July 30, 2024

The Honorable Janet L. Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Dear Secretary Yellen:

It is critical to American energy independence and rural prosperity that the Department of the Treasury (Treasury) issue proposed and subsequently final guidance for the Clean Fuel Production Credit (45Z) in advance of its January 1, 2025, statutory deadline. Finalizing this rule in a timely manner will provide farmers, renewable fuel producers, end-users, and other biofuels stakeholders with the certainty and clarity they need to invest and make planting decisions. As Treasury works to craft 45Z guidance, we urge you to restrict the eligibility to renewable fuels made from feedstocks sourced domestically.

45Z is intended to stimulate the development of a domestic, low-carbon fuel supply chain and to increase American competitiveness in the renewable and traditional energy markets. If drafted and implemented correctly, the credit will help to support robust American energy independence—incentivizing the production of biofuels made with domestically-produced feedstocks. In order to ensure this objective, it is essential that the 45Z rule articulate clear, workable pathways for domestically-produced renewable fuels derived from domestically-produced feedstocks, to lead the way in lowering the carbon intensity of American transportation fuels.

While the use of foreign feedstocks can play an important role in producing domestically manufactured ethanol and biodiesel, the rule must make it clear that the tax credit may only apply to biofuels produced from domestic feedstocks. This would be keeping with the two-fold intent of Congress in creating 45Z: 1) support domestic biofuels manufacturing, and 2) utilize domestic feedstocks to lead the way in lowering the carbon intensity of American transportation fuels. This approach marks a deliberate change from the previous Blenders Tax Credit, and it is important that Treasury's guidance capture this nuance and accurately reflect Congressional intent.

Failure to properly structure the feedstock sustainability criteria associated with 45Z credit will incentivize the use of foreign feedstocks over those from U.S. suppliers, contrary to the intent of Congress. If the guidance fails to establish robust, science-based, sustainability criteria that producers of domestic feedstocks can actually meet, and fails to include guardrails that ensure the credit is only available to renewable fuels made with domestically produced feedstocks, renewable fuel producers will take the path of least resistance and import foreign feedstocks, such as used cooking oil (UCO) from China to produce renewable diesel or Brazilian ethanol as a feedstock for sustainable aviation fuel (SAF) in the U.S.[1] This would reduce the utility of the credit to a manufacturing credit, rather than a credit that supports both manufacturing and feedstock production. This was not the intent of Congress.

One need look no further than the dramatic increase in imports of Chinese UCO and Brazilian tallow, and the current use of Brazilian ethanol in producing (SAF) to understand the consequences of a failure to properly craft the 45Z tax credit in a manner that supports American feedstocks. This has occurred, in part, because under the current guidance for the 40B tax credit for sustainable aviation fuel, no domestically-produced ethanol is able to achieve the criteria set forth by the Treasury Department. This has unintended and counterproductive consequences.

We are deeply concerned that if the Administration fails to address the current market dynamics of foreign UCO, tallow and ethanol, and Brazilian trade barriers for American ethanol, American agriculture will have a limited role in decarbonizing the transportation system. American agriculture, in search of new and robust markets, has been the chief advocate for biofuels adoption. A poorly constructed rule will deny American farmers the long-anticipated benefit of biofuel adoption, which would be unacceptable.

If more is not done to support the production and utilization of domestic feedstocks, the U.S. will see its renewable fuels industry shift focus from domestically oriented feedstocks towards imports. Allowing U.S. tax credits to fund the importation and use of foreign feedstocks to produce biofuels would put U.S. agriculture at the back of the line, while foreign agricultural producers are subsidized by U.S. taxpayers.

We urge you to issue proposed and subsequently final guidance for 45Z in advance of January 1, 2025. Such a rule should include language that only allows for the distribution of federal tax dollars to renewable fuel made with domestic feedstocks as Congress intended.

Sincerely,

Sherrod Brown
United States Senator

Roger W. Marshall

Roger Marshall, M.D.
United State Senator

Mike Braun

Mike Braun
United States Senator

Jerry Moran

Jerry Moran
United States Senator

---

[1] https://www.agweb.com/markets/pro-farmer-analysis/brazil-makes-first-ethanol-saf

Todd Young
United States Senator

Richard J. Durbin
United States Senator

Tammy Duckworth
United States Senator

Deb Fischer
United States Senator

Pete Ricketts
United State Senator

Tammy Baldwin
United States Senator

Debbie Stabenow
United States Senator

Joni K. Ernst
United States Senator

Tina Smith
United States Senator

Gary Peters
United State Senator

Amy Klobuchar
United States Senator

cc: The Honorable Secretary Granholm, Secretary of Energy
The Honorable Secretary Vilsack, Secretary of Agriculture
The Honorable Secretary Buttigieg, Secretary of Transportation
The Honorable Michael Regan, Environmental Protection Agency Administrator