

**DRAFT FOR REVIEW: SABR RFI SUBMISSION TO THE WAYS & MEANS  
COMMITTEE**

(Responses will be submitted via online portal rather than a letter from the organization.)

**General Questions**

***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?***

- SABR supports a production tax credit that benefits domestically produced biofuels that helps spur investment in U.S. agricultural and biofuel production. We believe this is an improvement over a blenders tax credit structure which has a history of encouraging imported biofuel from Asia and Europe.
- A long-term PTC will help drive investment in new fuel production technologies and enhance existing facilities. This is important for all biofuel production sectors, not just sustainable aviation fuel sector. All biorefineries are going to have to make significant investments by 2030 to remain competitive with their peers as the domestic and global market shift to a performance-based market. A strong performance-based tax credit will support that investment. However, for the credit to support long-term investment in America, the credit must be modified to remove flawed and arbitrary disincentives placed on American grown feedstocks, like soybean oil.
- SABR wants to ensure that the tax credit does not disadvantage domestic feedstock relative to imports. Care must be taken to ensure the performance-based mechanism is adapted to rely on accurate, precise, and certain estimates of environmental performance, not highly uncertain European-driven estimates of potential indirect effects, which currently, are applied in an uneven fashion. These modeled future indirect effects have consistently been wrong when backcasting to compare to the actual data. The predicted indirect effects simply did not happen.

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

- The biodiesel industry has successfully grown as a result of a blender's tax credit, helping it compete with the long-standing and still subsidized fossil fuel industry. It has allowed diversification of transportation fuels, supporting our energy independence and rural economy. The tax credit, however, should not

create disparities and should continue to ensure diversified feedstocks and fuels, supporting domestic production of feedstock and fuel.

- The tax credit must not create an environment where imports become the preferred feedstock. The tax credit instead should reward fuels sourced from domestic value chains.
- If this tax credit drives innovation and investment in domestic biofuel production, agricultural processing and enhances energy security, extensions should be considered in the long-term.

***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?***

- If guidance on 45Z is delayed, Congress must seriously consider an extension of the Biodiesel Blenders Tax Credit (40A) that can be utilized in the interim. Industry support for a 40A extension should not be perceived as opposition to a production tax credit, but rather a bridge to ensure market certainty in the interim as 45Z is reshaped into a tax credit that works for American farmers and domestic biorefiners, glycerin refiners, chemical suppliers, commodity traders, construction contractors, labor, blenders, distributors, retailers, and everyone else in the value chain of this \$17 billion industry. If 40A is not extended promptly, nearly all of the economic activity in that large value chain will come to a sudden halt on January 1, and stay halted until 40A is extended. This cessation of economic activity will not just directly harm the members of the biodiesel industry value chain, it will be felt in the economy as a whole because it touches so many parts of the economy. This is different than the times 40A has lapsed in the past, because the markets continued to speculate that Congress would reinstate the credit retroactively, which they did. 45Z and the lack of guidance on it has created so much confusion and uncertainty that the markets are not for the most part speculating this time on a retroactive reinstatement of 40A.
- If the tax credit guidance incentivizes feedstocks grown using climate smart agriculture (CSA) practices, retroactive guidance is ineffective. Soybean oil used to produce biofuels is grown in previous years to when the biodiesel is produced. So, considering planting and business decision-making, farmers & the value chain need at least 18 months of lead time to benefit from tax credits that reward CSA practices. Releasing 45Z guidance without CSA options unfairly disadvantages agricultural feedstocks, especially if those domestic agricultural

feedstocks are also assessed a penalty based on the failed theory and flawed implementation of indirect land use change.

### **Credit Eligibility**

#### ***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?***

- Ensuring feedstock producers can access all available measures to effectively reduce their carbon intensity scores will be critical to the success of agricultural feedstocks in domestic & international biofuel markets.
- For soybean growers, the 40B tax credit allows farmers to use both no-till and cover crop practices to achieve a lower carbon intensity score. Although cover cropping was central in the original tax credit, we strongly encourage the use of CPS 328 as an alternative to 340. CPS 328 allows farmers to harvest and manage the winter cover biomass, creating an additional supply of feed, forage, and bioenergy feedstock. Value added processing of the above ground biomass from winter cover would be disallowed if only CPS 340 is used.
- Practices should not be required to be bundled to qualify for CSA practice credit. Instead, farmers should be allowed to select the individual practices that work for their operation. Any requirement to bundle is unscientific, unproductive, and will be limiting to American agriculture.

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

- Individual quantification of climate-smart agriculture practices provides the most flexibility and ease of participation for growers, especially when growing conditions change.
- Offering a suite of individually quantified practices for a farmer to choose from when seeking to reduce GHG emissions will encourage increased adoption of practices. However, allowing that list to evolve as farming technology improves is imperative to continuing to reward progress.
- While there are numerous practices that could be listed, we ask that any statutory modification to the credit explicitly direct USDA to work with DOE and Treasury to continue to add practices on a regular basis over the tenure of the tax credit.

#### ***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***
  - Similar to domestic procurement preferences for other energy tax credits, SABR believes that similar preferences for biofuels would better direct US taxpayer investments to the benefit of the US economy.
- ***Requiring that foreign feedstocks must obtain a higher standard of verification***
  - Domestic feedstocks are held to incredibly high standards in terms of traceability and sustainability reporting. CSA provisions in the 40B tax credit required additional domestic traceability & farmer attestations. State level biofuels programs may yet require additional sustainability reporting requirements for domestic feedstocks.
  - While imported waste feedstocks are technically held to the same chain-of-custody reporting requirements as domestic used cooking oil (UCO), tracing imported UCO back to the point of origin would be costly and nearly impossible to achieve on a large scale without significant investments in oversight. The United States does not have the ability to inspect foreign facilities, so imports must necessarily meet higher testing standards to ensure similar level of confidence in the environmental attributes of the feedstock.
  - A simple and effective way to help ensure foreign feedstock is unadulterated is to require that foreign feedstocks meet existing foreign cellulosic biomass traceability requirements administered by U.S. EPA as part of the Renewable Fuel Standard. This will provide an immediate, clear, strong standard for imports, while allowing the government to more rapidly react in the event further oversight is needed.
  - There should be a distinction between Canadian feedstock that comes in by rail vs. feedstock that comes from overseas. Canadian feedstock is regulated and highly traceable and should not be excluded from the program. There are several precedents for allowing for North American feedstocks to comply with programs. Due to the difficulty in enforcing overseas regulatory programs, the US routinely includes additional provisions to ensure foreign products meet the statutory requirements and facilitate oversight.
- ***Limiting feedstocks to domestic, but allowing certain trade partners (such as those with trade agreements, or those who do not currently discriminate against biofuels)***

- SABR understands trade concerns and limitations that may arise from domestic feedstock requirements and believes an appropriate alternative may be reached by limiting participation to those countries who are entered into free trade agreements with the U.S.
- ***Modifying how indirect land use change is considered for the purposes of determining the CI score of a feedstock producer***
  - Indirect land use change (ILUC) should be excluded from use in federal tax policy. ILUC is a failed theory that uses highly flawed assumptions. Unlike direct emissions measurements which use well-understood lifecycle analysis and the most recent actual data available, ILUC attempts to predict the future by guessing at highly complex and ever-changing geopolitical, trade, economic, and agricultural patterns and assign third and fourth iterations of indirect effects that supposedly will be committed by future generations and assigned backwards to today's biofuels. We now have 20 years of actual data that we can compare to the ILUC predictions which shows that the ILUC that was predicted to happen did not happen. This highly uncertain estimate of global land use is unmeasurable, unverifiable, and unobservable. It is an academic exercise that failed to materialize. Recently as an Amicus Brief to the US Court of Appeals in a Petition for Review filed by SABR, eight of the nation's most pre-eminent life cycle scientist pointed out the flawed assumptions in the failed theory of ILUC.  
[https://www.sabrcoalition.org/\\_files/ugd/2ffb3f\\_68488f6fe65c41ac8b23d807b782edb9.pdf](https://www.sabrcoalition.org/_files/ugd/2ffb3f_68488f6fe65c41ac8b23d807b782edb9.pdf)
  - In the early 2000's there was much academic discussion about peak oil – a modeled prediction of the time when global oil production would begin a precipitous decline, leading to economic decline. The theory of peak oil did not take into account the fracking revolution enabled by technology advances in hydraulic fracturing and horizontal drilling and heavily subsidized by the 2005 Energy Policy Act. Because of this oversight, nobody is talking about Peak Oil anymore unless it is in the context of famous *failed* academic theories. Indirect land use change should join that list. Like Peak Oil ILUC theory contained a major oversight: the revolution of technology advances in modern precision agricultural equipment, farming practices and plant science research over the past 20 year that has resulted in massive yield improvements with less energy inputs on less land, not more. ILUC theory assumes that use of a crop-based

feedstock for biofuel will result in more land going into production to replace that crop. Because of the modern precision agriculture revolution, the US and most of the rest of the world is producing more crops on less land every year lost mostly to commercial development. The predicted land use change simply didn't happen.

- Furthermore, the United States remains the last national market globally which relies on ILUC, artificially inflating the carbon intensity scores of our product and perpetuating the myth that U.S. agriculture is unsustainable. U.S. tax policy has an opportunity to change course, in line with the census recommendation of the G20 and G7 on bioenergy carbon accounting.  
(<https://www.iea.org/reports/carbon-accounting-for-sustainable-biofuels>)
- Observable and measurable indirect land use change did occur, but not because of biofuels. Due to the fracking revolution and the significant incentives that supported it, fracking wells that were not there 15 years ago, now dot the landscape and can be seen from most commercial airline flights. Yet biofuels are still assumed to create ILUC and the baseline petroleum that it is compared to is assumed to not to have any indirect effects, when the opposite is true.
- California and three other states that have adopted a state low carbon fuel standard (LCFS). Those states now make up over half of the nation's biomass-based diesel and soon it will be 2/3. Those LCFS programs assign ILUC penalties as well as multiple other layers of disincentives to crop-based feedstocks. When a gallon of soy biomass-based diesel is assigned a land use change penalty at the state level and then again at the federal level, it effectively doubles the ILUC penalty on the same gallon as if the gallon was burned twice and the land was converted twice, when in reality land was not converted at all due to that gallon of biofuel.

- **Utilizing Direct Land Use**

- Congress and tax writers should consider using a direct land use change (DLUC) mechanism if still interested in using carbon intensity as a metric to determine tax credit eligibility. Unlike ILUC, DLUC is observable and measurable.
- DLUC would allow for continued safeguards to protect against deforestation, while also ensuring that domestic agricultural feedstocks are not penalized for land conversions outside of the U.S.
- Reliance on DLUC for biofuel markets would also help align the biofuels export value chain with the whole soybean and soybean meal export value

chain which relies on DLUC today when estimating environmental impact against competitors in the global marketplace.

- ***Allowing foreign feedstock to participate in and benefit from 45Z, but at a lower credit amount***
  - While SABR has deep concerns about foreign feedstocks from non-trade partners being eligible to participate in 45Z, if eligibility continues, ensuring participation at a discounted rate is imperative. Without doing so, this tax credit may incentivize the procurement of imported feedstocks over domestic feedstocks.
  - To ensure that this U.S. tax credit continues to support the U.S. biofuel value chain, there needs to be safeguards to prevent the potential incentivization of cheaper foreign feedstocks that lack proper oversight and testing.
  - A potential adjustment to the current tax credit that may be useful to promote the use of domestic feedstocks would be to discount foreign feedstocks to the 'does not meet wage and apprenticeship requirements' in the IRA, roughly an 80% discount. This would help ensure American farmers do not become the residual feedstock supplier in their own domestic market.

***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?***

- SABR believes that a U.S. biofuel tax credits should benefit the entire U.S. biofuel value chain. Shifting from a blender credit (40A) to a producer credit (45Z) was intended to bolster U.S. biofuel production by removing imported biofuels from tax credit eligibility. However, this shift in eligibility did not extend to the rest of the biofuel value chain, leaving agricultural feedstock producers and oilseed processors at a disadvantage while pathways for cheaper, imported waste feedstocks with arbitrarily low CI scores continue to rapidly expand.
- It is imperative that updates to 45Z include provisions that create parity, if not a preference, for domestic agricultural feedstocks. Options like shifting to DLUC, removing ILUC penalties from domestic feedstocks, requiring new oversight and testing standards for imported waste feedstocks, and providing additional credit benefits to domestic feedstocks will all support market opportunities for U.S. farmers.



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

- SABR does not submit an answer to this question.

### **Airlines**

***What potential does sustainable aviation fuel that meets GREET standards, but not ICAO's CORSIA standards, have for utilization in international flights?***

- USDA has made significant investments in engaging with ICAO as they update CORSIA standards, through the development of academic articles to help bolster the argument that GREET should be recognized as an international standard for the purpose of SAF utilization. SABR urges USDA to continue engagement with ICAO to ensure that U.S. fuels derived from U.S. agricultural feedstocks can be eligible for international air transportation. In the end, U.S. funded credits should be determined by U.S. standards.

***Would GREET compliant SAF, but not CORSIA compliant, be restricted to domestic utilization? How feasible would such a restriction be in the marketplace?***

- U.S. tax credits should be used to incentivize behavior consistent with domestic goals. The United States benefits from utilization of SAF, whether utilized in domestic or international flights. This includes reducing GHG emissions and supporting domestic feedstock and biofuel industries. The CORSIA model was determined through political compromise instead of science. The benefits as demonstrated under GREET should not be lost due to the process that generated CORSIA.
- An updated and strengthened 45Z, which relies on DLUC versus ILUC could provide additional horsepower to efforts to reform CORSIA to ensure that it more treats U.S. agricultural products more accurate and favorable fashion compared to our global competitors.

***Do you anticipate the supply of SAF that is compliant with CORSIA to meet the scale of anticipated demand for SAF in 2030 and 2050? Do you expect the domestic supply of CORSIA-compliant SAF to meet domestic demand in that time frame?***

- SABR does not submit an answer to this question.