THIRD WAY

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Third Way
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Third Way appreciates the opportunity to respond to this Internal Revenue Service **Request for Comments on Credits for Clean Hydrogen and Clean Fuel Production (IRS Notice 2022-58).**

Founded in 2005, Third Way is a national public policy think tank that champions modern center-left ideas grounded in the mainstream American values of opportunity, freedom, and security. Third Way's Climate & Energy Program designs and advocates for policies that will drive innovation and deployment of clean energy technologies to deliver the emissions cuts we need to place the U.S. on the fastest, fairest path to net-zero emissions by mid-century.

Clean Fuel Production Credit (§ 45Z)

(2) What methodologies should the Treasury Department and IRS consider for the lifecycle greenhouse gas emissions of sustainable aviation fuel for the purposes of § 45Z(b)(1)(B)(iii)(II)?

The Clean Air Act (42 U.S.C. 7545(o)(1)(H)) grants the Administrator of the Environmental Protection Agency broad authority to select a methodology for measuring lifecycle greenhouse gas emissions that accounts for both "direct emissions and significant indirect emissions such as significant emissions from land use changes." EPA has long held that the Greenhouse gases, Regulated Emissions, and Energy use in Transportation (GREET) model developed by Argonne National Laboratory meets this definition. Furthermore, the IRA makes clear in § 45Z(b)(1)(B)(ii) that the GREET model satisfies these requirements for the purposes of calculating emissions for "any transportation fuel which is not sustainable aviation fuel," though this language does not preclude the GREET model from also being used to measure emissions for sustainable aviation fuel. As such, Treasury should interpret the requirement in § 45Z(b)(1)(B)(iii)(II) permitting "any similar methodology which satisfies the criteria under section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H))" as clearly permitting the GREET model to qualify under this section. However, this should not preclude the Department from also approving other methodologies that it determines meet the minimum requirements of this section.

(7) Please provide comments on any other topics related to § 45Z credit that may require guidance.

1. **The Department should narrowly interpret the definition of a "qualified facility" in § 45Z.** While the § 45Z credit's definition of a qualified facility precludes a facility from taking this credit if it also takes a credit under § 45Q or § 45V, it does not establish any restrictions that would preclude two co-located facilities from each receiving separate credits. Clean hydrogen and carbon feedstock acquired through carbon sequestration will both be critical inputs for the production of low-carbon intensity SAFs—particularly for emerging Power-to-Liquid (PtL) fuels—so the Department should not penalize producers for establishing SAF production facilities in close proximity to any facility taking the § 45Q or § 45V credits. A narrow interpretation of this provision that would allow fuel producers to co-locate their facilities in close proximity, including single sites, would ensure that clean fuel producers can make investments in the most economical and environmentally efficient manner.

2. **The Department should clarify that negative lifecycle emissions rates are permitted under § 45Z.** § 45Z(b)(1)(A) establishes a formula under which "the emissions factor of a transportation fuel shall be an amount equal to the quotient of an amount equal to 50 kilograms of CO_2e per mmBTU, minus the emissions rate for such fuel, divided by 50 kilograms of CO_2e per mmBTU." The Department should clarify that the emissions rate used in this calculation can be a negative value, which will incentivize the production of the cleanest possible fuels.