



April 10, 2025

***Submitted via [www.regulations.gov](http://www.regulations.gov) (IRS 2025-0002)***

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

**Re: Notice 2025-10  
Implementation of Section 45Z – Clean Fuels Production Credit.**

Dear Sir or Madam:

The Energy Marketers of America (EMA) appreciates the opportunity to comment on the Department of the Treasury (Treasury Department) and the Internal Revenue Service's (IRS) notice of intent to propose regulations (forthcoming regulations) implementing the clean fuels production income tax credits under § 45Z of the Internal Revenue Code (45Z), as added by the Inflation Reduction Act (IRA).<sup>1</sup> Although EMA supports expanding the availability and accessibility of biofuels, the guidance for Section 45Z—which defines key concepts and outlines rules for measuring carbon intensity—is unlikely to achieve its intended goal of reducing transportation costs for consumers.

EMA is a federation of 49 state and regional trade associations representing family-owned and operated small business energy marketers throughout the United States. As a vital link in the motor fuels and heating oil supply chains,<sup>2</sup> energy marketers represented by EMA are responsible for supplying 80 percent of all finished motor and heating fuel products nationwide. EMA marketers distribute finished products to approximately 40,000 gas stations and operate about 60,000 retail stations, including placing into markets a growing portfolio of motor fuels, including a variety of biofuels.

The proposed 45Z regulations issued by the IRS fail to offer the economic incentives needed to drive greater adoption of biofuels. Structural deficiencies with the proposed 45Z regulations include:

---

<sup>1</sup> See § 13704 of Public Law 117-169, 136 Stat. 1818, 1997 (August 16, 2022).

<sup>2</sup> Energy Marketers of America, *EMA Legislative Brief: Refined Products Supply Chain* (Mar. 2024), [https://www.energymarketersofamerica.org/pdfs/EMA\\_LB\\_SupChain3-24.pdf](https://www.energymarketersofamerica.org/pdfs/EMA_LB_SupChain3-24.pdf).

- The shift in incentives from blenders to producers — and allocating added weight to aviation fuels —discourages energy marketers and retailers from including biofuel gallons into their sales portfolios;
- The lack of harmonization between 45Z and the Renewable Fuel Standard (RFS) undermines compliance with volume mandates;
- The barriers to pass-through mechanisms effectively cancel out the carbon reduction benefits of renewable heating oil;
- The emissions rate model lacks a clear, consistent methodology for credit calculation; and
- To realize the full benefits of biofuel incentives, there must be alignment with infrastructure policy to ensure the safe and reliable availability of biofuels below the terminal rack.

Accordingly, EMA urges the Treasury Department and the IRS to collaborate with Congress on the development of a coordinated, comprehensive biofuels tax policy—one that promotes lower consumer prices, increases biofuels adoption, and delivers meaningful emissions reduction. EMA’s comments on the above follow in detail.

#### **I. Shifting Incentives from Blenders to Producers Negatively Impacts the Competitive Advantage of Biofuels.**

A strategic approach to biofuels tax policy should aim to create stability and predictability in markets while being practical in terms of implementation and compliance. Unfortunately, the proposed 45Z regulations fall short on both fronts. EMA urges the Treasury Department and the IRS to work with Congress to reinstate downstream blending incentives that promote decarbonization, profitability, and affordability. Restoring a blenders’ tax credit is the most effective and strategic path to boost biofuels consumption across the country.

- a. A producer-level credit regime does not impact consumption and disincentivizes downstream penetration.

By redirecting tax credits and market advantages upstream, the proposed 45Z regulations disrupt the established blending economics that have successfully increased biofuels consumption in on-road applications. This policy shift weakens the role of downstream stakeholders – those closest to consumers – by reducing their incentive to invest in and distribute biofuels. As a result, the motor fuels market faces chilling consequences – that is, blenders lose the economic leverage they once held to competitively price and integrate biofuels into retail supply chains. This not only jeopardizes progress in reducing transportation-sector emissions but also undercuts a proven strategy for lowering the cost of fuel at the pump, which is the primary driver of biofuels demand.

Blenders have traditionally played a critical role in incorporating renewable fuels, such as biodiesel and renewable diesel, into the national fuel supply, directly responding to consumer demand and retail pricing dynamics. Removing the link between incentive availability and retail fuel distribution fractures nationwide blending economics, as the financial benefits percolate upstream. In other words, the production nature of 45Z concentrates market power in producers

and feedstock suppliers and delinks the credit from the actors who introduce biofuel blends into local markets, creating uncertainty around cost savings pass-through. This concentration reduces downstream blending margins and weakens the incentives to retailers to sustain or expand the use of biofuels.

Without a financial mechanism to support blending, downstream stakeholders may scale back biofuel offerings, particularly in price-sensitive or infrastructure-limited regions. This undercuts biofuel penetration in those markets where production incentives would not be felt. Over time, the 45Z regulations risk eroding the demand-side apparatus that has been critical to the growth of renewable fuels, threatening to unravel years of progress toward a lower-emission transportation sector.

Thus, EMA urges the IRS to include blending under the definition of production as it involves crucial steps and processes to produce and market customized transportation fuels. In the absence of legislative action, the Treasury Department and the IRS can play a key role in supporting blending economics by keeping incentives as close as possible to consumers. Nothing in the statutory language prevents such support.<sup>3</sup>

b. The preferential treatment for SAF discourages motor biofuels consumption.

EMA's concerns are compounded by the preferential treatment Sustainable Aviation Fuels (SAF) receive under 45Z, which undermines the economic viability of biofuels for motor vehicles by diverting limited feedstocks. Higher credit values for SAF skew the market, encouraging producers to prioritize aviation fuels over on-road transportation fuels. Since feedstocks like soybean oil, used cooking oil, and animal fats are essential to both types of products, agricultural suppliers are incentivized to shift resources toward SAF to capture higher credits. This dynamic further weakens the economics of motor biofuels, forcing energy marketers and retailers—who previously relied on stable blending incentives—to reevaluate their businesses and ability to offer renewable fuels at the pump.

Without a policy that adequately supports blending economics, motor biofuel consumption is likely to contract. By prioritizing aviation fuels, policymakers risk weakening the biofuels transportation market at a time when the Trump administration's objective is boosting biofuels consumption.

c. 45Z market dynamics create compliance challenges with Renewable Fuel Standards and state blending mandates.

As outlined above, the proposed 45Z regulations weaken the economics of blending, putting downward pressure on demand for biofuels in retail motor fuels markets. Lower consumption, in turn, makes it more challenging for obligated parties to comply with volume obligations under the Renewable Federal Standard (RFS) and/or state blending requirements at an affordable rate. EMA urges the Treasury Department and the IRS to work with Congress to harmonize biofuels tax policy with blending programs.

---

<sup>3</sup> EMA did not find substantiating evidence showing that Congress prevented the Treasury Department and the IRS from including blending within the definition of production.

The lack of harmonization between the 45Z credit and the RFS creates uncertainty and compliance challenges. A downstream contraction in biofuels consumption could lead to an ongoing shortfall in available Renewable Identification Numbers (RINS), placing upward pressure on RIN prices and leading to price hikes at the pump. A shrinking RINS market would drive up costs for obligated parties, which could, in turn, be passed down to jobbers, wholesalers, and retailers. The U.S. Environmental Protection Agency (EPA) will be faced with the increasingly challenging task of setting ambitious volume quotas in the market landscape that 45Z will create. Additionally, the misalignment of incentives under 45Z and the RFS can create a practical regulatory dichotomy: whether, in certain circumstances, to prioritize 45Z tax credits over RFS RINS generation. Market behavior may be shaped by relative incentive strength and transactional friction; meaning that producers may prioritize sales strategies that optimize for the more predictable or higher-value credit, as opposed to the volatile RINS cost.

From a technical perspective, under the current framework, biofuel producers must navigate conflicting carbon intensity calculations, with the Treasury Department's GREET model dictating 45Z eligibility, while EPA's lifecycle analysis governs RFS compliance. This divergence creates inefficiencies in fuel supply chains, making it harder for downstream marketers to secure cost-effective renewable fuel blends. Finally, regulatory misalignment further complicates compliance planning and investment decisions. For example, uncertainty over the implementation of 45Z and its impact on biofuel consumption vis-à-vis the RFS creates hesitation in infrastructure investments for higher-blend ethanol (E15, E85) and biodiesel (B20, B100).

State-level programs that rely on similar credit generation mechanisms could likewise face challenges if the economics of in-state blending weaken, challenging both environmental targets and market stability. If these biofuel policies are not reconciled, entities across the supply chain will likely face a patchwork of compliance risks, supply inconsistencies, and financial unpredictability that undermine the goal of boosting renewable fuel offerings.

EMA urges the Trump administration to coordinate agency efforts and provide clear, streamlined guidance that ensures 45Z and the RFS function as complementary programs, rather than competing regulatory frameworks that destabilize fuel markets.

d. A producer-level credit undermines the carbon reduction and affordability benefits of renewable heating oil.

Unlike the former blenders' credit, the proposed 45Z regulations suffer from exclusionary design that overlooks the environmental and economic benefits of renewable fuels in the heating oil sector. While biodiesel ultimately used to create BioHeat® blends—ranging from 5% biodiesel (B5 Bioheat® fuel) up to 20% biodiesel (B20 Bioheat® fuel)—is eligible for the tax credit,<sup>4</sup> the shift to a production-level incentive dilutes the affordability and diminishes the environmental impact of this proven sustainability initiative.

---

<sup>4</sup> EMA supports the definitions of “fuel” and “transportation fuel” to encompass fuels “suitable for use” in a highway vehicle as a fuel mixture, which ensures the eligibility of biodiesel that is ultimately used for heating oil blending.

The industry has enthusiastically embraced renewable heating fuels as a low-carbon solution that advances both emissions reduction and energy security goals. Many EMA members have made long-term investments to increase biodiesel percentages in heating oil blends. However, the expiration of the blenders' credit—paired with the limited pass-through of benefits under 45Z—has introduced significant uncertainty. Without a blenders' tax credit, the cost-effectiveness of biodiesel and renewable biodiesel for home heating erodes, leading to higher prices for consumers and jeopardizing significant emissions gains.

EMA urges the Treasury Department to codify a more inclusive credit structure—one that recognizes and supports the full value of downstream blending activity in the heating oil market. Preserving progress on emissions reduction and protecting consumer choice requires fair treatment for all renewable fuel applications.

## **II. The Emissions Rate and Climate Smart Feedstock Model Is Not a Sufficiently Definite and Precise Standard for Credit Calculation.**

Congress may delegate rulemaking power to federal agencies, provided that the enabling statute supplies standards that are sufficiently definite and precise to guide implementation.<sup>5</sup> In other words, any delegation of legislative power must be accompanied by discernable parameters that constrain agency discretion and ensures regulatory coherence. Currently, the methodologies advanced by the Treasury Department and the U.S. Department of Agriculture's (USDA) do not provide sufficiently clear, definite, or precise standards for calculating credits under Section 45Z. Therefore, EMA urges both the Treasury Department and USDA to work with Congress to better delineate a credit calculation standard that does not rely on multiple agencies attempting to synchronize exceptionally complex implementing regulations.

Under the proposed 45Z regulations, credits may be available or maximized if biofuel producers source agricultural feedstocks from farmers who have implemented climate-smart practices. Despite efforts by multiple agencies—including EPA, USDA, and the Department of Energy—to establish intelligible parameters for credit calculation, significant implementation gaps remain. The emissions rate methodology for SAF producers allow the use of alternative approaches that are “similar” to the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA). However, it is unclear what precise aspects, assumptions, data inputs, or accounting principles must be incorporated in such an alternative methodology to comply with statutory requirements—particularly when paired with climate-smart agricultural practices. Likewise, the climate-smart agriculture incentives intended to yield or maximize credits for over-the-road fuels rest on assumptions that lack statutory clarity.

Even if not driven by constitutional or statutory concerns, credit calculation should, as a matter of sound regulatory policy, be anchored to stable and unchanging principles that promote certainty and incentivize the intended market behavior. EMA advocates for legislative action to

---

<sup>5</sup> See *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212 (1989) (reaffirming the constitutional principle that Congress is required to “clearly delineate[]” the boundaries of delegation). Unlike the *Skinner* delegation, the 45Z regime is riddled with cryptic parameters.

codify a transparent, consistent, and administrable standard for credit calculation. Doing so will reduce compliance risk, enhance market predictability, and ensure that the crediting framework aligns with both congressional intent and constitutional governance.

### III. HBIIP Grants Policy is Crucial Component of Biofuels Policy

While not directly related to 45Z, the Higher Blends Infrastructure Incentive Program (HBIIP) plays a critical role in advancing a comprehensive biofuels policy. One of the most persistent barriers to expanding biofuel use is infrastructure – that is, many retail stations, terminals, and distribution facilities lack the equipment to store, blend, and dispense higher blends like E15, E85, and B20.<sup>6</sup> HBIIP addresses this gap by helping offset the significant upfront capital costs of upgrading tank systems and blending infrastructure—costs that are often prohibitive for small and mid-sized fuel marketers, especially given the limited downstream benefits of production-level tax credits.

Integrating HBIIP grants into the broader biofuels policy framework ensures that supply-side incentives translate into real consumer access at the pump. Blending credits are helpful but may be ineffective on their own if retailers lack the capacity to deliver high-blend fuels to the public. By enabling infrastructure readiness, HBIIP unlocks downstream demand, broadens geographic availability of renewable fuels, and helps meet national decarbonization goals. To fully realize the potential of 45Z and other tax incentives to propel a competitive market for low-carbon fuels, infrastructure support through programs like HBIIP must be viewed as a foundational component—not a peripheral additional—of federal biofuels policy.

\* \* \* \*

We appreciate your attention to these important issues that directly impact EMA members across the country. If you have any questions regarding this letter, please contact me or the organization's regulatory counsel, Jeff Leiter ([jleiter@bmalaw.net](mailto:jleiter@bmalaw.net)) and Jorge Roman ([jroman@bmalaw.net](mailto:jroman@bmalaw.net)). EMA welcomes the opportunity to meet and discuss its comments.

Sincerely,

Rob Underwood  
President

---

<sup>6</sup> While storage tanks are compatible with fuel blends containing more than 10 percent ethanol, some components of the UST system like product piping and gaskets can suffer from compatibility issues. See Energy Marketers of America, *EMA Legislative Issues: Underground Storage Tank System Graphic* (Mar. 2024), [https://www.energymarketersofamerica.org/pdfs/EMA\\_LB\\_SupChain3-24.pdf](https://www.energymarketersofamerica.org/pdfs/EMA_LB_SupChain3-24.pdf).