



April 6, 2026

Submitted via www.regulations.gov

Internal Revenue Service
Department of the Treasury
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

**Re: Section 45Z Clean Fuel Production Credit [REG-121244-23]
Docket No. IRS-2026-0133**

Dear Sir or Madam:

The Energy Marketers of America (EMA) submits these comments on the Internal Revenue Service's (IRS or Service) proposed regulations implementing the clean fuels production credit under Section 45Z of the Internal Revenue Code (Section 45Z). Additionally, EMA requests to speak at the May 28, 2026, public hearing — our comments below serve as the outline of topics EMA wishes to discuss at the public hearing.

EMA supports expanding the availability of and accessibility to low-carbon fuels and biofuels, but we urge the IRS to broadly construe credit eligibility across the fuels supply chain, thereby maximizing the opportunity for fuel distributors, retailers, and consumers to benefit from this federal incentive.

EMA is a federation of 48 state and regional trade associations representing family-owned and operated energy marketers throughout the United States. As a vital link in the motor fuels and heating oil supply chains, EMA marketers are responsible for supplying 80 percent of all finished motor and heating fuel products nationwide — placing into market a growing portfolio of fuels, including a variety of biofuel blends.

While EMA supports the proposed standard of "suitable for use" for purposes of meeting the definition of a "transportation fuel," we request for avoidance of doubt that the IRS add a specific regulatory example expressly recognizing that heating oil applications do not disqualify renewable fuels from Section 45Z credit generation. Additionally, the IRS should broadly construe the qualified sale regime to reflect the commercial realities of fuels supply chains — where fuels routinely pass through intermediate hands before reaching the end user — so that fuel marketers, distributors, and retailers have an opportunity to benefit from the Section 45Z credit.

EMA's detailed comments follow.

I. The Proposed Regulations Adopt a Predictable and Practical "Suitable for Use" Standard for Credit Eligibility Purposes.

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. EMA commends the IRS for proposing a "suitable for use" definition that is consistent with established industry and regulatory practice. Proposed § 1.45Z-1(b)(34)(ii) would define "suitable for use" to mean that a fuel has "practical and commercial fitness for use as a fuel in a highway vehicle or aircraft, or may be blended into a fuel mixture that has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft." This definition is both textually faithful to the statute and consistent with longstanding excise tax regulatory principles.

EMA supports decoupling credit qualification from actual end use. As the IRS' preamble notes, the proposed definition is expressly modeled on the Manufacturers and Retailers Excise Tax Regulations, with which fuel producers, distributors, and retailers are thoroughly familiar. Adopting a consistent definition reduces compliance uncertainty and avoids creating inconsistent regulatory regimes for economically similar transactions. An actual-end-use framework would be unworkable, unpredictable, and contrary to the legislative intent, which focuses on the character of the fuel, not the conduct of the ultimate user. From a policy standpoint, the proposed approach also maximizes the statute's reach, ultimately supporting investment in a diverse array of low-carbon fuel pathways.

To that end, the IRS should add a specific regulatory example recognizing that heating oil applications are not disqualifiers for Section 45Z credit eligibility. Renewable heating oil is a biobased distillate fuel blended from conventional heating oil (No. 2 fuel oil) and biomass-based diesel — such as biodiesel (B100) or renewable diesel produced from bio-based feedstocks including used cooking oil, tallow, soybean oil, and other triglyceride-bearing materials. Renewable heating oil is produced in various blend levels — most commonly B2, B5, and B20 — and is used as a replacement for conventional petroleum heating oil in residential and commercial heating applications throughout the northeastern United States and elsewhere.

Critically for purposes of Section 45Z, renewable heating oil is chemically and functionally interchangeable with on-road diesel fuel and marine diesel fuel with respect to its base distillate component. The biomass-based diesel blendstocks used to produce renewable heating oil — biodiesel and renewable diesel — are themselves widely used in on-road applications. Thus, while the "suitable for use" standard already implies that actual use as heating fuel does not defeat credit qualification, EMA requests the IRS to include a specific regulatory example expressly addressing heating oil use to eliminate any confusion.

EMA proposes the following illustrative example for inclusion in the final regulations:

Example 2. Suitable for use. Y produces diesel fuel that has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft. The diesel fuel meets the description of low-GHG diesel fuel in paragraph (b)(24)(ii)(C) of this section, and no further production, refinement, or other step is necessary before the fuel may be sold in a qualified sale. Y sells the diesel fuel to fuel marketer Z, which blends the low-GHG diesel fuel with conventional No. 2 heating oil to produce a blend containing 20 percent biomass-based diesel by volume (B20). Z markets and sells the B20 blend exclusively for residential and commercial space heating. Y's diesel fuel satisfies the suitable for use standard under paragraph (b)(34)(ii) of this section, notwithstanding that the diesel fuel ultimately is used in a residential or commercial heating application — not in a highway vehicle or aircraft.

The addition of this example would explicitly address a commercially significant fuel pathway that may not be intuitively obvious to stakeholders and would clearly recognize and support the full value of downstream blending activity in the heating oil market.

II. The 45Z Regime Must Broadly Construe "Qualified Sales" to Reflect the Realities of Fuels Supply Chains.

EMA agrees with the IRS' decision to remove the "use as a fuel" limitation from the definition of "sold for use in a trade or business" and commends the Service for its responsiveness to the concerns raised by fuel industry stakeholders during the Notice 2025-10 comment process. The original "use as a fuel" framing threatened to disqualify the vast majority of transactions that occur in the commercial fuels supply chain. Fuel producers rarely sell directly to end users; rather, product moves through a series of intermediate commercial hands — from producer to terminal operator, from terminal to jobber or distributor, from distributor to retailer — before it ever reaches the ultimate consumer. Conditioning credit eligibility on "use as a fuel" at the point of sale would have arbitrarily excluded these intermediate commercial transactions, undermining Congress's broader goal of incentivizing the distribution and commercial adoption of low-carbon fuels throughout the marketplace.

EMA further supports the clarification that "sold for use in a trade or business" expressly includes sales to unrelated persons that subsequently resell the fuel in their own trade or business. This is the normal commercial reality of fuel distribution and codifying it in the regulatory text removes a significant source of uncertainty for fuel marketers, distributors, and other intermediaries who are critical partners in moving low-carbon fuels from the point of production to the point of consumption.

A credit regime that functionally benefits only vertically integrated producers — and not the independent fuel marketers and distributors who serve tens of thousands of retail and commercial customers — would fail to fully harness the commercial infrastructure necessary to scale clean fuel adoption across the economy.

III. Conclusion

EMA appreciates this opportunity to comment. We support the proposed broad, commercially grounded definition of "suitable for use" in proposed Section 1.45Z-1(b)(34)(ii) — a definition that is legally sound, administratively workable, and essential to realizing the full clean energy potential of Section 45Z — and urge the Service to complement it with a specific regulatory example expressly recognizing renewable heating oil as a qualifying transportation fuel.

EMA likewise supports a qualified sale regime that does not artificially exclude intermediate commercial transactions from credit eligibility, reflecting the way fuels move through domestic supply chains. Taken together, these interpretive choices will determine whether the Section 45Z credit functions as a broad-based incentive that mobilizes the entire fuels distribution network in support of its intended energy goals, or a narrowly confined benefit that fails to reach the marketers, distributors, and retailers who are indispensable to getting low-carbon fuels into the hands of American consumers.

If you have any questions about the comments, please contact EMA's Regulatory Counsel, Jeffrey Leiter (jleiter@bmalaw.net) and Jorge Roman (jroman@bmalaw.net).

Sincerely,

Rob Underwood
President