ORAL TESTIMONY OF THE ENERGY MARKETERS OF AMERICA
Section 45Z Clean Fuel Production Credit
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Good morning. My name is Jorge Roman, and I am regulatory counsel to the Energy Marketers of America. EMA is a federation of 48 state and regional trade associations representing family-owned and operated energy marketers throughout the United States. EMA marketers supply roughly 80 percent of all finished motor and heating fuel products nationwide, and they are placing into market a growing portfolio of low-carbon fuels and biofuel blends. Thank you for the opportunity to testify today.

EMA supports expanding the availability and commercial adoption of low-carbon fuels. We are here today because the regulatory choices the IRS makes in finalizing its 45Z rules will determine whether the credit functions as a broad-based incentive that mobilizes the entire fuels distribution network — or as a narrowly confined benefit that fails to reach the marketers, distributors, and retailers who are indispensable to getting renewable fuels to American consumers.

Our previously submitted comments cover this ground in detail. This morning, I just want to focus on two points, both of which go to the same fundamental question: will Section 45Z reach the businesses that move the fuel through the American economy?

First, on the "suitable for use" criteria for purposes of meeting the definition of a "transportation fuel." EMA commends the IRS for proposing a definition grounded in practical and commercial fitness for use — a standard consistent with longstanding excise tax regulatory principles and familiar to fuel industry participants. As the preamble notes, the proposed definition is expressly modeled on the Manufacturers and Retailers Excise Tax Regulations, with which producers, distributors, and retailers work every day. Decoupling credit qualification from actual end use is the right approach. It is textually faithful to the statute, it focuses on the character of the fuel rather than the conduct of the ultimate user, and it avoids creating inconsistent regulatory regimes for economically similar transactions.

An actual-end-use framework, by contrast, would be unworkable and unpredictable. It would certainly run contrary to the legislative intent of the credit regime. So, EMA urges the IRS to finalize the "suitable for use" standard as proposed.

We do, however, respectfully ask the Service to add one specific regulatory example to the final rule — an example expressly recognizing that use of a qualifying fuel in a heating oil application does not disqualify it from Section 45Z credit eligibility. Let me explain why this matters.

Renewable heating oil is a biobased distillate fuel, blended from conventional No. 2 heating oil and biomass-based diesel — biodiesel or renewable diesel produced from feedstocks such as used cooking oil, tallow, soybean oil. It is produced at common blend levels — namely, 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. It is a meaningful and growing low-carbon fuel pathway.

The key point for purposes of this credit is this: renewable heating oil is chemically and functionally interchangeable with on-road diesel fuel with respect to its base distillate component. The biomass-based diesel blendstocks used to make it — biodiesel and renewable diesel — are themselves widely used in on-road applications. So, while the "suitable for use" standard, properly read, already implies that heating oil use does not defeat credit eligibility, an explicit example would eliminate any confusion. It would address a commercially significant pathway that may not be obvious to every stakeholder, and it would give producers, blenders, and distributors the certainty they need to keep investing in this market. We have proposed specific illustrative language in our written comments, and we would welcome the opportunity to work with the Service on it.

Second, on the qualified sale criteria. EMA strongly supports the IRS' decision to remove the "use as a fuel" limitation from the definition of "sold for use in a trade or business," and we commend the Service for its responsiveness to the concerns fuel industry stakeholders raised during the last comment process. That earlier framing threatened to disqualify the vast majority of transactions that occur in the commercial fuels supply chain.

Here is the commercial reality. Fuel producers rarely sell directly to end users. Product moves from producer to terminal operator, from terminal to jobber or distributor, from distributor to retailer. In other words, fuel moves through a series of intermediate commercial hands before it ever reaches the ultimate consumer. A credit regime that conditions eligibility on "use as a fuel" at the point of first sale would have arbitrarily excluded those intermediate transactions and undermined Congress's broader goal of incentivizing renewable fuel adoption across the marketplace.

We likewise support the clarification that sales to unrelated persons who subsequently resell the fuel in their own trade or business qualify under the regime. That, too, is the normal commercial reality of fuel distribution, and codifying it in the regulatory text removes a significant source of uncertainty for the independent marketers and distributors who are critical partners in scaling renewable fuel adoption nationwide.

I would underscore one consequence of getting this wrong. 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 harness the very commercial infrastructure needed to scale renewable fuels across the economy. The qualified sale rules, as proposed, avoid that outcome, and EMA urges the Service to finalize them.

In closing, EMA urges the IRS to finalize the "suitable for use" standard as proposed, to complement it with a specific regulatory example addressing renewable heating oil, and to adopt a qualified sale framework that reflects how fuels actually move through domestic supply chains. Taken together, these interpretive choices will determine whether Section 45Z delivers on its full potential as a broad-based renewable energy incentive — one that mobilizes the entire fuels distribution network — or whether it becomes a narrowly confined benefit that never reaches the businesses and consumers it was meant to serve.

Thank you.