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Implementation of Section 45Z/Clean Fuels Production Credit: Energy Marketers of America Comments on Internal Revenue Service's Notice of Intent to Propose Regulations

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The Energy Marketers of America (formerly, Petroleum Marketers Association of America) ("EMA") submitted April 10th comments to the Internal Revenue Service ("IRS") addressing its:

...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).

EMA initially states that it:

...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.

The Clean Fuel Production Credit is a tax credit for clean fuel production. It is an income tax credit for the domestic production of clean transportation fuel and divided into two categories:

1. Sustainable aviation fuel.
2. Non-sustainable aviation transportation fuel.

The credit is equal to the product of:

1. The applicable amount per gallon (or gallon equivalent) for any transportation fuel that is produced by the taxpayer at a qualified facility during the taxable year sold by the taxpayer in a qualifying sale; and,
2. The emissions factor for such fuel is determined under the Internal Revenue Code.

EMA describes itself as a federation of 49 state and regional trade associations representing family-owned and operated small business energy marketers throughout the United States. Its members are stated to be responsible for supplying 80% of all finished motor fuel and heating fuel products in the United States.

The Arkansas Oil Marketers Association is a state member of EMA.

EMA states that the proposed regulations fail to offer the economic incentives needed to drive greater adoption of biofuels. The organization identifies what it describes as “structural deficiencies” which include:

- 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.
- 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.

A copy of the comments can be downloaded [here](#).