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Via Electronic Filing (www.regulations.gov)

The Honorable Kenneth Kies
Assistant Secretary of Tax Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Frank J. Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

ATTN: CC:PA:01:PR (REG-121244-23)

Re: Section 45Z Clean Fuel Production Credit, Notice of proposed rulemaking and public hearing, 91 Fed. Reg. 5160 (Feb. 4, 2026)

Dear Gentlemen:

The National Energy & Fuels Institute (“NEFI”) appreciates the opportunity to comment on the U.S. Department of the Treasury (“Treasury Department”) and the Internal Revenue Service’s (“IRS”) proposed rule to implement the Section 45Z Clean Fuel Production Credit (“Proposed Rule”). NEFI represents predominantly small and mid-sized family-owned businesses that provide essential heating fuels and related home comfort services to millions of American homes and businesses across Northeast and Mid-Atlantic states. Our members have invested billions of dollars in renewable fuels infrastructure to support energy diversity, reliability, and security while meeting the ever-evolving demands of a competitive market.

NEFI’s members are critical energy suppliers that have successfully leveraged private investment and existing infrastructure to achieve significant emissions reductions through the deployment of renewable liquid heating fuels and high-efficiency home heating technologies. These efforts have been consistent with national energy policy that has long recognized the role of the heating oil market in supporting U.S. renewable fuel production. In 2007, for example, Congress expanded the Renewable Fuel Standard, allowing renewable fuel used in the heating oil market to qualify under this program aimed at the transportation fuel market. This was largely because biodiesel (and now renewable diesel) was increasingly being used in the heating oil market. The industry responded, including establishing its own policy to increase use of renewable fuels to contribute to the Renewable Fuel Standard, as well as to meet various State law requirements that increasingly require use of renewable fuels.

Our members' successful transition to renewable fuels demonstrates how market-based solutions, supported by appropriate federal tax policy can achieve environmental objectives while preserving consumer choice, bolstering American energy security, and contributing to rural economies, supporting American agriculture. Many of our members have completely rebranded their businesses around renewable liquid heating fuels, making significant investments that provide an immediate, affordable path to cleaner fuels and reducing emissions without requiring costly conversions to electric heat pumps. The success of the Section 45Z tax credit will depend on its ability to support continued market driven adoption of renewable fuels while maintaining reliability and affordability. The tax credit's implementation also should encourage continued innovation in renewable fuel development by supporting next-generation fuels that utilize diverse feedstocks. Promising cellulosic biofuel technologies are emerging in the Northeast that could utilize locally sourced materials, such as sustainably harvested wood products and agricultural residues, to produce liquid heating fuel.¹ These innovative technologies represent an important opportunity to provide clean fuels while supporting regional economic development and energy independence.

The industry has been waiting on guidance to address regulatory uncertainty with implementation of the Section 45Z credit. As highlighted in NEFI's submitted comments on Notice 2022-58 (IRS-2022-0029-0147) and on Notice 2025-10 (IRS-2025-0002-0283), successful implementation of the Section 45Z credit will ensure that renewable fuels will continue to be available at an affordable price for the millions of Americans that rely on heating oil. As such, NEFI appreciates the issuance of this Notice of Proposed Rulemaking and urges the final rule be completed as soon as possible, including the issuance of a revised 45ZCF-GREET model to support biofuels made from a diverse range of feedstocks and utilizing emerging technologies. NEFI submits these comments in support of key provisions in the Notice of Proposed Rulemaking that we believe properly implements the statute as Congress intended and addresses some uncertainties that remained under Section 45Z after the draft regulations were issued in Notice 2025-10.

1. Credit Eligibility.

Section 45Z provides a clean fuel production tax credit to "transportation fuel" produced by the taxpayer at a qualified facility and sold by the taxpayer to an unrelated person (A) for use by such person in the production of a fuel mixture, (B) for use by such person in a trade or business, or (C) who sells such fuel at retail to another person and places such fuel in the fuel tank of such other person. 26 U.S.C. §45Z(a)(1)(A), (4). Transportation fuel is defined as a fuel that "is suitable for use as a fuel in a highway vehicle or aircraft" and has an emissions rate which is not greater than 50 kilograms of CO_{2e} per mmBTU. *Id.* §45Z(d)(5)(A)(i), (ii). The fuel must not be co-processed with a petroleum feedstock and cannot be produced from a fuel for which a credit under Section 45Z is allowable. *Id.* §45Z(d)(5)(A)(iii), (iv). NEFI believes the Proposed Rule generally implements the statute as Congress intended but should not impose undue restrictions or regulatory burdens on seeking the credit that might restrict the availability of clean fuels beyond transportation applications, including the heating oil market.

¹ See, e.g., Biofine Developments Northeast, *Developing the Industrial Bioeconomy Today*, <https://www.biofinedevelopments.com> (last visited April 1, 2026).

Suitable for use. Consistent with comments submitted by NEFI on Notice 2022-58 (IRS-2022-0029-0147), Notice 2025-10 (at 10) defined “suitable for use” to mean that the fuel either 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. It further properly recognized that “actual use as a fuel in a highway vehicle or aircraft is not required.” *Id.* This is consistent with the plain language of the statute, where “suitable” requires that something be “appropriate” or “fitting” for such use.² This also is consistent with Congressional intent as confirmed by the following colloquy on the Senate floor:

Ms. HASSAN. Mr. President, I ask unanimous consent to engage in a colloquy with Senator WYDEN for clarification regarding a tax provision included in the bill currently before the Senate. Section 13704 of the bill, which concerns production credits for biofuels, defines “transportation fuel” that can qualify for the credit as a fuel that is suitable for use as a fuel in a highway vehicle or aircraft. The fuel must also be below a carbon emissions ceiling and meet a processing requirement. Senator WYDEN, as chair of the Finance Committee, is it his understanding that, although a fuel must be suitable for use as a fuel in a highway vehicle or aircraft to qualify for this biofuel production credit, it may still actually be used for any business purpose, including as transportation fuel, industrial fuel, or for residential or commercial heat?

Mr. WYDEN. I thank the Senator for her inquiry. That is correct. The credit is intended to incentivize production of biofuels of a certain quality, usable as fuel for highway vehicles or aircrafts, but not limited only to fuels which are actually used in highway vehicles or aircrafts.

Ms. HASSAN. I thank the chair for that clarification and for engaging in this colloquy.

168 Cong. Rec. S4165, S4166 (Aug. 6, 2022). “Residential or commercial heat” were specifically referenced as a proper application of biofuels that are “suitable for use” as a transportation fuel for purposes of receiving a Section 45Z tax credit.

This makes sense because the heating oil industry long has been incorporating renewable fuels into the market, supporting local economies and contributing to American energy and environmental security. Such fuels include biodiesel and renewable diesel that are produced from an array of sustainable feedstocks, including recycled cooking oils and fats and surplus vegetable oils. As noted above, next-generation cellulosic heating fuels are also in development. Such use was also recognized in the Renewable Fuel Standard program, which allows these fuels to participate in the program when used in heating oil applications. These fuels utilize existing and well-regulated storage and distribution infrastructure and, with minor and very low-cost modifications, work seamlessly in existing appliances – all at little to no additional cost to the

² Collins, Definition of ‘suitable’, <https://www.collinsdictionary.com/dictionary/english/suitable>.

consumer. Biodiesel, renewable diesel, and other advanced biofuels provide our mostly small family businesses with the opportunity to help achieve local, state, and federal requirements while enhancing their competitiveness, increasing fuel diversity to support this Nation's energy policy, and preserving a future for the heating oil industry.

Appropriately, the Proposed Rule includes a similar definition of “suitable for use as a fuel in a highway vehicle or aircraft” at proposed §1.45Z-1(b)(34)(ii)(A). *See also* Proposed §1.45Z-1(b)(34)(iv)(A) (illustrating diesel fuel ultimately used as marine fuel “satisfies the suitable for use standard under paragraph (b)(34)(ii) of this section, notwithstanding that the diesel fuel ultimately is not used in a highway vehicle or aircraft”). It again properly confirms that “[t]o be considered suitable for use, a fuel need not actually be used as a fuel in a highway vehicle or aircraft.” NEFI supports this definition.

However, NEFI notes that the definitions of various non-transportation fuels incorporate ASTM specifications as a means to confirm a fuel is “suitable” for use in a highway vehicle or aircraft. *See, e.g.*, Proposed §1.45Z-1(b)(24)(ii)(A) (definition of low-GHG biodiesel). Section 45Z is not intended to be a fuel quality program and meeting these specifications, which often include numerous parameters, are not required to be “suitable” for use as a transportation fuel. The preamble recognizes that fuels may not always meet these specifications and that the “proposed ASTM specifications would be both non-exhaustive and non-exclusive with respect to determining whether a fuel is a transportation fuel for purposes of section 45Z.” 91 Fed. Reg. at 5168. While the Proposed Regulation notes that this is a “non-exclusive” list of transportation fuels, requiring a fuel “meet” the specification could be unduly restrictive, particularly with respect to the newer fuels being commercially developed. It is in the interest of the entire supply chain to ensure the fuel being sold is of proper quality, and what must be “met” is typically handled by contract. Compliance with the ASTM specification is also not tied to the emissions rate calculations. The final rule should make clear that testing is not required to establish that each and every aspect of the specification is met to be “suitable” for use as a transportation fuel and qualify under an already established pathway, relying on current market practices to establish whether a fuel meets the “specifications” for the fuel.

Qualifying Sale. An important improvement in the Proposed Rule compared to the draft regulations in Notice 2025-10 are the changes around the definition of “qualified sale” that better reflects fuels transactions in the marketplace. Notice 2025-10 (at 14) would have defined “sold for use in a trade or business” as “sold for use *as a fuel* in a trade or business.” The inclusion of the phrase “as a fuel” arguably limited the transactions that would qualify for purposes of the tax credit in a manner that would be inconsistent with the statute that does not require actual use as a fuel to be eligible for the credit and not reflective of the fuels market where transactions often occur through intermediates, such as marketers, traders, or other third parties prior to the sale to the ultimate end user of the fuel. The Proposed Rule would importantly remove this potential restriction, providing that the term “sold for use in a trade or business” includes “fuel sold to an unrelated person that subsequently resells the fuel in its trade or business.” Proposed §1.45Z-1(b)(29)(ii). This is consistent with the plain meaning of “use” that you do “something with it in order to do a job or to achieve a particular result or effect.”³ It supports the purpose of the Section 45Z credit to promote production of clean fuels, including production by smaller

³ Collins, Definition of ‘use’, <https://www.collinsdictionary.com/dictionary/english/use>.

producers that are more likely to work through a marketer to sell their fuel production. Third party marketers may especially be important for the heating oil market to ensure cost-effective distribution of renewable fuels throughout the United States, particularly in the Northeast where domestic fuel production may be less than in other regions of the country.

Similarly, NEFI appreciates the inclusion of Proposed §1.45Z-1(b)(29)(iv) in the Proposed Rule, which recognizes that “a taxpayer will be treated as selling fuel to an unrelated person if such fuel is sold to the unrelated person by a related person (within the meaning of Section 45Z(f)(3) and paragraph (b)(36) of this section).” Allowing intermediate sales, including where the intermediary is a related entity to the producer, is consistent with prior IRS guidance on sales to unrelated persons that have looked to an ultimate sale to an unrelated person disregarding intermediary sales. This provision also recognizes the practicalities of the fuel market that may allow for more cost-effective distribution of fuels to better ensure their availability and affordability.

2. Emissions Rate Table

NEFI notes that a revised 45ZCF-GREET model has yet to be released. Where the Proposed Rule is requiring the emissions rate be determined based on the 45ZCF-GREET model, it must be updated in a timely and regular manner. These regular updates should include additions of new pathways to add new feedstocks and recognize the innovations being made to bring new fuels into the market and to enable more feedstock-specific inputs for all fuels to reflect those innovations and support investments being made. This could help avoid delays and reduce burdens in seeking provisional emissions rates, which should be done in a streamlined manner.

The 45ZCF-GREET model also should include additional flexibilities for producers in determining their emissions rates, including allowing for use of “book and claim” accounting. NEFI supports the efforts of biofuel producers to seek additional flexibility in calculating their emissions rate in 45ZCF-GREET and to remove overly restrictive requirements in the Proposed Rule, such as the proposed incorporation of requirements in the Section 45V regulations to use hydrogen, natural gas alternatives, or electricity as production inputs or to account for use of carbon capture and sequestration by production facilities. Alternative fuel sources for energy attribute certificates, such as waste-to-energy facilities, also should be considered and allowed under Section 45Z. Congress anticipated the use of book and claim accounting in determining emissions rates under these tax credits, and such efforts allow facilities to seek more efficient and innovative ways to reduce their emissions rate.


NEFI also supports revisions to the model to eliminate indirect land use emissions for crop-based feedstocks and the inclusion of the lifecycle modelling work being done by the U.S. Department of Agriculture.

We believe these revisions to the 45ZCF-GREET model could better support a diverse energy market that could provide energy in a more cost-effective manner to meet this country’s energy needs. Allowing more flexibility in calculating the emissions rates and recognizing the efforts of clean fuel producers and feedstock providers to reduce their emissions would better ensure the availability of fuels to provide lower cost energy to consumers.

* * *

NEFI is available to discuss these comments and looks forward to working with the Treasury Department and IRS to ensure the Section 45Z tax credit is implemented in a manner that continues to support our members' ability to continue to deliver affordable, reliable and increasingly cleaner-burning heating fuels to millions of American homes. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "James M. Collura" with a long horizontal flourish extending to the right.

James M. Collura
President & CEO