Clean Fuels
ALLIANCE AMERICA

The Hon. Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

August 28, 2024

Dear Secretary Yellen,

Clean Fuels Alliance America (Clean Fuels) is the U.S. trade association representing the entire biodiesel, renewable diesel, and sustainable aviation fuel supply chain, including producers, feedstock suppliers and fuel distributors. Made from an increasingly diverse mix of resources such as recycled cooking oil, soybean oil, and animal fats, clean fuels are a proven, integral part of America's clean energy future.

Clean Fuels appreciates the work the Treasury Department (Treasury) is doing to implement the section 45Z Clean Fuel Production Credit in a timely fashion. We appreciate that Treasury understands the importance of having guidance for the section 45Z Clean Fuel Production credit well in advance of January 1, 2025, so farmers, producers and fuel customers have the certainty to continue to produce, sell, and use low-carbon biomass-based diesel.

The timing of the guidance is important to the entire clean fuels supply chain. The clean fuels marketplace is a complicated ecosystem that is tied in many cases to agricultural inputs and feedstock production, sales of fuel and futures, allocations to third-party marketers and other factors that will require many months of advance understanding of the new tax structure. As a result, U.S. biodiesel, renewable diesel, and sustainable aviation fuel (SAF) producers are facing difficulties finalizing feedstock contracts, securing capital flows, and meeting project deadlines without knowing the value of the credit. The need for policy certainty is urgent.

On July 23rd, a bipartisan, bicameral letter signed by 16 Senators and 36 U.S. Representatives urged you to publish proposed rules and safe harbor guidance for the section 45Z Clean Fuel Production Credit by September 1, 2024, and complete a final rulemaking by November 1, 2024. Clean Fuels requests that Treasury meet that timeline and strongly urges that the following safe harbor provisions be provided, with taxpayers permitted to rely on them until the final rule is in effect. Treasury set a precedent for providing safe harbors when, in December 2023, it issued Notice 2024-06 for section 40B, providing taxpayers a safe harbor for the

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use of life cycle GHG emission reduction percentages and registration requirements. Therefore, Clean Fuels recommends the following safe harbors in order to include all clean fuels currently in commerce:

- For non-aviation fuels, taxpayers may apply one of the following safe harbor methods to determine the amount of the section 45Z credit: R&D GREET, the U.S. Environmental Protection Agency's (EPA) Renewable Fuel Standard (RFS), or the California Air Resource Board's (CARB) Low Carbon Fuel Standard (LCFS). Utilizing the most recent version of R&D GREET would be consistent with congressional intent, as IRA language clearly specifies that GREET can be used—as of the date of enactment—to calculate the credit for on-road fuels without additional modifications that were required under the section 40B credit.
- SAF producers may determine the emissions factor of such fuel based on the section 40B SAF Credit guidance to qualify for the section 45Z credit.

In addition to providing the foregoing safe harbor, we request that the safe harbor allow for ending inventory—as of December 31, 2024—to qualify for the section 45Z credit to ensure clean fuel produced but not blended before the end of 2024 generates a tax credit.

To set up a practice-based crediting program for success, farmers must know the credit value as soon as possible to help them employ land management practices as they make both planting and harvesting decisions ahead of the season. As Treasury works with the U.S. Department of Agriculture (USDA) to finalize the Climate Smart Agriculture provisions, we ask that Treasury not include a bundling of practices as was the case in section 40B. The bundling of climate smart agriculture practices puts many growers at a disadvantage as farmers in many climates cannot participate in all the suggested practices.

Additionally, requiring use of cover crops is in direct conflict with incorporating winter annual oilseeds. With that in mind, we ask that Treasury include all available biofuel feedstocks—including emerging winter annual oilseeds—and remove the bundling requirements for climate smart practices that were included in the section 40B SAF blenders tax credit guidance.

More clarity also is needed in guidance or the final rule with respect to the term "produced by the Taxpayer" to ensure that no market participants attempt to navigate around the requirement of U.S. production and undermine the intended benefits of the legislation. A definition similar to section 45X should be included:

> "Produced by the Taxpayer" means "a process conducted by the taxpayer that substantially transforms constituent elements, materials, or subcomponents into a complete and distinct eligible component that is functionally different from that which would result from mere assembly or superficial modification of the elements, material or subcomponents."

Additionally, we ask that the guidance directly address whether a toll producer is considered to be the producer for purposes of the credit.

Lastly, we ask that Treasury provide guidance clarifying that renewable heating fuels are a transportation fuel under the section 45Z credit. The statute defines "transportation fuel" as a fuel which is *"suitable for use as a fuel in a highway vehicle or aircraft"* (emphasis added). However, that does not mean it must exclusively be used as a fuel in a highway vehicle or aircraft to receive the credit.

The intent of Congress is clear on this matter, as demonstrated by an August 6, 2022, colloquy between Sen. Margaret Hasson (D-NH) and Sen. Ron Wyden (D-OR), Chair of the Senate Finance Committee, in which Sen. Wyden confirms, "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."

With the section 45Z credit set to take effect January 1, 2025, the clean fuels industry will face significant headwinds and business risk if the suggested safe harbors and clarity on related implementation issues outlined above are not published by September 1, 2024, and a final rule by November 1, 2024. This delay could cause existing biofuel production to slow or cease, reducing total fuel supplies and potentially raising retail fuel prices. Thank you for your work to implement the section 45Z Clean Fuel Production Credit and please consider Clean Fuels as a resource as section 45Z is implemented.

Thank you for your consideration,

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CC:

The Hon. Tom Vilsack, Secretary, U.S. Department of Ag
The Hon. Michael Regan, Administrator, Environmental Protection Agency
The Hon. Jennifer Granholm, Secretary, Department of Energy
The Hon. Pete Buttigieg, Secretary, Department of Transportation
The Hon. John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation