



April 6, 2026

Frank J. Bisignano
Chief Executive Officer
Internal Revenue Service
CC:PA:01:PR (REG-121244-23), Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Via Electronic Submission at Regulations.gov

**Re: Prime Mover Institute's Comment on the Proposed Rule Entitled:
Proposed Regulations Under Section 45Z of the Internal Revenue
Code (REG-121244-23), 91 Fed. Reg. 5160 (Feb. 4, 2026)**

Dear Mr. Bisignano:

Prime Mover Institute submits these comments on the proposed regulations implementing Section 45Z of the Internal Revenue Code, 91 Fed. Reg. 5160 (Feb. 4, 2026).

The Prime Mover Institute is a new public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to engage in rulemaking processes with technical information and legal arguments, calling attention to the impacts regulation has on citizens, the grid, and the rule of law.

America stands at a crossroads. A legacy of bad policy and worse ideas threatens the nation with blackouts and bill hikes, right as demand for energy rises. In order for America to scale up its energy production and avoid the worst-case scenarios, we cannot cling to the policies and procedures that got us here. Fortunately, both policymakers and the private sector realize the need for dramatic change. And courts have begun to look more skeptically at accretions of arbitrary power, accretions that government officials used to thwart energy production and use. This points the way to a future of streamlined regulation, taxpayer savings, and cheaper, more abundant energy for all.

The main obstacle to energy dominance is what Robert Bryce calls the “anti-industry industry,” the non-profits and lawyers dedicated to defending the status quo. These groups have used litigation, regulatory comments, and intimidation to forestall change. They will no doubt keep at it. But, despite their vast funding, they will not be able to maintain a policy regime that’s so far out of touch with the American public and their elected representatives. So long, that is, that the advocates of energy dominance show up to defend their ideas.

In the words of Vaclav Smil, “prime movers are energy converters able to produce kinetic (mechanical) energy in forms suitable for human uses.” In the same way, Prime Mover Institute helps convert insight into action.

Thank you for the opportunity to comment.

Respectfully submitted,

/Russell Greene/
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Prime Mover Institute

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1. SUMMARY OF ARGUMENT

Prime Mover Institute respectfully argues that the proposed regulations exceed the statutory text in three respects. Each is independently sufficient to require revision. Together, they expand a targeted transportation fuel credit into a substantially broader subsidy that Congress did not enact.

1. The book-and-claim attribution mechanism substitutes financial transactions for physical measurement. The statute requires that a fuel's emissions rate be based on its "lifecycle greenhouse gas emissions"—defined by the Clean Air Act as the "aggregate quantity of greenhouse gas emissions ... related to the full fuel lifecycle." 42 U.S.C. § 7545(o)(1)(H). That is a physical measurement concept. The proposed regulations permit fuel producers to reduce their reported emissions by purchasing energy attribute certificates from clean electricity generators, even when the producer draws electricity from the same grid it always has. A certificate purchase does not change the aggregate quantity of emissions. The wind farm generates the same power whether the certificate is sold; the ethanol plant draws the same grid electricity whether it holds a certificate. Peer-reviewed research spanning 2018-2024 reaches a consistent conclusion: energy attribute certificates do not produce actual emissions reductions.¹

Treasury imported this mechanism from the Section 45V hydrogen credit through a single cross-reference sentence, with no independent analysis of whether it is appropriate for the structurally different Section 45Z credit—an omission that falls short of the reasoned explanation the Administrative Procedure Act requires. The three pillars framework that ostensibly constrains certificate use—incrementality, deliverability, and temporal matching—imposes no meaningful discipline as applied to Section 45Z. Temporal matching is annual through the credit's expiration on December 31, 2029; the hourly standard that both the Department of Energy and Treasury acknowledge produces greater emissions accuracy does not take effect until January 1, 2030—one day after the credit expires. Annual matching is not a transition to a more rigorous standard. As applied to Section 45Z, it is the permanent standard. Deliverability permits generators hundreds of miles from the production facility with no physical delivery path. The fiscal impact is substantial: the book-and-claim mechanism adds an estimated \$6-9 billion in excess credits over the credit's five-year life—approximately one-quarter to one-third of the program's \$25.7 billion total projected cost—subsidizing paper transactions that the scientific literature says bear no relation to the statute's

¹ Langer, L. et al., "A systematic review of the emissions reduction potential of renewable energy certificates," J. CLEANER PRODUCTION 478, Art. 143791, at 1 (2024).

requirements. If Treasury retains book-and-claim despite these concerns, it should at minimum require hourly temporal matching and physical deliverability immediately, rather than deferring the more accurate standard past the credit's expiration.

2. “Suitable for use” is a purpose limitation, not a chemistry test. Section 45Z limits the credit to “transportation fuel” that “is suitable for use as a fuel in a highway vehicle or aircraft.” 26 U.S.C. § 45Z(d)(5)(A)(i). “Suitable for use *as*” is a purpose phrase—it describes what the fuel is for, not what the fuel is chemically capable of. When Congress wants a chemical-composition test, it writes one: the biodiesel credit defines “biodiesel” by chemical structure—“the monoalkyl esters of long chain fatty acids.” 26 U.S.C. § 40A(d)(1). Section 45Z contains nothing of the sort. Congress instead used the same functional “suitable for use” formulation it adopted in the fuel excise tax definitions at 26 U.S.C. § 4083(a)(3)(A)(i). The proposed regulations convert this purpose limitation into a capability test, defining eligibility as “practical and commercial fitness” regardless of actual end use. 91 Fed. Reg. at 5167. Treasury invokes the excise tax definition at 26 C.F.R. § 48.4081-1(c)(2)—but Treasury is quoting half of its own scheme. Congress structured the diesel fuel excise tax regime in two steps: § 4083 broadly defines “diesel fuel” as any liquid “suitable for use” in a highway vehicle, and § 4082 exempts from the tax any such fuel that is “destined for a nontaxable use” and “indelibly dyed.” For three decades, Treasury has administered that scheme through detailed terminal-rack, dyeing, and back-up tax regulations at 26 C.F.R. §§ 48.4082-1, 48.4082-2, and 48.4082-4. That is what Treasury does when it takes “suitable for use” language seriously: it pairs the broad definition with the narrowing infrastructure.

Here, Treasury has quoted the broad half of its own excise tax definition and walked away from the narrowing half—inconsistent with Congress’s design and with Treasury’s own three-decade administration of identical statutory language. The statutory structure confirms the error: Congress restricted production to the United States, § 45Z(f)(1)(A)(ii), and feedstock to North America, § 45Z(f)(1)(A)(iii). Every geographic restriction points toward domestic transportation use. Reading “suitable for use” as a chemistry test creates a credit that carefully controls where fuel comes from but imposes no limitation on where it goes or what it does. The results confirm the problem. Home heating oil qualifies. Marine diesel qualifies—Treasury’s preamble says so. The fix is straightforward: the existing dyeing system under § 4082 already distinguishes highway fuel from non-highway fuel at the terminal rack. Undyed fuel should qualify for the credit. Dyed fuel should not. For exported fuel, the producer should certify domestic transportation use.

3. The USDA’s calculator is still in “beta” and cannot support a statutory “determination.” Congress required that a fuel’s emissions rate be based on “determinations” under the GREET model. 26 U.S.C. § 45Z(b)(1)(B)(ii). A determination is a conclusion reached after investigation and deliberation—not a preliminary estimate. Treasury anticipates allowing credit claims based on USDA’s Feedstock Carbon Intensity Calculator, a beta tool that Treasury itself characterizes as still undergoing testing, peer review, and public comment. 91 Fed. Reg. at 5172. A tool that has not completed testing has not been tested. A tool undergoing peer review has not been peer-reviewed. USDA itself warns that the beta values are preliminary and “should not [be] rel[ied] upon.” 90 Fed. Reg. at 5,499 (Jan. 17, 2025). Yet the proposed regulations anticipate that the tool “may be used for fuel produced and sold in 2025.” 91 Fed. Reg. at 5172. The underlying regulation, 7 C.F.R. Part 2100, is itself an interim rule that has not been finalized. If the finalized version produces materially different carbon intensity values—which is the entire purpose of testing, peer review, and public comment—credits already claimed on beta values will have been wrong from day one, and the proposed regulations contain no mechanism for retroactive adjustment. Section 45Z(e) authorizes Treasury to prescribe procedures for making determinations; it does not authorize dispensing with the requirement that determinations be made. Treasury should defer feedstock-specific carbon intensity adjustments until the FD-CIC is finalized, while allowing retroactive claims for the interim period.

2. STATUTORY AND REGULATORY BACKGROUND

2.1. The Section 45Z Credit Structure

Section 45Z of the Internal Revenue Code establishes a technology-neutral tax credit for the domestic production and sale of clean transportation fuels. Pub. L. 117-169, § 13704 (Aug. 16, 2022), as amended by Pub. L. 119-21 (July 4, 2025). The credit equals the product of (a) the applicable amount per gallon and (b) the emissions factor for the fuel. 26 U.S.C. § 45Z(a)(1). The applicable amount is \$0.20 per gallon, or \$1.00 per gallon for facilities meeting prevailing wage and apprenticeship requirements. *Id.* § 45Z(a)(2). Both amounts are indexed for inflation. *Id.* § 45Z(c).

The emissions factor is calculated as $(50 - \text{Emissions Rate}) / 50$, where the emissions rate is the fuel's lifecycle greenhouse gas emissions expressed in kilograms of CO₂e per mmBTU. § 45Z(b)(1)(A). A fuel with zero lifecycle emissions receives the full credit; a fuel at 50 kg CO₂e/mmBTU receives nothing. Fuels exceeding that threshold are ineligible. § 45Z(d)(5)(A)(ii). The credit is available for direct pay under § 6417 and transferability under § 6418, and the Joint Committee on Taxation estimates its cost at \$25.7 billion over the 2025-2034 budget window. Staff of J. Comm. on Tax'n, JCX-35-25, at 6 (2025).

To claim the credit, a producer must sell the fuel to an unrelated person in a qualified sale: for use in producing a fuel mixture, for use in a trade or business, or at retail into a fuel tank. § 45Z(a)(4). The credit applies to fuel produced at a qualified facility in the United States after December 31, 2024, and sold by December 31, 2029. *Id.* § 45Z(d)(4), (f)(1)(A)(ii), (g). The producer must be registered under § 4101 at the time of production. *Id.* § 45Z(f)(1)(A)(i)(I).

2.2. “Lifecycle Greenhouse Gas Emissions”

The emissions rate that determines the credit's value depends on a fuel's “lifecycle greenhouse gas emissions.” Section 45Z does not define this term independently. Instead, it incorporates by reference the definition in Section 211(o)(1)(H) of the Clean Air Act, 42 U.S.C. § 7545(o)(1)(H), “as in effect on the date of the enactment of this section.” 26 U.S.C. § 45Z(b)(1)(B)(i). That definition provides:

The term “lifecycle greenhouse gas emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock

generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

42 U.S.C. § 7545(o)(1)(H).²

Three textual features of this definition bear emphasis. First, it measures “the aggregate quantity of greenhouse gas emissions”—a physical measurement concept, denominated in mass values, describing actual quantities of gases released into the atmosphere. Second, the measurement must be “related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer.” The statute calls for a comprehensive accounting of what physically happens as fuel moves from feedstock to end use. Third, the scope expressly includes “direct emissions and significant indirect emissions.” Congress specified which emissions count. It did not reference financial instruments, certificate purchases, or any mechanism for attributing the environmental characteristics of one facility’s electricity to another facility’s production process.

Congress delegated the measurement of these emissions to a scientific model. For non-SAF transportation fuels, the emissions rate must be “based on the most recent determinations under the Greenhouse gases, Regulated Emissions, and Energy use in Transportation model developed by Argonne National Laboratory, or a successor model (as determined by the Secretary).” 26 U.S.C.

§ 45Z(b)(1)(B)(ii). IRS Notice 2025-11 anticipated the model’s release, and DOE released the first version of 45ZCF-GREET on January 15, 2025. The statute’s word is “determinations”—a conclusion reached after investigation and deliberation, not a preliminary estimate.

2.3. The OBBBA Amendments

The One Big Beautiful Bill Act, Pub. L. 119-21 (July 4, 2025), amended Section 45Z in ways relevant to the arguments that follow. It extended the credit through fuel sold by December 31, 2029, § 45Z(g)—a date that, as discussed in Section 3.1.3, means the more rigorous hourly temporal matching standard never applies during the credit’s statutory life. And it imposed a North American feedstock

² Section 45V, the clean hydrogen production credit enacted in the same legislation on the same date, incorporates the identical definition. 26 U.S.C. § 45V(c)(1)(A) provides that “[t]he term ‘lifecycle greenhouse gas emissions’ has the same meaning given such term under subparagraph (H) of section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)).”

requirement: for fuel produced after December 31, 2025, the feedstock must be “exclusively derived from a feedstock which was produced or grown in the United States, Mexico, or Canada.” *Id.* § 45Z(f)(1)(A)(iii).

Otherwise, the basic requirements of Section 45Z remain intact.

2.4. The Section 45V Three Pillars Framework and Its Importation into Section 45Z

The proposed regulations’ treatment of electricity emissions originates not in the Section 45Z statute but in the Section 45V rulemaking. Understanding the provenance of this framework is essential to evaluating whether Treasury has adequately justified its application to the structurally different Section 45Z credit.

In April 2023, NRDC and the Clean Air Task Force submitted a memo to Treasury advocating for three requirements when hydrogen producers use energy attribute certificates to claim lower electricity-related emissions: incrementality (the generating facility must be new), temporal matching (the electricity generation must occur contemporaneously with hydrogen production), and deliverability (the generator must be in the same region as the production facility). Eight months later, in December 2023, Treasury proposed the Section 45V regulations at 88 Fed. Reg. 89220, adopting all three requirements—the “three pillars” framework.

Simultaneously, DOE released a white paper providing the analytical basis. DOE concluded that when EACs from low-GHG generators meet all three criteria, “they can serve as a reasonable proxy for calculating induced grid emissions.” DOE, “Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,” 1 (Dec. 2023). DOE recommended all three pillars as jointly necessary; it “did not present them as options among alternatives.” *Id.* at 3 (“The three necessary EAC attribute criteria are: incremental generation, geographic matching, and granular temporal matching.”).

On temporal matching, DOE concluded that hourly matching is superior: “hourly matching of EACs will provide significantly greater certainty about lifecycle GHG emissions outcomes by ensuring that there is actual alignment between load and generation.” *Id.* at 11. DOE acknowledged that annual matching leaves generation “not necessarily matched with load over those same timeframes” and that this “unmatched load can drive induced GHG emissions.” *Id.* Treasury’s NPRM proposed annual matching through 2027, with hourly matching from 2028, stating that hourly tracking systems “are not yet broadly available across the country.” 88 Fed. Reg. at 89233. Treasury did not claim the statute authorized annual matching as the permanent standard; it maintained that “[t]emporal matching at an hourly

level best mitigates the risk of induced grid emissions,” conceding only that infrastructure readiness required a phase-in.

The 45V final rule, published January 10, 2025, extended the annual matching period by two additional years—through December 31, 2029, with hourly matching deferred to January 1, 2030. 90 Fed. Reg. 2224 (Jan. 10, 2025). Treasury “acknowledge[d] that hourly tracking of EACs is not yet widely available on a standardized basis” but maintained the position that an hourly matching requirement “best mitigates the risk of induced grid emissions.” *Id.* at 2266.

The Section 45Z proposed regulations import this framework through a single cross-reference. Proposed Section 1.45Z-2(e)(3)(iii)(B)(1) provides that “[i]n the 45ZCF-GREET model, for purposes of accounting for emissions associated with hydrogen (as a production input), natural gas alternatives (as a production input or as the transportation fuel produced), electricity, and carbon capture and sequestration, rules similar to the rules under section 45V of the Code apply.” 91 Fed. Reg. at 5197. The preamble’s discussion is equally spare. At 91 Fed. Reg. 5172, Treasury states that “rules similar to the rules under section 45V would apply unless otherwise specified by the 45ZCF-GREET model with respect to technical modeling issues or other technical differences.” That is the totality of the justification. The preamble does not explain why the 45V framework is appropriate for the structurally different 45Z credit, does not acknowledge the structural differences between 45V (where electricity is the primary input for electrolysis) and 45Z (where electricity is one input among many for diverse fuel pathways), and does not consider alternatives.

Because the Section 45Z credit expires December 31, 2029, and the hourly matching standard does not take effect until January 1, 2030, the more rigorous temporal matching standard—the standard that both DOE and Treasury acknowledge produces greater emissions accuracy—never applies during the statutory life of the Section 45Z credit. Annual matching is not a transition to a more accurate standard. It is the permanent standard.

The 45V statute uses the same lifecycle GHG definition as 45Z—§ 211(o)(1)(H) of the Clean Air Act. Both credits therefore require measurement of the same thing: the aggregate quantity of greenhouse gas emissions related to the full fuel lifecycle. The regulatory methodology that Treasury adopted to implement that standard in 45V—the three pillars framework for energy attribute certificates—is a policy choice, not a statutory command. Treasury imported that policy choice into Section 45Z through the cross-reference described above.

2.5. The “Suitable for Use” Definition Extends the Credit Beyond Transportation Fuel

Section 45Z limits the credit to “transportation fuel,” defined as fuel that “is suitable for use as a fuel in a highway vehicle or aircraft.” 26 U.S.C.

§ 45Z(d)(5)(A)(i). The proposed regulations define this eligibility standard as “practical and commercial fitness for use as a fuel in a highway vehicle or aircraft.” 91 Fed. Reg. at 5167; Prop. Treas. Reg. § 1.45Z-1(b)(34)(ii)(A). A fuel possesses this fitness “even though use in a highway vehicle or aircraft is not the fuel’s predominant use.” *Id.* Treasury clarifies that “[t]o be considered suitable for use, a fuel need not actually be used as a fuel in a highway vehicle or aircraft.” 91 Fed. Reg. at 5194. The preamble illustrates the standard with a marine diesel example: “diesel fuel that has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft, but is ultimately used as marine fuel, would satisfy the ‘suitable for use’ standard.” 91 Fed. Reg. at 5167–68; Prop. Treas. Reg. § 1.45Z-1(b)(34)(iv)(A).

Treasury expressly invokes excise tax precedent: “The proposed definition of ‘suitable for use’ is consistent with longstanding excise tax rules under Section 48.4081-1(c)(2) of the Manufacturers and Retailers Excise Tax Regulations.” 91 Fed. Reg. at 5167. Under that regulation, diesel fuel is “any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train,” and the standard turns on “practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train,” and a liquid “may possess this practical and commercial fitness even though the liquid is not predominantly used as a fuel in a highway vehicle or train.” 26 C.F.R. § 48.4081-1(c)(2)(i).

Under that same excise tax regime, home heating oil (No. 2 fuel oil) is classified as “diesel fuel” precisely because it has practical and commercial fitness for highway use—it is chemically identical to highway diesel. The entire federal fuel-dyeing system under 26 U.S.C. § 4082 exists for this reason: heating oil must be indelibly dyed with Solvent Red 164 and marked to escape the excise tax, because without the dye it is indistinguishable from taxable highway diesel. The dyeing requirement is proof that heating oil meets the “practical and commercial fitness” standard. Treasury adopted the excise tax’s broad definitional net. The implications of that choice for credit eligibility are addressed in Section 3.2.

3. COMMENTS OF PRIME MOVER INSTITUTE

3.1. The Book-and-Claim Attribution Mechanism Is Inconsistent with the Statute and Costs Taxpayers an Estimated \$6-10 Billion.

3.1.1. The Statutory Text Requires Physical Measurement, Not Financial Attribution.

Begin with the statute. Section 45Z calculates the credit based on a fuel's "lifecycle greenhouse gas emissions," a term the statute incorporates by reference from § 211(o)(1)(H) of the Clean Air Act. *See supra* Section 2.2. That definition measures "the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer." 42 U.S.C. § 7545(o)(1)(H).

This definition is physical from start to finish. It measures "the aggregate quantity of greenhouse gas emissions"—actual quantities of gases, denominated in mass values, released into the atmosphere. It requires that the measurement be "related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer." And it specifies the emissions that count: "direct emissions and significant indirect emissions." Taken together, the statute requires an accounting of the actual emissions associated with the actual energy consumed at each stage of the actual fuel production process.

A certificate purchase changes none of this. When a corn ethanol producer in Iowa purchases a wind energy certificate from a generator in Kansas, the aggregate quantity of greenhouse gas emissions associated with that producer's fuel production does not change. The same grid electricity powers the plant. The same fossil generation dispatches to serve that load. The same emissions enter the atmosphere. What changes is a ledger entry in an EAC tracking system, and the proposed regulations treat that ledger entry as though it reduced the physical quantity of emissions to zero.

The peer-reviewed scientific literature confirms this conclusion. A 2022 study published in *NATURE CLIMATE CHANGE* analyzed 115 companies with approved science-based emissions reduction targets over the period 2015-2019 and found that corporate REC purchases are "unlikely to lead to additional renewable energy generation." Bjorn, A. et al., "Renewable energy certificates threaten the

integrity of corporate science-based targets,” NATURE CLIMATE CHANGE 12(6), 539-546 (2022). Removing the contribution of certificates from the sample companies’ reported reductions cut the median market-based scope 2 emission reduction from 30.2% to 8.5%, and dropped the share of companies whose trajectories aligned with the Paris Agreement’s 1.5°C goal from 68% to 36%. *Id.* Brander, Gillenwater, and Ascui (2018) reached the same conclusion, finding that market-based emissions accounting using certificates “fails to provide accurate or relevant information in GHG reports” and that “purchasing contractual emission factors is very unlikely to increase the amount of renewable electricity generation.” Brander, M., Gillenwater, M. & Ascui, F., “Creative accounting: A critical perspective on the market-based method for reporting purchased electricity (scope 2) emissions,” ENERGY POLICY 112, 29-33 (2018). This is not a single dissenting study. It is a body of peer-reviewed research spanning 2018-2024 reaching a consistent conclusion: energy attribute certificates do not produce actual emissions reductions.

Following the overruling of *Chevron*, courts exercise independent judgment in determining the best reading of the statute. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412-13 (2024). Treasury’s interpretation of “lifecycle greenhouse gas emissions” to accommodate certificate-based financial attribution receives no automatic deference. The question is what the statute means, not whether Treasury’s reading is reasonable.

Proponents of a more flexible approach may respond that the GREET model, which Congress designated as the measurement tool, has always allowed producers to input foreground data about their operations, and that an EAC is simply one form of foreground data. *See* 91 Fed. Reg. at 5171 (distinguishing background data from producer-specific foreground data). This conflates what the model *can accept* with what the statute *requires*. The GREET model’s data fields are input parameters; they do not define the scope of the statutory mandate. The distinction between foreground data that reflects physical measurements (facility-specific electricity consumption, actual energy sourcing) and foreground data that reflects financial transactions (certificate purchases) is the distinction between what the statute requires and what the proposed regulations permit.

3.1.2. The Fiscal Consequences Are Substantial.

The book-and-claim mechanism allows a fuel producer to spend \$0.002 per gallon on certificates and receive \$0.09 per gallon in additional tax credit—a 50-to-1 return on a paper transaction (detailed derivation below). Applied across the U.S. fuel industry, this single regulatory choice adds an estimated \$6-9 billion to the program’s cost over the credit’s five-year life, representing approximately one-quarter to one-third of the Joint Committee on Taxation’s \$25.7 billion total cost estimate. Staff of J. Comm. on Tax’n, JCX-35-25, at 6 (2025).

For a representative Midwest corn ethanol plant, switching from grid-average electricity to EAC-attributed wind electricity in the 45ZCF-GREET model reduces the lifecycle emissions rate by approximately 4.3 gCO₂e/MJ, equivalent to approximately 4.6 kg CO₂e/mmBTU. Under the credit formula—where each 1 kg CO₂e/mmBTU reduction increases the credit by \$0.02 per gallon at the \$1.00 applicable amount for facilities meeting prevailing wage and apprenticeship requirements, 26 U.S.C. § 45Z(a)(2), (b)(1)(A)—this translates to a per-gallon credit increase of approximately \$0.09. This calculation is derived from the 45ZCF-GREET model’s own published data: Table 7 of the 45ZCF-GREET User Manual reports a Midwest grid emissions factor of 0.58 kg CO₂e/kWh, while EAC-attributed wind electricity is modeled at zero. DOE, *Guidelines to Determine Life Cycle Greenhouse Gas Emissions of Clean Transportation Fuel Production Pathways Using 45ZCF-GREET* (May 2025), at 30 tbl. 7, 13. At 0.60 kWh per gallon of ethanol—the current dry-mill industry average—the differential is 0.348 kg CO₂e per gallon (0.60 x 0.58), or 4.32 gCO₂e/MJ. *See* Renewable Fuels Ass’n, *Corn Ethanol’s Energy Balance Continues to Improve 2* (Apr. 2022) (reporting 0.599 kWh/gal based on 2021 survey of 60+ dry-mill facilities by Christianson Benchmarking, LLC); *see also* U.S. Dep’t of Agric., Office of Energy Policy & New Uses, *2015 Energy Balance for the Corn-Ethanol Industry* at 15 tbl.2 nn.1³

The cost of the certificates required to claim this credit increase is negligible. Voluntary wind RECs—which account for approximately 76-78% of the voluntary REC market—have traded at a generation-weighted average price of \$2.2-\$3.7 per MWh in recent years. *See* NREL, *Status and Trends in the U.S. Voluntary Green Power Market* (2025); EPA, Green Power P’ship, *Impacts of Voluntary Renewable Energy Demand on Deployment: A Market-Based Approach* (Jan. 2025); *see also* S&P Global Mkt. Intelligence, *US Renewable Energy Credit Market Size to Double to \$26 Billion by 2030* (2022) (estimating average voluntary REC cost at \$3.00 per credit in 2021, compared to \$33.94 for compliance RECs). At 0.60 kWh per gallon, the REC cost is approximately \$0.002 per gallon. The producer spends \$0.002 per gallon on certificates and receives \$0.10 per gallon in additional credit—a return

³ The per-gallon credit increase is calculated as follows. (1) Emissions differential: 0.60 kWh/gal x 0.58 kg CO₂e/kWh = 0.348 kg CO₂e/gal. (2) Unit conversion using ethanol’s lower heating value of 76,330 BTU/gal (80.5 MJ/gal), the GREET model standard for denatured fuel ethanol: 348 g ÷ 80.5 MJ = 4.32 gCO₂e/MJ; 4.32 gCO₂e/MJ x 1,055.06 MJ/mmBTU = 4,558 g = 4.56 kg CO₂e/mmBTU. (3) Credit formula: each 1 kg CO₂e/mmBTU reduction increases the credit by Applicable Amount ÷ 50. At the \$1.00 applicable amount (prevailing wage and apprenticeship requirements met, § 45Z(a)(2)(A)): 4.56 x (\$1.00 ÷ 50) = \$0.091 ≈ \$0.09/gal. At the \$0.20 base amount: 4.56 x (\$0.20 ÷ 50) = \$0.018/gal. This analysis uses the \$1.00 amount because the majority of large commercial ethanol facilities are expected to meet the prevailing wage and apprenticeship thresholds.

of approximately 50-to-1 on a paper transaction that involves no capital investment, no change to operations, no construction, and no permitting.

At the facility level, the arithmetic is even more striking. A 100-million-gallon-per-year ethanol plant consumes approximately 60,000 MWh of electricity annually. At \$10 per MWh for qualifying EACs (conservatively above the voluntary market floor), the annual certificate cost is \$600,000. The annual credit increase is \$9 million. The net annual gain from a paper transaction: \$8.4 million. Even at a generous \$15 per MWh—reflecting a premium for certificates meeting the three pillars requirements—the return exceeds 10 to 1.

Applied across the U.S. ethanol industry—approximately 16 billion gallons per year, EIA, *Monthly Energy Review* tbl. 10.3, concentrated in the Midwest and Plains regions where over 90% of production capacity is located, *see* EIA, *U.S. Fuel Ethanol Plant Production Capacity* (2025), and where credit inflation ranges from \$0.07-\$0.09 per gallon depending on regional grid emissions factors, *see supra* (per-gallon calculation)—the book-and-claim mechanism for electricity alone generates an estimated \$1.1 to 1.4 billion per year in additional credits that do not correspond to any actual emissions reduction. Over the five-year credit window (fuel sold by December 31, 2029, 26 U.S.C. § 45Z(g)), the cumulative excess credit cost attributable to book-and-claim electricity attribution is estimated at \$5-7 billion for ethanol alone. Extending this analysis to other fuel pathways where certificate-based attribution similarly inflates credits—including biodiesel, renewable diesel, and renewable natural gas—yields an estimated \$6-9 billion across all fuels and energy inputs. This represents approximately one-quarter to one-third of the Joint Committee on Taxation’s \$25.7 billion total cost estimate for the Section 45Z credit. Staff of J. Comm. on Tax’n, JCX-35-25, at 6.

Treasury has not published its own estimate of the credit inflation attributable to the book-and-claim mechanism. The preamble contains no fiscal analysis of the differential between credits claimed with and without certificate-based attribution. *See* 91 Fed. Reg. 5160-5210. Before finalizing a mechanism that may account for one-quarter to two-fifths of the program’s total cost, Treasury should quantify and publicly disclose the fiscal impact of this regulatory choice and subject that analysis to public comment.

3.1.3. Treasury Imported the 45V Framework Without Independent Justification.

The proposed regulations import the entire certificate-based framework from the Section 45V clean hydrogen production credit through a single cross-reference. Prop. Treas. Reg. § 1.45Z-2(e)(3)(iii)(B)(1), 91 Fed. Reg. at 5197. The preamble explains that “rules similar to the rules under section 45V would apply unless otherwise specified by the 45ZCF-GREET model with respect to technical

modeling issues or other technical differences.” 91 Fed. Reg. at 5172. The preamble does not elaborate further on the basis for this importation.

Under the Administrative Procedure Act, an agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The preamble does not explain why the 45V framework is appropriate for the structurally different Section 45Z credit. For Section 45V, electricity is the *primary* input, because the clean hydrogen credit targets hydrogen produced by electrolysis—a process that is fundamentally an electricity conversion process. For Section 45Z, electricity is *one input among many* across a diverse range of fuel production pathways. Importing a framework designed for a credit where electricity sourcing is the central question into a credit where electricity is a peripheral input warrants an explanation of why the framework remains appropriate. The preamble does not provide one, and *State Farm* requires it. Nor can Treasury justify the importation on grounds of administrative convenience or the nascent state of tracking infrastructure. Where Congress specifies the factors that determine a standard, the agency cannot import additional factors Congress did not mention. *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 468 (2001).

We respectfully submit that the preamble would benefit from a discussion of alternatives and the body of peer-reviewed research finding that certificates do not produce actual emissions reductions. *See supra* Section 3.1.1. We encourage Treasury to address these points in the final rule to strengthen the administrative record.

We note that we have concerns with the three pillars framework even as applied to Section 45V. In that context, the argument for flexibility is that without book-and-claim attribution, the stringency of electricity emissions accounting could prevent electrolytic hydrogen projects from proceeding at all—an existential threat to the program. Whatever the merits of that argument, it has no application to Section 45Z. The fuel production facilities claiming the 45Z credit are operating enterprises. They will produce fuel and claim the credit regardless of how electricity emissions are measured. The question is not whether producers will participate; it is what level of credit a producer should receive, taking into account the full lifecycle of emissions. That is a measurement question, and the statute answers it: the aggregate quantity of greenhouse gas emissions related to the full fuel lifecycle. Treasury cannot import a flexibility framework designed to preserve program viability into a credit where viability is not at issue.

3.1.4. If Treasury Retains Book-and-Claim, It Should Require Hourly Matching and Physical Deliverability.

If Treasury retains the book-and-claim mechanism despite the statutory and fiscal concerns identified above, the temporal matching and deliverability standards should be substantially tightened to ensure that certificate purchases correspond to actual emissions reductions—as the statute requires. 42 U.S.C. § 7545(o)(1)(H).

Hourly temporal matching should apply immediately. The proposed regulations require only annual matching through December 31, 2029, with hourly matching deferred to January 1, 2030. *See supra* Section 2.4. Because the Section 45Z credit expires December 31, 2029, the more rigorous standard never applies. Annual matching is not a transition; as applied to Section 45Z, it is the permanent standard. Under annual matching, a producer can purchase certificates from a wind farm generating at 3:00 AM and use them to cover electricity consumed during peak hours, when the marginal generator is typically a natural gas or coal plant. The emissions profile of the electricity actually consumed bears no relationship to the emissions profile of the wind generation. We recognize that immediate hourly matching would narrow the pool of qualifying certificates. That is a feature, not a defect—it confines the book-and-claim pathway to circumstances where there is actual temporal alignment between generation and consumption. If Treasury concludes that hourly matching is impractical for the 45Z credit’s remaining life, then the appropriate response is to acknowledge that book-and-claim attribution cannot be validated under the current infrastructure and to exclude it from the 45Z credit entirely, rather than to retain it under a standard that Treasury and DOE agree produces inferior emissions accuracy.

DOE’s own electricity assessment report concluded that hourly matching “will provide significantly greater certainty about lifecycle GHG emissions outcomes by ensuring that there is actual alignment between load and generation.” DOE, “Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit” 11 (Dec. 2023). DOE acknowledged that annual matching “can drive induced GHG emissions”—that is, drive additional fossil-fuel generation dispatched to meet demand that was nominally, but not actually, served by the credited renewable source. *Id.* Langer et al. (2024), a systematic review of eight techno-economic modeling studies, confirmed that annual matching “do not lead to significant emission reductions compared to a counterfactual without a REC market,” while “hourly matching (with power purchase agreements involving local and new RE generators) leads to significant emission reductions.” Langer, L. et al., J. CLEANER PRODUCTION 478, Art. 143791, at 1 (2024). Treasury acknowledged that “[t]emporal matching at an hourly level best mitigates the risk of induced grid emissions.” 90 Fed. Reg. at

2266. The 45Z preamble contains no independent discussion of why the inferior standard is nonetheless adequate for this credit.

Deliverability should require a physical connection to the production facility.

The deliverability requirement, imported from Section 45V, requires only that the generator be in the same region as the fuel production facility. A generator can be hundreds of miles away, connected to a different grid node, with no physical delivery path, and the certificate still counts. For a certificate to reflect a real reduction in the emissions associated with a facility’s electricity consumption, the clean electricity must actually reach the facility—or at minimum, must demonstrably displace the fossil generation that would otherwise serve that load.

California’s LCFS provides the most instructive contrast. California categorically prohibits book-and-claim for process electricity: “[I]ndirect accounting mechanisms for renewable or low-[carbon intensity] process energy, such as the use of renewable energy certificates, cannot be used to reduce [carbon intensity]. In order to qualify as a low-[carbon intensity] process energy source, energy from that source must be directly consumed in the production process” as provided in the rest of the regulation. Cal. Code Regs. tit. 17, § 95488.8(h). Where California permits an exception for electrolysis, it does so because “electric vehicle charging and hydrogen production through electrolysis represent unique cases due to the limited area to collocate renewable assets given that these fueling facilities are often located in urban environments.” Cal. Air Res. Bd., Staff Report: Initial Statement of Reasons for Proposed Amendments to the Low Carbon Fuel Standard Regulation, III-96 (Mar. 6, 2018). Such circumstances do not apply for facilities that will claim the Section 45Z credit. The proposed federal regulations permit exactly what California prohibits without acknowledging the California experience or explaining the departure.

The book-and-claim mechanism also extends to RNG and hydrogen inputs.

The cross-reference to Section 45V rules applies to “hydrogen (as a production input), natural gas alternatives (as a production input or as the transportation fuel produced), electricity, and carbon capture and sequestration.” Prop. Treas. Reg. § 1.45Z-2(e)(3)(iii)(B)(1), 91 Fed. Reg. at 5197. Pipeline natural gas is fungible. When a producer purchases an RNG certificate, the facility physically consumes whatever gas is available at its pipeline interconnection—overwhelmingly conventional natural gas. The certificate is entirely divorced from the physical reality of what the facility combusts. The preamble does not address this issue.

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Taken together, the book-and-claim mechanism redirects several billion dollars to transactions that do not measure the “aggregate quantity of greenhouse gas emissions” Congress told Treasury to measure, through a framework imported

from a different credit without independent rationale. Treasury should remove book-and-claim attribution from the final rule; if Treasury retains it, hourly matching and physical deliverability should apply from the effective date of the final rule, not on a deferred schedule that never arrives before the credit expires.

3.2. “Suitable for Use” Is a Purpose Limitation, Not a Chemistry Test.

The statute limits the credit by purpose, not by chemical composition. Section 45Z limits the credit to “transportation fuel,” defined as fuel that “is suitable for use as a fuel in a highway vehicle or aircraft.” 26 U.S.C. § 45Z(d)(5)(A)(i). “Suitable for use *as*” is a purpose phrase. It describes what the fuel is for—use in a highway vehicle or aircraft—not what the fuel is chemically capable of. Congress called it “transportation fuel” and defined it by reference to highway vehicles and aircraft. If Congress had meant “any liquid with the chemical properties of diesel,” it knew how to say that. When Congress wants a chemical-composition definition, it writes one: the biodiesel credit defines “biodiesel” as “the monoalkyl esters of long chain fatty acids derived from plant or animal matter” meeting EPA registration requirements and the ASTM D6751 specification. 26 U.S.C. § 40A(d)(1). Section 45Z contains nothing of the sort. Congress instead used the same functional formulation it adopted in the fuel excise tax definitions, where “diesel fuel” means “any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train.” 26 U.S.C. § 4083(a)(3)(A)(i). When Congress wants a chemical test, it writes one; when Congress wants a functional test, it writes one. Section 45Z is the latter.

The statutory structure confirms this reading. Congress restricted production to the United States. § 45Z(f)(1)(A)(ii). It restricted feedstock to North America. § 45Z(f)(1)(A)(iii). Every geographic restriction in the statute points toward domestic transportation use. Reading “suitable for use” as a chemistry test creates an anomaly: Congress carefully controlled where the fuel comes from but imposed no limitation on where it goes or what it does. The more natural reading is that “suitable for use as a fuel in a highway vehicle or aircraft” carries a purposive limitation that completes the supply-chain logic Congress started. Congress restricted the front end of the supply chain (production, feedstock). The eligibility definition restricts the back end (end use). Together, they describe a credit for fuel produced domestically from North American feedstock for use in American highway vehicles and aircraft.

The proposed regulations strip out the purposive element. Treasury adopted a “practical and commercial fitness” test under which a fuel qualifies based on its chemical properties regardless of actual end use. 91 Fed. Reg. at 5167; Prop. Treas. Reg. § 1.45Z-1(b)(34)(ii)(A). Treasury confirms that a fuel “need not actually be used as a fuel in a highway vehicle or aircraft” to qualify. 91 Fed. Reg. at 5194. This

reads “suitable for use as” to mean “capable of being used as”—converting a purpose limitation into a capability test and eliminating any connection between the credit and actual transportation use.

The excise tax analogy cuts against Treasury, not for it. Treasury expressly invokes the excise tax standard at 26 C.F.R. § 48.4081-1(c)(2). 91 Fed. Reg. at 5167. But Treasury is quoting half of its own scheme. Congress wrote the diesel fuel excise tax regime in two steps. First, Section 4083 defines “diesel fuel” broadly as “any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train.” 26 U.S.C. § 4083(a)(3)(A)(i). Read in isolation, that definition would sweep in home heating oil, marine diesel, and any other liquid chemically similar to highway diesel. Second, § 4082 exempts from the tax any diesel fuel that is “destined for a nontaxable use” and “indelibly dyed” in accordance with Treasury regulations. 26 U.S.C. § 4082(a). The dye is the purpose signal: fuel dyed red goes to heating, farming, construction, or marine use and is exempt; undyed fuel enters the taxable highway supply chain.

The broad definition casts the net; the dyeing exemption pulls back everything that is not going to highway use. Treasury then built the operational machinery to enforce that split. Its regulations at 26 C.F.R. §§ 48.4082-1, 48.4082-2, 48.4082-4 prescribe terminal-rack procedures, Solvent Red 164 concentration standards, notice-posting requirements, and a back-up tax if fuel exempted as dyed nonetheless ends up in taxable highway use. That is what Treasury does when it takes “suitable for use” language seriously: it pairs the broad definition with the narrowing infrastructure. Faced with the same statutory formulation in § 45Z, Treasury has quoted the broad half of its own excise tax definition and walked away from the narrowing half. That is not just inconsistent with Congress’s design. It is inconsistent with Treasury’s own three-decade administration of the same words. The same logic that limits the excise tax to highway fuel should limit the credit to highway fuel.

The results confirm the error. Under Treasury’s reading, home heating oil qualifies for the Section 45Z credit. No. 2 fuel oil is chemically identical to ultra-low sulfur highway diesel—the dyeing system at § 4082 exists precisely because heating oil meets the chemical-properties standard. Approximately 3.0 to 3.7 billion gallons of heating oil are consumed annually by 4.8 million U.S. households. Marine diesel qualifies—Treasury’s own preamble says so. 91 Fed. Reg. at 5167-68. And exported fuel qualifies, because the proposed regulations contain no domestic-use requirement. A U.S. producer can claim the credit on renewable diesel that is immediately exported to satisfy a European renewable fuel mandate. Prop. Treas. Reg. § 1.45Z-1(b)(29)(ii).

The export pathway exposes how far the credit has drifted from its purpose. When U.S.-produced renewable diesel is exported, the 45Z credit subsidizes

production and the receiving country’s renewable fuel mandate generates additional compliance value on the same gallon. The anti-stacking provisions at § 45Z(d)(4)(B) address only domestic credits. Under the UK RTFO, waste-derived fuels generate combined transatlantic subsidy stacks of approximately \$2.42 to \$2.92 per gallon. UK Dep’t for Transport, Renewable Transport Fuel Obligation Guidance, Obligation Period 2025/26. Under the EU RED III, the combined stack reaches \$1.40 to \$2.75 per gallon. The United States exported approximately 600 million gallons of renewable diesel in 2025. Over the credit’s remaining life, the cumulative cost on exported fuel alone could reach \$1.6 to \$3.0 billion—for fuel that never enters the U.S. fuel supply. The export pathway also raises questions about the beneficiaries of the credit. A company 44.2% owned by the Finnish government operates a Section 45Z-eligible renewable diesel facility in California. Neste, Largest Shareholders (Dec. 31, 2024), <https://www.neste.com/investors/share/largest-shareholders>.

The regulatory architecture also routes value through foreign certification gatekeepers. For SAF producers claiming the 45Z credit, the proposed regulations accept certifications from ICAO-approved Sustainability Certification Schemes. 91 Fed. Reg. at 5172. Only three schemes have been approved: ISCC (Germany), RSB (Switzerland), and ClassNK (Japan). ICAO, Document 04: ICAO CORSIA Approved Sustainability Certification Schemes (3d ed. Oct. 2024). None is based in the United States. ISCC—the dominant scheme, with over 11,000 certified companies in 100 countries—is operationally managed by Meo Carbon Solutions GmbH, a private Cologne-based consulting firm that initiated and steered ISCC’s development from its inception. Meo Carbon Solutions GmbH, “ISCC Case Study,” <https://www.meo-carbon.com/case/iscc/>. American taxpayer-funded credits for sustainable aviation fuel effectively require certification by a German private company, with no domestic alternative available.

The fix restores the credit to its statutory purpose. The existing dyeing system under § 4082 already distinguishes highway fuel from non-highway fuel at the terminal rack. Undyed fuel—fuel entering the taxable highway supply chain—should qualify for the Section 45Z credit. Dyed fuel should not. For exported fuel, the producer should certify that the fuel is sold for domestic transportation use. These mechanisms are practical, already implemented, and would align the credit with what Congress enacted: an incentive for clean fuel in American highway vehicles and aircraft.

3.3. USDA’s Calculator Is Still in “Beta” Format and Cannot Support a Statutory “Determination.”

The statute requires “determinations.” Section 45Z requires that emissions rates be “based on the most recent determinations under the” 45ZCF-GREET model. 26 U.S.C. § 45Z(b)(1)(B)(ii). A determination is a conclusion reached after

investigation and deliberation. It is not a preliminary estimate. It is not a beta value. It is not the output of a tool whose developer warns against reliance.

The FD-CIC has not produced a basis for a determination. The proposed regulations anticipate allowing producers to claim lower emissions rates based on climate-smart agricultural practices, using a Feedstock Carbon Intensity Calculator (FD-CIC) module. 91 Fed. Reg. at 5172. This module does not exist in final form. USDA published a beta version in January 2025 that Treasury acknowledges is “undergoing testing, peer review, and public comment in preparation for the publication of a final version.” *Id.* If the tool is “undergoing testing,” it has not been tested. If it is “undergoing peer review,” it has not been peer-reviewed. If it is “undergoing public comment,” the public has not had its say. The underlying regulation—7 C.F.R. Part 2100—is itself an interim rule that has not been finalized. The comment period closed in March 2025; no final rule has been published.

USDA itself says not to rely on the tool. In the same FEDERAL REGISTER notice publishing the beta, USDA warned that values are preliminary and “should not [be] rel[ied] upon.” 90 Fed. Reg. at 5,499 (Jan. 17, 2025). Yet Treasury anticipates that the tool “may be used for fuel produced and sold in 2025 even though 45ZCF FD-CIC likely will be published in 2026.” 91 Fed. Reg. at 5172. Treasury is proposing to base credit claims worth hundreds of millions of dollars on a tool whose developer published a FEDERAL REGISTER notice telling the public not to rely on it. Whether the finalized version ultimately confirms or revises the beta values is beside the point. The statute requires “determinations,” and a tool still undergoing testing, peer review, and public comment has not produced one. Treasury is authorizing credit claims based on values whose accuracy has not been established through the process Congress required.

Section 45Z(e) does not authorize skipping the statutory standard. The statute does direct the Secretary to “issue guidance regarding implementation of this section.” 26 U.S.C. § 45Z(e). That guidance authority is real but subordinate to the statutory framework it implements. The Secretary may prescribe procedures for making determinations. The Secretary may not dispense with the requirement that determinations be made. Treasury should not permit reliance on a beta-version calculator for final credit determinations. The FD-CIC should be finalized through testing, peer review, and public comment before any credits are based on its outputs.

4. CONCLUSION

The proposed regulations implementing Section 45Z exceed the statutory text in three material respects. The book-and-claim attribution mechanism allows producers to claim emissions reductions through certificate purchases that do not

change the aggregate quantity of greenhouse gas emissions the statute requires be measured. The “suitable for use” definition converts a statutory purpose limitation into a chemistry test: Treasury has quoted the broad half of its own excise tax definition of “diesel fuel” but walked away from the narrowing half—the dyeing mechanism that has given the identical statutory language its purposive meaning under Treasury’s own three-decade administration of the excise tax scheme—and the credit now reaches heating oil, marine diesel, and exported fuel that never enters the domestic transportation supply. And reliance on a beta-version measurement tool shifts all revision risk to taxpayers while crediting producers for “determinations” that have not been determined. Each of these choices expands a \$25.7 billion credit beyond what Congress authorized.

Prime Mover Institute urges Treasury to bring the final regulations into alignment with the statutory text before finalization. We thank Treasury and the Internal Revenue Service for the opportunity to comment on these proposed regulations.