TREASURY PROPOSES CLEAN FUEL PRODUCTION CREDIT GUIDANCE

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US Policy and Regulatory Alert

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On 4 February 2026, the US Department of the Treasury and the Internal Revenue Service (Treasury) released highly anticipated proposed regulations implementing the Section 45Z Clean Fuel Production Tax Credit (Section 45Z),[1] providing clarity on eligibility rules, emissions rate determinations, and certification and registration requirements. The proposed regulations also include several examples to help taxpayers better understand the regulatory text.

Treasury will hold a public hearing on 28 May 2026. Written comments on the proposed regulations are due on or before 6 April 2026.

The proposed regulations are substantively similar to the draft proposed regulations (draft regulations) released in January 2025, but they make important revisions to incorporate stakeholder feedback and to reflect statutory changes from the One Big Beautiful Bill Act (OBBBA) (Pub. L. 119-21). These include:

- Providing an expanded qualifying sale definition that explicitly includes sales to intermediaries.
- Increasing the scope of the look-through rule to treat taxpayers as selling to unrelated persons if related intermediaries ultimately sell to unrelated persons.
- Detailing recordkeeping requirements with safe harbors for substantiating emissions rates and qualified sales.
- Clarifying that ASTM International (ASTM) standards are “non-exhaustive and non-exclusive” for determining transportation fuel qualification.

LEGISLATIVE DEVELOPMENTS

For many years, Congress has, with bipartisan support, provided tax credits for the domestic production of biofuel.[2] In 2022, as part of the Inflation Reduction Act (Pub. L. 117-169), Congress enacted Section 45Z to replace and consolidate this array of fuel-specific tax credits into a single “technology-neutral” credit. The credit is determined as a general business credit under Section 38. As originally enacted, the credit was available for fuel produced after 31 December 2024 and sold before 31 December 2027.

In January 2025, Treasury announced in Notice 2025-10 its intent to propose regulations implementing Section 45Z. Notice 2025-10 also included an explanation of the rules it intended to propose and invited public comments on the draft regulations. Concurrently, Treasury provided initial guidance on methodologies for determining emissions rates under Section 45Z and provided the 2025 emissions rate table.

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In July 2025, as part of OBBBA, Congress made six significant changes to Section 45Z,[3] as follows:

1. Extended Section 45Z for two years, so that it expires at the end of 2029, rather than at the end of 2027.
2. Modified the emissions rate calculation by excluding the consideration of indirect land-use changes, requiring distinct emissions rates for emissions from animal manures, and prohibiting emissions rates of less than zero (except for animal manures).
3. Added an anti-abuse provision to prevent double crediting.
4. Required qualified fuel produced after 31 December 2025 to use feedstocks grown or produced in the United States, Canada, or Mexico.
5. Added prohibited foreign-entity restrictions for specified foreign entities (after 4 July 2025) and foreign-influenced entities (after 4 July 2027).
6. Repealed the bonus incentive for SAF produced after 31 December 2025.

KEY HIGHLIGHTS FROM THE REGULATIONS

To qualify for the Section 45Z credit, a taxpayer must satisfy several statutory requirements. The fuel must meet the definition of "transportation fuel," be produced at a qualified facility in the United States by a taxpayer registered under Section 4101, and be sold to an unrelated person in a qualified sale during the taxable year. Transportation fuel produced after 31 December 2025 must be exclusively derived from a feedstock produced or grown in the United States, Mexico, or Canada. These requirements are described in detail in the proposed regulations.

Transportation Fuel

The proposed regulations define "suitable for use" to mean that fuel either has practical and commercial fitness for use as fuel in a highway vehicle or aircraft, or the fuel may be blended into a fuel mixture with such fitness. Consistent with the draft regulations, actual use as fuel is not required. Only the first transportation fuel in a production chain qualifies for Section 45Z.[4]

Qualified Facility

The proposed regulations define "qualified facility" narrowly to include a single production line with interdependent components that produce transportation fuel, excluding any facility for which an "anti-stacking credit" is allowed in the same taxable year.[5] The proposed regulations also confirm that taxpayers need not own the facility and provide guidance on situations in which multiple taxpayers produce at a facility not owned by all and when a facility has more than one ownership interest.

Section 4101 Registration Process

The proposed regulations detail Section 4101 registration procedures, including approval, denial, revocation, suspension, reregistration, and separate entity treatment.[6] The proposed regulations also explain the three tests the IRS applies when evaluating registration applications: the activity test, the acceptable risk test, and the satisfactory tax history test.[7]

Qualified Sale Requirement

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Regarding the qualified sale requirement, the statute requires taxpayers to sell fuel to an unrelated person during the taxable year in one of three qualifying manners: (1) for use in the production of a fuel mixture,[8] (2) for use in a trade or business, or (3) at retail with placement in the fuel tank.[9] The proposed regulations make significant changes from the draft regulations regarding these qualifying sale requirements, substantially expanding commercial flexibility.

The second option—sales for use in a trade or business—reflects the most significant change from the draft regulations to the proposed regulations. The draft regulations defined this requirement as sales for use "as a fuel" in a trade or business. Stakeholders argued this language would prohibit sales to intermediaries, such as fuel marketers, wholesalers, and distributors. Responding to this feedback, the proposed regulations remove the "use as a fuel" language and explicitly clarify that sales to unrelated persons who subsequently resell the fuel in their trade or business qualify.

Pursuant to OBBBA statutory changes, the proposed regulations also adopt a broad look-through rule for sales made through related intermediaries, resulting in taxpayers being treated as selling to unrelated persons if any related person—including related intermediary dealers or wholesalers—ultimately sells the fuel to an unrelated person.[10]

CREDIT VALUE DETERMINATIONS

Besides revisions to incorporate OBBBA statutory changes, the proposed regulations do not substantively alter—compared to the draft regulations—the credit value determination of Section 45Z, including how emissions rates are calculated, the applicable amount per gallon, the use of the emissions rate table, or the emissions factor calculation.

Determining Emissions Rates

In the preamble, Treasury said it "carefully considered" public feedback it received on the draft regulations as it related to emissions rates determinations, and, as a result, the proposed regulations extensively clarify the use of the annual emissions rate table for the purposes of determining emissions rates. Additionally, because of the expressed "urgent need for regulations," the preamble and proposed regulations implement an extensive provisional emissions rate (PER) process.[11]

To establish emissions rates, the emissions rate table, generally, instructs taxpayers to use the 45ZCF-GREET Model for non-SAF transportation fuel and allows SAF transportation fuel producers to choose among three methodologies: the CORSIA Default Life Cycle Emissions Values, the CORSIA Methodology for Calculating Actual Life Cycle Emissions Values, or the SAF portion of the 45ZCF-GREET Model.[12] The preamble rejects commenters requests to use older emissions rate tables for future tax years, confirming that taxpayers must use the table in effect on the first day of the taxable year during which they produced the fuel. Within that framework, the preamble reaffirms that a taxpayer should use the most recent determinations under the 45ZCF-GREET Model—which includes determinations from models released throughout the tax year—to calculate the emissions rates of its transportation fuel.[13]

If the applicable emissions rate table does not establish an emissions rate for a specific type and category of transportation fuel produced by a taxpayer, the taxpayer may petition for a PER determination. The proposed regulations clarify the "scope and mechanics" of the PER process. Generally, the PER process has two steps: (i)

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submission of an Emissions Value Request (EVR) to the Department of Energy (DOE) following DOE's Section 45Z EVR process instructions, and (ii) filing a PER petition with the IRS when claiming the credit.[14] The proposed regulations provide that newly determined emissions rates relate back to 1 January 2025, allowing taxpayers who have been producing fuel while awaiting a PER determination to claim credits for that earlier production.

45ZCF-GREET Model Developments

Following intensive biofuel industry engagement with both Treasury and congressional tax-writing committees, the proposed regulations maintain the energy attribute certificate (EAC) pathway in the 45ZCF-GREET Model for the purpose of scoring the carbon intensity of electrical inputs. The proposed regulations add a definition of "placed in service" for the Section 45V incrementality pillar requirement, providing that a taxpayer's facility is considered placed in service in the first taxable year in which it produces a transportation fuel. Applying this clarification within the incrementality pillar, the electricity-generating facility that produces the unit of electricity attributable to the EAC must have a commercial operations date no later than three years before the first day of the taxable year that the facility for which the EAC is retired first produced a transportation fuel.

Many stakeholders expected a revised version of the 45ZCF-GREET model to be released in tandem with the proposed regulations. However, the proposed regulations suggest that the US Department of Agriculture (USDA) and DOE have not yet finalized their plans for incorporating climate-smart agriculture practices into the 45ZCF-GREET Model, while reports also indicate USDA and DOE have not yet finalized the removal of indirect land-use changes from the model, which they are planning to do before a revised model is released.

RECORDKEEPING AND SUBSTANTIATION

Compared to the draft regulations, the proposed regulations more explicitly outline the recordkeeping requirements a taxpayer must satisfy to claim the credit, which include documents establishing fuel qualification and characterization, feedstock eligibility, life cycle emissions rate determination, facility qualification and timing, and commercialization with third-party verification.[15] A taxpayer must also maintain certain records relating to prevailing wage and apprenticeship requirements and the PER process, if applicable.

The proposed regulations also include two safe harbors: one for substantiating emissions rates for non-SAF transportation fuel[16] and one for substantiating qualified sales of transportation fuel. The proposed regulations flesh out the emissions rates safe harbor and introduce the safe harbor for substantiating qualified sales, compared to the draft regulations.

CLAIMING THE CREDIT

The proposed regulations establish an extensive framework for claiming the credit using Form 7218. Treasury also includes special claim filing rules for situations where the registered producer is not the ultimate credit claimant, including when disregarded entities, qualified subchapter S subsidiaries, or consolidated group members produce the fuel.[17] A separate Form 7218 is required for each qualified facility.

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CONCLUSION

These long-awaited proposed regulations introduce a complex regulatory framework requiring fuel producers to satisfy multiple overlapping and tiered statutory requirements—from transportation fuel definitions and qualified facility determinations to Section 4101 registration, qualified sale structuring, and emissions rate calculations. Additionally, significant uncertainty remains, including the absence of a revised 45ZCF-GREET Model, outstanding questions regarding foreign feedstock substantiation requirements, and the practical application of ASTM's "non-exhaustive and non-exclusive" standard.

Our firm regularly assists stakeholders in navigating Section 45Z compliance across these interrelated requirements and in engaging with Treasury and the IRS on related advocacy issues. We are available to discuss how the proposed regulations may impact your specific operations, to prepare technical comments, and to help ensure your business is well positioned for compliance and credit maximization.

FOOTNOTES

[1] 91 Fed. Reg. 5160 (Feb. 4, 2026).

[2] These included the Section 40A credit for biodiesel, renewable diesel, biodiesel mixtures, renewable diesel mixtures, and small agri-biodiesel producers; the Section 40B credit for sustainable aviation fuel (SAF); the Section 6426 and Section 6427 credits for alcohol fuel, biodiesel, and alternative fuel mixtures; and the Section 40 Second Generation Biofuel Producer Tax Credit.

[3] OBBBA, § 70521, 139 Stat. 276. Additionally, OBBBA removed a previous exception allowing Treasury/IRS to round emissions rates to the nearest multiple of 5 kilograms of CO2 per mmBTU and authorized the Treasury Secretary to prescribe rules broadening sale attribution rules to include fuel sold through related intermediaries.

[4] E.g., if renewable natural gas (RNG) is used as a primary feedstock to produce SAF, only the RNG qualifies as a transportation fuel, unless the SAF producer *only* used the RNG as a process fuel or "other non-primary-feedstock input." *See* 26 U.S.C. § 45Z(d)(5)(A).

[5] The anti-stacking credits include: (a) the Section 45V clean hydrogen production credit, (b) the Section 48(a)(15) election for energy credit with respect to specified clean hydrogen production facilities, and (c) the Section 45Q carbon oxide sequestration credit. The determination is made separately for each taxable year and each facility, except that a Section 48(a)(15) election is irrevocable and permanently disqualifies the facility for all subsequent years. *See* proposed § 1.45Z-4(b) for more information.

[6] The proposed regulations clarify that a letter of registration is not a determination of the tax treatment of any transaction or the creditability of any transportation fuel—it simply confirms that the applicant has met the Section 4101 registration requirements. Taxpayers remain responsible for ensuring their fuel production and sales meet all eligibility requirements for the credit.

[7] *See* proposed § 1.4101-1 for more information on these registration requirements.

[8] The proposed regulations confirm a sale for blending (if made to an unrelated person) would qualify as a sale for use in the production of a fuel mixture.

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[9] 26 U.S.C. § 45Z(a)(4).

[10] The draft regulations included a narrower rule, allowing sales from one member of a taxpayer's consolidated group to another member of the same group, who then sells the fuel to an unrelated person, to be treated as selling fuel to an unrelated person.

[11] 91 Fed. Reg. 5172

[12] 91 Fed. Reg. 5170. The proposed regulations clarify that a taxpayer must use the same methodology to calculate life-cycle greenhouse gas emissions associated with all stages of fuel feedstock production and distribution.

[13] 91 Fed. Reg. 5172. To clarify, “most recent determinations” is “understood to refer to determinations under the most recent version of the 45ZCF–GREET model.”

[14] 91 Fed. Reg. 5173. Upon filing, the PER petition is deemed accepted by the IRS, and taxpayers may rely on the emissions value if all information and representations to DOE are accurate.

[15] More details on these documentation requirements can be found in proposed Section 1.45Z-4(g)(1).

[16] This safe harbor applies the same certification process as for SAF to non-SAF transportation fuel. SAF producers *must* obtain this certification and include it with their Form 7218, which is filed with the taxpayer's Federal income tax return or Federal information return, for each qualified facility at which the taxpayer produces SAF transportation fuel.

[17] *See* proposed § 1.45Z–6(b)(2) for more information on these special rules.

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