

# IRS Issues Proposed Regulations on Clean Fuel Production Credits

## WRITTEN BY

Adam C. Kobos | Anne C. Loomis | West Ailsworth | McKenzie L. Bayliss | Mitchell T. Emmert | Scott Grundeir | Tsitsi M. Mangosho | Camille M. Mennen | Andrew P. Nelson | John C. Nelson, Jr. | Joel M. Post

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The IRS and the Treasury Department issued [proposed regulations](#) on February 3, 2026 (Proposed Regulations), providing guidance on the clean fuel production credit under Section 45Z (Clean Fuel PTC).

The Proposed Regulations follow the passage of the [Inflation Reduction Act of 2022](#) (IRA), publication of the initial Clean Fuel PTC guidance in Notices 2024-49, 2025-10, 2025-11, and passage of the [One Big Beautiful Bill Act](#) (OB3).

The Proposed Regulations would generally apply to qualified sales occurring in taxable years ending on or after the date the final regulations are published in the *Federal Register*, with an exception for the regulations related to the emissions rate table, which would apply to qualified sales occurring in taxable years ending on or after January 10, 2025. Taxpayers may rely on these Proposed Regulations until the final regulations are published in the *Federal Register* if they follow the Proposed Regulations in their entirety and in a consistent manner.

## Background

The Clean Fuel PTC is available for low-emission transportation fuel produced domestically and sold between 2025 and 2029. The Clean Fuel PTC replaces an assortment of prior fuel incentives consisting of income tax credits, excise tax credits, and excise tax payment provisions for various biofuels and other alternative fuels sold for use as a fuel or used as a fuel, including biodiesel, renewable diesel, compressed natural gas, second generation biofuel, and sustainable aviation fuel (SAF).

To qualify for the Clean Fuel PTC, a taxpayer must: (i) produce a transportation fuel that meets requirements for suitability, emissions rate, coprocessing, and prevention of double crediting; (ii) produce the fuel at a qualified facility in the United States; (iii) be registered as a producer of clean fuel at the time of production; and (iv) sell the fuel to an unrelated person in a qualified sale during the taxable year.

Fuel produced after December 31, 2025, must be exclusively derived from a feedstock that was produced or grown in the United States, Mexico, or Canada. Like other tax credits after OB3, a taxpayer cannot be (i) a specified foreign entity, for taxable years beginning after July 4, 2025, or (ii) a foreign-influenced entity (other than a foreign-influenced entity as a result of effective-control), for taxable years beginning after July 4, 2027.

## Producer of Transportation Fuel

The Proposed Regulations generally define the *producer* as the person that engages in the production of a transportation fuel. For renewable natural gas (RNG), *producer* means the person that processes untreated sources of alternative natural gas to remove water, carbon dioxide, and other impurities such that it is interchangeable with fossil natural gas. The Proposed Regulations provide as an example that a *producer* does not include a taxpayer that merely compresses the gas, such as a wholesaler that removes gas from a pipeline and further compresses it for use in buses or automobiles.

The Proposed Regulations define *production* as all steps and processes used to make a transportation fuel. Production begins with the processing of primary feedstock(s) and ends with transportation fuel ready to be sold in a qualified sale. Minimal processing such as blending or other activities that do not result in chemical transformation do not qualify as production.

Under the Proposed Regulations, a taxpayer is not required to own the qualified facility at which the taxpayer produces the transportation fuel in order for the Clean Fuel PTC to be determined with respect to that fuel.

### **Qualified Facility**

The Proposed Regulations define *qualified facility* to mean a facility used to produce transportation fuel but excluding any facility for which the credit for production of clean hydrogen under section 45V, the energy credit determined under section 48 with respect to a clean hydrogen production facility, or the credit for carbon oxide sequestration under section 45Q is allowed.

- **Troutman Pepper Locke Insight:** Notably, neither the text of the Clean Fuel PTC nor the Proposed Regulations prohibit taxpayers from being allowed both the section 48 energy credit for qualified biogas property and the Clean Fuel PTC on the same facility.

The Proposed Regulations provide special rules and examples for determining whether any such credit has been allowed with respect to a facility. The determination is made on an annual basis such that a facility may be qualified in one year but not in another. For example, if a taxpayer makes an election to treat a hydrogen production facility as energy property under section 48, that facility is permanently disqualified from the Clean Fuel PTC. However, a taxpayer producing hydrogen could be allowed the clean hydrogen production credit under section 45V in one year and the Clean Fuel PTC in another, as long as both credits are not allowed for the facility in the same year.

### **Qualified Sale**

The Clean Fuel PTC requires that transportation fuel is sold by the taxpayer to an *unrelated* person (1) for use by such person in the production of a fuel mixture; (2) for use by such person in a trade or business; or (3) who sells such fuel at retail to another person and places such fuel in the fuel tank of such other person.

The Proposed Regulations clarify that *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. As an example, the Proposed Regulations describe a producer that sells RNG to an unrelated taxpayer by injecting the RNG into a pipeline for resale and distribution. The subsequent resale of gas by the unrelated taxpayer qualifies as a use in a trade or business and satisfies the qualified sale requirement.

- **Troutman Pepper Locke Insight:** Previously issued draft guidance had proposed to narrowly define *sold for use in a trade or business* to mean sold for use **as a fuel** in a trade or business. Many stakeholders raised concerns that the proposed language would prohibit many fuel producers from claiming the Clean Fuel PTC since transportation fuel is generally delivered to consumers through intermediaries. The revised language is a welcome development.

The Proposed Regulations provide that in the case of a corporation that is a member of an affiliated group of corporations filing a consolidated return, such corporation will be treated as selling fuel to an unrelated person if the fuel is sold to the unrelated person by another member of that consolidated group. Similarly, 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. The rule is similar to guidance for other renewable energy credits that requires sales to unrelated parties.

## Transportation Fuel

The Proposed Regulations provide that *transportation fuel* means a fuel that (1) is suitable for use in a highway vehicle or aircraft; (2) has an emissions rate that is not greater than 50 kilograms of CO<sub>2</sub>e per mmBTU; (3) is not derived from coprocessing an applicable material (or materials derived from an applicable material) with a feedstock that is not biomass; and (4) is not produced from a fuel for which the Clean Fuel PTC is allowable.

The Proposed Regulations define *fuel* as any liquid or gaseous substance that can be consumed to supply heat or power. Therefore, for purposes of the Clean Fuel PTC, the term *fuel* does not include electricity.

Transportation fuel is suitable for use in a highway vehicle or aircraft if the fuel 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. The Proposed Regulations provide a special rule for RNG, which is suitable for use once it is produced so that it is interchangeable with fossil natural gas and would require only minimal processing (for example, further compression or liquefaction) to meet industry specifications.

## Amount and Timing of Credit

The Proposed Regulations provide that for any taxable year, with respect to a given transportation fuel, the Clean Fuel PTC is an amount equal to the product of (i) the applicable amount for such fuel; (ii) the total gallons or gallon equivalents of such fuel that were produced by the taxpayer at a qualified facility and sold by the taxpayer in a qualified sale during the taxable year; and (iii) the emissions factor for such fuel.

For non-SAF fuel produced prior to January 1, 2026, the base applicable amount is \$0.20 and the alternative amount, if the prevailing wage and apprenticeship requirements are satisfied, is \$1. For SAF fuel produced prior to January 1, 2026, the base applicable amount is \$0.35 and the alternative amount, if the prevailing wage and apprenticeship requirements are satisfied, is \$1.75. For fuel produced after December 31, 2025, OB3 lowered the credit amount for SAF fuel to match the credit available for non-SAF fuel.

The Proposed Regulations, like the previous draft guidance, define *gallon equivalent* to mean, with respect to any nonliquid fuel, the amount of such fuel that has the energy equivalent of a gallon of gasoline, which refers to the amount of such fuel that has a British thermal unit (Btu) content of 116,090 (lower heating value).

## Emissions Factor

Under the Clean Fuel PTC, the emissions factor of a transportation fuel is equal to the quotient of 50 kilograms of CO<sub>2</sub>e per mmBTU, minus the emissions rate for such fuel, divided by 50 kilograms of CO<sub>2</sub>e per mmBTU.

The Proposed Regulations provide that to determine an emissions rate for a fuel, a taxpayer must either use the applicable emissions rate table published by the Secretary or, if the applicable emissions rate table does not establish an emissions rate for the taxpayer's fuel, a provisional emissions rate determined by the Secretary.

If the applicable emissions rate table establishes the emissions rate for a non-SAF transportation fuel, a taxpayer producing such fuel determines the fuel's emissions rate using the 45ZCF-GREET model, as directed by the applicable emissions rate table. If the applicable emissions rate table establishes the emissions rate for a SAF transportation fuel, a taxpayer producing such fuel determines the fuel's emissions rate (using the most recent version of CORSIA Default or CORSIA Actual), or the 45ZCF-GREET model, as directed by the applicable emissions rate table.

OB3 modified the Clean Fuel PTC to generally disallow negative emissions rates, with an exception that the Secretary may provide an emissions rate that is less than zero for transportation fuel derived from animal manure feedstock such as dairy, swine, or poultry manure. The Proposed Regulations adopt such an exception, providing a significant advantage to animal manure RNG facilities.

## 45ZCF-GREET Model

The Proposed Regulations invoke the Secretary's authority under the Clean Fuel PTC to designate the 45ZCF-GREET model as a successor model to the GREET model.

## Provisional Emissions Rate (PER)

The Proposed Regulations provide that if a taxpayer produces either a type or category of fuel that is not included in the applicable emissions rate table, the taxpayer may file a petition with the Secretary for a determination of the emissions rate. Before submitting a PER, which is done through a taxpayer's federal income tax return, the taxpayer must first submit an emissions value request (EVR) with the Department of Energy (DOE). The Proposed Regulations provide that DOE will publish specific guidance and procedures for submitting an EVR.

## Substantiation Requirements

In addition to providing a list of records that taxpayers must maintain to substantiate the credits, the Proposed Regulations provide two safe harbor methods to substantiate the emissions rate and qualified sale requirements.

### *Emissions Rate Safe Harbor (Non-SAF Fuels)*

A producer of non-SAF transportation fuel, such as RNG, can substantiate its lifecycle emissions rate by obtaining a written certification from an unrelated *qualified certifier*. If the certification is in substantially the prescribed form, signed under penalties of perjury, and based on all the data the taxpayer provides about feedstocks, production,

metering, and modeling, the IRS will treat the emissions rate reported as adequately substantiated. In practice, this lets the taxpayer rely on an independent expert's certification, rather than having to independently substantiate every aspect of the emissions calculation to the IRS.

A *qualified certifier* is an independent third party with recognized technical accreditation to verify lifecycle greenhouse gas emissions for transportation fuels, who has no financial or business stake in the taxpayer's fuel activities. The certifier must have an active third-party accreditation either from ANAB to perform validation/verification under ISO 14065 or as a CARB LCFS verifier, lead verifier, or verification body.

#### *Qualified Sale Safe Harbor (Purchaser Certificate)*

To substantiate that fuel was sold in a *qualified sale*, the producer can rely on a purchaser certificate from an unrelated buyer. The certificate, signed under penalties of perjury and in substantially the model form, identifies the parties, the fuel, and how the purchaser will use it (for a mixture, in its trade or business, or for retail sale into fuel tanks). It may cover a single sale or a series of sales for up to one year. If obtained timely and if the taxpayer has no reason to doubt its accuracy, the certificate serves to substantiate that the sales qualify for the credit.

### **SAF Certification**

The Proposed Regulations provide detailed procedures for the certification of SAF requirements. A producer must obtain an annual certification from an unrelated qualified certifier for each qualified facility and submit it with Form 7218. The certificate is a signed statement, under penalties of perjury, in which the certifier attests to the quantity of SAF produced at the facility during the taxable year and the lifecycle greenhouse gas (GHG) emissions rate that will be used to claim the section 45Z credit. It must confirm that the gallons and emissions data are consistent with the approved methodology (for example, CORSIA or 45Z-GREET, or an approved PER) and that the calculated emissions rate is accurate within the higher of  $\pm 5$  percent or 2 kg CO<sub>2</sub>e per mmBTU.

The certifier must be properly accredited for the methodology used and must be independent: not related to or employed by the taxpayer, not involved in buying or selling the fuel or its feedstocks, and not compensated under any fee arrangement tied to the amount of credit claimed. In the certificate, the certifier provides identifying information, describes its accreditation, and gives facility-level details — such as the production process, the types and amounts of primary feedstocks, their sourcing locations, and the metering and QA/QC systems used to generate the underlying data, including confirmation that meters were appropriately calibrated and tested.

The certificate must be signed and dated no later than the due date (including extensions) of the return for the year in which the SAF is sold in a qualified sale, or, if the credit is first claimed on an amended return or AAR, by the date such filing occurs. The taxpayer must attach the certificate to Form 7218 for that facility and retain both the certificate and all supporting documentation in its records to substantiate the credit on examination.

### **Filing a Claim for the Clean Fuel PTC**

The Proposed Regulations provide that to claim the clean fuel production credit, a taxpayer must file a completed Form 7218, Clean Fuel Production Credit, with its timely filed federal income tax return or information return for the year the credit is determined. A separate Form 7218 is required for each qualified facility at which the taxpayer

produces transportation fuel for which it is claiming the credit. Where SAF is involved, the taxpayer must also attach the required annual certification from an unrelated qualified certifier for each such facility, and, where a PER is used, the taxpayer must attach the DOE calculated emissions value letter(s) as part of its PER petition with Form 7218 for the first year it claims the credit for that fuel.

Only a taxpayer that is treated as a registered producer of transportation fuel at the time of production may claim the credit. As a baseline, this means the producing entity must be registered under section 4101 with the appropriate activity letter for non-SAF or SAF fuel. However, the regulations include look-through rules: if a disregarded entity is the registered producer, its owner is treated as the registered producer for purposes of claiming the credit, and if a member of a consolidated group is registered, the common parent (as group agent) is treated as the producer and claims the credit on the consolidated return. In each case, the claimant must satisfy the Clean Fuel PTC recordkeeping and substantiation requirements, and its registration status (or that of its disregarded/consolidated group member) must be in place at the time the fuel is produced.

## Registration

The Clean Fuel PTC requires registration with the IRS prior to the production of transportation fuel. Under the Proposed Regulations, registration is done at the EIN level, so the actual producing entity (including a single-member LLC with its own EIN) should apply in its own name, even if it is disregarded for income tax purposes or part of a consolidated group. Registration is requested on Form 637, and a producer is treated as registered only when the IRS issues a formal Letter of Registration.

The IRS may revoke or suspend registration if the producer no longer meets the registration tests, misuses its registration (for example, to facilitate improper claims), or fails to follow the terms and conditions. Loss of registration generally means new fuel produced while unregistered will not be eligible for the Clean Fuel PTC. Finally, the Letter of Registration is expressly not a substantive blessing of the producer's Clean Fuel PTC computations or credit entitlement; it is simply a prerequisite license to participate in the Clean Fuel PTC regime, and all substantive Clean Fuel PTC eligibility and recordkeeping requirements must still be independently satisfied.

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*Gibson Oddderstol also contributed to this article. He is not licensed to practice law in any jurisdiction; bar admission pending.*

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