

TaxNewsFlash

United States

No. 2026-026
February 3, 2026

Proposed regulations: Clean fuel production credit under section 45Z

The U.S. Treasury Department and IRS today issued [proposed regulations](#) (REG-121244-23) regarding the clean fuel production credit under section 45Z, which provides a tax credit for producing transportation fuels with lifecycle greenhouse gas emissions below certain levels.

Background

Section 45Z was enacted by the Inflation Reduction Act (IRA) and amended by Pub. L. No. 119-21 (the “One Big Beautiful Bill Act” (OBBA)). Amendments under the OBBA include a two-year extension of the credit for transportation fuel sold through 2029 and a limitation on credit eligibility to fuel produced from feedstocks from the United States, Mexico, or Canada.

The section 45Z credit replaces an assortment of prior fuel incentives consisting of income tax credit, excise tax credit, 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).

The Treasury Department and IRS in January 2025 issued [Notice 2025-10](#), announcing the intention to issue proposed regulations under section 45Z, as well as [Notice 2025-11](#), providing the annual emissions rate table. Today’s proposed regulations are the proposed regulations announced in Notice 2025-10.

Proposed regulations

The proposed regulations would provide rules for determining clean fuel production credits, including credit eligibility rules, emissions rates, and certification and registration requirements. In addition, the proposed regulations would amend three sets of final regulations: the elective payment election regulations and the credit transfer election regulations, to clarify language relating to ownership of clean fuel production facilities, and the federal excise tax registration regulations, to make them clearer and more consistent with the clean fuel production credit registration requirements in the proposed regulations.

The proposed regulations are proposed to apply to qualified sales occurring in tax years ending on or after the date the regulations are finalized (with the exception of Prop. Treas. Reg. § 1.45Z-2(e), relating to the emissions rate table, which is proposed to apply to qualified sales occurring in tax years ending on or after January 10,

2025), but taxpayers may rely on the proposed regulations until they are finalized, provided they follow them in their entirety and in a consistent manner.

Comments on the proposed regulations, as well as requests to speak and outlines for topics to be discussed at the public hearing (scheduled for May 28, 2026, at 10:00 AM ET), are due by April 6, 2026. If no outlines are received by that date, the public hearing will be cancelled.

Read a related IRS release—[IR-2026-20](#) (February 3, 2026)

KPMG observations

Generally, the proposed regulations provide welcome additional clarity regarding the application of the clean transportation fuel credit. The applicability date of the proposed regulations would be any tax year ending on or after publication of final regulations in the federal register, with a few exceptions. Therefore, for calendar year taxpayers, the 2025 tax year generally would not be affected. One notable exception is the rules relating to the emissions rate table provided in Prop. Treas. Reg. § 1.45Z-2(e) are proposed to be effective for qualified sales occurring in tax years ending on or after January 10, 2025. If this applicability date is finalized as drafted, it would potentially affect many qualified sales occurring during calendar year 2025.

Some key areas of interest in the proposed regulations include:

- 1) **Qualified sale.** Prop. Treas. Reg. § 1.45Z-1(b)(29)(ii) clarifies that the term "sold for use in a trade or business" includes fuel sold to an unrelated person that subsequently resells the fuel in its trade or business. This clarification addresses previous concerns that the definition of "qualifying sale" provided in Notice 2025-10 was inconsistent with the statute and industry practices. A model certificate that can be used to document a qualified sale is included.
- 2) **Energy attribute certificates (EACs).** Prop. Treas. Reg. § 1.45Z-2(e)(3)(iii)(B)(2) proposes a new rule for assessing the "incrementality" of EACs used to account for the emissions associated with electricity in the 45ZCF-GREET model. It provides that the taxpayer's facility is considered placed in service in the first tax year it produces a transportation fuel. An example addresses an ethanol facility that is finished being upgraded on January 1, 2024 (before the credit applies) to produce ethanol that has an emissions rate that is less than 50kg CO₂e per mmBTU. It states that the placed in service date for incrementality is January 1, 2024. However, the example does not address a facility that produces ethanol and the facility isn't "upgraded." If finalized as drafted, this proposed rule would apply to qualified sales occurring in tax years ending on or after January 10, 2025.
- 3) **Provisional emissions rate (PER) process.** Prop. Treas. Reg. § 1.45Z-2(f) provides the process a taxpayer may use to petition for a PER determination.
- 4) **Non-SAF transportation fuels.** Prop. Treas. Reg. § 1.45Z-1(b)(24) clarifies that the list of transportation fuels is non-exclusive. It further provides that the term "low-GHG ethanol" includes both denatured and undenatured ethanol, which is an expansion of the previous definition of "low-GHG ethanol." Finally, the proposed ASTM specifications would be both non-exhaustive and non-exclusive with respect to determining whether a fuel is a transportation fuel for purposes of section 45Z.
- 5) **Conventional and alternative natural gas (CANG) producer.** Prop. Treas. Reg. §§ 1.45Z-1(b)(26)(ii) and (27) clarify that with respect to alternative natural gas, including RNG, the term producer means the person that processes the untreated sources of alternative natural gas to remove water, carbon dioxide, and other impurities such that it is interchangeable with fossil natural gas. Compression is not production. These definitions in combination with the clarification around qualified sale indicate that pipeline-quality RNG qualifies for the section 45Z credit as soon as it is sold into the pipeline.
- 6) **Climate smart agriculture (CSA).** The preamble to the proposed regulations indicates that certain CSA practices may soon be incorporated in carbon intensity scoring. It provides that following publication of the final version of the USDA Feedstock Carbon Intensity Calculator (USDA FD-CIC), the Treasury Department anticipates that 45ZCF FD-CIC, a section 45Z-specific version of the FD-CIC

module, will be included as an input to the DOE's 45ZCF-GREET model to be used for calculating carbon intensity adjustments under section 45Z for feedstocks that are produced using certain agricultural practices. The USDA FD-CIC may be used for fuel produced and sold in 2025, even though the USDA FD-CIC likely will be published in 2026.

- 7) **Pro rata allocation of fuels held in common storage.** Prop. Treas. Reg. § 1.45Z-2(a)(3)(ii) requires pro rata allocation of fuels held in common storage with other fuels that have different emissions rates. Therefore, if a taxpayer sells transportation fuel that is held in common storage with other fuels that have different emissions rates, the taxpayer is treated as selling a pro rata portion of each fuel produced after December 31, 2024, and held in such common storage. Further, the blending of fuels while such fuels are held in common storage does not constitute production of a transportation fuel with a distinct emissions rate.
- 8) **Sale by related person** (other than another member of a consolidated group). Prop. Treas. Reg. § 1.45Z-1(b)(29)(iv) provides that a taxpayer will be treated as selling fuel to an unrelated person if such fuel is sold to the unrelated person by a related person in certain cases. This change is consistent with amendments in OBBBA.
- 9) **Primary feedstock restriction.** OBBBA added a restriction that any fuel "produced from a fuel for which a section 45Z credit is allowable" is not transportation fuel. The proposed regulations would define the term "produced from a fuel for which a section 45Z credit is allowable" to mean that a fuel has a primary feedstock that meets the definitions of a transportation fuel under section 45Z (without regard to section 45Z(d)(5)(A)(iv)). This rule is meant to credit only the first transportation fuel in a production chain. Thus, if one fuel is used as a primary feedstock to produce a second fuel, and the first fuel qualifies as a transportation fuel for purposes of section 45Z, the second fuel would not qualify for a section 45Z credit. However, a fuel could still qualify for a section 45Z credit if its production process uses a transportation fuel solely as a process fuel or other non-primary-feedstock input.
- 10) **Sales prior to production.** Prop. Treas. Reg. § 1.45Z-2(b)(3)(i) clarifies that a credit is allowable in cases where the sale of clean transportation fuel occurs before production. For example, the fuel may be produced in an earlier tax year than the tax year in which the qualified sale of the fuel occurs. However, a qualified sale may not occur before the date the fuel is produced. As a result, if a taxpayer sells transportation fuel before production, the qualified sale would occur on the date of production.

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