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## Inflation Reduction Act: Registration Requirements for the Clean Fuel Production Credit

By Steven Lorch, Jonathan Macke and Nathan Bunch

On May 31, 2024, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2024-49](#), which provides guidance on the registration process for taxpayers intending to claim the clean fuel production tax credit (the CFP Credit) under Section 45Z.<sup>1</sup>

Notice 2024-49 provides details regarding the registration process under Section 45Z and additional color regarding fuels and underlying feedstocks eligible for the CFP Credit. More importantly, however, Notice 2024-49 makes clear that a taxpayer cannot claim the CFP Credit before it submits an application and receives a letter of registration back from the IRS. For taxpayers seeking to claim the CFP Credit for fuel production in early 2025, the clock is ticking. Treasury and the IRS intend to process any application received before July 15, 2024 in order for the applicant to receive a letter of registration before January 1, 2025, but any taxpayer intending to claim the CFP Credit should submit the application for registration as soon as possible.

### *The Basics of the CFP Credit*

Taxpayers generally are eligible to claim the CFP Credit for transportation fuel – including sustainable aviation fuel (SAF)<sup>2</sup> and non-SAF transportation fuel – produced in the United States at a qualified facility and sold to an unrelated person during the calendar years 2025, 2026, and 2027.<sup>3</sup>

For purposes of the CFP Credit:

- The applicable SAF or non-SAF transportation fuel must (1) have an emissions rate not greater than 50 kilograms of CO<sub>2</sub>e per mmBTU (the Emissions Rate Threshold) and (2) not be derived from co-processing certain glycerides, free fatty acids, or fatty acid esters (or materials derived from therefrom) with a non-biomass feedstock.

<sup>1</sup> Unless otherwise indicated, “Section” references are intended to refer to a section of the Internal Revenue Code of 1986, as amended.

<sup>2</sup> SAF is defined as non-kerosene liquid fuel sold for use in an aircraft and meets the requirements of either ASTM International D7566 or Fischer Tropsch provisions of ASTM D1655 Annex A1, and is not derived from palm fatty acid distillates or petroleum.

<sup>3</sup> The CFP Credit is a producer’s credit. By contrast, the federal income tax credit under Section 40B, which is available to taxpayers that blend SAF into a qualified mixture during 2023 and 2024, is a blender’s credit. We discussed the SAF credit under Section 40B in a recent [client alert](#).

- The definition of “qualified facility” is intended to prevent taxpayers from stacking the CFP Credit with other federal income tax credits. A qualified facility specifically excludes any facility for which the clean hydrogen production credit under Section 45V (or, in the case of an election to treat a hydrogen facility as energy property, Section 48) or carbon sequestration credit under Section 45Q is allowed.
- The transportation fuel sold to an unrelated person must be (1) used by the unrelated buyer in a fuel mixture, (2) used by the unrelated buyer in its trade or business, or (3) sold by the unrelated buyer to an end user at retail.

The amount of the 45Z Credit is the product of a per-gallon base credit and an emissions multiplier. The base credit equals up to \$1.75 per gallon of SAF and \$1.00 per gallon of non-SAF transportation fuel that is produced by the taxpayer at a qualified facility, provided that certain prevailing wage and apprenticeship requirements are met. The emissions multiplier for a transportation fuel is calculated as follows:

$$\frac{(50 \text{ kilograms of CO}_2\text{e per mmBTU}) \text{ minus } (\text{Emissions rate for the fuel})}{(\text{Emissions rate for the fuel})}$$

For purposes of this calculation, the Secretary of the Treasury is required to publish an annual table setting forth the emissions rate for similar types and categories of transportation fuels based on the amount of lifecycle greenhouse gas emissions as described in § 211(o)(1)(H) of the Clean Air Act as in effect on the August 16, 2022 (Section 211). Specifically:

- The emissions rate for SAF is based on the fuel’s lifecycle greenhouse gas emissions as determined under the most recent Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) or any similar methodology that satisfies the criteria of Section 211 (a Similar Methodology).<sup>4</sup>
- The emissions rate for non-SAF transportation fuel is based on the lifecycle greenhouse gas emissions as determined under the R&D GREET model.<sup>5</sup>

Finally, a taxpayer must be registered as a producer of clean fuel under Section 4101 at the time of production in order to claim the CFP Credit. In addition, in the case of SAF, the taxpayer must provide a certification from an unrelated party demonstrating compliance with any general requirements, supply chain traceability requirements, and information transmission requirements established under CORSA or, in the case of SAF using a Similar Methodology to determine the Emissions Reduction Percentage, similar requirements.<sup>6</sup>

### **Application for Registration**

Notice 2024-49 provides that a taxpayer will be considered to be registered for purposes of Section 45Z only if the IRS has issued a registration letter to the taxpayer and the registration has not been revoked or suspended. A taxpayer cannot claim the Section 45Z credit without a registration letter in hand, even if all other requirements under Section 45Z are met.

<sup>4</sup> [Notice 2024-37](#) introduced a SAF-specific version of the Greenhouse Gases, Regulated Emissions, and Energy Use in Technologies (GREET) model that qualifies as a similar methodology for purposes of the SAF credit under Section 40B, which indicates that Treasury and the IRS will likely take approach for purposes of the CFP Credit.

<sup>5</sup> Prior to December 2023, the R&D GREET model was generally referred to simply as the GREET model.

<sup>6</sup> Notice 2024-49 does not provide any guidance regarding the unrelated party certification. Treasury and the IRS intend to provide guidance on this topic at a later time.

Taxpayers are required to use the existing IRS Form 637 (Application for Registration for Certain Excise Tax Activities) (Form 637) to apply for purposes of Section 45Z. Notably, the existing Form 637, which was last revised in December 2022, does not contemplate Section 45Z registration. The IRS currently is revising Form 637 to accommodate the registration of SAF and non-SAF transportation fuels for purposes of Section 45Z.

Until the revised Form 637 is released, applicants producing SAF transportation fuel eligible for the CFP Credit must write in Activity Letter "CN" in Part II of Form 637 and provide the following additional information:

- A statement indicating whether the applicant produces SAF under an ASTM D7566 Annex or ASTM D1655 Annex A1, and if applicable, the specific ASTM D7566 Annex under which the SAF synthetic blending component is produced;
- The feedstock(s) and country of origin of each feedstock used to produce the SAF the applicant produces;
- The annual volume of SAF the applicant produces;
- The location(s) and a description of the applicant's production facilities;
- Each production facility's annual fuel production capacity, and whether the applicant's production facilities are operational and currently producing volumes of SAF;
- The names and addresses of any person(s) acting for the applicant as an agent or broker in buying, selling, or transporting any SAF;
- The business entities to which the applicant sells SAF;
- The business entities from or with which the applicant buys, trades, transfers, or exchanges any SAF; and
- The annual volume of SAF the applicant buys, sells, trades, transfers, or exchanges.

Similarly, applicants producing non-SAF transportation fuel eligible for the CFP Credit must write in Activity Letter "CA" in Part II and provide the following additional information:

- Each type of non-SAF transportation fuel and the annual volume of each type of non-SAF transportation fuel the applicant produces. If a type of non-SAF transportation fuel the applicant produces is not described in the guidance, the applicant must provide "Other" and provide a description of the fuel;
- The feedstock(s) and country of origin of each feedstock used to produce each type of non-SAF transportation fuel the applicant produces;
- The location(s) and a description of the applicant's production facilities;
- Each production facility's annual fuel production capacity, and whether the applicant's production facilities are operational and currently producing volumes of non-SAF transportation fuel
- The names and addresses of any person(s) acting for the applicant as an agent or broker in buying, selling, or transporting any non-SAF transportation fuel;
- The business entities to which the applicant sells non-SAF transportation fuel;
- The business entities from or with which the applicant buys, trades, transfers, or exchanges any non-SAF transportation fuel;

- The annual volume of non-SAF transportation fuel the applicant buys, sells, trades, transfers, or exchanges; and
- A statement indicating under which ASTM standard(s), SAE standard(s), or both, the applicant produces non-SAF transportation fuel.

Notably, Notice 2024-49 affords the IRS discretion as to whether or not to issue a registration letter to an applicant. The IRS will grant a registration letter to an applicant only if the IRS (1) concludes that the applicant is engaged as a producer of either SAF or non-SAF transportation fuel, as applicable, that may be eligible for the 45Z Credit, or is likely to become so engaged within a reasonable time after being registered and (2) is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person.

### *Timing of Application*

As noted above, a taxpayer cannot claim the Section 45Z credit without first receiving a registration letter from the IRS. Taxpayers seeking to produce transportation fuel eligible for the CFP Credit in early 2025 therefore should seek to apply for registration as soon as possible. However, for an application for registration received before July 15, 2024, Notice 2024-49 provides that the IRS intends to process these applications quickly in order to provide a letter of registration to the applicant before January 1, 2025.<sup>7</sup>

### *Additional Information Regarding Eligible Fuels and Feedstocks*

Notice 2024-49 provides a list of fuels that may qualify as non-SAF transportation fuel taking into account the Emissions Rate Threshold: low-GHG biodiesel, low-GHG butanol, low-GHG diesel fuel, low-GHG dimethyl ether, low-GHG ethanol, low GHG gasoline, low-GHG hydrogen, low-GHG LPG, low-GHG methanol, and low-GHG natural gas (each as defined under Notice 2024-49). By contrast, fuels derived from palm fatty acid distillates, petroleum, natural gas, and coal (including lignite) are not expected to qualify as non-SAF transportation fuel.

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If you have questions concerning the contents of this alert, or would like more information about Weil's Tax practice, please speak to your regular contact at Weil, or to:

Steven Lorch	<a href="#">View Bio</a>	<a href="mailto:steven.lorch@weil.com">steven.lorch@weil.com</a>	+1 212 310 8060
Jonathan Macke	<a href="#">View Bio</a>	<a href="mailto:jonathan.macke@weil.com">jonathan.macke@weil.com</a>	+1 214 746 8194
Nathan Bunch	<a href="#">View Bio</a>	<a href="mailto:nathan.bunch@weil.com">nathan.bunch@weil.com</a>	+1 212 310 8724

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<sup>7</sup> Nonetheless, Notice 2024-49 makes clear that the IRS cannot guarantee that any application for registration will be processed by any particular date, regardless of when the application is submitted.