

(12) Phaseout for elective payment**(A) In general**

In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, the amount of such credit shall be replaced with—

- (i) the value of such credit (determined without regard to this paragraph), multiplied by
- (ii) the applicable percentage.

(B) 100 percent applicable percentage for certain qualified facilities

In the case of any qualified facility—

- (i) which satisfies the requirements under paragraph (11)(B), or
- (ii) with a maximum net output of less than 1 megawatt (as measured in alternating current),

the applicable percentage shall be 100 percent.

(C) Phased domestic content requirement

Subject to subparagraph (D), in the case of any qualified facility which is not described in subparagraph (B), the applicable percentage shall be—

- (i) if construction of such facility began before January 1, 2024, 100 percent,
- (ii) if construction of such facility began in calendar year 2024, 90 percent,
- (iii) if construction of such facility began in calendar year 2025, 85 percent, and
- (iv) if construction of such facility began after December 31, 2025, 0 percent.

(D) Exception**(i) In general**

For purposes of this paragraph, the Secretary shall provide exceptions to the requirements under this paragraph if—

- (I) the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or
- (II) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(ii) Applicable percentage

In any case in which the Secretary provides an exception pursuant to clause (i), the applicable percentage shall be 100 percent.

(Added Pub. L. 117-169, title I, §13701(a), Aug. 16, 2022, 136 Stat. 1982.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e)(2), is the date of enactment of Pub. L. 117-169, which was approved Aug. 16, 2022.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117-169, title I, §13701(c), Aug. 16, 2022, 136 Stat. 1990, provided that: “The amendments made by

this section [enacting this section and amending section 38 of this title] shall apply to facilities placed in service after December 31, 2024.”

§ 45Z. Clean fuel production credit**(a) Amount of credit****(1) In general**

For purposes of section 38, the clean fuel production credit for any taxable year is an amount equal to the product of—

(A) the applicable amount per gallon (or gallon equivalent) with respect to any transportation fuel which is—

- (i) produced by the taxpayer at a qualified facility, and
- (ii) sold by the taxpayer in a manner described in paragraph (4) during the taxable year, and

(B) the emissions factor for such fuel (as determined under subsection (b)).

(2) Applicable amount**(A) Base amount**

In the case of any transportation fuel produced at a qualified facility which does not satisfy the requirements described in subparagraph (B), the applicable amount shall be 20 cents.

(B) Alternative amount

In the case of any transportation fuel produced at a qualified facility which satisfies the requirements under paragraphs (6) and (7) of subsection (f), the applicable amount shall be \$1.00.

(3) Special rate for sustainable aviation fuel**(A) In general**

In the case of a transportation fuel which is sustainable aviation fuel, paragraph (2) shall be applied—

- (i) in the case of fuel produced at a qualified facility described in paragraph (2)(A), by substituting “35 cents” for “20 cents”, and
- (ii) in the case of fuel produced at a qualified facility described in paragraph (2)(B), by substituting “\$1.75” for “\$1.00”.

(B) Sustainable aviation fuel

For purposes of this subparagraph (A),¹ the term “sustainable aviation fuel” means liquid fuel, the portion of which is not kerosene, which is sold for use in an aircraft and which—

- (i) meets the requirements of—
 - (I) ASTM International Standard D7566, or
 - (II) the Fischer Tropsch provisions of ASTM International Standard D1655, Annex A1, and

(ii) is not derived from palm fatty acid distillates or petroleum.

(4) Sale

For purposes of paragraph (1), the transportation fuel is sold in a manner described in this paragraph if such fuel is sold by the taxpayer to an unrelated person—

¹ So in original.

- (A) for use by such person in the production of a fuel mixture,
- (B) for use by such person in a trade or business, or
- (C) who sells such fuel at retail to another person and places such fuel in the fuel tank of such other person.

(5) Rounding

If any amount determined under paragraph (1) is not a multiple of 1 cent, such amount shall be rounded to the nearest cent.

(b) Emissions factors

(1) Emissions factor

(A) Calculation

(i) In general

The emissions factor of a transportation fuel shall be an amount equal to the quotient of—

- (I) an amount equal to—
 - (aa) 50 kilograms of CO₂e per mmBTU, minus
 - (bb) the emissions rate for such fuel, divided by
- (II) 50 kilograms of CO₂e per mmBTU.

(B) Establishment of emissions rate

(i) In general

Subject to clauses (ii) and (iii), the Secretary shall annually publish a table which sets forth the emissions rate for similar types and categories of transportation fuels based on the amount of lifecycle greenhouse gas emissions (as described 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) for such fuels, expressed as kilograms of CO₂e per mmBTU, which a taxpayer shall use for purposes of this section.

(ii) Non-aviation fuel

In the case of any transportation fuel which is not a sustainable aviation fuel, the lifecycle greenhouse gas emissions of such fuel shall 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).

(iii) Aviation fuel

In the case of any transportation fuel which is a sustainable aviation fuel, the lifecycle greenhouse gas emissions of such fuel shall be determined in accordance with—

- (I) the most recent Carbon Offsetting and Reduction Scheme for International Aviation which has been adopted by the International Civil Aviation Organization with the agreement of the United States, or
- (II) any similar methodology which satisfies the criteria under 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 enactment of this section.

(C) Rounding of emissions rate

(i) In general

Subject to clause (ii), the Secretary may round the emissions rates under subparagraph (B) to the nearest multiple of 5 kilograms of CO₂e per mmBTU.

(ii) Exception

In the case of an emissions rate that is between 2.5 kilograms of CO₂e per mmBTU and -2.5 kilograms of CO₂e per mmBTU, the Secretary may round such rate to zero.

(D) Provisional emissions rate

In the case of any transportation fuel for which an emissions rate has not been established under subparagraph (B), a taxpayer producing such fuel may file a petition with the Secretary for determination of the emissions rate with respect to such fuel.

(2) Rounding

If any amount determined under paragraph (1)(A) is not a multiple of 0.1, such amount shall be rounded to the nearest multiple of 0.1.

(c) Inflation adjustment

(1) In general

In the case of calendar years beginning after 2024, the 20 cent amount in subsection (a)(2)(A), the \$1.00 amount in subsection (a)(2)(B), the 35 cent amount in subsection (a)(3)(A)(i), and the \$1.75 amount in subsection (a)(3)(A)(ii) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale of the transportation fuel occurs. If any amount as increased under the preceding sentence is not a multiple of 1 cent, such amount shall be rounded to the nearest multiple of 1 cent.

(2) Inflation adjustment factor

For purposes of paragraph (1), the inflation adjustment factor shall be the inflation adjustment factor determined and published by the Secretary pursuant to section 45Y(c), determined by substituting “calendar year 2022” for “calendar year 1992” in paragraph (3) thereof.

(d) Definitions

In this section:

(1) mmBTU

The term “mmBTU” means 1,000,000 British thermal units.

(2) CO₂e

The term “CO₂e” means, with respect to any greenhouse gas, the equivalent carbon dioxide (as determined based on relative global warming potential).

(3) Greenhouse gas

The term “greenhouse gas” has the same meaning given that term under section 211(o)(1)(G) of the Clean Air Act (42 U.S.C. 7545(o)(1)(G)), as in effect on the date of the enactment of this section.

(4) Qualified facility

The term “qualified facility”—

(A) means a facility used for the production of transportation fuels, and

(B) does not include any facility for which one of the following credits is allowed under section 38 for the taxable year:

(i) The credit for production of clean hydrogen under section 45V.

(ii) The credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48 with respect to any specified clean hydrogen production facility for which an election is made under subsection (a)(15) of such section.

(iii) The credit for carbon oxide sequestration under section 45Q.

(5) Transportation fuel

(A) In general

The term “transportation fuel” means a fuel which—

(i) is suitable for use as a fuel in a highway vehicle or aircraft,

(ii) has an emissions rate which is not greater than 50 kilograms of CO₂e per mmBTU, and

(iii) is not derived from coprocessing an applicable material (or materials derived from an applicable material) with a feedstock which is not biomass.

(B) Definitions

In this paragraph—

(i) Applicable material

The term “applicable material” means—

(I) monoglycerides, diglycerides, and triglycerides,

(II) free fatty acids, and

(III) fatty acid esters.

(ii) Biomass

The term “biomass” has the same meaning given such term in section 45K(c)(3).

(e) Guidance

Not later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section, including calculation of emissions factors for transportation fuel, the table described in subsection (b)(1)(B)(i), and the determination of clean fuel production credits under this section.

(f) Special rules

(1) Only registered production in the United States taken into account

(A) In general

No clean fuel production credit shall be determined under subsection (a) with respect to any transportation fuel unless—

(i) the taxpayer—

(I) is registered as a producer of clean fuel under section 4101 at the time of production, and

(II) in the case of any transportation fuel which is a sustainable aviation fuel, provides—

(aa) certification (in such form and manner as the Secretary shall prescribe) from an unrelated party demonstrating compliance with—

(AA) any general requirements, supply chain traceability requirements, and information transmission requirements established under the Carbon Offsetting and Reduction Scheme for International Aviation described in subclause (I) of subsection (b)(1)(B)(iii), or

(BB) in the case of any methodology described in subclause (II) of such subsection, requirements similar to the requirements described in subitem (AA), and

(bb) such other information with respect to such fuel as the Secretary may require for purposes of carrying out this section, and

(ii) such fuel is produced in the United States.

(B) United States

For purposes of this paragraph, the term “United States” includes any possession of the United States.

(2) Production attributable to the taxpayer

In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(3) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling fuel to an unrelated person if such fuel is sold to such a person by another member of such group.

(4) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(5) Allocation of credit to patrons of agricultural cooperative

Rules similar to the rules of section 45Y(g)(6) shall apply.

(6) Prevailing wage requirements

(A) In general

Subject to subparagraph (B), rules similar to the rules of section 45(b)(7) shall apply.

(B) Special rule for facilities placed in service before January 1, 2025

For purposes of subparagraph (A), in the case of any qualified facility placed in service before January 1, 2025—

(i) clause (i) of section 45(b)(7)(A) shall not apply, and

(ii) clause (ii) of such section shall be applied by substituting “with respect to any taxable year beginning after December 31, 2024, for which the credit is allowed under

this section” for “with respect to any taxable year, for any portion of such taxable year which is within the period described in subsection (a)(2)(A)(ii)”.

(7) Apprenticeship requirements

Rules similar to the rules of section 45(b)(8) shall apply.

(g) Termination

This section shall not apply to transportation fuel sold after December 31, 2027.

(Added Pub. L. 117-169, title I, §13704(a), Aug. 16, 2022, 136 Stat. 1997.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(B)(i), (iii)(II) and (d)(3), is the date of enactment of Pub. L. 117-169, which was approved Aug. 16, 2022.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117-169, title I, §13704(c), Aug. 16, 2022, 136 Stat. 2003, provided that: “The amendments made by this section [enacting this section and amending sections 25C, 30C, 38, and 4101 of this title] shall apply to transportation fuel produced after December 31, 2024.”

§ 45AA. Military spouse retirement plan eligibility credit for small employers

(a) In general

For purposes of section 38, in the case of any eligible small employer, the military spouse retirement plan eligibility credit determined under this section for any taxable year is an amount equal to the sum of—

(1) \$200 with respect to each military spouse who is an employee of such employer and who participates in an eligible defined contribution plan of such employer at any time during such taxable year, plus

(2) so much of the contributions made by such employer (other than an elective deferral (as defined in section 402(g)(3))¹ to all such plans with respect to such employee during such taxable year as do not exceed \$300.

(b) Limitation

An individual shall only be taken into account as a military spouse under subsection (a) for the taxable year which includes the date on which such individual began participating in the eligible defined contribution plan of the employer and the 2 succeeding taxable years.

(c) Eligible small employer

For purposes of this section, the term “eligible small employer” means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)).²

(d) Military spouse

For purposes of this section—

(1) In general

The term “military spouse” means, with respect to any employer, any individual who is

married (within the meaning of section 7703 as of the first date that the employee is employed by the employer) to an individual who is a member of the uniformed services (as defined section 101(a)(5) of title 10, United States Code) serving on active duty. For purposes of this section, an employer may rely on an employee’s certification that such employee’s spouse is a member of the uniformed services if such certification provides the name, rank, and service branch of such spouse.

(2) Exclusion of highly compensated employees

With respect to any employer, the term “military spouse” shall not include any individual if such individual is a highly compensated employee of such employer (within the meaning of section 414(q)).

(e) Eligible defined contribution plan

For purposes of this section, the term “eligible defined contribution plan” means, with respect to any eligible small employer, any defined contribution plan (as defined in section 414(i)) of such employer if, under the terms of such plan—

(1) military spouses employed by such employer are eligible to participate in such plan not later than the date which is 2 months after the date on which such individual begins employment with such employer, and

(2) military spouses who are eligible to participate in such plan—

(A) are immediately eligible to receive an amount of employer contributions under such plan which is not less than the amount of such contributions that a similarly situated participant who is not a military spouse would be eligible to receive under such plan after 2 years of service, and

(B) immediately have a nonforfeitable right to the employee’s accrued benefit derived from employer contributions under such plan.

(f) Aggregation rule

All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer for purposes of this section.

(Added Pub. L. 117-328, div. T, title I, §112(a), Dec. 29, 2022, 136 Stat. 5294.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 29, 2022, see section 112(e) of Pub. L. 117-328, set out as an Effective Date of 2022 Amendment note under section 38 of this title.

SUBPART E—RULES FOR COMPUTING INVESTMENT CREDIT

Sec.	
46.	Amount of credit.
47.	Rehabilitation credit.
48.	Energy credit.
48A.	Qualifying advanced coal project credit.
48B.	Qualifying gasification project credit.
48C.	Qualifying advanced energy project credit.
48D.	Advanced manufacturing investment credit.
48E.	Clean electricity investment credit.
49.	At-risk rules.

¹ So in original. Probably should be followed by another closing parenthesis.

² So in original. Another closing parenthesis probably should precede the period.