

## Part III - Administrative, Procedural, and Miscellaneous

Modification of Notice 2008-110; ASTM standards for biodiesel

Notice 2009-34

### SECTION 1. PURPOSE

This notice extends the transitional rule set forth in Section 2(c) of Notice 2008-110, 2008-51 I.R.B. 1298, to September 30, 2009.

### SECTION 2. BACKGROUND

(1) Sections 40A, 6426, and 6427(e) of the Internal Revenue Code (Code) provide tax incentives for the production, sale, and use of biodiesel and biodiesel mixtures. Section 40A(d)(1) of the Code defines biodiesel as monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet (i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and (ii) the requirements of ASTM D6751.

(2) Effective on October 13, 2008, the American Society of Testing and Materials revised the requirements of ASTM D6751 by adding a cold soak filtration test for biodiesel (the October 13, 2008 revision).

(3) Section 2(c) of Notice 2008-110 provides a transitional rule to address this new ASTM D6751 requirement. Under the transitional rule, if a taxpayer's claim for biodiesel incentives is related to the production, sale, or use of biodiesel or a biodiesel mixture before April 1, 2009, a certification that the biodiesel covered by the claim meets the requirements of ASTM 6751 is valid if the biodiesel meets the requirements of ASTM 6751 as in effect either before or after the October 13, 2008, revision. However, if the claim is related to the production, sale, or use on or after April 1, 2009, the certification of the biodiesel covered by the claim is valid only if the biodiesel meets the requirements of ASTM 6751 as in effect after the October 13, 2008 revision.

### SECTION 3. EXTENSION OF TRANSITIONAL RULE

This guidance extends the transitional rule set forth in Section 2(c) of Notice 2008-110 through September 30, 2009. Therefore, if a taxpayer's claim for biodiesel incentives relates to the production, sale, or use of biodiesel or a biodiesel mixture and the production, sale, or use occurs before October 1, 2009, a certification that the biodiesel covered by the claim meets the requirements of ASTM D6751 is valid if the biodiesel meets the requirements of ASTM D6751 as in effect either before or after the October 13, 2008 revision that added the cold soak filtration test for biodiesel. If a claim relates to the production, sale, or use of biodiesel or a biodiesel mixture and the production, sale, or use occurs on or after October 1, 2009, a certification that the biodiesel covered by the claim meets the requirements of ASTM D6751 is valid only if the biodiesel satisfies the requirements of ASTM D6751 as in effect after the October 13, 2008, revision that added the cold soak filtration test for biodiesel.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2008-110 is modified.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Charles J. Langley, Jr. of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Charles J. Langley, Jr. on (202) 622-3130 (not a toll-free call).