

Comments of Alliance for Automotive Innovation

U.S. Department of the Treasury's Request for Comments on Section 30D Excluded Entities RIN 1545-BQ99

January 18, 2024

The Alliance for Automotive Innovation (Auto Innovators)¹ hereby submits these comments in response to the U.S. Department of the Treasury Internal Revenue Service's Notice of Proposed Rulemaking on Section 30D Excluded Entities ("proposed rule"),² as included in the Inflation Reduction Act (IRA).

Members of Auto Innovators produce nearly all of the cars and light trucks sold in the United States. Members include original equipment manufacturers, suppliers, battery producers, technology companies, and others within the automotive industry. The automotive industry is the nation's largest manufacturing sector and represents approximately 5 percent of the country's GDP that supports 10 million jobs.

As a major force in our nation's economy and a leader when it comes to significant investments in auto production and expanding the number of electrified vehicles available to consumers, our comments reiterate the shared interest regarding a variety of key provisions included in the Inflation Reduction Act (Public Law 116-169) that President Biden signed into law in August 2022.

Auto Innovators appreciates the Department of the Treasury's release of its proposed rule on 30D excluded entities. The auto industry is in the process of building transparency of our supply chains, but this takes time, and it is unclear if this will be complete by 2025 for critical mineral tracing. We look forward to continuing to work with the Department of the Treasury and

¹ From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.
www.autosinnovate.org.

² <https://www.regulations.gov/document/IRS-2023-0059-0001>

Department of Energy on the implementation of these provisions, and as such, we provide comments below in addition to comments previously filed to the Departments.³

Transition Rule for Non-Traceable Materials

Auto Innovators appreciates the Department of the Treasury recognizing that EV battery supply chains are complex and consist of low-value materials which are non-traceable. As the Department of the Treasury states:

“Non-traceable battery materials to mean specifically identified low-value battery materials that may originate from multiple sources and are often commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials.”

These non-traceable battery materials are currently not tracked as they are low-value and not critical to the electromechanical function of the battery. As such, Auto Innovators believe that it is appropriate to allow qualified manufacturers to exclude the non-traceable battery materials from the due diligence requirements. In addition, the Department of the Treasury states that these exemplar materials that are non-traceable “account for less than two percent of the value of applicable minerals in the battery.” While we appreciate this tolerance, we recommend that the exemplar materials tolerance be increased to less than *five* percent of the value of the battery. This increased allowance would provide a more feasible pathway, while at the same time ensuring that vehicles aren’t disqualified due to price fluctuations of low-value materials.

The Department of the Treasury has proposed a transition rule until January 1, 2027, that would allow qualified manufacturers to meet the due diligence requirement while excluding non-traceable battery materials. The transition period is likely too short, and Auto Innovators would

³ U.S. Dept. of Energy Interpretation of FEOC, Jan. 3, 2024. (<https://www.regulations.gov/comment/DOE-HQ-2023-0067-0013>)

U.S. Dept. of Treasury 30D Proposed Regulations, June 16, 2023 (<https://www.regulations.gov/comment/IRS-2023-0019-0069>)

U.S. Dept. of Treasury 30D Proposed Guidance, Nov. 3, 2022 (<https://www.regulations.gov/comment/IRS-2022-0020-0671>)

propose that the transition rule be included for the duration of the program. The Department of the Treasury accurately states that “industry has not developed standards or systems for tracing certain low-value materials with precision.” It is unlikely that industry will have developed such standards or systems by 2027. The process of tracing low-value materials is challenging as the materials are often commingled through different production processes. Tracing those materials is challenging and costly, and seemingly unnecessary. Allowing the transition rule through the duration of the program would be in keeping with the mutual goals of auto manufacturers and the Administration to increase the number of new clean vehicles that eligible taxpayers can receive a corresponding 30D tax credit as efforts are made to develop alternative supply chains which is well underway.

Allocation-Based Determination for Applicable Critical Minerals

The proposed rule includes a temporary path by which qualified manufacturers may determine if a battery cell is FEOC-compliant through allocation of available mass of applicable critical minerals without physical tracking. Within the proposed rule, the Departments of Energy and the Treasury found:

“Certain applicable (and associated constituent materials) are commingled prior to delivery to or at the battery cell production facility. Thus, while the qualified manufacturer and its suppliers can trace such minerals through the entire electric vehicle battery supply chain to determine FEOC-compliance, the manufacturer and suppliers cannot physically track specific mass of minerals to specific battery cells or batteries.”

Auto Innovators agrees with this approach, as tracing unique critical minerals to each battery cell is unnecessary so long as the qualified manufacturer can attest that the appropriate mass of critical minerals equates to the appropriate number of FEOC-compliant batteries.

The Department of the Treasury has requested comments on whether allocation-based accounting should be included as a permanent compliance approach. Auto Innovators would support this approach as, again, the qualified manufacturer still must attest, under the penalty of

perjury, that the appropriate mass of critical minerals equates to the appropriate number of FEOC-compliant batteries.

Industry Standard for Tracing Materials

Auto Innovators recommends that the Department of the Treasury, in coordination with other federal agencies and industry, look to build an industry standard for tracing materials. We have seen successful development of open and interoperable data ecosystem that enables transparency and collaborative use of data chains along the automotive value chain, e.g., Catena-X⁴ in Europe. This tool was built in collaboration with a cross-sector of industries and the European Commission. It will take this type of collaboration in the U.S. to build a traceability system capable of the level of detail necessary to attest for 30D eligibility.

Battery Component Definition

Auto Innovators appreciates the Department of the Treasury using a consistent definition of a battery component. Keeping the definition of battery component the same for the FEOC test and qualifying percentage test is appropriate and will reduce potential confusion that would be expected from two different definitions. Battery components appropriately may include “a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module” while critical mineral processing, including processing into precursor and active material mineral powders appropriately belongs under the critical mineral test.

Rule for 2024

Auto Innovators continues to express concern with using the date of purchase as the calendar year in which the vehicle must meet applicable compliance requirements. The proposed rule states that “for example, a vehicle that was anticipated to be placed in service in 2023 that remains unsold at the end of 2023 is subject to these rules if placed in service in 2024.” Due to

⁴ <https://catena-x.net/en/>

the overlapping nature of vehicle production schedules, the calendar year in which a vehicle is manufactured may be different than when it is ultimately placed in service following a purchase or a lease. As such, we have consistently recommended that the Department of the Treasury articulate the difference between date of manufacture for purposes of the vehicle content thresholds and when a qualifying vehicle is placed in service and an eligible taxpayer can claim the 30D tax credit on their respective tax return or transferring the credit to a registered dealer at the point of sale.

Auto Innovators thanks the Department of the Treasury for the development of the proposed rule, and we stand ready to work with the Administration, Department of Energy, and Department of the Treasury to ensure that the 30D tax credit and related tax incentives are widely accessible to American consumers as the industry works to develop alternative supply chains. In addition, Treasury's efforts to finalize this rule also has an impact on separate but related rulemaking requirements by the Department of Transportation, EPA, and the Department of Energy with respect to future auto standards. That said, implementation of various Inflation Reduction Act provisions are being closely monitored because of their potential impact to both manufacturers and consumers of electric vehicles.

Respectfully submitted,



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