Autos Drive America
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November 4, 2022

The Honorable Janet L. Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Via Electronic Submission

RE: *Request for Comments on Credits for Clean Vehicles* (Docket No. IRS-2022-0046, Notice 2022-46)

Dear Secretary Yellen,

On behalf of Autos Drive America's members, we appreciate the opportunity to submit the following comments in response to the Department of the Treasury's (Treasury Department) Request for Comments on Credits for Clean Vehicles.[1] Autos Drive America represents thirteen international automakers and battery manufacturers operating in the United States: BMW, Honda, Hyundai, Kia, Mazda, Mercedes-Benz, Mitsubishi, Nissan, Panasonic, Subaru, Toyota, Volkswagen, and Volvo. Our members produce nearly half of all American-made vehicles annually, account for over half of new vehicle sales, and support 2.3 million American jobs. As the voice of international automakers in the United States, Autos Drive America educates stakeholders about the benefits of open trade and works to reduce trade barriers and ensure a level playing field for all auto manufacturers with U.S. operations.

International automakers have supported the U.S. shift to electrification, with our members investing $21 billion over the past four years in domestic clean vehicle manufacturing. These investments will enable the production of hundreds-of-thousands of clean vehicles annually and double our nation's current electric vehicle battery production capacity, helping the United States achieve President Biden's ambitious goal of making half of all new vehicles sold by 2030 zero-emission vehicles. To maximize these investments' contributions to sustainability and delivery on the president's 2030 target, all consumers, dealers, and producers will need clarity on Section 30D implementation.

[1] Notice 2022-46, IR-2022-172, October 5, 2022

The following comments address specific questions posed arising from the Inflation Reduction Act's amendments to section 30D, as well as important issues on which additional guidance is needed.

North American Final Assembly Requirement:

An urgent matter that is not specifically addressed in the request for comments and which we strongly believe requires additional guidance is the North American Final Assembly requirement. Effective immediately upon enactment, the *Inflation Reduction Act* required that vehicles be assembled in North America to qualify for the Section 30D credit, with no transition period. Autos Drive America's member companies are concerned about the material impact this provision will have in multiple areas of the value chain.

The North American final assembly restriction severely limits the number of vehicles that are eligible for any portion of the tax credit, reducing consumer choice, and drastically stunting the adoption of clean vehicles. Of the more than 70 clean vehicle models currently available to American consumers, only 28 are manufactured in North America, several of which are inaccessible to the average consumer. Immediately decreasing credit-eligible clean vehicle choices by more than half negates the effectiveness of the program.

This provision is also inconsistent with the commitments the United States has made to its economic and security partners. The European Union, Japan, and the Republic of Korea are key partners in our nation's efforts to establish resilient supply chains and reduce reliance on non-market economies. Discriminating against these key strategic allies will disincentivize both future cooperation with, and discourage future investment in, the United States.

Furthermore, this requirement could steer our allies to develop closer economic ties with non-market economies as the United States becomes less reliable for long-term investment, especially when those countries have incentives that do not discriminate against imported clean vehicles. This discrimination also incentivizes other countries to enact copycat incentives that would be inaccessible to exported United States assembled vehicles, further harming production in the United States.

Free Trade Agreement Definition:

Another matter that is not specifically addressed in the request for comments and which we believe requires additional guidance is what constitutes a free trade agreement as that term is used in Section 30D(e)(1). As there is no statutory definition of what constitutes a free trade agreement (FTA), expanding on which countries are considered FTA partners would help alleviate some of the concerns raised by America's allies, and expand our supply chain capacities to reach the goal of 50% zero-emission vehicle sales by 2030.

The Treasury Department should recognize the importance of our allies, especially the European Union and Japan, by ensuring that the critical mineral supply chains within these nations are deemed qualifying for the Section 30D(a)(2) tax credit. These countries are not only allies; they are also key economic and strategic partners in

American efforts to build resilient supply chains through multiple frameworks, such as the US-EU Trade and Technology Council, the Indo-Pacific Economic Framework, and the Minerals Security Partnership. Allowing the supply chains originating in these countries to qualify for the credit will help achieve our common goal of electrifying transportation to reduce carbon emissions. Their inclusion would also reduce the United States' reliance on the extraction and processing of critical minerals from foreign entities of concern.

For the purposes of implementing Section 30D(e)(1), Autos Drive America recommends that the term "free trade agreement" be defined as an agreement included among the programs listed in General Note 3(c)(i) of the Harmonized Tariff Schedule of the United States. The Treasury Department's guidance on defining what constitutes a "free trade agreement in effect" under section 30D(e)(1) should be as follows:

> "The term 'free trade agreement' means any agreement or program listed in General Note 3(c)(i) of the Harmonized Tariff Schedule of the United States."
>
> "The term 'country with which the United States has a free trade agreement in effect' includes all parties to or beneficiaries of a free trade agreement as defined herein, including the member states of a customs union party or beneficiary, but does not include any party that is a territory of a state."

Defining the term "free trade agreement" in this manner provides a regulatory definition of trade agreements that reduce tariff rates, includes important allies in the automotive supply chain, and is consistent with the objectives of diversifying supply chains away from non-market economies.

Responses to Questions in the Request for Comments on Credits for Clean Vehicles

(3) Battery Components:

(3)(a) What factors should be considered in defining the components of a battery of a clean vehicle?

The Treasury Department will need to define where in the production chain critical minerals processing ends and battery component manufacturing begins. Section 30D(e), Critical Mineral and Battery Component Requirements, requires clean vehicle manufacturers to demonstrate that the critical minerals utilized for the vehicle's battery were extracted or processed in the U.S., or in a country that has a free trade agreement in effect with the U.S., and that the battery components were assembled in North America. Given the complexities of battery production, Autos Drive America strongly recommends the Treasury Department establish the point at which the cathode and anode slurries are sprayed onto metal foils as the beginning of the battery component manufacturing process.

While the law does provide a list of applicable critical minerals for Section 30D(e)(1)(A), it lacks language mandating that the Treasury Department utilize any specific definition of battery components. Given that Congress did set some definitions for the 30D Clean Vehicle Credit, it can be inferred that where there is no definition, Congress intended for the Treasury Department to establish these definitions, battery components clearly being one of these instances.

Extracting critical minerals and turning them into batteries powering a vehicle is extremely complex with dozens of discrete steps, often done by numerous firms in several locations. There are several chemical processes needed to produce several inorganic compounds that in-turn are processed to create cathode and anode active materials, typically taking the form of a dry powder, shipped to the battery manufacturing facility. This cathode and anode material is subsequently mixed into a “slurry” with other additives and solutions, sprayed onto a metal foil acting as a current collector, and dried. Once the slurry has dried, the foil is slit into appropriate sections, rolled (or stacked) together, and placed into the battery housing with a separator that either has absorbed, or will absorb, the electrolyte filling. If these complicated chemical compounding processes are not properly considered as the Treasury Department develops guidance, the new Section 30D Clean Vehicle Credit will likely be rendered ineffective. Establishing the point at which the cathode and anode slurries are sprayed onto metal foils as the beginning of the battery component manufacturing process would prevent this unwanted outcome.

Customs and Border Protection’s (CBP) Office of Trade has recently issued rulings that cathode active material and its precursor materials are categorized under HTS Codes 3824.99.3900 *Mixtures Of Two Or More Inorganic Compounds*[2] and 2825.90.9000 *Other Inorganic Bases; Other Metal Oxides, Hydroxides And Peroxides, Others,* respectively.[3] The electrolyte filling material is also not considered a battery component and, like the cathode active material, it is categorized under HTS Chapter 38, *Miscellaneous Chemical Products*.[4] These Customs rulings have established that these materials are not battery components, they are chemical compounds and therefore fall under Section 30D(e)(1)(A), the critical mineral extracted or processed provision. Additionally, CBP has determined that once the cathode material has been sprayed and dried on the metal foil, it is considered a battery component, categorized under HTS Code 8507.90.8000 *Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Parts: Other*.[5]

These rulings provide the Treasury Department with a clear demarcation of where critical mineral extraction and processing ends, and where battery component manufacturing begins. Establishing the delineation between these two processes at when the cathode and anode material is sprayed onto the metal foil will allow for ease of compliance and enforcement, the shifting of supply chains towards our allies and partners, and increased effectiveness of the Clean Vehicle Credit.

(6) Recordkeeping and Reporting:

(6)(b) What existing regulatory or guidance frameworks for recordkeeping requirements or information reporting or existing battery technology supply chain tracking

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[2] https://rulings.cbp.gov/ruling/N324313
[3] https://rulings.cbp.gov/ruling/N321599
[4] https://rulings.cbp.gov/ruling/N327146
[5] https://rulings.cbp.gov/ruling/N303974

methodologies may be useful for developing guidance for qualified manufacturers under § 30D(e)(3)?

Autos Drive America recommends that the Treasury Department provide automotive original equipment manufacturers (OEM) the flexibility to make their critical mineral and battery component sourcing calculations by individual vehicle, model line, assembly plant, or region to streamline the regulatory compliance process.

Tracing the critical mineral and components sourcing of each battery cell, followed by counting every cell going into a battery pack, and then tracing the battery pack to the vehicle, would place an overwhelming compliance burden on both OEMs, suppliers, and the Treasury Department. Creating reporting procedures similar to those established by the United States–Mexico–Canada Agreement (USMCA) allows both manufacturers and agencies to utilize existing compliance infrastructure, minimizing costs and implementation time.

(11) Election to Transfer and Advance Payments:

(11)(a) What factors should be considered in determining the time and manner of the taxpayer's election under § 30D(g) to transfer the § 30D credit to an eligible entity?

Autos Drive America recommends that the Treasury Department should, for the purposes of Section 30D(e), define "placed in service" as either the date of a vehicle's manufacture or when the vehicle is delivered to the dealer, similar to the regulatory framework of California's Zero-Emission Vehicle Mandate, allowing more effective compliance and consumer utilization of the credit.[6]

As currently understood by the Internal Revenue Service (IRS) for claiming a 30D tax credit, "placed in service" is when the buyer begins utilizing the vehicle for their own purposes. When a consumer purchases a particular qualifying clean vehicle cannot reasonably be forecasted, leaving manufacturers with an immense amount of uncertainty as they shift supply lines to comply with the annual increase in critical mineral and battery component requirements.

The current IRS definition will cause significant confusion for consumers as they are told the clean vehicle they want to buy is no longer credit-eligible because their vehicle was not "placed in service" during the correct time period. This may occur because eligible clean vehicles may be assembled, invoiced, and delivered to a dealer, but then sit on the dealer's lot for several months before being "placed in service."

Using the current IRS definition of "placed in service" will only cause confusion for manufacturers and consumers. The Treasury Department needs to provide certainty that a vehicle produced during the qualifying calendar year is eligible for the credit regardless of when the vehicle is purchased.

Conclusion

Autos Drive America strongly encourages the Treasury Department to develop guidance that provides maximal consumer choice of electric vehicles. A meaningful consumer

[6] Cal. Code Regs. tit. 13 § 1962.2

purchase incentive will help more Americans better afford a clean vehicle of their choice and help reach consumers beyond those who are considered early adopters of the technology. As Autos Drive America member companies continue to add new jobs in the United States, we also recognize the important role that U.S. economic, security, and trading partners have in helping to build clean vehicle and battery global supply chains. As the Treasury Department considers how to implement the new Section 30D tax credit program for clean vehicles, we are hopeful such regulations will ensure a level playing field with our trusted partners in the European Union, Japan, and Republic of Korea, and allow for greater consumer usage to help grow the clean vehicle supply chain.

Sincerely,

Jennifer M Safavian

Jennifer M. Safavian
President and CEO