



June 16, 2023

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: *Section 30D New Clean Vehicle Credit* (Docket ID No. IRS-2023-0019; REG-120080-22; RIN 1545-BQ52)

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) Notice of Proposed Rulemaking for the Inflation Reduction Act's Section 30D New Clean Vehicle Credit.<sup>1</sup> 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 committing and investing more than \$30 billion since 2020 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. To get more clean vehicles on American roads, consumers, dealers, and producers will need effective implementation of the Section 30D credit.

The following comments address specific questions in the April 17 Notice of Proposed Rulemaking on Section 30D, as well as important issues requiring additional guidance.

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<sup>1</sup> 88 FR 23370, April 17, 2023

## **Comments on Proposed Regulations**

### **Definition of Constituent Materials:**

Autos Drive America and its members strongly support the Treasury Department's proposal to define the final step in the critical mineral processing chain prior to battery components as constituent materials. This line of demarcation between the critical mineral processing and battery component portions of the Section 30D credit both aligns with industry standards and practices and is consistent with rulings made by Customs and Border Protection's (CBP) Office of Trade.<sup>2</sup> This definition provides a reasonable pathway to industry compliance, shifting supply chains towards our nation and allies, increasing the effectiveness of the Clean Vehicle Credit.

Classifying the chemical processing supply chains of U.S. allies as non-qualifying would damage the development of a North American supply chain. Companies are investing billions of dollars to expand U.S. material refining and processing capacity to meet ever-increasing demand for these materials. Much of this new refining and processing capacity is scheduled to come online between 2025-2030, but for the foreseeable future, the U.S. will continue to face a significant lack of capacity when it comes to North American cathode and anode active materials, further highlighting the importance of maintaining access to qualifying materials from U.S. allies. The global leaders in constituent materials and battery production are headquartered in the European Union, Japan, and South Korea. Benchmark Materials estimates that foreign direct investments will account for 81% of U.S. battery manufacturing capacity by 2030.<sup>3</sup> Those companies are more likely to invest and succeed if they can rely on existing supply chains in their home countries while committing billions of dollars towards building North American production capacity for these materials and batteries.

As a final clarification, Autos Drive America and its members suggest the proposed regulations reinforce that battery cell or module parts separate from electrochemical energy storage (e.g., Can, Case, Pouch, Busbar, Thermal Mitigation Systems) not be considered constituent materials, even though they may contain non-battery-grade minerals such as aluminum or nickel. This clarification is consistent with the Treasury Department's proposed regulations as constituent materials are defined under §1-30D-3(c)(6) as "materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components." These parts do not directly contribute to the electrochemical storage of energy within a battery and therefore fall outside the definition of what are considered battery components or constituent materials for the purposes of Section 30D.

### **Recognition of Critical Minerals Agreements:**

We applaud the Treasury Department's recognition of the pivotal role our allies will play in strengthening and securing resilient critical mineral supply chains. The U.S. – Japan critical minerals agreement properly recognizes Japan as a key trading partner and

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<sup>2</sup> <https://rulings.cbp.gov/ruling/N324313>, <https://rulings.cbp.gov/ruling/N321599>, <https://rulings.cbp.gov/ruling/N327146>

<sup>3</sup> <https://source.benchmarkminerals.com/article/south-koreas-lg-chem-expands-north-america-footprint-with-lithium-investment-and-offtake>

steadfast ally. This agreement allows industry to access materials from a strategic partner in advancing the U.S. climate goals. Autos Drive America and its members support a similar agreement with the European Union (EU). We encourage the Administration to finalize agreements with the EU and other strategic allies to broaden clean vehicle manufacturers' access to refined critical minerals.

The European Union and Japan 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 U.S.-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 Section 30D credit will help achieve our shared goal of electrifying transportation to reduce carbon emissions.

### **Accounting for Lack of Price Transparency in Upstream Procurement Chains:**

The Treasury Department's guidance and Section 30D White Paper accurately noted the complexity of battery supply chains and difficulty involved in the detailed tracking necessary to certify compliance with the critical mineral requirement. This difficulty occasionally extends to include a lack of price transparency (and thus the value-add) for each step of a critical mineral procurement chain due to suppliers' reluctance to reveal what they consider proprietary pricing information to higher tiers of the supply chain.

Autos Drive America and its members suggest the Treasury Department provide the option to use widely recognized and trusted market indices that can serve as an acceptable estimation of the price of a particular step in the procurement chain, in the case that actual prices for certain procurement chains or portions of the procurement chain cannot be determined by the manufacturer. Contracts with suppliers usually indicate what the "controllable piece" is, essentially what cost of that supplier's value-add is within the overall cost of the supplied product. However, contracts typically do not provide a set cost for inputs, as those inputs are price flexible based on the mineral markets, meaning that using an established mineral market index for cost estimation would likely reflect the real-world prices paid for that material. Examples of these indices may include those commonly cited in U.S. Geological Survey reports.

### **Converging Critical Mineral Procurement Chain Calculations:**

Autos Drive America and its members recommend that the Treasury Department address uncertainty in the procedure to calculate qualifying critical mineral content when procurement chains for individual minerals converge. For various battery chemistries, many constituent materials and their precursor materials are chemical compounds resulting from chemically processing several separate critical minerals, which in many cases undergo subsequent processing steps.

Multiple critical minerals are commonly processed into a single compound, and based on the Treasury Department's proposed regulation, the value added from the relevant processing steps where critical minerals were compounded must be distributed between the individual procurement chains for the minerals utilized. However, the proposed

regulation did not provide a methodology for distributing the value-add across procurement chains, creating compliance uncertainty for manufacturers.

Autos Drive America and its members have identified two methods for distributing value-add among converging procurement chains.

1. An input-cost ratio method where the manufacturer distributes the value-add generated from processing across the relevant procurement chains based on the ratio of the cost of the critical mineral inputs back to the point when those inputs were acquired to be processed into a chemical compound. Companies should retain the ability to protect their sensitive business information when using the input-cost ratio, for example, by only providing the relevant final ratios and percentages rather than actual cost figures.
2. A molar ratio<sup>4</sup> method where the manufacturer distributes the value-add from processing two or more applicable critical minerals based on the molar ratio of the fully reacted applicable minerals of the chemical compound resulting from processing. This would only be the ratio of moles of applicable critical minerals and not include moles on non-applicable elements of the constituent material such as hydrogen or oxygen. Companies should retain the ability to protect their sensitive intellectual property when using the molar ratio by not being required to disclose their proprietary cathode chemistry or sensitive details of their proprietary manufacturing processes.

The below scenario provides a high-level explanation for how a manufacturer could use either method:

**Scenario:**

- A supplier (**S1**) produces precursor cathode active material (pCAM) for NCM811 batteries. The pCAM produced is nickel-cobalt-manganese hydroxide ( $\text{Ni}_{0.8}\text{Co}_{0.1}\text{Mn}_{0.1}(\text{OH})_2$ ), generating \$120 of processing value-add.
- This pCAM is then sent to another supplier (**S2**) who utilizes pCAM material and refined lithium to produce cathode active material (CAM) for NCM811 batteries ( $\text{LiNi}_{0.8}\text{Co}_{0.1}\text{Mn}_{0.1}\text{O}_2$ ), generating a further \$200 of processing value-add. The finished CAM is then shipped to be utilized for North American-made batteries.

*If the qualified manufacturer (QM) elects to use the input-cost ratio method for their procurement chain eligibility calculations, then:*

- To distribute the value-add generated by **S1's** processing activities to produce pCAM, the QM determines the total applicable critical mineral inputs

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<sup>4</sup> *Molar ratio* (A.K.A. "mole ratio" or "mole-to-mole ratio") is the number of moles of substances in a chemical reaction based on the coefficients in a balanced chemical equation.

cost and the individual cost of the cobalt, manganese, and nickel material utilized by **S1** to produce the NCM811 pCAM. Of the total cost of applicable critical mineral inputs, 50% is attributable to cobalt, 30% is attributable to manganese, and 20% is attributable to nickel. The QM distributes the \$120 of value-add from **S1's** processing activity based on those ratios:

- \$60 is attributed to the **cobalt** procurement chain,
  - \$36 is attributed to the **manganese** procurement chain,
  - \$24 is attributed to the **nickel** procurement chain.
- To distribute the value-add generated by **S2's** activities to produce CAM, the QM determines the total applicable critical mineral inputs cost and the individual cost of the NCM811 pCAM and refined lithium utilized by **S2** to produce the finished CAM. Of the total cost of applicable critical mineral inputs, 65% is attributable to the NCM811 pCAM and 35% is attributable to the refined lithium. The QM distributes the \$200 of value-add from the processing activity to the relevant procurement chains based on those ratios:
- \$70 is attributed to the **lithium** procurement chain,
  - \$130 is attributed to the **NCM811 pCAM** and must be further distributed to its inputs based on their cost ratio:
    - \$65 is attributed to the **cobalt** procurement chain,
    - \$39 is attributed to the **manganese** procurement chain,
    - \$26 is attributed to the **nickel** procurement chain.

*If the qualified manufacturer (QM) elects to use the molar ratio method for their procurement chain eligibility calculations, then:*

- To distribute the value-add generated by **S1's** activities to produce pCAM, the QM determines the molar ratio of nickel, cobalt, and manganese utilized by **S1** in the NCM811 pCAM, which is 8:1:1 between Ni:Co:Mn. The QM distributes the \$120 of value-add from **S1's** processing activity based on this molar ratio of the applicable critical minerals:
- \$96 is attributed to the **nickel** procurement chain,
  - \$12 is attributed to the **cobalt** procurement chain,
  - \$12 is attributed to the **manganese** procurement chain.
- To distribute the value-add generated by **S2's** activities to produce CAM, the QM determines the molar ratio between the refined lithium and the NCM811 pCAM utilized by **S2** to produce the finished CAM. The molar ratio between the refined lithium and the NCM811 pCAM is 1.04:1. The QM distributes the \$200 of value-add from **S2's** processing activity to the relevant procurement chains based on the molar ratios:
- \$102 is attributed to the **lithium** procurement chain,
  - \$98 is attributed to the **NCM811 pCAM** and must be further distributed to its inputs based on its molar ratio:
    - \$78.40 is attributed to the **nickel** procurement chain,
    - \$9.80 is attributed to the **cobalt** procurement chain,

- \$9.80 is attributed to the **manganese** procurement chain.

Autos Drive America and its members recommend that the Treasury Department establish regulations providing the option for qualified manufacturers to choose from either of the two methods detailed above for distributing the combined value-add across the relevant procurement chains.

Both suggested ratios are valid and rational methods for distributing the value added across multiple procurement chains and are in keeping with Section 30D credit's intent of strengthening supply chains. The suggested procedures are straightforward to implement through both company compliance practices and regulatory enforcement policies. Providing qualified manufacturers the option to elect which of the two methods they deem the best fit for their use when making qualifying critical mineral calculations is paramount due to the complexity in battery manufacturing supply chains, volatility in mineral markets, and evolving battery chemistries. Providing this versatility will buttress qualified manufacturers as they work to establish qualifying supply chains as the industry evolves, increasing the effectiveness of the Section 30D Clean Vehicle Credit.

### **Accounting for Uncertainty in Mineral Markets:**

A significant issue that impacts qualifying critical mineral calculation methodology is the volatility within critical mineral markets. In August 2022, battery-grade refined lithium prices increased 90% from January 2022 levels, and 900% compared to January 2020.<sup>5</sup> While lithium prices have decreased some since then, unpredictability remains in the market; lithium carbonate spot prices had risen 22% in the 30 days following the Treasury Department's publication of the proposed regulation.<sup>67</sup> Extreme price fluctuations are an ongoing concern for automakers and suppliers unlikely to be alleviated in the foreseeable future.

The value-added calculations that determine qualifying critical mineral content are extremely susceptible to this price volatility. A spike in the price of one portion of the procurement chain could easily skew the value ratios of qualifying vs non-qualifying processing value add, thereby resulting in procurement chains that suddenly cease to qualify for the critical minerals portion of the Section 30D credit despite no changes in sourcing.

However, based on the April 17 Notice of Proposed Rulemaking, this pricing volatility would be treated as added value in a manufacturer's qualifying material calculations, similar to high-tech chemical treatments in a manufacturer's qualifying material calculations. Autos Drive America recommends that the Treasury Department adopt mechanisms that provide procurement chain eligibility calculations some insulation from mineral market volatility.

<sup>5</sup> <https://source.benchmarkminerals.com/article/what-is-driving-lithium-prices-in-2022-and-beyond>

<sup>6</sup> <https://www.wsj.com/articles/lithium-prices-are-down-cheaper-batteries-and-evs-could-follow-7a171fc0>

<sup>7</sup> <https://tradingeconomics.com/commodity/lithium>

Autos Drive America and its members recommend the Treasury Department establish a mechanism wherein:

If a qualified manufacturer experiences unexpected and significant fluctuations in the price of materials, well-outside normal market fluctuations, that substantially impacts the resulting qualifying material calculation of a procurement chain; then

The manufacturer may elect to utilize an up-to 18-month trailing average price for that material in place of the actual amount paid when making the calculations for that procurement chain.

This up-to 18-month trailing average may be based on:

Mineral market indices, or

Long-term contracts the qualified manufacturer made with the same supplier or with suppliers located in the same country.

This mechanism would only apply to the value used to calculate which qualifying critical mineral procurement chains meet the qualifying value-add threshold and would not have any impact on real-world prices paid for these minerals. This trailing average mechanism addresses some of industry's concerns over market volatility by providing needed flexibility for qualified manufacturers to weather shorter-term price fluctuations and provide time for qualified manufacturers to adapt their supply chains to a new market norm. This mechanism would also provide stability to the U.S. clean vehicle market as consumers will not need to consider global mineral markets when deciding which qualifying new clean vehicle they wish to purchase.

By providing some insulation between a clean vehicle's Section 30D eligibility and the volatile global mineral markets, manufacturers will be better able to build resilient supply chains in the United States and with its allies and provide consumers with the qualifying clean vehicles that fit their needs.

Further, a mechanism should be considered to address other unexpected events that may affect the extraction, processing, recycling, manufacturing, or assembly of critical materials or battery components, such as the sudden closure of extraction or processing facilities or other events outside of the control of automakers. Accordingly, we recommend that the Treasury Department and the Internal Revenue Service (IRS) consider developing and implementing a temporary waiver request process in the event that there is no adequate supply of qualifying critical mineral and battery components.

If an unexpected event occurs within an applicable critical mineral or battery component procurement chain, then the affected qualified manufacturer may request that the Department of the Treasury grant a waiver which provides that the affected values cited in [below] may be discounted from the manufacturer's overall calculation:

1. Total value of critical minerals as defined under §1-30D-3(c)(23); or
2. Total incremental value of battery components as defined under §1-30D-3(c)(21).

In the waiver request, the qualified manufacturer must provide the following:

1. Information citing the unexpected event in question that provides reasonable detail on the situation; and
2. A reasonable demonstration that:
  - i. Adequate supplies of the qualifying applicable critical mineral or North American battery component suitable for use in the manufacturer's production processes is not readily available in the open market; and either
  - ii. The cited event has impacted, or will impact applicable mineral procurement chains that have been deemed qualifying; or
  - iii. The cited event has impacted, or will impact availability of qualifying battery component content.

This unexpected event waiver would not supersede Foreign Entities of Concern content regulations restricting Section 30D eligibility.

Such a waiver will prevent potential disruptions that could have significant negative impact on the new clean vehicle market and consumers, while affording needed flexibility for qualified manufacturers during this period of significant supply chain transitions.

#### **Definition of *Placed in Service*:**

In comments submitted to the Treasury Department on November 4, 2022, Autos Drive America recommended that the Treasury Department should, for the purposes of Section 30D(e), define "placed in service" as the date of vehicle manufacture to provide more effective compliance and consumer utilization of the credit.<sup>8</sup> Autos Drive America raises this issue again for the Treasury Department's consideration.

As currently understood by the IRS for claiming a Section 30D tax credit, "placed in service" is when the buyer begins utilizing the vehicle for their own purposes. The date when a consumer purchases a qualifying clean vehicle cannot reasonably be forecast, leaving manufacturers with 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 the vehicle was not "placed in service" at the correct time. 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."

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<sup>8</sup> Cal. Code Regs. tit. 13 § 1962.2



Using the current IRS definition of “placed in service” will cause confusion for manufacturers and consumers. The Treasury Department should provide certainty that a vehicle, which is eligible for some or all of the Section 30D tax credit on the date of manufacture, retains such eligibility for the credit regardless of the date when the vehicle is purchased by a consumer.

### **Conclusion**

A meaningful and effective consumer purchase incentive will help more Americans better afford the transition to a clean vehicle of their choice. These consumer credits will encourage the purchase of clean vehicles beyond early adopters of these technologies. Autos Drive America and its members appreciate the Treasury Department’s extensive effort to draft guidance that clearly accounts for the complex supply and production chains involved in producing clean vehicle batteries. We look forward to continued engagement with the Treasury Department as it works to finalize the Inflation Reduction Act’s Section 30D regulations.

Sincerely,

A handwritten signature in blue ink, reading "Jennifer M. Safavian". The signature is fluid and cursive, with the first name "Jennifer" and last name "Safavian" clearly legible.

Jennifer M. Safavian  
President and CEO