



October 7, 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

Re: *Inflation Reduction Act of 2022* Guidance Proposals

Dear Secretary Yellen,

On behalf of Autos Drive America's members, we are writing to express concerns regarding the eligibility restrictions and implementation of the Section 30D Clean Vehicle Credit (30D) included in the *Inflation Reduction Act of 2022* (P.L. 117-169). Autos Drive America represents thirteen (13) 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 in 2030 zero-emission vehicles. To maximize the investment's contribution to sustainability and delivery on the president's 2030 target, all consumers, dealers, and producers will need clarity on Section 30D implementation.

North American Final Assembly

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.

We urge the administration to work with Congress and our international partners to find a solution that addresses these very real concerns.

Free Trade Agreement Definition

As the administration works to implement the critical minerals provisions of the Clean Vehicle Credit, 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(b)(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. 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 vehicles sales by 2030.

Properly Delineating Where the Battery Components Manufacturing Process Begins

As the Treasury Department works to implement the battery component and critical mineral provisions of the law, consideration should be given to the complexity of the supply chain - specifically, the process of manufacturing and the formula to calculate components and minerals. We recommend the Treasury Department draft implementing guidance that provides

flexibility to allow for the increased production and swift adoption of electric vehicles by making these vehicles affordable to a greater number of customers.

Autos Drive America recommends that the Treasury Department 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 an FTA in effect with the U.S., and that the battery components were assembled in North America. Given the immense complexities of battery production, it is paramount that the Treasury Department establish a clear demarcation between the steps that fall under the critical mineral provision (Section 30D(e)(1)) and the steps that fall under the battery component provision (Section 30D(e)(2)) to enable effective and achievable compliance.

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 a multitude of 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. To prevent this outcome, 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.

Congress provided the Treasury Department with the authority to make this determination. 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.

The Treasury Department should establish a definition of "processed" under Section 30D(e)(1)(A) that properly encapsulates the chemical processes that are required to create cathode and anode material from critical minerals. The vast majority of cathode and anode materials used are stable, inorganic compounds with their own chemical formulas and unique molecular structures. Any definition for "processed" established by the Treasury Department for the purposes of Section 30D(e)(1)(A) should account for the various chemical processes required to produce cathode and anode material in its final chemical form.

This final chemical form could be determined by a Chemical Abstracts Service (CAS) Registry Number, or by other similar means as determined by the Treasury Department. This definition would provide clarity for manufacturers as they seek to comply with Section 30D.

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*¹ and 2825.90.9000 *Other Inorganic Bases; Other Metal Oxides, Hydroxides And Peroxides, Others*, respectively.² 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*.³ 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*.⁴

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.

Placed in Service Definition

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.⁵

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

¹ <https://rulings.cbp.gov/ruling/N324313>

² <https://rulings.cbp.gov/ruling/N321599>

³ <https://rulings.cbp.gov/ruling/N327146>

⁴ <https://rulings.cbp.gov/ruling/N303974>

⁵ Cal. Code Regs. tit. 13 § 1962.2

vehicle produced during the qualifying calendar year is eligible for the credit regardless of when the vehicle is purchased.

Compliance Calculation Methods

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.

Providing multiple calculation methods allows manufacturers more flexibility in how they choose to meet the requirements based on their supply chains and their ability to find new suppliers without impeding the overall objective of sourcing more batteries from North America. The percentages required for purchasing remain the same regardless of the calculation method used. Finally, this would reduce the burden on both government agencies and the manufacturers in submitting and reviewing compliance documentation.

Transition Rule: Protect Consumers with Existing EV Reservations

Semiconductor shortages and other supply chain disruptions have curtailed automotive production for almost two years, delaying the delivery of vehicles that were reserved prior to the enactment of the *Inflation Reduction Act*. Thousands of consumers placed these reservations with an understanding that the original 30D electric vehicle tax credit would be available to support their purchase, and guidance should honor the reservations that were made prior to the enactment of the Inflation Reduction Act. We urge the Treasury Department to expand upon the guidance issued on August 16, 2022, to ensure that customers who placed reservations on vehicles are still afforded the credit that they had a reasonable expectation of when they made the reservation.

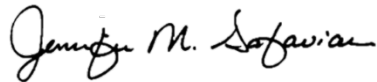
Conclusion

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

If you should have any questions concerning the above, please do not hesitate to contact me at jsafavian@autosdriveamerica.org or 202-650-5561.

Sincerely,

A handwritten signature in black ink, reading "Jennifer M. Safavian". The signature is fluid and cursive, with the first name "Jennifer" being more prominent and the last name "Safavian" following in a similar style.

Jennifer M. Safavian
President and CEO

cc: Ms. Gina M. Raimondo, Secretary, Department of Commerce
Ambassador Katherine Tai, United States Trade Representative
Mr. Jose W. Fernandez, Under Secretary for Economic Growth, Energy, and the Environment, Department of State
Mr. Brian Deese, White House National Economic Council
Mr. John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation
Mr. Ali Zaidi, White House National Climate Advisor