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January 18, 2024

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

Re: *Section 30D Excluding Entities* (Docket ID No. IRS-2023-26513; REG-118492-23; RIN 1545-BQ99)

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 Section 30D New Clean Vehicle Credit Excluding Entities.[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 committing and investing nearly $40 billion since 2020 in domestic clean vehicle manufacturing. These investments will enable the production of hundreds of thousands of clean vehicles annually and significantly expand our nation's current electric vehicle battery production capacity. To get more electric vehicles on American roads, consumers, dealers, and producers require effective implementation of the Section 30D Clean Vehicle Credit.

The following comments address specific questions in the December 4, 2023, Proposed Rule on Section 30D Excluding Entities, as well as important issues requiring additional guidance.

Due Diligence and Transition Rule for Non-Traceable Battery Materials

Autos Drive America and its members support the Treasury Department's inclusion of the *transition rule for non-traceable battery materials* provision allowing qualified

[1] 88 FR 84098, December 4, 2023

manufacturers (QMs) to exclude non-traceable battery materials from the determination of whether a battery cell is FEOC-compliant. However, the proposed timeframe is too narrow in scope to properly address the tracing challenges facing the industry and therefore we recommend the Treasury Department establish the non-traceability mechanism as permanent for the duration of the §30D New Clean Vehicle Credit.

To enhance compliance feasibility for battery manufacturers, the Association and its members propose establishing a dynamic list of non-traceable materials. This list would exempt materials, each accounting for less than a specified percentage of the total value of the critical minerals in the battery. Making this exemption permanent would not only simplify the compliance pathway for EV battery manufacturers, but also encourage more stringent adherence to the FEOC restrictions for higher-value materials. The evaluation of whether a mineral is below a specified value threshold, and therefore deemed non-traceable, should be against the value of the entire battery cell rather than only against the total value of applicable critical minerals. Such an evaluation would more appropriately reflect the material's relative importance to a completed battery, and therefore, more appropriately determine whether it merits being considered non-traceable. Overall, this approach would align better with the evolving nature of battery technology and industry practices, offering a more practical and adaptable framework for manufacturers.

A dynamic list allowing the addition of battery materials on a rolling basis is preferable to a static list which lacks the flexibility needed to account for future developments in battery chemistry. A static non-traceable list established based on batteries manufactured today may not be adequate for batteries manufactured in 2026 and beyond. Consequently, relying solely on a static list of minerals and materials may unintentionally stifle American battery innovation as QMs continue to produce and purchase older battery types accounted for in a static the non-traceability list over choosing innovative, newer battery types that may face compliance uncertainty.

For specifically named inputs, we recommend that the Treasury Department include low-value anode active materials including graphite as a non-traceable battery material. Graphite is particularly difficult to track as battery cell manufacturers frequently utilize a mix of both synthetic and natural graphite in their batteries, resulting in a large number of suppliers to track. Additionally, graphite is a relatively low value input for batteries. Based on historical prices, graphite accounts for only three to four percent of the overall value of a battery cell.

This approach would make the FEOC requirements more administrable for the IRS. The resources required to affirmatively define an ever- changing list of materials or suppliers for non-traceable materials are burdensome and would result in routinely outdated guidance. Due to the complexity of tracing these low-value critical minerals and dynamic nature of battery chemistries, it is vital that a straightforward metric is used to determine non-traceable materials.

The automotive industry seeks stability whenever possible, and unfortunately, mineral pricing markets are hardly the pinnacle of consistency. As the Association has noted in previous comments, markets for applicable critical minerals have been volatile for several years.[2] Any regulations established by the Treasury Department should account for this uncertainty, thereby allowing for long-term effective compliance. To achieve this, the Association recommends that the Treasury Department allow QMs the option to elect to average the current non-traceable material's value with the historical values of that material based on previous annual contracts up to three years prior from the relevant calendar year. This ability to elect to average would help mitigate the issues stemming from price instability, provide compliance stability, and allow QMs a reasonable timeframe to establish tracing regimes if needed.

Sudden price fluctuations could push a critical mineral, previously determined as meeting "non-traceable" thresholds, over that threshold, forcing the QM to rapidly establish a tracing regimen for that critical mineral from whole cloth, which may not be possible to accomplish in a limited timeframe. However, by electing to average the new price of the critical mineral to costs with up-to three prior years, the QM is less likely to be faced with an insurmountable task or a non-FEOC-compliant determination due to lack of mineral tracing. Additionally, if an increase in a critical mineral's price remains high, the QM will have a reasonable amount of time to implement an appropriate tracing program for that critical mineral to demonstrate FEOC compliance.

Temporary Allocation-based Determination for Applicable Critical Minerals and Associated Constituent Materials of a Battery Cell

Autos Drive America and its members support the Treasury Department's inclusion of the provision wherein QMs may elect to have an allocation of batteries deemed FEOC-compliant based on the mass of FEOC-compliant critical minerals present in the specific battery type's supply chain. We believe this allocation provision is a logically sound method that mathematically achieves the same outcome as tracing each gram of applicable critical mineral to an individual battery cell. The Association and its members fully support this allocation-based accounting being included as a permanent compliance approach.

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

[2] https://www.regulations.gov/comment/IRS-2023-0019-0048

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 §30D regulations.

Sincerely,

Jennifer M. Safavian
President and CEO