



MEMORANDUM

TO: US Internal Revenue Service (IRS), US Department of Treasury (Treasury)
FROM: The Battery Materials & Technology Coalition (BMTC)
RE: IRS REG-118492-23 Notice of Proposed Rulemaking on Section 30D Excluded Entities

Introduction

The Battery Materials and Technology Coalition (BMTC) would like to applaud the US Internal Revenue Service (IRS) for issuing its Proposed Rulemaking on Section 30D Excluded Entities. As defined by the proposed guidance from the Department of Energy (DOE) released in December, the Foreign Entity of Concern (FEOC) exclusion will help to determine 30D tax credit eligibility for clean vehicles sold in the US market. BMTC appreciates the IRS's detailed approach in clarifying implementation of the FEOC exclusion to further boost domestic capabilities and defend against national and economic security threats from adversarial entities.

BMTC is a coalition of companies that mine, extract, process, manufacture, and recycle battery materials, as well as develop cathode, anode, cell, pack, and battery technologies in North America. The coalition is comprised of 18 member companies across Canada and the US, including facilities and operations in 28 states and current employment numbers of over 8,700 individuals, with projections for over 23,500 individuals to be employed by 2030. Our coalition is united behind a shared interest in growing a resilient and sustainable North American battery industry that ensures private sector and governments work together to seize the opportunity to secure the supply chains that power our way of life.

Background Information

The US, and North America more broadly, is heavily reliant on foreign countries and industries for the sourcing, processing, and manufacturing of the materials and components needed for the lithium-ion battery supply chain. Most notably, Chinese entities control most of the global battery mineral processing and refining including almost 60% of lithium processing, 69% of nickel processing, 69% of synthetic graphite processing, 95% of manganese processing, and 100% of natural graphite processing.¹ As of 2022, Chinese companies have over 10 times the battery cell manufacturing capacity than companies in the US, and Chinese entities also have ownership stake in mining operations worldwide, including in Indonesia, Australia, the Democratic Republic of Congo, Chile, and beyond, where they wield outsized power and influence. Russian entities are also dominant players in this space, as the nation is the top global producer of Class 1 nickel.² With geopolitical tensions on the rise, the US and other nations have committed to shifting

¹ [Benchmark Minerals Intelligence, "China's Battery Supply Chain Dominance," October 2022.](#)

² [International Energy Agency, "Global Supply Chains of EV Batteries," July 2022.](#)

dependence away from Russia for a variety of critical goods, including battery materials such as nickel, posing a significant supply concern moving forward.

This stranglehold on battery supply chains is exacerbated by the policies implemented by the governments of China and Russia that allow for bad-faith business practices in and outside their countries, including restricting market access, implementing trade barriers, utilizing discriminatory procurement policies, and undercutting competitors on pricing.

The Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) provide much-needed investments to level the playing field in helping the US build a sustainable domestic battery supply chain. Domestic production is critical to sustainably powering electric vehicles, renewable energy sources, and industrial decarbonization. Importantly, the FEOC provision in the IRA 30D tax credit is intended to add an additional layer of security on top of the sourcing requirements for critical minerals and battery components. These legal protections are meant to ensure that adversarial materials are not incentivized as inputs into clean vehicles sold in the US market.

Below, BMTC asks the IRS for clarifications and provides recommended changes to the proposed guidance. These changes are to guarantee that the Congressional intent of the law is upheld, and that the focus remains on investments in the US and with our close trading partners that share high-level economic, environmental, and labor practices across the battery supply chain.

FEOC Through to Extraction

The guidance makes clear that “the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6).”

Many minerals that enter battery supply chains prior to achieving the purity level listed in Section 45X, or to becoming an associated constituent material, come from China, Russia, or other FEOCs. Allowing these adversarial materials into eligible clean vehicle batteries would defeat the purpose of the IRA in incentivizing domestic- and allied-sourced minerals for 30D credit eligibility. BMTC supports this clarification of extending FEOC-compliance for critical minerals throughout production, even when not in final form as defined in the 45X Advanced Manufacturing Production Tax Credit.

Non-Traceable Battery Materials

While the coalition understands the temporary exclusion of certain low-value minerals from FEOC-compliance is a transition rule only in effect until January 2027, BMTC would like clarity in a final rule that confirms the key critical minerals in a lithium-ion battery are *not* impacted by this temporary exclusion. Specifically, BMTC requests that Cobalt, Graphite, Lithium, Manganese, and Nickel are clarified as *traceable* materials. These five minerals are critical to the battery industry and have high-risk supply chains. They are also included in all critical minerals and materials lists by the administration, including those managed by the

Departments of Interior, Energy, and Defense. Even if these minerals are inputs into “electrolyte salts, electrode binders, and electrolyte additives” and any other “low-value” constituent materials or battery components, BMTC asks for assurance that these five minerals not be included in the list of “non-traceable” materials. These important minerals should be held fully accountable to the FEOC rules throughout the full life of the credit.

Definition of Recycling

BMTC asks for clarity on what the IRS constitutes as “recycling,” particularly when a recycled material is re-entering into an FEOC-compliant supply chain. The guidance states, “Proposed § 1.30D–6(a)(15) would define ‘recycling’ to mean the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.”

The guidance also later states, “The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process. Thus, for example, an applicable critical mineral derived from recyclable material that was recycled by an entity that is not a FEOC would be FEOC-compliant even if such mineral may have been extracted by a FEOC prior to its inclusion in the recyclable material.”

This language is vague in that it does not clearly define which recycling steps can and cannot occur within an FEOC – for instance, shredding, separating, producing black mass, and critical mineral refinement processing are all separate activities that can occur in multiple facilities. BMTC supports that *all* the recycling activities should be required to occur in a non-FEOC facility for the recycled material to qualify as FEOC-compliant in a new clean vehicle battery. The North American battery recyclers are just as important to the supply chain and should be fully incentivized accordingly across all recycling activities.

Third-Party Manufacturers and Suppliers

The guidance clarifies that, “In addition, the [third-party] manufacturer or supplier must be contractually required to provide such information to the qualified manufacturer of the new clean vehicle and must be contractually required to inform the qualified manufacturer of any changes in the supply chain that affect determinations of FEOC compliance.” Is there a specified timeframe in how often, and how soon after, changes in supply chains will need to be disclosed to a qualified manufacturer?

Also, the guidance only lists “battery manufacturers” and “battery cell producers” when providing information on “third-party” manufacturers and suppliers. Do these requirements also apply to further upstream participants, like mineral extractors or material processors? BMTC would like clarification on what reporting requirements, and the associated timelines of these requirements, will be imposed across *each participant* in a supply chain.

Supply Chain Tracing Implementation

BMTC appreciates Treasury's requirement to track minerals and components down to the VIN. The battery supply chain is incredibly complex, and it changes frequently. Traceability systems are essential to ensure accurate reporting and further secure supply chains. BMTC would like to better understand Treasury's expectations for supply chain tracing and stands ready to work with the Department and qualified manufacturers to implement effective traceability mechanisms.

Conclusion

BMTC greatly appreciates the opportunity to provide input and identify areas in need of clarification to the IRS's proposed guidance. Should you have any questions about this response, please reach out to Ben Steinberg at bsteinberg@vennstrategies.com.