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Contact: Ben Steinberg
bsteinberg@vennstrategies.com

BMTC Comments on Final Regulations for Section 30D Clean Vehicle Tax Credit

Washington, D.C. – Today, the Battery Materials & Technology Coalition (BMTC) expresses its concern with the final regulations for the Inflation Reduction Act’s (IRA) Section 30D Clean Vehicle Tax Credit as released last Friday, including the Department of Energy’s (DOE) foreign entity of concern (FEOC) definition and the Department of the Treasury’s (Treasury) final implementation guidance. We stand ready to continue our work with the Administration and Congress to stand up a resilient North American battery supply chain.

Department of Energy’s FEOC Definition – BMTC is disheartened that the finalized FEOC definition does not extend FEOC classification to look beyond explicit government control when determining what entities are a FEOC. Government influence is regularly imposed through means other than explicit ownership, voting rights, and board seats. Without a strong FEOC guardrail in 30D, we risk undermining the investments being made to stand up the domestic industry. In addition, extending consideration beyond explicit government control would have been more in line with the Department of Commerce (DOC) definition of FEOC under the CHIPS and Science Act.

Given the less-stringent FEOC definition, BMTC urges DOE, in partnership with the Department of Defense (DOD) and the Office of the Director for National Intelligence (ODNI), to impose a strict enforcement regime to ensure that FEOCs, including Chinese and Russian entities, are *not* eligible under the tax credit. We encourage the U.S. government to work directly with domestic industry to ensure effective and transparent oversight and implementation of the rule. We also encourage DOE to utilize the Secretary of Energy’s determination authority in conducting rigorous, ongoing research and evaluation of battery industry players to proactively identify and designate bad actors as FEOCs. This authority is essential in ensuring effective implementation of the FEOC rule as intended by law.

Department of the Treasury’s Implementation Regulations – BMTC strongly disapproves of Treasury’s decision to classify some battery materials as “impracticable-to-trace.” This temporary classification in the updated regulation grants automakers an exemption from FEOC sourcing rules for graphite as well as for applicable critical minerals in salts, additives, and binders for two years, allowing critical minerals from FEOCs into eligible vehicles for the credit until 2027. Graphite makes up a majority if not all the anode in many battery chemistries, meaning that up to half of a battery’s critical minerals may be exempt from FEOC rules through 2026. This decision sets a concerning precedent for adjusting content requirements. We stand by the graphite industry in clarifying that graphite, both natural and synthetic, is indeed fully traceable, as is the case with all battery materials.

In addition, this temporary exclusion from the FEOC requirements does not account for the growing capacity of domestic and allied producers of these applicable critical minerals, including graphite. However, the inclusion of new up-front certification requirements in the guidance represents a step in

the right direction. In the final regulation, Treasury clarifies that prior to being granted the temporary exclusion for “impracticable-to-trace” materials, qualified manufacturers must demonstrate robust documentation of efforts made to secure FEOC-compliant supply, including offtake agreements and contracts with domestic and other FEOC-compliant suppliers.

BMTC asks the administration to stringently impose these requirements by ensuring that automakers reach financeable offtake agreements with domestic critical mineral producers over the course of the exemption. We expect the government will enforce these new provisions in a transparent manner and directly coordinate with qualified manufacturers and supply chain participants to uphold the intent of the law. Strict enforcement of this requirement will help to secure a domestic and allied battery supply chain.

BMTC is encouraged to see the new Traced Qualifying Value Test in the final guidance since this rule will support supply chain transparency and clear eligibility calculations for the credit. The updated language is more stringent and precise in calculating eligibility for critical minerals in a battery when compared to the proposed 50% value added test. Despite the 50% test being permitted as a transition rule through 2026, BMTC applauds the new Traced Qualifying Value Test in tracing full procurement chains to achieve more accurate eligibility percentages.

BMTC looks forward to continuing this work with the Administration and Congress to further support and advocate for the North American battery supply chain.

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