ZERO EMISSION TRANSPORTATION ASSOCIATION

March 31, 2023

Department of Treasury Releases Proposed Rulemaking to Implement 30D New Clean Vehicle Tax Credit

Background

The New Clean Vehicle Credit of the Inflation Reduction Act amends Section 30D(a) of the United States Internal Revenue Code for the purposes of purchasing clean, new vehicles. The Notice of Proposed Rulemaking (NRPM) builds out the domestic electric vehicle (EV) supply chain and expands access to qualifying, plug-in EVs. New vehicles will be eligible for a $7,500 tax credit delivered at the point of sale. The credit is composed of two halves: qualifying vehicles will receive $3,750 for meeting each of the critical mineral and battery component sourcing requirements.

The NPRM is filed for public inspection and will be published in the *Federal Register* on April 17, 2023. Vehicles placed-in-service on or after April 18, 2023 will be subject to the critical mineral and battery component requirements laid out in the IRA statute and Treasury rule. On April 18, FuelEconomy.gov will be updated to contain a list of eligible clean vehicles that meet the requirements to claim the new clean vehicle credit, including the amount of the credit. This list will continue to be updated promptly, as manufacturers provide information on which of their vehicles qualify for the tax credit based on the NPRM.

A summary of the announcement can be found below, including a breakdown of key definitions upfront and those embedded throughout the NPRM along with more specificity on the critical mineral and battery component requirements. While the public awaits further clarification in some key areas, most notably regarding foreign entities of concern, this proposal provides other areas of certainty that will be necessary to meet the IRA's stringent sourcing requirements.

Definitions

Final assembly is the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Eligible vehicles will meet the required ***Manufacturer's Suggested Retail Price***, or commonly known as ***MSRP***, of $80,000 for a van, pickup truck, or sport utility vehicle, or $55,000 for any other vehicle. Building on the anticipated approach detailed in a white paper released in December, the NPRM also explains how manufacturers may satisfy the critical mineral and battery component requirements under the IRA.

A vehicle is considered to be ***placed in service*** on the date the taxpayer takes possession of it.

Vehicle classifications including for vans, pickup trucks, and SUVs, are consistent with the rules and definitions in EPA regulations at 40 CFR 600.315-08.

Critical Minerals Requirements

To meet the critical mineral requirement and be eligible for a $3,750 credit, the applicable percentage of the value of the critical minerals contained in the battery must be extracted or processed in the United States or a country with which the United States has a free trade agreement, or be recycled in North America—as mandated by the IRA.

- For 2023, the applicable percentage is 40 percent.
- For 2024, the applicable percentage is 50 percent.
- For 2025, the applicable percentage is 60 percent.
- For 2026, the applicable percentage is 70 percent.
- Beginning in 2027, the applicable percentage is 80 percent.

Applicable critical minerals include aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.

The NPRM proposes a ***three-step process for determining the percentage of critical mineral content*** that contributes towards meeting the critical minerals requirement:

1. The portion of an applicable critical mineral that is a qualifying critical mineral must be determined separately for each procurement chain.
2. Identify qualifying critical minerals sourced domestically or from free trade agreement countries.
3. Calculate qualifying critical mineral content by dividing the total value of qualifying critical minerals (domestically or free trade agreement country-sourced) by the total value of all critical minerals.

A qualified manufacturer may determine qualifying critical mineral content in two ways:

- For a specific vehicle, based on the value of the critical minerals actually contained in the battery of that vehicle; or
- For a group of vehicles, based on the average critical mineral content over a period of time (for example, a year, quarter, or month) for vehicles from the same model line, plant, class, or some combination of thereof.

A critical mineral is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if:

- 50 percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or

- 50 percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect.

A critical mineral is recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

The NPRM also details a proposed set of principles for identifying the set of countries with which the United States has a ***free trade agreement*** in effect, since this term is not defined in statute. This term could include newly negotiated critical minerals agreements. The criteria the Secretary will consider in determining whether a country qualifies is based on whether the agreement:

- Reduces or eliminates trade barriers on a preferential basis;
- Commits the parties to refrain from imposing new trade barriers;
- Establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections); and/or
- Reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions.

The Department of Treasury has determined that the U.S. currently has free trade agreements with 21 countries: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

This list of countries may be revised and updated through appropriate guidance published in the *Federal Register* or in the *Internal Revenue Bulletin*.

Battery Component Requirements

To meet the battery component requirement and be eligible for a $3,750 credit, the applicable percentage of the value of the battery components must be manufactured or assembled in North America—as mandated by the IRA.

- For 2023, the applicable percentage is 50 percent.
- For 2024 and 2025, the applicable percentage is 60 percent.
- For 2026, the applicable percentage is 70 percent.
- For 2027, the applicable percentage is 80 percent.
- For 2028, the applicable percentage is 90 percent.
- Beginning in 2029, the applicable percentage is 100 percent.

The NPRM proposes a ***four-step process for determining the battery component value***:

1. Identify battery components that are manufactured or assembled in North America;
2. Determine the value of each battery component, including North American battery components;
3. Determine the total value of all battery components; and
4. Calculate the qualifying battery component content by dividing the total value of North American battery components by the total value of all battery components.

A qualified manufacturer may determine the battery component value in two ways:

- For a specific vehicle, based on the value of the battery components actually contained in the battery of that vehicle; or
- For a group of vehicles, based on the average battery component content over a period of time (for example, a year, quarter, or month) for vehicles from the same model line, plant, class, or some combination of thereof.

Beginning in 2024, an eligible clean vehicle may not contain any battery components that are manufactured by a ***foreign entity of concern*** and beginning in 2025 an eligible clean vehicle may not contain any critical minerals that were extracted, processed, or recycled by a foreign entity of concern. The NPRM states that Treasury and IRS will issue subsequent guidance on this provision further clarifying what qualifies as a foreign entity of concern.

With respect to battery components, ***assembly*** means the process of combining battery components into battery cells and battery modules.

For purposes of a new clean vehicle, ***battery*** means a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

Battery cell means a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

A ***battery component*** is defined as a component that forms part of a battery and which is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not considered a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

Constituent materials contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

Recycling means 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.

Extraction means the process of harvesting minerals from the ground or a body of water, which includes from mines and wells or from a prior extraction site. Under this definition, the process of extraction is completed when the harvested or raw materials are converted into substances that are readily available for critical mineral processing. Although extraction may include the physical process involved in refining, but does not include the chemical or thermal processes involved in refining.

Manufacturing means the industrial and chemical steps taken to produce a battery component.

Processing means the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

Procurement chain means a common sequence of extraction, processing, or recycling activities that occur in a common set of locations concluding in the production of constituent materials. Sources of a single critical mineral may have multiple procurement chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations.

Conclusion

In addition to clarifying requirements for manufacturers, the NPRM discusses taxpayer-focused scenarios outlining how prospective consumers can apply the 30D credit. We expect to provide more detail on those requirements in the coming weeks. In short, this announcement is a positive step forward towards providing clarity and regulatory certainty. While more areas will require further clarification, most importantly the foreign entities of concern definition, ZETA applauds the Biden-Harris Administration for reinforcing the resolve of the companies leading the transition to zero-emission transportation and creating the opportunity for others to join the movement.