



**ZERO EMISSION
TRANSPORTATION
ASSOCIATION**

January 18, 2024

United States Department of the Treasury
Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

**RE: Docket No. REG-118492-23
Section 30D Excluded Entities**

Submitted via Rulemaking Portal: <http://www.regulations.gov>.

The Zero Emission Transportation Association (ZETA) is an industry-backed coalition of over 60 member companies advocating for 100% electric vehicle (EV) sales. ZETA is committed to enacting policies that drive EV adoption, create hundreds of thousands of jobs, dramatically improve public health, and significantly reduce emissions. Our coalition spans the entire EV supply chain including vehicle manufacturers, charging infrastructure manufacturers and network operators, battery manufacturers and recyclers, electricity providers, and critical minerals producers, among others.

We thank the Department of the Treasury and the Internal Revenue Service (IRS) for the opportunity to comment on its Section 30D Excluded Entities proposed rule¹. Federal incentives in emerging energy and transportation markets are key tools for driving domestic economic growth while reducing carbon emissions—and the United States has a history of supporting, encouraging, and fostering advanced vehicle technologies. As the U.S. market moves out of the EV early adopter phase and enters the mainstream consumer phase, the impact of these incentives on consumer behavior becomes even more important as manufacturers continue building secure, domestic supply chains.

Background

Signed by President Biden in August 2022, the Inflation Reduction Act (IRA) created and modified a series of clean vehicle tax credits designed to simultaneously reduce the EVs' cost and bolster the development of a domestic supply chain. The updated § 30D tax credit is designed to incentivize EV adoption while simultaneously onshoring the supply chains for vehicles, batteries, and minerals. As part of the § 30D New Clean Vehicle Tax Credit, the IRA included language to onshore the EV supply chain and impose safeguards to prevent so-called “foreign entities of concern,” or FEOCs, from benefiting.

¹ See 88 FR 84098 (December 4, 2023)

ZETA has long advocated for a 30D credit structure that maximizes EV adoption while balancing enhancements to U.S. economic security and competitiveness.² Largely as a result of the Inflation Reduction Act, the past few years have seen record investment in the EV supply chain. Electric vehicle sales are skyrocketing, with well over a million new EVs sold in 2023.

ZETA Comments

In addition to submitting these comments, ZETA has encouraged its members to submit comments in their individual capacities and we urge IRS to give those comments full consideration as well. ZETA is also including in the appendix its January 3, 2024 comments³ to the Department of Energy on its proposed interpretation⁴ of the statutory definition of “foreign entity of concern” in the Bipartisan Infrastructure Law. We believe these comments may be informative as Treasury and the IRS consider comments on its Section 30D Excluded Entities proposed rule.

As ZETA’s members continue to build secure, domestic supply chains for EVs and their constituent parts, clarity on how the FEOC provisions will be implemented in the 30D context is crucial to providing industry with regulatory certainty while ensuring foreign adversaries do not benefit from domestic investments in transportation electrification.

Traceability and Low-Value Battery Materials (De Minimis)

ZETA appreciates Treasury and the IRS’ efforts to implement a stringent, but workable solution to tracing low-value battery minerals. Even in cases where it may be technically achievable, the costs associated with tracing component materials down to the furthest end of the supply chain are high and could exceed the benefit provided by the 30D credit. We believe it would be unnecessarily onerous and costly to finalize more stringent requirements than those proposed.

Additionally, ZETA encourages Treasury and the IRS to provide further guidance pertaining to the format, calculations, and structure of any certifications and documentation that qualified manufacturers should use to demonstrate compliance for FEOC-compliant batteries. This additional layer of specificity will better enable industry to provide the necessary materials and analysis to achieve compliance.

Transition Rule and Allocation-Based Exemption

² <https://www.regulations.gov/comment/IRS-2022-0020-0792>

³ <https://www.regulations.gov/comment/DOE-HQ-2023-0067-0012>

⁴ See 88 FR 84082 (December 4, 2023)

ZETA supports Treasury and the IRS' proposed transition rule and allocation-based exemption. Such provisions are necessary as companies throughout the EV supply chain work to onshore their operations, due in large part to the 30D incentive.

Lastly, ZETA encourages Treasury and the IRS to consider developing a list of non-FEOC compliant companies as doing so would provide more certainty to industry. In addition, we encourage Treasury and the IRS to consider how FEOC provisions would be applied in the event a qualified manufacturer enters into an agreement with an entity which is not an FEOC at the time, but later becomes one due to actions outside the control of the qualified manufacturer.

Conclusion

ZETA applauds the Biden-Harris administration for its historic work to strengthen domestic clean energy supply chains and decarbonize the transportation sector. The provisions in the December 2023 proposed rule create a stringent but workable pathway to resilient EV supply chains controlled by the United States and its allies. Paired with the definitions provided in guidance from the Department of Energy, the industry now has a more stable framework to ensure materials are indeed predominantly sourced in the U.S. and its allied trading partners.

ZETA and its member companies thank you for your attention to these comments and are available should you have any questions.

Sincerely,



Albert Gore
Executive Director
Zero Emission Transportation Association

APPENDIX



**ZERO EMISSION
TRANSPORTATION
ASSOCIATION**

January 3, 2024

United States Department of Energy
Office of Manufacturing and Energy Supply Chains
1000 Independence Avenue, SW
Washington D.C. 20585

RE: Docket No. DOE-HQ-2023-0067-0001
Interpretation of Foreign Entity of Concern
Submitted via Rulemaking Portal: <http://www.regulations.gov>.

The Zero Emission Transportation Association (ZETA) is an industry-backed coalition of over 60 member companies advocating for 100% electric vehicle (EV) sales. ZETA is committed to enacting policies that drive EV adoption, create hundreds of thousands of jobs, dramatically improve public health, and significantly reduce emissions. Our coalition spans the entire EV supply chain including vehicle manufacturers, charging infrastructure manufacturers and network operators, battery manufacturers and recyclers, electricity providers, and critical minerals producers, among others.

We thank the Department of Energy (DOE) for the opportunity to comment on its proposed interpretation of the statutory definition of “foreign entity of concern” (FEOC) in the Bipartisan Infrastructure Law (BIL). Through the proposed guidance, DOE sets a strong standard that will fortify our supply chains and ensure the United States owns the transition to clean transportation. This proposal involves a rational approach to balancing the goal of onshoring mid-stream and upstream production with supporting the continued rapid growth in domestic battery and vehicle manufacturing already taking place.

In addition to submitting these comments, ZETA has encouraged its members to submit comments in their individual capacities and we urge DOE to give those comments full consideration as well. As ZETA’s members continue to build secure, domestic supply chains for EVs and their constituent parts, clarity on FEOC definitions is crucial to ensuring foreign adversaries do not benefit from investments in transportation electrification.

Background

ZETA has long advocated for policies that maximize EV adoption while balancing enhancing economic security and U.S. economic competitiveness. The past few years have seen record

investment in the EV supply chain.⁵ Electric vehicle sales in the U.S. are skyrocketing, with well over a million expected to be sold in 2023.⁶ Tax credits are helping make EVs more affordable than ever for individuals and Americans are reaping the direct benefits of the electric vehicle industry. The Department of Energy’s FEOC guidance supports those investments, ensuring that the most valuable parts of the supply chain are manufactured in the United States, creating good-paying American jobs and bolstering national security.

The Inflation Reduction Act (IRA) created and modified a series of clean vehicle tax credits designed to simultaneously reduce the EVs’ cost and bolster the development of a domestic supply chain. The updated § 30D New Clean Vehicle Tax Credit is designed to incentivize EV adoption while simultaneously onshoring the supply chains for vehicles, batteries, and critical minerals. As part of the § 30D credit, the IRA included language to impose safeguards to prevent FEOCs, as defined in the BIL, from benefiting.

The BIL statutory definition provides that, among other criteria, a foreign entity is a FEOC if it is “owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.”⁷ Through its proposed guidance, DOE offers language to clarify the term “foreign entity of concern” by providing interpretations of the following key terms: foreign entity; government of a foreign country; subject to the jurisdiction; and owned by, controlled by, or subject to the direction, among other key ancillary terms.

ZETA is pleased to provide the following feedback in response to DOE’s proposed interpretation of FEOC.

ZETA Comments

Proposed interpretations outlined in Section B “Proposed FEOC Terminology Interpretations”

ZETA appreciates the intent behind the proposed interpretations outlined in Section B for the definitions of “foreign entity,” “government of a foreign country,” and “subject to the jurisdiction.” As part of the definition of “government of a foreign country” in Section B.II, the sub-definition for “a current or former senior foreign political figure” is broad and creates significant uncertainty, even with the clarifying language included in Section B.II. To address this, ZETA recommends DOE provide additional guidance by addressing the following:

- What level of diligence is expected of companies determining whether individuals are immediate family members of senior foreign political figures?

⁵ <https://www.zeta2030.org/education-fund/investments>

⁶ <https://www.zeta2030.org/news/zeta-executive-director-celebrates-one-million-ev-sales-in-2023>

⁷ 42 USC § 18741(a)(5)

- Is there a specific time frame after which a “former” senior foreign political figure no longer qualifies as a senior foreign political figure?
- Can a company rely on supplier attestations to confirm the ownership and control of entities in its supply chain?
- Can the U.S. Government create a definitive list of current or former senior political figures to provide certainty to industry?

Whether use of determination authority in Section 40207(a)(5)(E) of BIL could provide a tool for limiting attempts to evade such restrictions and what DOE may deem “unauthorized conduct.”

Section 40207(a)(5)(E) of the BIL includes as FEOCs those foreign entities “determined by the Secretary [of Energy], in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.” ZETA understands that DOE is concerned about the ability of FEOCs to exercise control or influence over an entity with which it has a licensing or contractual agreement despite the agreement technically reserving operating rights to the licensee. Given the substantial Executive power created by this provision, ZETA encourages DOE to exercise caution when making determinations on “unauthorized conduct.”

Whether DOE should establish a pre-review process to create greater certainty regarding whether effective control by a FEOC is present.

ZETA encourages DOE to provide entities with the opportunity to voluntarily request a pre-review of contracts and licensing arrangements by DOE in order to provide additional certainty regarding whether effective control by a FEOC is present. Such a voluntary review process would be highly beneficial, lowering risk and enabling entities to enter such arrangements with greater confidence and regulatory clarity. ZETA further recommends that this process be structured in a confidential manner that safeguards proprietary information and the privacy of interested parties before any such arrangements are made public.

Conclusion

ZETA applauds the Biden-Harris administration for its historic work to strengthen domestic clean energy supply chains and decarbonize the transportation sector. The provisions in the December 2023 Department of Energy proposed rule create a stringent but workable pathway to resilient EV supply chains controlled by the United States and its allies. Paired with the additional administrative implementation guidance from the Department of the Treasury, the industry now has a more stable framework to ensure materials are indeed predominantly sourced in the U.S. and its allied trading partners.

ZETA and its member companies thank you for your attention to these comments and are available should you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal flourish extending to the right.

Albert Gore
Executive Director
Zero Emission Transportation Association