Treasury Releases Proposed Guidance to Continue U.S. Manufacturing Boom in Batteries and Clean Vehicles, Strengthen Energy Security

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WASHINGTON – Today the U.S. Department of the Treasury and Internal Revenue Service (IRS) released proposed guidance on the clean vehicle provisions of the Inflation Reduction Act (IRA) that are lowering costs for consumers, spurring a boom in U.S. manufacturing, and strengthening energy security by building resilient supply chains with allies and partners. Since the IRA was enacted, nearly $100 billion in private-sector investment has been announced across the U.S. clean vehicle and battery supply chain.

“The Inflation Reduction Act has unleashed an investment and manufacturing boom in the United States, and since President Biden enacted the law, ecosystems have developed in communities nationwide to onshore the clean vehicle supply chain,” said Secretary of the Treasury Janet L. Yellen**. “The Inflation Reduction Act’s clean vehicle tax credit saves consumers up to $7,500 on a new clean vehicle and hundreds of dollars per year on gas, while creating American manufacturing jobs and strengthening our energy security.”**

“President Biden entered office determined to reverse the decades-long trend of letting jobs and factories go overseas to China,” said John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation. **“Thanks to the Investing in America agenda and today’s important guidance from Treasury and the Department of Energy, we’re helping ensure that the electric vehicle future will be made in America.”**

Today’s Notice of Proposed Rulemaking (NRPM) provides clarity and certainty around the IRA’s foreign entity of concern (FEOC) requirements. To strengthen the security of America’s supply chains, beginning in 2024, an eligible clean vehicle may not contain any battery components that are manufactured or assembled by a FEOC, and, beginning in 2025, an eligible clean vehicle may not contain any critical minerals that were extracted, processed, or recycled by a FEOC. In conjunction with today’s Treasury NPRM, the Department of Energy has released proposed guidance defining what entities are a FEOC.

In addition to the FEOC requirement, clean vehicles must also continue to meet additional statutory criteria, including additional sourcing requirements for both the critical minerals and battery components contained in the vehicle, a requirement that vehicles undergo final assembly in North America, and a requirement that vehicles do not exceed a Manufacturers Suggested Retail Price of $80,000 for a van, pickup truck, or sport utility vehicle, or $55,000 for any other vehicle.

FOREIGN ENTITY OF CONCERN REQUIREMENT

The NPRM provides proposed rules to determine whether applicable critical minerals (and their associated constituent materials) and battery components are manufactured or assembled by a FEOC for battery components, and extracted, processed, or recycled by a FEOC for critical minerals. The proposed rules would require manufacturers to conduct due diligence that complies with industry standards of tracing for battery materials.

Under the proposal, FEOC-compliance for battery components would be determined at the time of manufacture or assembly, and FEOC-compliance for critical minerals would be determined by reviewing all phases of applicable critical mineral extraction, processing, and recycling. For example, a mineral extracted by an entity that is not a FEOC but processed by an entity that is a FEOC would not be compliant. Compliant battery components would have to be tracked to FEOC-compliant battery cells, and cells could not be manufactured or assembled by a FEOC.

Critical minerals generally also must be traced. However, given that there is commingling in the critical mineral supply chains and suppliers may not be able to physically track certain specific masses of minerals to specific battery cells or batteries, the NPRM asks for comments on a temporary transition rule, under which critical minerals and associated constituent materials may be allocated to a particular set of battery cells. The battery cells would then have to be physically tracked to batteries and new clean vehicles using a serial number or other identification system.

The NPRM also asks for comment on a proposed additional transition rule as the automotive industry develops the ability to trace certain low-value materials with precision. The NPRM proposes a temporary transition rule through 2026 that would give the industry time to develop tracing standards for these low-value materials. The guidance asks for comment on the need for and design of such a rule, what materials should be included under this approach, and whether alternative approaches to such a transition rule would be more appropriate.

To allow compliant vehicles already on dealer lots and currently being manufactured to qualify for the credit while the rulemaking process proceeds, the proposed rules would provide a transition rule to expedite certification for new clean vehicles that do not contain battery components manufactured or assembled by a FEOC and are placed in service in 2024 between January 1 and 30 days after the rules are finalized.

The proposed rules would also create an upfront review system starting in 2025 that would provide additional oversight of FEOC compliance, as well as certainty to manufacturers. For new vehicles placed in service in 2025 or later, the IRS would track FEOC compliance via a compliant-battery ledger. Each year, automakers would be required to submit to the IRS an estimate of the number of FEOC-compliant batteries they expect to procure each year, along with supporting documentation, and the Department of Energy would review these submissions. Automakers' balances would be adjusted to account for changes in the number of anticipated FEOC-compliant batteries and would be reduced as new credit-eligible clean vehicles are reported to the IRS. Once the ledger reaches zero for a year, the automaker could no longer submit vehicles as qualifying for the clean vehicle credit under section 30D.

Finally, the NPRM proposes a regime to incentivize compliance by automakers. Inadvertent errors may be cured; otherwise, the vehicle related to the error will no longer be credit eligible. If that vehicle has already been sold, the error would instead cause a reduction to the ledger.

Under the proposed enforcement framework, in cases of fraud or intentional disregard for the rules, all unsold vehicles of the automaker may be no longer eligible for the section 30D credit. The IRS may also terminate the automaker's ability to qualify additional vehicles for the credit in the future. Treasury and the IRS will carefully consider public comments before issuing final rules.

BATTERY COMPONENT REQUIREMENT

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

- 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.

CRITICAL MINERAL REQUIREMENT

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 Inflation Reduction Act.

- 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.

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.

Clean Vehicle Credit Requirement	2024 (To receive $7,500)	2025 (To receive $7,500)
Foreign Entity of Concern (Battery Component)	YES	YES
Foreign Entity of Concern (Critical Minerals)	NO	YES
Battery Component Percentage	60%	60%
Critical Minerals Percentage	50%	60%

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