U.S Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Agency/Docket Number: REG-118492-23

On behalf of our millions of members and supporters, thank you for the opportunity to comment on the proposed rule for excluded entities from the 30D clean vehicle credit, as amended by the Inflation Reduction Act of 2022. These comments primarily address the proposed rule's due diligence and supply chain tracing mechanisms.[1] We appreciate the steps that the Department of Treasury and the IRS have taken in the proposed rule to ensure responsible business conduct throughout battery supply chains.

In particular, we applaud the proposed rule's requirement that to qualify for the credit, manufacturers and their suppliers must perform ongoing due diligence and trace battery materials across their supply chains. Together, battery materials tracing and due diligence are foundational elements for ensuring compliance and easing the administration of the 30D credit.

In addition, choosing widely adopted tracing and due diligence standards would help reassure the public that 30D credits will promote an ethical electric vehicle (EV) transition. Electrifying vehicles is essential to reducing health-harming tailpipe emissions and addressing the climate crisis. We must also ensure that the companies sourcing the EV battery minerals minimize human rights and environmental impacts. Doing so requires strong due diligence and material tracing by companies across their battery supply chains.

Until tracing systems mature, some qualified manufacturers and their suppliers may not have the ability to precisely determine the provenance of some applicable critical minerals, constituent materials, or low-value nontraceable materials. For this reason, Treasury and the IRS are correct to consider "principle-based criteria" as an alternative approach to inform tracing, due diligence, and de-risk mineral supply chains in high-conflict areas closely correlated with foreign entities of concern (FEOC).[2]

The Inflation Reduction Act provided Treasury and IRS broad powers for how to determine FEOC compliance. We advise simple, widely adopted tools available to Treasury and the IRS that can help identify materials and their sources. These include the due diligence mechanism developed by the Organization for Economic Co-operation and Development (OECD), the tracing mechanism required by the European Union's battery law, and chain-of-custody standards under development by the Initiative for Responsible Mining Assurance (IRMA). These tracing and due diligence options will facilitate the

[1] Please see ((1.30D-6(b)(1) et seq. 88 Fed. Reg. 84098 December 4, 2023)
[2] Ibid. Please see 88 Fed. Reg. 84104

responsible use of American tax dollars, the protection of public interest, and regulatory certainty for companies.

The Treasury and IRS rule should align with OECD's definition for "Due Diligence" and adopt OECD's sector-specific guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

Treasury and the IRS should clearly define due diligence according to the OECD (Organization for Economic Co-operation and Development) Guidelines for Multinational Enterprises on Responsible Business Conduct[3] and adopt the corresponding OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.[4]

The OECD Guidelines are government-backed recommendations to companies on responsible business conduct from the US and other OECD member states.[5] The US Department of State oversees US progress on these commitments and their implementation.[6] The OECD Guidelines endorse company supply chain due diligence as a core component; and are a broadly supported, internationally agreed upon, comprehensive code of responsible business conduct that governments have committed to promoting.

The OECD Guidelines define due diligence as:

> "the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making

---

[3] OECD. 2023. "OECD Guidelines for Multinational Enterprises on Responsible Business Conduct." https://mneguidelines.oecd.org//mneguidelines/ The Guidance outlines six fundamental measures of due diligence, based on a framework OECD governments, including the US, have committed to support and monitor. They are:

(1) Embedding responsible business conduct into policies and management systems;
(2) Identifying and assessing actual and potential adverse impacts associated with the enterprise's operations, products or services;
(3) Ceasing, preventing and mitigating adverse impacts;
(4) Tracking implementation and results;
(5) Communicating how impacts are addressed; and
(6) Providing for or co-operating in remediation when appropriate

See Commentary on Chapter II: General Policies, item 15, pg. 17. https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1705092275&id=id&accname=guest&checksum=EBB18F147F27870B979B7887EA9B5ADF
These guidelines also align with the United Nations Guiding Principles on Business and Human Rights (UNGPs).

[4] OECD. 2016. "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas." https://mneguidelines.oecd.org/mining.htm

[5] OECD. 2018. "OECD Due Diligence Guidance for Responsible Business Conduct." https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm

[6] US Department of State. "Sector Specific Implementation Guidance." https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/sector-specific-implementation-guidance/

and risk management systems."[7]

This definition and process can help Treasury accomplish the proposed rule's goal of excluding FEOC from EV battery mineral supply chains because proper risk management leads companies to inquire from whom and where they source materials. FEOC are closely correlated with mineral supply chains in high-risk and conflict-affected areas. For this reason, companies and governments around the world are using the OECD guidance to promote due diligence across mineral supply chains and Treasury can do the same to administer FEOC compliance more easily.

Notably, the EU Battery Law[8] and the EU Corporate Sustainability Due Diligence Directive (CSDDD)[9] now require companies operating in Europe to undertake human rights due diligence across their mineral supply chains following the OECD's guidance. Aligning Treasury and the IRS's due diligence with those existing efforts will deliver more certain and durable 30D compliance. A lack of alignment creates more uncertainty and a less stable regulatory environment for companies.

In addition, adopting OECD's due diligence standards would help reassure the public that 30D subsidies will benefit only materials produced by companies that respect workers' and Indigenous Peoples' rights while de-risking supply chains in high-conflict areas.[10] The mining industry is a notoriously pervasive abuser of human rights globally; often mining companies operate within, or are controlled by, FEOC.[11]

A recent analysis of mining companies producing key battery minerals found that the majority did not have the necessary policies to respect the rights of impacted communities, with glaring gaps in upholding Indigenous peoples' rights.[12] Globally, more than half of battery minerals are located underneath or near Indigenous territories.[13]. In the US, 97% of nickel reserves, 89% of copper, 79% of lithium, and 68% of

[7] OECD. 2023. "OECD Guidelines for Multinational Enterprises on Responsible Business Conduct." Commentary on Chapter II: General Policies, item 15, pg. 17. https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1705092275&id=id&accname=guest&checksum=EBB18F147F27870B979B7887EA9B5ADF

[8] *Regulation - 2022/720 - en - EUR-lex*. EUR. (n.d.). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0720

[9] Corporate sustainability due diligence: Council and Parliament strike ... (n.d.-a). https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/

[10] Human rights and environmental due diligence involves assessing actual or potential adverse impacts on rights-holders, including Indigenous Peoples, integrating findings into management plans; taking action; providing remedy and gender-responsive grievance mechanisms when violations occur; and tracking and communicating externally on performance. It is an ongoing process, requiring periodic review and revisions as project operations and operating contexts change. Crucially, HREDD recognizes Indigenous Peoples' rights to self-determination and Free, Prior, and Informed Consent (FPIC), according to both the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and International Labor Organization Convention 169 (ILO 169).

[11] *Transition minerals tracker*. Business & Human Rights Resource Centre. (n.d.). https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/

[12] Oxfam. 2023. "Recharging Community Consent: Mining companies, battery minerals, and the battle to break from the past." https://webassets.oxfamamerica.org/media/documents/2023_OXF_Recharging_Community_Consent_Report_FNL-AA.pdf?_gl=1*1idqvwl*_ga*MTQ3NTI1ODYxOC4xNzA1MDg3OTI5*_ga_R58YETD6XK*MTcwNTA4NzkyOS4xLjEuMTcwNTA4Nzk0Mi40Ny4wLjA.

[13] Owen, J.R., Kemp, D., Lechner, A.M. et al. Energy transition minerals and their intersection with land-connected peoples. Nat Sustain 6, 203–211 (2023). https://doi.org/10.1038/s41893-022-00994-6

cobalt, are located within 35 miles of Tribal reservations.[14] OECD's due diligence processes can help companies identify and address the acute risks mining and processing pose to Indigenous peoples.

Treasury and IRS's Due Diligence Mechanism Should Incorporate Beneficial Ownership Information to Ease Tax Administration and Encourage Traceability

The purpose of Beneficial Ownership Information (BOI) is to help Treasury and the IRS trace illicit flows of money. BOI identifies and locates individuals and entities that, directly or indirectly, own or control reporting companies. For mineral supply chain transactions, BOI can help indicate who owns applicable critical minerals or constituent materials and where those owners are. BOI may then help Treasury and the IRS determine, or reasonably infer, the source of those materials and whether they are FEOC compliant.

For example, OECD's guidance urges manufacturers and their third-party suppliers to maintain records on the identities of smelters, refiners, and "other points of transformation where the mineral is processed to reach commercial quality." Understanding this information may ease administration for Treasury and the IRS and simplify reporting for companies claiming 30D credits for transactions in applicable critical minerals and constituent materials.

According to the OECD, supply chain due diligence "*can be a valuable source of business intelligence for a company. For instance, it can help identify the beneficial owners of companies in the supply chain. Companies may use this information to better understand the security or insecurity of their supply chain, particularly if companies in the supply chain have ownership links with different jurisdictions.*"[15]

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) final rule on Beneficial Ownership Information (BOI rule)[16] follows a similar approach. Unless exempt, companies from all over the world that do business in the United States (by filing incorporation documents in any state), will need to confidentially report to FinCEN the names, addresses, birthdates, and driver's license or passport pictures of their owners and senior officers.[17]

The BOI rule allows reporting companies to register and receive a confidential, specialized FinCEN identifier that the IRS can use for tax administration. Future Treasury and IRS guidance could further encourage or require BOI, especially for companies claiming 30D credits for applicable critical minerals, associated constituent materials, and low-value nontraceable materials.

---

[14] Samuel Block, "Mining Energy-Transition Metals: National Aims, Local Conflicts." (MSCI, New York, 3 June 2021). https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947

[15] *Due Diligence - Organisation for Economic Co-operation and development*. Guidelines for MNEs - Organisation for Economic Co-operation and Development. (n.d.). https://mneguidelines.oecd.org/duediligence/

[16] https://fincen.gov/boi

[17] The DOE's 30D FEOC proposed rule setting a 25% threshold for ownership relies in part on the same ownership threshold in FinCEN's BOI rule. FinCEN's BOI rule became effective on January 1, 2024. The BOI rule exempts 23 categories of companies, including companies publicly listed on US exchanges, certain large companies, and nonprofit charitable corporations.

Treasury's Rule Should Adopt a Battery Passport and Battery Ledger

The proposed rule suggests tracing battery materials via "international battery passport certifications and enhanced battery material and component tracking and labeling." The signatories of this letter strongly support the adoption of a "battery passport" (a type of digital battery identifier) as the best possible solution for FEOC compliance.

Given the complexity of battery mineral supply chains, Treasury needs an organized, established, and capable solution to streamline information gathering and reporting for manufacturers, and to relay information in a usable manner. A battery passport will also enable the United States to adhere to international norms for battery mineral tracing and due diligence. Batteries sold in the European Union will be required to include a battery passport starting in 2026, per a regulation adopted in 2023.

As Representative Paul D. Tonko (D-NY-20) wrote in a November 2022 letter to Secretary Yellen, "A global systems approach is necessary to address challenges along the battery supply chain, including material extraction, battery production, and end-of-life processing and recycling. A well-developed digital battery identifier and set of reporting standards could allow for the smooth transfer of relevant information between stakeholders."[18]

The undersigned groups emphasize the benefit of aligning 30D with international tracing and due diligence standards to enhance the competitiveness of American automakers and ensure their ability to compete on a global stage. Furthermore, many major US electric vehicle (EV) manufacturers also participate in EU markets and will have to comply with the EU's tracing and due diligence requirements. In other words, if Treasury and the IRS do not adopt the global approach, this rule will disadvantage domestic automakers already adapting their practices to comply with the EU's tracing and due diligence regulations. Instead, aligning the US and EU approaches will ease tax administration and create more regulatory certainty for automakers.

Importantly, requiring a digital battery identifier for EV batteries has broad support across sectors. A digital identifier linked to an electronic information exchange was endorsed by a majority (87%) of the participants of the California Lithium-ion Car Battery Recycling Advisory Group[19], which included manufacturers, recyclers, and civil society organizations. Digital identifiers are also required by California's Advanced Clean Cars II regulation[20], adopted in 12 other states.

The proposed rule also creates a "compliant-battery ledger" to track FEOC-compliant vehicles, based on information reported to the IRS. In concert with our above recommendations to implement a digital battery identifier (or "battery passport") linking beneficial ownership information to a given battery (and thereby a given vehicle), we suggest the establishment of a data repository or electronic information exchange system to house and make accessible the data linked to each battery. A sortable and regularly

---

[18] Please see https://tonko.house.gov/uploadedfiles/letter_to_department_of_the_treasury_from_congressman_tonko.pdf

[19] CA Lithium-ion Battery Recycling Advisory Group, 2022. https://calepa.ca.gov/lithium-ion-car-battery-recycling-advisory-group/

[20] CA Advanced Clean Cars II, https://ww2.arb.ca.gov/rulemaking/2022/advanced-clean-cars-ii

updated repository will allow for administrative efficiency for both the IRS and the qualified manufacturers. This repository can act as a master ledger across manufacturers and ensure a standardized data collection and reporting format.

The undersigned groups strongly recommend the IRS refer to the Global Battery Alliance (GBA), a consortium of over 150 businesses, governments, academics, industry organizations, and nongovernmental organizations that has championed the battery passport concept.[21] The GBA's recommendations for data collection and reporting align closely with the information needed to assess FEOC compliance for the 30D tax credit. GBA has launched three proof-of-concept pilots for the battery passport.[22]

Treasury's Rule Should Encourage Critical Mineral Recycling

The undersigned support the current proposal that a battery being non-FEOC compliant does not disqualify material recovered from the recycling of that battery from being FEOC compliant so long as the recycler is FEOC-compliant. That being said, we urge IRS to consider the perverse incentive to recycle batteries from non-FEOC compliant batteries before the end of their useful life that may arise from this, and work with the Department of Energy and other agencies to set up safeguards against premature recycling from entities seeking to take advantage of the 30D tax credit through recycling.

Voluntary Initiatives to Support Mineral Supply Chain Tracing and Due Diligence

Voluntary standards are no substitute for enforcing laws and regulations. Strong, enforceable laws and regulations remain the best means to ensure that companies respect the environment and human rights, particularly Indigenous and other frontline communities. Unfortunately, the laws and rules governing mining around the world remain inadequate, almost across the board. Until mineral supply chain tracing becomes standardized, voluntary standards using multi-stakeholder governance with independent, publicly available, third-party auditing, can assist.

The Initiative for Responsible Mining Assurance's standard has a governance structure with an equal voice across mineral supply chain stakeholders, including mining, processing, technology and automotive purchasers, investors, non-government organizations (NGOs), and Indigenous communities. IRMA audits are an additional tool, especially for evaluating due diligence within the upstream mineral extraction and processing supply chain links. IRMA is also currently developing a Chain-of-Custody standard to potentially provide tracing capabilities further downstream.

In September 2023, the Biden-Harris administration's Interagency Working Group on Mining Laws, Regulations, and Permitting delivered their *Recommendations to Improve Mining on Public Lands*.[23] Concerning standards, the IWG endorsed the adoption of IRMA to improve operator performance in mining, due diligence, and circularity.

---

[21] https://www.globalbattery.org/battery-passport/

[22] https://www.globalbattery.org/action-platforms-menu/pilot-test/

[23] Recommendations to improve mining on public lands. (n.d.). https://www.doi.gov/sites/doi.gov/files/mriwg-report-final-508.pdf

***"This report endorses the adoption of a number of components of voluntary standards—particularly ones from the IRMA standard** developed by a multi-stakeholder coalition comprised of the mining industry, end-users, environmental and human rights NGOs, labor organizations, and others—but believes that additional work is required to determine whether adherence to a single voluntary standard can be adequate and appropriate for U.S. government purposes. At a minimum, the IWG believes that third-party review of company or mine performance against selected standards is necessary for achieving public trust and allowing the Federal government to base decisions on the reported level of compliance. Ideally, the third-party assessments would be conducted in accordance with international guidelines and standards for conformity assessment, and the results of these third-party assessments would be made public.*[24]

In summary, Treasury has options for due diligence and tracing mechanisms tailored to the EV battery mineral supply chain to help ease administration and compliance of the 30D credit. For instance, the principle-based criteria from OECD's due diligence guidance can help furnish Treasury with beneficial ownership information tailored for the battery passport and ledger. This data would help Treasury reasonably determine the provenance of difficult-to-trace 30D materials, analogous to how FinCEN's BOI rule allows Treasury to reasonably determine the provenance of difficult-to-trace illicit financing. Voluntary standards with multistakeholder governance, like IRMA, can provide an additional tool to help trace and audit due diligence.

Facilitating EV adoption with credit eligibility information

Cost is one of the most significant factors in purchasing a vehicle, and the 30D credit impacts EV purchasing decisions by consumers in a meaningful manner.[25] Consumers require clear, accurate, and *advance* information about which vehicle models and which vehicles are eligible for credits to inform their purchasing decisions. Transactional friction must be minimized for the consumer who is already taking a big step in considering an EV. While the list of eligible EV models maintained on the fueleconomy.gov website serves as a valuable source of general information, consumers need much more detailed information. Such detail is necessary for the tax credit to fulfill its goals of affecting consumer behavior and also to protect consumers from abuse and fraud.

Two of the most important pieces of information a consumer needs access to are which vehicles are eligible for the credit and which dealers are registered to use the portal to allow the consumer to claim the credit. Consumers need to be able to access and independently verify this information without relying on dealers.

There should be a way for consumers to verify the eligibility of individual vehicles before contacting a dealer. Vehicle eligibility for 30D and 25E occurs at the individual vehicle level. The proposed rules addressing physically tracking FEOC-compliant critical minerals to specific battery cells in specific

[24] Ibid page 24. Per this IWG recommendation, the Department of Commerce's National Institute for Standards and Technology (NIST) is currently developing conformity assessments for critical minerals supply chains, in accordance with 15 CFR part 287. See standards.gov The IWG further suggested conditioning Federal procurement, Mineral Security Partnership financial, technical, and diplomatic support, Department of Defense financial support, and Department of Energy loan authority upon adherence to voluntary standards or best practices.

[25] *How policy actions can spur EV adoption in the United States*. RMI. (2023a, June 8). https://rmi.org/insight/how-inflation-reduction-act-will-affect-ev-adoption-in-the-united-states/

vehicles to determine if they are eligible, or, alternatively, allocating the allowable portion to particular vehicles if the critical minerals have been commingled, would likely increase the occurrences of some individual vehicles in a model line being eligible for the credit and some vehicles not being eligible. A potential car buyer could spend hours or days negotiating and attempting to buy an individual car they think is eligible only to determine at the last minute that it is not. Even worse, they could mistakenly believe it is eligible when it is not. The public should be able to check vehicle eligibility through a Vehicle Identification Number (VIN) search on a reliable and safe government site. We suggest that information should be available on fueleconomy.gov.

The other piece of information consumers need to be able to access and independently verify is which dealerships are registered on the portal and authorized to submit "time of sale" reports. Without the time of sale report, consumers would be unable to obtain a credit, whether through a transfer or on their own. Without being able to verify in advance which dealers have registered for the portal and can submit time of sale reports, consumers may negotiate for hours or days with dealers on cars they believe to be eligible for the credit, only to discover too late that the dealer they have been negotiating with cannot provide the required information over the online portal.

Treasury and the IRS should continuously update and incorporate battery ledger information provided by automakers into the list of compliant vehicles on the fueleconomy.gov website. Once the battery ledger recordkeeping system is in place, the eligibility of vehicles will vary dynamically by model, volume of production, and sales. The list of vehicles on the website should provide forward-looking information to disclose the compliance of future models by indicating when 30Dcompliant stock of a particular make and model is running low for the year.

In closing, we applaud Treasury and the IRS's work on these critical matters. The Inflation Reduction Act is intended to make EVs more affordable and accessible, support critical and rapid climate and air pollution reductions, strengthen domestic supply chains, and grow U.S. jobs. We stand ready to work with Treasury and the IRS to that vital end. Please don't hesitate to contact us for clarification or elaboration on any of the above.

Sincerely,

Alliance of Nurses for Healthy Environments
CALSTART
Center for Biological Diversity
Conservation Law Foundation
Dream.Org
Earthjustice
Earthworks
Electric Vehicle Association
GreenLatinos
Interfaith Power & Light
League of Conservation Voters (LCV)
National Consumer Law Center on behalf of its low-income clients
Plug In America

Public Citizen
RMI
SELC
Sierra Club
Union of Concerned Scientists