



November 4, 2022

Internal Revenue Service
United States Department of the Treasury
Submitted via the Federal eRulemaking Portal at www.regulations.gov

Re: IRS Notice 2022-0046 Request for Comments on Credits for Clean Vehicles

EDF respectfully urges the United States Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) to quickly implement the provisions of the clean vehicle and manufacturing tax incentives as set forth by Congress. The Inflation Reduction Act (“IRA”) was intended to support critical and rapid climate and air pollution reductions by strengthening domestic supply chains and growing U.S. jobs to produce zero-emitting vehicles and their components. In addition, a central purpose of the IRA is to drive down costs for consumers and the clean vehicle tax provisions are a key way to cut costs for the millions of Americans purchasing new and used clean vehicles. These clean vehicles will eliminate emissions, ensure healthier communities, and save drivers hard earned money, as they are less expensive than their high emitting counterparts. We have already seen the Act’s important provisions accelerating ZEV development and impacting auto manufacturer investments and plans,¹ and to ensure continued and accelerated progress it is important that the Act be implemented according to its plain terms and in furtherance of these critical objectives. Accordingly, we do not support exemptions, waivers, or delays of any of the provisions of 30D, which would be inconsistent with this intent and the Act’s central objectives.

EDF supports timely implementation of the IRA’s tax credits and offers the following recommendations on implementation and guidance. Below, we include specific recommendations in Section I on ways in

¹ Some manufacturers have indicated they are well positioned to meet these requirements. For instance, Steve Carlisle, president of General Motors Co's North American operations, citing the automaker’s four announced U.S. battery plants, noted, "We're pretty well positioned. All in, it's very beneficial to help promote (EV) adoption." Similarly, Stellantis said the automaker's purchasing teams are working to meet the new law's requirements and are making sure they are “covered all the way through 2030.” Hyundai has pulled forward its planned opening of a \$5.5 billion EV manufacturing plant in Georgia and indicated it is exploring pathways to meet domestic content requirements in its vehicles, and BMW just announced a \$1.7 billion investment to build EVs in South Carolina. See <https://www.electrive.com/2022/08/23/hyundai-to-accelerate-schedule-for-us-plant/>; <https://www.reuters.com/business/autos-transportation/automakers-need-more-time-meet-us-minerals-requirements-evs-execs-2022-10-19/>

which Treasury and IRS can protect and empower consumers. Section II addresses questions related to implementation in furtherance of the Act’s objectives to reduce climate and air pollution, strengthen domestic supply chains, and grow U.S. Jobs. Section III describes issues related to accelerating innovation.

I. Treasury and IRS Should Implement 30D/ 25E In A Manner That Protects and Empowers Consumers.

It is critical that the implementation of the clean vehicle credits protects and empowers consumers, including those in marginalized communities. To do this, we recommend that Treasury and IRS provide consumers with information that is readily accessible, clear, and consistent on whether a credit is available along with the battery and critical mineral content for each vehicle by VIN, for both new and used vehicles. We also encourage Treasury and IRS to ensure the credit is fully accessible to all consumers who qualify. To do this, Treasury and IRS should issue guidance around the definition of “MSRP” and the availability and applicability of the 30D credit to leases to ensure that consumers are getting the full and intended benefits of the provision. Making EVs more accessible and affordable will help speed the transition to a fully electric passenger vehicle fleet and help to put more EVs into communities in greatest need. To further this intent, we make the following recommendations related to specific questions Treasury and IRS have asked for comment on.

Question 1. Definitions: Section 30D(d)(1)(B) of the Code defines a “new clean vehicle,” in part, as a motor vehicle which is acquired for use or lease by the taxpayer and not for resale.

- a. *As used in this definition, what, if any, guidance is needed as to the meaning of the terms “acquired,” “use,” and “lease?”*

Prior to the passage of the IRA, if an eligible vehicle under 30D was leased, only the lessor was eligible for the credit and not the lessee. However, the IRA is intended to help consumers below certain income caps have access to electric vehicles. It is estimated that currently up to 80 percent of all EVs are leased.² In order to ensure that the large percent of consumers who lease EVs are eligible for a 30D credit, Treasury and IRS should define “acquired for use or lease” to include lessees who acquire an EV through a lease. In order to ensure that the taxpayer whose income is being used to qualify is the actual recipient of the benefit credit, the amount of the credit should go to the consumer, or if the credit is transferred to another entity such as the lessor, the amount should be disclosed as a rebate and the entity actually receiving the credit should be responsible for any excess payment if there is a lack of eligibility for the credit.

In addition, we note that Treasury and IRS issued its RFI for the 45W Commercial Clean Vehicle credit on November 3rd. We encourage Treasury and IRS to ensure through guidance that it is clear that only the 30D credit applies to leases arranged for personal use and that companies may not use the 45W credits for vehicles that they then lease back to consumers, which otherwise could allow companies to avoid 30D content requirements and may prevent consumers from realizing the benefit of the credit. Accordingly, Treasury and IRS should clarify under both 30D and 45W guidance that all leases for personal use are

² See, <https://www.motortrend.com/news/lease-is-the-word-for-evs/>

governed by 30D. We also recommend Treasury and IRS ensure through guidance that the allowance of credit under 30D precludes the allowance of a credit under 45W for the same vehicle.

Question 6. Recordkeeping and Reporting.

- a. *In addition to VIN numbers, what additional information should a qualified manufacturer provide to the Secretary to be considered a qualified manufacturer with respect to a particular vehicle, per § 30D(d)(3)?***

EDF recommends Treasury and IRS develop a digital clean vehicle VIN tool to provide timely information to dealers and consumers regarding the tax credit status of a vehicle. This online tool should clearly indicate if a vehicle will or will not be credit-eligible if sold to a qualifying taxpayer, for a qualifying price, by a qualifying dealer and if and when that credit will expire. The tool should verify that a vehicle in question meets all requirements to qualify for a tax credit, how much that credit is worth, and that the tax credit has not previously been claimed by another taxpayer.

This information will need to be provided to Treasury and IRS by the manufacturer. Manufacturers will be the only entities that know whether a vehicle meets the credit requirements for critical minerals, battery components, foreign entity of concern, final assembly and others. Providing this information will empower both dealers and consumers with clear and actionable information, further incentivizing sales. EDF urges Treasury and IRS to provide the same information for both new clean vehicles and previously-owned clean vehicles.

In addition to ensuring this information is part of a VIN tracking tool, we recommend that Treasury and IRS coordinate with agencies, including the National Highway Traffic Safety Administration, already responsible for vehicle labeling to ensure information related to compliance with the 30D credit is also included on vehicle labels, including the percentage of these components and materials that satisfy relevant IRA requirements and how those percentages compare to other similar vehicles. Providing this information would complement other presently available information allowing consumers to compare attributes like GHG performance and fuel economy across vehicles and empower consumers to choose vehicles based on their content.

Question 10. Vehicle Classifications

- a. *What, if any, guidance is needed to define how vehicles are classified as vans, sport utility vehicles, pickup trucks, or other designations of vehicles for purposes of the manufacturer's suggested retail price limitation in § 30D(f)(11)?***

EDF recommends Treasury and IRS offer guidance on vehicle classification that will ensure that vehicles are accurately classified as cars, and not misclassified as light trucks, sports utility vehicles or pickup trucks as this would undermine affordability. We recommend Treasury and IRS use the same definitions for size and class that the Environmental Protection Agency uses to avoid any confusion by manufacturers. Automakers are already familiar with these classifications for purposes of meeting emissions standards under the Clean Air Act.

- c. *Is guidance needed to clarify how the manufacturer's suggested retail price is calculated?***

We would recommend that Treasury and IRS provide additional guidance related to calculating the manufacturer's suggested retail price (MSRP) limits. Under 30D, we recommend that MSRP be representative of the total transaction amount or total price of the EV that the consumer pays, including non-discretionary dealer fees and add-ons. Treasury and IRS should disincentivize dealers or other sellers from inflating the total price of a vehicle after it meets the requirements for a credit. This will help protect consumers against the recently-documented practice of dealers marking up EV prices well above MSRP. Absent an approach along these lines, dealers could effectively capture the benefit of the credit for vehicles at or below the price caps, and in the extreme case, could undermine those caps entirely. Guidance will help ensure that the intent of the law is upheld to provide affordable, equitable EV options for purchase by consumers. We encourage Treasury and IRS to offer the same guidance for previously-owned clean vehicles under 25E (see below).

Question 13. *Please provide comments on any other terms that may require definition or additional guidance.*

In addition to ensuring consumers have access to information on whether vehicles qualify for the credit, and the content of batteries and critical minerals, we recommend Treasury and IRS issue guidance to help ensure this information is stable and consistent over time. In particular, we would encourage Treasury and IRS to issue guidance defining "Placed in Service" in a manner that is keyed to the date the vehicle leaves the factory and not the date the consumer takes possession of the vehicle. Adopting a definition along these lines would create certainty for both consumers and manufacturers and guard against circumstances where a vehicle is produced and available for sale during one year, when it would meet the applicable content requirements, and actually sold in a subsequent year when it may not. In other words, tax credit qualifying vehicles could become ineligible while the vehicle is on the lot or in transit to consumers. This situation has the potential to lead to significant uncertainty, confusion and frustration for both consumers and dealers and undermines the law's intent to help incentivize deployment of affordable EVs. We recommend Treasury and IRS interpret the statute such that once a VIN has been registered by a manufacturer as eligible for a certain level of tax credit, that eligibility does not expire before the vehicle can be sold and transferred to the purchaser.

25E

Question 1. *What, if any, guidance is needed to address how a taxpayer can verify that a vehicle qualifies as a "previously-owned clean vehicle" as defined in § 25E(c)(1)?*

The clean vehicle credit under 25E has the potential to help large numbers of consumers access affordable EVs by supporting a secondary market for clean vehicles and through expanding the access that many low- and moderate-income taxpayers have to the consumer savings that come from EV ownership.

The IRA defines a previously owned clean vehicle under 25E to include, "the first transfer since the date of enactment of this section to a qualified buyer other than the person with whom the original use of such vehicle commenced." In other words, Congress intended that the credits under section 25E apply to a previously-owned clean vehicle only one time to one qualified buyer. However, the IRA does not make clear whether the credit will expire after the second sale, if the second buyer does not qualify, or if the credit could carry forward to a future qualifying consumer. We encourage Treasury and IRS to offer

guidance that the requirements under 25E be implemented in a manner such that a clean vehicle that is resold for an amount greater than \$25,000, or to a taxpayer not meeting the income requirements, could still be eligible for the credit in a subsequent sale.

For instance, if a taxpayer buys an otherwise qualifying used EV for \$30,000, subsequently trades the vehicle into a dealer, and a second taxpayer meeting the income requirements purchases that vehicle for \$24,000, that should still be a qualifying sale. Otherwise, a used EV that is resold in a non-qualifying transaction would never be eligible for the credit, effectively reducing the pool of credit-qualifying used EVs available for purchase by low- and moderate-income taxpayers.

EDF also recommends that the status of a credit be available to dealers and consumers through an online VIN tool (described above). Once a new clean vehicle has been determined to meet the manufacturing requirements under 30D, and that information provided through the online VIN tool, Treasury and IRS should be able to identify that VIN is then eligible for a 25E credit, if the buyer meets eligibility requirements. Again, the VIN tool would benefit both dealers and consumers by providing timely information on credit availability.

Question 4. *Please provide comments on any other terms that may require definition or additional guidance.*

The statute defines qualified sale but does not define sale price for the purposes of 25E.

“(2) QUALIFIED SALE.—The term ‘qualified sale’ means a sale of a motor vehicle—

“(A) by a dealer (as defined in section 30D(g)(8)),

“(B) for a sale price which does not exceed \$25,000, and

“(C) which is the first transfer since the date of the enactment of this section to a qualified buyer other than the person with whom the original use of such vehicle commenced.

Similar to our recommendation on the MSRP for new clean vehicles (discussed above) we believe Treasury and IRS should define “sale price” of previously-owned clean vehicles as the total amount paid by the consumer to the dealer in the vehicle purchase transaction, excluding any amounts payable to a government entity. Again, Treasury and IRS should disincentivize dealers from increasing the total price of a vehicle after it meets the requirements for a credit. This will provide greater transparency to consumers and benefit low-income consumers by ensuring greater access to affordable EVs.

II. Treasury and IRS Should Implement 30D/25E In A Manner That Strengthens Domestic Supply Chains and Grows Jobs.

Congress was clear in setting forth requirements for batteries and critical minerals and those requirements should be applied rigorously to advance the legislation’s critical intent to drive swift deployment of zero-emitting vehicles and support manufacturers’ investments in securing and strengthening EV supply chains and growing jobs. Accordingly, we do not support waivers or delays of any of the provisions of 30D, which would be inconsistent with this intent and the Act’s central objectives.

We recognize there are ambiguities in the statute and encourage Treasury and IRS to provide clarity that creates strong incentives for onshoring supply chains and offers manufacturers multiple pathways to do so consistent with the plain terms of the legislation and its intent. At the same time, we would encourage

Treasury and IRS to guard against any interpretations that would allow satisfaction of the requirements without actually achieving the climate, job growth, and supply chain outcomes the legislation aims to secure. To further this intent we make the following recommendations related to specific questions Treasury and IRS has asked for comment on.

Question 2. Critical Minerals

c. What factors and definitions should be considered to determine (i) the total value of the critical minerals contained in a vehicle’s battery, and (ii) the percentage of that total value attributable to critical minerals (I) extracted or processed in the United States or a country with which the United States has a free trade agreement in effect, or (II) recycled in North America?

Treasury and IRS should offer clarification through guidance that confirms the critical mineral requirements can be satisfied either through 1) extraction, 2) processing, or 3) recycling, or some combination of all three. Such guidance is consistent with and reinforces the plain language of the statute and would create multiple pathways for manufacturers to strengthen supply chains and grow jobs.

Question 2 (c) Critical Minerals and Question (3)(c) Battery Components and 45X Question 10 ***Please provide comments on any other topics under § 45X that may require guidance***

Additionally, Treasury and IRS should implement 45X credits in a manner that is consistent with and supports the sourcing requirements in 30D, and also helps to inform the “value” of these components and minerals for purposes of assessing compliance with 30D. For example, Treasury and IRS will have a wealth of information on the costs of critical mineral projects and battery component manufacturing from companies seeking 45X credits and Treasury and IRS should leverage this information in determining the percentage “value” of these components for purposes of determining whether a vehicle meets applicable percentage content requirements under 30D.

Question 5. Foreign Entity of Concern: Section 30D(d)(7) provides that some vehicles are excluded from the availability of the credit, including when any of the applicable critical minerals contained in the battery were extracted, processed, or recycled by a foreign entity of concern (defined in 42 U.S.C. 18741(a)(5)), or if any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern.

a. Is guidance needed to clarify the definition of “foreign entity of concern”?

We recommend Treasury and IRS provide guidance clarifying the definition of “foreign entity of concern” in a manner that provides certainty for consumers and manufacturers and that is consistent with the language and intent of the legislation. In particular, the text of the legislation provides that vehicles would not qualify for the credit if certain critical mineral-related and battery-related activities were undertaken “by a foreign entity of concern.” In clarifying these provisions, we encourage Treasury and IRS to consider and provide guidance related to both 1) geography and 2) corporate ownership and structure as either of these can independently have an important bearing on control (either physical or operational). The intent of the IRA is to accelerate adoption of zero-emitting vehicles in a way that strengthens the supply chain for EVs and their components and providing clear and rigorous guidance defining a “foreign entity of concern” is critical to achieving this outcome.

III. Treasury and IRS Should Implement 30D / 25E / 45X In A Manner That Recognizes and Accelerates Innovation

We also recommend that Treasury and IRS consider how its interpretations of the 30D, 25E, and 45X credits can help to spur innovation and incentivize improved performance and efficiency in clean vehicle manufacturing, battery manufacturing, and the sourcing of critical materials. It is critically important that these investments are rapidly deployed, and resources are spent in a manner that incentivizes innovation and supports manufacturing processes that meet the highest environmental safeguards.

Question 2 (c) Critical Minerals and Question (3)(c) Battery Components

Under 30D, Treasury and IRS have sought comment on what factors and definitions should be considered in defining “value” for purposes of determining whether vehicles meet percentage content requirements for batteries and critical minerals. Many of these questions are appropriately directed at determining the relevant battery and mineral percentages in current vehicles. In defining “value,” we also encourage Treasury and IRS to consider the likelihood that future innovations reduce or eliminate the need for certain critical minerals and to define “value” in a manner that accounts for if substituted materials are produced and sourced in a manner consonant with the IRA. Treasury and IRS should consider how the term “value” might be defined in a manner that accommodates and incentivizes further technological innovation, increased performance and efficiency, and minimization of environmental impacts.

EDF respectfully requests that IRS and Treasury move quickly to issue clear guidance and rules consistent with the recommendations above.

Thank you for your consideration of these comments,

Andy Su
Attorney, Clean Transportation
asu@edf.org
303-447-7236

Peter Zalzal
Senior Counsel and Associate Vice President for Clean Air Strategies