



American Critical Minerals Association

SUBMITTED ELECTRONICALLY

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203
P.O. Box 5203, Ben Franklin Station
Washington, D.C. 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Mr. William M. Paul
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Re: Comments in Response to the Notice of Proposed Rulemaking - Section 30D Excluded Entities (IRS and REG-118492-232022-58)

Dear Ms. Batchelder and Mr. Paul:

The American Critical Minerals Association (ACMA) respectfully submits the following comments in response to the Notice of Proposed Rulemaking (Proposed Rule) regarding the excluded entity provisions concerning the clean vehicle credit as amended by the Inflation Reduction Act of 2022 (IRS and REG-118492-232022-58).

ACMA is an industry association committed to advancing the growth of a domestic supply chain for critical minerals, with a particular focus on processing and recycling. ACMA and its members advocate for federal policies that will advance a sustainable and independent future for the American critical minerals industry. ACMA serves as a unified voice to advance U.S.-based critical mineral processing and recycling capacity for the benefit of multiple sectors, including but not limited to, the defense, transportation, aerospace, energy, and manufacturing sectors. ACMA supports common sense federal policies that will ensure the nation's economy and national security are no longer reliant on adverse nations for the supply, processing, and recycling of these strategic materials.

As we understand it, the Proposed Rule and the Department of Energy's Interpretative Rule (RIN 1901-ZA02) address the definition of "foreign entity of concern" in a similar manner, reflecting the fact that Section 30D(d)(7) of the Internal Revenue Code, as modified by Section 13401 of the Inflation Reduction Act of 2022 (PL 117-169), defines the term through reference to Section 40207 of the Infrastructure Investment and Jobs Act (PL 117-58). These two provisions -- the Battery Manufacturing and Recycling Grants as established by the Infrastructure Investment and Jobs Act and administered by the Department of Energy, and the Section 30D clean vehicle credit, as amended by the Inflation Reduction Act -- represent key goals to advance the future of our manufacturing sector: (a) the electrification of the US transportation sector, and (b) US investment in independent sourcing, processing, and recycling of critical minerals.

ACMA supports a policy and regulatory approach that strategically and methodically advances United States interests, mitigating industry reliance on China's currently dominant critical minerals supply and, therefore, appreciates the coordinated approach by the Departments of the Treasury and Energy to ensuring that the critically important "foreign entity of concern" is uniform and consistent in application. But ACMA remains concerned that the lack of robust available options for US manufacturers outside of China will create opportunities for manipulation by foreign entities of concern, therefore, final guidance must strike a careful and clear balance that accomplishes the following.

1. Provides certainty for investors in the capacity build-out of US production, processing, and recycling of critical minerals in the near and mid-term;

2. Ensures efficient and timely allocation of credits that will rapidly enable the development, deployment, and scaling of processing, refining, and recycling capacity in the United States;
3. Takes meaningful steps to secure and diversify the US battery manufacturing supply chain to reduce reliance on China as an exporter of raw or processed critical minerals while recognizing the near-term realities of the existing US critical mineral production capacity and supply constraints;
4. Ensures that final guidance allows for the unique needs of certain products, particularly where those materials are operating in specialty markets (not commodity markets);¹
5. Meaningfully incentivize US investment in the scale-up of the domestic production, processing, and recycling of critical minerals while recognizing the realities of competing in a market where unpredictable export restrictions are a dominant factor in price disruption for US manufacturers and, therefore, certainty of investment; and
6. Ensures vigilant oversight to prevent FEOCs from benefitting from federal tax incentives through licensing agreements, and by other means, with US manufacturers.

ACMA thanks you for your consideration and looks forward to working in a collaborative manner to ensure successful implementation of the proposed rule implementing Section 30D(d)(7) of the Internal Revenue Code. Please do not hesitate to reach out with any questions.

Sincerely,



Chris Sarley
Vice President
The American Critical Minerals Association

¹ As an example, as Treasury considers “whether other applicable critical minerals (and associated constituent materials) should be designated as identified non-traceable battery materials,” it should determine whether battery-grade coke should be excluded from the non-traceable battery materials list. Synthetic graphite electrode active materials *and* their petroleum coke precursors are unique. Phillips66, a member of the American Critical Minerals Association, argues that battery coke is qualified based on a multi-year process of graphitization and cell manufacturing - processes tailored to a specific EV model. Battery manufacturers attempt to certify multiple sources of synthetic graphite and coke to better ensure the integrity of the product – not because such materials are produced from a non-traceable supply chain.