

[4830-01-p]



This document is scheduled to be published in the Federal Register on 12/04/2023 and available online at <https://federalregister.gov/d/2023-26513>, and on <https://govinfo.gov>

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

#### [REG-118492-23]

#### RIN 1545-BQ99

### Section 30D Excluded Entities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that would provide guidance regarding the excluded entity provisions with respect to the clean vehicle credit as amended by the Inflation Reduction Act of 2022. The proposed regulations would also provide clarity on definitions with respect to new clean vehicles eligible for the clean vehicle credit. The proposed regulations would affect qualified manufacturers of new clean vehicles and taxpayers who purchase and place in service new clean vehicles.

**DATES:** Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-118492-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any

comments submitted to the IRS's public docket. Send paper submissions to:  
CC:PA:01:PR (REG-118492-23), Room 5203, Internal Revenue Service, P.O. Box  
7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202) 317-6901 (not a toll-free number) or send an email to *publichearings@irs.gov* (preferred).

**SUPPLEMENTARY INFORMATION:**

**Background**

**I. Overview**

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended section 30D of the Internal Revenue Code (Code). Section 30D provides a credit (section 30D credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to each new clean vehicle that a taxpayer purchases and places in service. The section 30D credit is determined and allowable with respect to the taxable year in which the taxpayer places the new clean vehicle in service.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 30D. These proposed regulations supplement a notice of proposed rulemaking (REG-120080-22) published in the **Federal Register** (88 FR 23370) on April 17, 2023 (April 2023 proposed regulations) that contains initial proposed regulations under section 30D as amended by the IRA, as well as a notice of proposed rulemaking (REG-113064-23) published in the **Federal Register** (88 FR 70310) on October 10, 2023 (October 2023 proposed regulations) that contains initial and additional proposed regulations under sections 25E, 30D, and 6213 of the Code. This

notice of proposed rulemaking does not address written comments that were submitted in response to the April 2023 proposed regulations or the October 2023 proposed regulations. Any comments received in response to this notice of proposed rulemaking will be addressed in the Treasury Decision adopting these regulations as final regulations.

## **II. Section 30D**

Section 30D was enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of the IRA. In general, the amendments made by section 13401 of the IRA to section 30D apply to vehicles placed in service after December 31, 2022, except as provided in section 13401(k)(2) through (5) of the IRA.

Effective beginning on April 18, 2023, section 30D(b) provides a maximum credit of \$7,500 per new clean vehicle, consisting of \$3,750 if certain critical minerals requirements are met and \$3,750 if certain battery components requirements are met. These requirements are described in section 30D(e)(1) and (2), respectively, and the preamble to the April 2023 proposed regulations.

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, under section 30D(c)(2), the section 30D credit is treated as a nonrefundable personal credit allowable under subpart A of part IV of subchapter A of chapter 1. However, under section 30D(c)(1), so much of the credit that would be allowed under section 30D(a) that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year general business credit under section 38(b) and not allowed

under section 30D(a). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

The IRA amended section 30D(d) regarding the definition of a new clean vehicle. Section 30D(d)(1) defines “new clean vehicle” as a motor vehicle that satisfies the following eight requirements set forth in section 30D(d)(1)(A) through (H) of the Code:

- the original use of the motor vehicle must commence with the taxpayer;
- the motor vehicle must be acquired for use or lease by the taxpayer and not for resale;
- the motor vehicle must be made by a qualified manufacturer;
- the motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act;
- the motor vehicle must have a gross vehicle weight rating of less than 14,000 pounds;
- the motor vehicle must be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 7 kilowatt hours, and is capable of being recharged from an external source of electricity;
- the final assembly of the motor vehicle must occur within North America; and
- the person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary of the Treasury or her delegate (Secretary) containing certain specifically enumerated items.

Section 30D(d)(3) defines “qualified manufacturer” as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act

(42 U.S.C. 7521 *et seq.*) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

Section 30D(d)(7) excludes from the definition of “new clean vehicle” any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern (as so defined).

No section 30D credit is allowed with respect to a vehicle placed in service after December 31, 2032.

### **III. Prior Guidance**

#### **A. Notice 2022-46**

On October 5, 2022, the Treasury Department and the IRS published Notice 2022-46, 2022-43 I.R.B. 302. The notice requested general comments on issues arising under sections 25E and 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals and battery components; (3) foreign entities of concern; (4) recordkeeping and reporting; (5) eligible entities; (6) elections to transfer and advance payments; and (7) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters' interest and engagement on these issues. These comments have

been carefully considered in the preparation of the proposed regulations.

#### **B. Revenue Procedure 2022-42**

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-42, 2022-52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W, and to report certain information regarding vehicles produced by such manufacturers that may be eligible for credits under these sections. In addition, Revenue Procedure 2022-42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

#### **C. April 2023 Proposed Regulations**

On April 17, 2023, the Treasury Department and the IRS published the April 2023 proposed regulations in the **Federal Register**, which provides proposed definitions for certain terms related to section 30D; proposed rules regarding personal and business use and other special rules; and additional proposed rules related to the critical mineral and battery component requirements.

#### **D. Revenue Procedure 2023-33**

On October 6, 2023, the Treasury Department and the IRS released Revenue Procedure 2023-33, which was published on October 23, 2023, in Internal Revenue Bulletin 2023-43, to provide guidance for taxpayers electing to transfer credits under section 25E or 30D and for eligible entities receiving advance payments of credits under sections 30D and 25E. This revenue procedure sets forth the procedures under sections 30D(g) and 25E(f) for the transfer of the previously-owned clean vehicle credit and the new clean vehicle credit from the taxpayer to an eligible entity, including the procedures for dealer registration with the IRS, the procedures for the revocation and suspension of that registration, and the establishment of an advance payment program

to eligible entities. In addition, this revenue procedure superseded sections 5.01 and 6.03 of Revenue Procedure 2022-42, providing new information for the time and manner of submission of seller reports, respectively. This revenue procedure also superseded sections 6.01 and 6.02 of Revenue Procedure 2022-42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

#### **E. October 2023 Proposed Regulations**

On October 10, 2023, the Treasury Department and the IRS published the October 2023 proposed regulations in the **Federal Register**, which provide guidance for elections to transfer clean vehicle credits under sections 30D(g) and 25E(f). The proposed regulations provide guidance for taxpayers intending to transfer the previously-owned clean vehicle credit and the new clean vehicle credit to dealers who are entities eligible to receive advance payments of either credit. The proposed regulations also provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or clean vehicle credits. The proposed regulations also provide guidance for recapturing the credit under sections 30D and 25E. Finally, proposed §1.6213-2 defines the term “omission of a correct vehicle identification number” (VIN) for purposes of section 6213, under which, in part, the IRS is authorized to make a summary assessment when there has been an omission of a correct VIN on a taxpayer's return when claiming or electing to transfer a credit under section 25E or 30D.

#### **IV. Department of Energy Guidance**

Concurrently with the release of these proposed regulations, the Department of Energy (DOE) is releasing proposed guidance in the **Federal Register**, which provides proposed interpretations of certain terms used in the definition of “foreign entity of

concern” (FEOC) set forth in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (IIJA), 42 U.S.C. 18741(a)(5), and as cross-referenced in section 30D(d)(7). Section 40207(a)(5) of the IIJA defines FEOC to include foreign entities covered by specific designations, inclusions, and allegations by Federal agencies as described in section 40207(a)(5)(A), (B), and (D), as well as foreign entities “owned by, controlled by, or subject to the jurisdiction or direction of a government” of a covered nation under section 40207(a)(5)(C). Covered nations are defined in 10 U.S.C. 4872(d)(2) as the People’s Republic of China, the Russian Federation, the Democratic People’s Republic of Korea, and the Islamic Republic of Iran as of the date of publication of these proposed regulations. Finally, section 40207(a)(5)(E) of the IIJA provides that a FEOC includes a foreign entity that the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, determines is engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

The DOE proposed guidance provides an interpretation of section 40207(a)(5)(C) of the IIJA. In particular, the DOE proposed guidance provides definitions for the terms “government of a foreign country,” “foreign entity,” “subject to the jurisdiction,” and “owned by, controlled by, or subject to the direction of.”. In general, an entity incorporated in, headquartered in, or performing the relevant activities in a covered nation would be classified as a FEOC. For purposes of these rules, an entity would be “owned by, controlled by, or subject to the direction” of another entity if 25 percent or more of the entity’s board seats, voting rights, or equity interest are cumulatively held by such other entity. In addition, licensing agreements or other contractual agreements may also create control. Finally, “government of a foreign country” would be defined to include subnational governments and certain current or former senior foreign political figures.



## **Explanation of Provisions**

### **I. Section 1.30D-2 Definitions**

Proposed §1.30D-2(a) is revised to clarify that all definitions in the section apply for purposes of section 30D and the section 30D regulations, including any guidance thereunder. Proposed §1.30D-2(f) is revised to include in the definition of “section 30D regulations” the provisions of proposed §1.30D-5 as set forth in the October 2023 proposed regulations and proposed §1.30D-6 as set forth in these proposed regulations. Proposed §1.30D-2(k) would provide, consistent with section 30D(d)(3), that “manufacturer” means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements provided in section 30D(d)(3) must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards set by EPA under the Clean Air Act (42 U.S.C. 7521 et seq.) for the subject vehicle.

Proposed §1.30D-2(l) would provide that a qualified manufacturer means a manufacturer that meets the requirements described in section 30D(d)(3). A qualified manufacturer would not include any manufacturer whose qualified manufacturer status has been terminated by the IRS. The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D and the regulations and guidance thereunder, including with respect to the periodic written reports described in section 30D(d)(3) and proposed §1.30D-2(m) and any attestations, documentation, or certifications described in proposed §1.30D-3(e) and proposed §1.30D-6(d), at the time and in the manner provided in the Internal Revenue Bulletin.

Proposed §1.30D-2(m) would provide that a “new clean vehicle” means a vehicle that meets the requirements described in section 30D(d). A new clean vehicle would not include any vehicle for which the qualified manufacturer does any of the following: (1) fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the VIN of such vehicle and certifying compliance with the requirements of section 30D(d); (2) provides incorrect information with respect to the periodic written report for such vehicle; (3) fails to update its periodic written report in the event of a material change with respect to such vehicle; or, (4) for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer fails to meet the requirements of proposed §1.30D-6(d). For purposes of section 30D(d)(6), the term “new clean vehicle” includes any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) which meets the requirements under section 30D(d)(1)(G) and (H). The Treasury Department and the IRS request comment on whether, in the interest of sound tax administration and to provide additional transparency to taxpayers, it would be feasible and helpful for tax administration if qualified manufacturers were to encode eligibility for section 30D through a particular calendar year into the VIN using an alphanumeric combination.

## **II. Section 1.30D-3 Provisions**

Proposed §1.30D-3(d) would provide rules regarding excluded entities by reference to proposed §1.30D-6.

Proposed §1.30D-3(e) would provide for an upfront review of conformance with the critical minerals requirement and battery components requirement. Specifically, proposed §1.30D-3(e) would provide that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with

analytical assistance from the DOE, will review the attestations, certifications, and documentations.

### **III. Excluded entities**

#### **A. Definitions**

The proposed regulations would provide definitions for terms relevant to the excluded entity provision. To the extent many of these terms were defined in the April 2023 proposed regulations, these proposed regulations would provide the same definitions for such terms as is provided in proposed §1.30D-3(c). The Treasury Department and the IRS intend that terms relevant to both the critical mineral and battery component requirements described in proposed §1.30D-3 and the excluded entity restrictions described in these proposed regulations are interpreted consistently.

##### **1. Applicable critical mineral**

Proposed §1.30D-6(a)(1) would define “applicable critical mineral” as an applicable critical mineral as defined in section 45X(c)(6). Guidance regarding the definition of applicable critical minerals, including the applicable critical minerals that are used in electric vehicle batteries to facilitate the electrochemical processes necessary for energy storage, would be provided in forthcoming proposed regulations under section 45X.

##### **2. Assembly**

Proposed §1.30D-6(a)(2) would define “assembly” as, with respect to battery components, the process of combining battery components into battery cells and battery modules.

##### **3. Battery**

Proposed §1.30D-6(a)(3) would define “battery” as, for purposes of a new clean vehicle, a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The

term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

#### **4. Battery cell**

Proposed §1.30D-6(a)(4) would define “battery cell” as a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

#### **5. Battery cell production facility**

Proposed §1.30D-6(a)(5) would define “battery cell production facility” as a facility in which battery cells are manufactured or assembled.

#### **6. Battery component**

Proposed §1.30D-6(a)(6) would define “battery component” as a component that forms part of a battery and that is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Proposed §1.30D-6(a)(6) would specify that battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

#### **7. Compliant-battery ledger**

Proposed §1.30D-6(a)(7) would define “compliant-battery ledger,” for a qualified manufacturer for a calendar year, as a ledger that tracks the number of available FEOC-compliant batteries for such calendar year. A compliant-battery ledger is established under the rules of proposed §1.30D-6(d), described in part III.D. of this Explanation of

Provisions.

## **8. Constituent materials**

Proposed §1.30D-6(a)(8) would define “constituent materials” as materials that contain applicable critical minerals and that are employed directly in the manufacturing of battery components. Proposed §1.30D-6(a)(8) would specify that constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

## **9. Extraction**

Proposed §1.30D-6(a)(9) would define “extraction” to mean the activities performed to harvest minerals or natural resources from the ground or a body of water. Extraction would include, but would not be limited to, operating equipment to harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction would conclude when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction would include the physical processes involved in refining. Extraction would not include the chemical and thermal processes involved in refining.

## **10. Foreign entity of concern**

Proposed §1.30D-6(a)(10) would define “foreign entity of concern (FEOC)” to have the same meaning as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) and guidance promulgated thereunder by the DOE.

## **11. FEOC-compliant**

Proposed §1.30D-6(a)(11) would define “FEOC-compliant” to mean in

compliance with the applicable excluded entity requirement under section 30D(d)(7). In particular, the proposed regulation would provide definitions of FEOC-compliant with respect to a battery component (other than a battery cell), applicable critical mineral, battery cell, or battery. This definition would treat battery cells separately from other battery components because battery cells contain applicable critical minerals (and associated constituent materials) as well as other battery components. Thus, the applicable rules under section 30D(d)(7) must be satisfied for such critical minerals and such components contained in the battery cell as well as the battery cell itself. A battery component (other than a battery cell), with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it is not manufactured or assembled by a FEOC. An applicable critical mineral, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not extracted, processed, or recycled by a FEOC. As described in part III.C.4. of this Explanation of Provisions, in general, the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6). A battery cell, with respect to a new clean vehicle placed in service after December 31, 2023, and before January 1, 2025, is FEOC compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components. A battery cell, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components and applicable critical minerals. A battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells.

## **12. Manufacturing**

Proposed §1.30D-6(a)(12) would define “manufacturing” to mean, with respect to a battery component, the industrial and chemical steps taken to produce a battery component.

## **13. Non-traceable battery materials**

Proposed §1.30D-6(a)(13)(i) would define “non-traceable battery materials” to mean specifically identified low-value battery materials that may originate from multiple sources and are often commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. Proposed §1.30D-6(a)(13)(ii), which is reserved, would contain the specific list of identified non-traceable battery materials. Low-value battery materials are those that, like the exemplar materials listed below, have low value compared to the total value of the battery. Where battery materials make up only a very small percentage of the value of the battery as a whole, many industry participants, prior to the passage of the IRA, had little reason to trace the source of these materials. As a result, unlike with higher value battery materials, tracing the source of these low value materials is not immediately feasible, which makes it in turn not feasible for qualified manufacturers to provide the necessary assurance to the IRS that their materials are FEOC-compliant.

The Treasury Department and the IRS, after extensive consultation with the Department of Energy, are considering whether the following applicable critical minerals (and associated constituent materials) may be designated as identified non-traceable battery materials: applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives. These exemplar materials each account for less than two percent of the value of applicable critical minerals in the battery, and the Treasury Department and the IRS understand that industry tracing of these particular applicable

critical mineral production processes is uncommon and third-party standards for doing so are underdeveloped. Other materials for inclusion could include, for example, other low-value electrode active materials that are also subject to the traceability difficulties described in part III.A.13. of this Explanation of Provisions. As discussed further below, the Treasury Department and the IRS request comment on: (1) whether other applicable critical minerals (and associated constituent materials) should be designated as identified non-traceable battery materials for the same reasons, and (2) whether an approach other than the proposed list of non-traceable battery materials would better address the traceability issues discussed here. As discussed in part III.B.2. of this Explanation of Provisions, some stakeholders have suggested that the Treasury Department and the IRS adopt a de minimis exception to the excluded entity restrictions based on value, weight, mass, or other considerations. In response to these comments, the Treasury Department and the IRS have proposed a transition rule that would temporarily exclude a specific list of identified non-traceable battery materials from the due diligence requirements of the qualified manufacturers.

The Treasury Department and the IRS request comments on the best approach to addressing low-value battery materials for which tracing to their source is not immediately feasible. The Treasury Department and the IRS request comment on whether the proposed approach is a sound method of accounting for non-traceable battery materials, and whether other criteria should be used to distinguish between traceable and non-traceable battery materials. In particular, the Treasury Department and the IRS request comments that explain whether and why certain battery materials are prohibitively difficult to trace at this time given current supply chains and current broadly available tools and practices for supply-chain tracing in the battery sector, and that explain how the supply chain may be limited by any such difficulty. The Treasury Department and the IRS also request comments explaining how the state of supply



chains and tools and practices for supply-chain tracing are expected to evolve in the coming months and years for battery materials that are prohibitively difficult to trace at present. The Treasury Department and the IRS further request comments explaining the state of recordkeeping that is currently used in the industry to trace supply chains, what kind of recordkeeping requirements would facilitate better tracing of supply chains in the coming months and years, how to encourage manufacturers to adopt appropriate tracing systems as soon as practicable, and how these rules incentivize further shifting of supply chains in a manner that will strengthen our energy security, national security, and domestic manufacturing.

In addition, the Treasury Department and the IRS request comment on whether the listed materials are appropriately characterized as non-traceable battery materials. The Treasury Department and the IRS further request comment on whether any other applicable critical minerals, including associated constituent materials, would also be appropriately characterized as non-traceable battery materials because they meet the required criteria. The Treasury Department and the IRS further request comment on whether other criteria should be applied to determine what qualifies as non-traceable battery materials, and what applicable critical minerals, including associated constituent materials, would be appropriately characterized as such materials under the suggested criteria. Finally, the Treasury Department and the IRS seek comment describing alternative approaches to addressing the challenges posed by low-value battery materials that are not currently feasible to trace to their origins.

#### **14. Processing**

Proposed §1.30D-6(a)(14) would define “processing” to mean the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes

involved in refining. Processing does not include the physical processes involved in refining.

## **15. Recycling**

Proposed §1.30D-6(a)(15) would define “recycling” to mean the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

### **B. Due diligence and transition rule for non-traceable battery materials**

#### **1. Due diligence**

Proposed §1.30D-6(b)(1) would provide that the qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. This due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enable the qualified manufacturer to know with reasonable certainty the provenance of applicable critical minerals, constituent materials, and battery components. Such tracing standards may include international battery passport certifications and enhanced battery material and component tracking and labeling. Proposed §1.30D-6(b)(1) would specify that reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after due diligence that such supplier attestation or certification is incorrect.

The due diligence must be conducted by the qualified manufacturer prior to its determination of any information to establish a compliant-battery ledger described in proposed §1.30D-6(d), and on an on-going basis. A battery is not considered FEOC-

compliant unless the qualified manufacturer has conducted such due diligence with respect to all such components and applicable critical minerals of the battery and provided required attestations or certifications described in part III.D. of this Explanation of Provisions.

## **2. Transition rule for non-traceable battery materials**

Proposed §1.30D-6(b)(2) would provide that for any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement may be satisfied by excluding identified non-traceable battery materials (and associated constituent materials), as defined in proposed §1.30D-6(a)(13)(ii). In addition, as described in part III.C.3. of this Explanation of Provisions, identified non-traceable battery materials (and associated constituent materials) may be excluded from the determination of whether a battery cell is FEOC-compliant. To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in part III.D. of this Explanation of Provisions demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect and all materials must be fully traced through the entire electric vehicle battery supply chain.

As described in part III.A.13. of this Explanation of Provisions, the Treasury Department and the IRS understand, after extensive consultation with the Department of Energy, that industry has not developed standards or systems for tracing certain low-value materials with precision. This inability to trace is exacerbated by the practice of commingling such materials within the materials processing supply chain. To address this issue, some stakeholders have suggested that the Treasury Department and the IRS adopt a de minimis exception to the excluded entity restrictions based on value, weight, mass, or other considerations. The Treasury Department and the IRS understand the tracing concerns in light of current standards and systems. However,

these standards and systems may develop to allow for improved tracing in the future.

The Treasury Department and the IRS therefore recognize the potential need for a transition rule to enable determination of FEOC compliance while detailed tracing practices are being developed to allow for full sourcing and tracing of applicable critical mineral supply chains. The transition rule in proposed §1.30D-6(b)(2) and (c)(3)(iii) is one option that the Treasury Department and the IRS are considering for such a rule. The Treasury Department and the IRS also are considering and seeking comment on possible alternative approaches for a transition rule that would address low-value materials that cannot be traced under current industry standards and that would be responsive to rapidly changing industry practices regarding specific materials or overall battery composition, or no transition rule at all.

This transition rule in proposed §1.30D-6(b)(2) is proposed to phase out for any new clean vehicles for which the manufacturer is required to provide a periodic written report after December 31, 2026. The Treasury Department and the IRS request comments on the need for and design of this transition rule, including data or other objective information to support such comments.

The Treasury Department and IRS also request comment on whether the challenges identified in this Explanation of Provisions related to traceability of low-value materials should instead be addressed through an alternative approach. The Treasury Department and the IRS request comment on whether a transition rule that adopts an alternative to the approach of listing materials would better achieve the Treasury Department's and IRS's stated goals and the challenges posed by low-value materials that are not currently feasible to trace. The Treasury Department and the IRS specifically request comment describing alternative approaches to providing a transition rule that accounts for low-value materials that cannot be traced under current industry standards and that is responsive to rapidly changing industry practice, if commenters

believe a different approach could better achieve the Treasury Department's and IRS's stated goals. Such alternative approaches, which might include ones that use principle-based criteria instead of the listing of specific non-traceable battery materials in a final regulation, should be narrowly tailored to address the traceability challenges identified, enable effective administration by the IRS, and phase-out on a schedule consistent with the reasonable development of industry standards.

## **C. Excluded entity restriction**

### **1. In general**

Proposed §1.30D-6(c)(1) would provide that in the case of any new clean vehicle placed in service after December 31, 2023, the batteries from which the electric motor of such vehicle draws electricity must be FEOC-compliant. A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles.

The proposed regulation would provide that the determination that a battery is FEOC-compliant is made as follows: First, the qualified manufacturer makes a determination of whether battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant, in accordance with rules for the determination of FEOC-compliant battery components and applicable critical minerals, which are described in part III.C.4. of this Explanation of Provisions. Next, the FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with rules for the determination of FEOC compliant-battery cells, described in part III.C.3. of this Explanation of Provisions. Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance the rules for a temporary allocation-based determination for applicable critical minerals

and associated constituent materials, described in part III.C.3.a of this Explanation of Provisions. Finally, the battery components, including battery cells, are physically tracked to specific batteries, in accordance with the rules for the determination of FEOC-compliant batteries described in part II.C.2 of this Explanation of Provisions.

## **2. Determination of FEOC-compliant batteries**

Proposed §1.30D-6(c)(2) would provide that the determination that a battery is FEOC-compliant must be made by physically tracking FEOC-compliant battery components, including battery cells, to such battery. With respect to battery cells, a serial number or other identification system must be used to physically track FEOC-compliant battery cells to such batteries.

## **3. Determination of FEOC-compliant battery cell**

Proposed §1.30D-6(c)(3)(i) would provide that, except as described in part III.C.3.a. of this Explanation of Provisions, the determination that a battery cell contains FEOC-compliant battery components and FEOC-compliant applicable critical minerals and their associated constituent materials must be made by physically tracking FEOC-compliant battery components to specific battery cells and by physically tracking the mass of FEOC-compliant applicable critical minerals and associated constituent materials to specific battery cells.

### **a. Temporary allocation-based determination for applicable critical materials and associated constituent materials of a battery cell**

Proposed §1.30D-6(c)(3)(ii)(A) would provide that the determination that a battery cell is a FEOC-compliant battery cell may be made through an allocation of available mass of applicable critical minerals and associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of the mass of applicable critical minerals (and associated constituent materials) to specific battery cells. This allocation-based determination is an

exception to the general rule, requiring specific tracking, of proposed §1.30D-6(c)(3)(ii)(A). As provided in proposed §1.30D-6(c)(3)(ii)(F), the Treasury Department and the IRS propose that this exception would be a temporary rule for any new clean vehicle for which the qualified manufacturer provides a periodic written report before January 1, 2027.

After extensive consultation with the DOE, the Treasury Department and the IRS understand that certain applicable critical minerals (and associated constituent materials) are commingled prior to delivery to or at the battery cell production facility. Thus, while the qualified manufacturer and its suppliers can trace such minerals through the entire electric vehicle battery supply chain to determine FEOC-compliance, the manufacturer and suppliers cannot physically track specific mass of minerals to specific battery cells or batteries. As a result, the qualified manufacturer cannot determine which battery cells or batteries are FEOC-compliant, absent an allocation-based determination.

The Treasury Department and the IRS anticipate that industry accounting practices may adapt to compliance regimes that require physical supply chain tracking in the future, whether through the acquisition of wholly-compliant supply, the separation of currently-commingled supply chains, the development of physical tracking systems, or some combination thereof. Accordingly, this exception is proposed to phase out for any new clean vehicle for which the qualified manufacturer provides a periodic written report after December 31, 2026. The Treasury Department and the IRS request comments on the need for, design, and duration of this temporary rule, including data or other objective information to support such comments. The Treasury Department and the IRS also request comment on whether industry practices are likely to develop that allow for physical tracking before December 31, 2032, and, if not, whether allocation-based accounting should be included as a permanent compliance approach, rather than

as a temporary transition rule.

Proposed §1.30D-6(c)(3)(ii)(B) would provide that the temporary allocation-based determination rules are limited to applicable critical minerals and associated constituent materials that are incorporated into a battery cell or its battery components. Battery components must be physically tracked.

Proposed §1.30D-6(c)(3)(ii)(C) would provide that any allocation with respect to the mass of an applicable critical mineral must be made within the type of constituent materials (such as powders of cathode active materials, powders of anode active materials, or foils) in which such mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials with which such applicable critical mineral is not associated, and an allocation of mass of an applicable critical mineral may not be made from one type of constituent material to another. Proposed §1.30D-6(c)(3)(ii)(C) also provides an example illustrating this rule.

Proposed §1.30D-6(c)(3)(ii)(D) would provide that any allocation with respect to applicable critical minerals and their associated constituent materials must be allocated within one or more specific battery cell product lines of the battery cell production facility, such that a particular mass of constituent material is not treated as fungible across different battery chemistries and designs.

Proposed §1.30D-6(c)(3)(ii)(E) would provide that if a qualified manufacturer uses the allocation-based determination rules described in this part III.C.3.a., the quantity of FEOC-compliant battery cells that can result from this allocation may not exceed the number of battery cells for which there is enough FEOC-compliant quantity of every applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates all of applicable critical mineral A, that is 20 percent FEOC-compliant, and all of applicable critical mineral B, that is 60 percent



FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line may be FEOC-compliant.

Proposed §1.30D-6(c)(3)(ii)(F) would provide that the rules of proposed §1.30D-6(c)(3)(ii) do not apply with respect to any new clean vehicle for which the qualified manufacturer provides a periodic written report after December 31, 2026.

#### **b. Transition rule for non-traceable battery materials**

Proposed §1.30D-6(c)(3)(iii) would provide that for new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under proposed §1.30D-6(c)(3) may be satisfied by excluding non-traceable battery materials, and their associated constituent materials. To use this transition rule, which is further discussed in part III.B. of this Explanation of Provisions, qualified manufacturers must submit a report during the up-front review process described in proposed §1.30D-6(d)(2)(ii).

#### **4. Determination of FEOC-compliant battery components and applicable critical minerals**

Proposed §1.30D-6(c)(4) would provide that the determination that battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be made prior to any determination under proposed §1.30D-6(c)(2) and (3). In general, the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6)), such as nickel sulphate that is used in production of a nickel-manganese-cobalt cathode active powder. A constituent material would be associated with an applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a

form not listed in section 45X(c)(6). However, an applicable critical mineral would be disregarded for purposes of the determination under proposed §1.30D-6(c)(4) if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery, such as certain solvents used in electrode production.

With respect to recycling, applicable critical minerals and associated constituent materials that are recycled would be subject to the determination of whether such mineral is FEOC-compliant if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process. Thus, for example, an applicable critical mineral derived from recyclable material that was recycled by an entity that is not a FEOC would be FEOC-compliant even if such mineral may have been extracted by a FEOC prior to its inclusion in the recyclable material.

Whether an entity is a FEOC is determined as of the time of the entity's performance of the relevant activity, which for applicable critical minerals is the time of extraction, processing, or recycling, and for battery components is the time of manufacturing or assembly. The determination of whether an applicable critical mineral is FEOC-compliant is determined at the end of processing or recycling of the applicable critical mineral into a constituent material, taking into account all applicable steps prior to final processing or recycling. Thus, for example, an applicable critical mineral that is not extracted by a FEOC but is processed by a FEOC is not FEOC-compliant.

Proposed §1.30D-6(c)(4)(iv) provides examples regarding determinations of

FEOC-compliant battery components and applicable critical minerals.

### **5. Third-party manufacturers or suppliers.**

Proposed §1.30D-6(c)(5) would provide that the determinations under proposed §1.30D-6(c)(2) through (4) may be made by a third-party manufacturer or supplier that operates a battery cell production facility provided that the manufacturer or supplier performs the due diligence described in proposed §1.30D-6 and provides the qualified manufacturer of the new clean vehicle information sufficient to establish a basis for the determinations under proposed §1.30D-6(c)(2) through (4). In addition, the manufacturer or supplier must be contractually required to provide such information to the qualified manufacturer of the new clean vehicle and must be contractually required to inform the qualified manufacturer of any changes in the supply chain that affect determinations of FEOC compliance. In the case of multiple third-party manufacturers or suppliers (such as if a manufacturer contracts with a battery manufacturer, who, in turn, contracts with a manufacturer or supplier who operates a battery cell production facility), the due diligence and information requirements must be satisfied by each such manufacturer or supplier either directly to the qualified manufacturer or indirectly through contractual relationships.

### **D. Compliant-battery ledger**

#### **1. In general**

Proposed §1.30D-6(d)(1) would provide that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must determine and provide information to the IRS to establish a compliant-battery ledger for each calendar year, as described in proposed §1.30D-6(d)(2)(i) and (ii). One compliant-battery ledger may be established for all vehicles for a calendar year, or there may be separate ledgers for specific models or classes of vehicles.

#### **2. Determination of number of batteries**

Proposed §1.30D-6(d)(2)(i) would provide that, to establish a compliant-battery ledger for a calendar year, the qualified manufacturer must determine the number of batteries, with respect to new clean vehicles (as described in section 30D(d) and proposed §1.30D-2(m)) for which the qualified manufacturer anticipates providing a periodic written report during the calendar year, that it knows or reasonably anticipates will be FEOC-compliant, pursuant to the requirements of proposed §1.30D-6(b) and (c). The determination would be based on the battery components and applicable critical minerals (and associated constituent materials) that are procured or contracted for the calendar year and that are known or reasonably anticipated to be FEOC-compliant battery components or FEOC-compliant applicable critical minerals, as applicable.

Proposed §1.30D-6(d)(2)(ii) would provide a process for upfront review of the number of batteries described in the preceding paragraph. Specifically, the proposed rule would provide that the qualified manufacturer must attest to the number of FEOC-compliant batteries determined under proposed §1.30D-6(d)(2)(i) and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with proposed §1.30D-6(b) and (c), at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, would review the attestations, certifications, and documentation. Once the IRS has determined that the qualified manufacturer has provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number will be the initial balance in the compliant-battery ledger.

Proposed §1.30D-6(d)(2)(iii) would provide rules for decreasing or increasing the balance of the compliant-battery ledger. Specifically, once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must

determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year, and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis in the manner provided in the Internal Revenue Bulletin.

The decrease described in the previous paragraph may decrease the compliant-battery ledger below zero, creating a negative balance in the compliant-battery ledger. In addition, if any such decrease is determined subsequent to the calendar year to which it relates, the decrease will be taken into account in the year in which the change is discovered. The remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple compliant-battery ledgers with negative balances, any negative balance would first be included in the compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year, the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

### **3. Tracking FEOC-compliant batteries**

Proposed §1.30D-6(d)(3) would provide that the compliant-battery ledger for a calendar year must be updated to track the number of available FEOC-compliant batteries of the qualified manufacturer, by reducing the balance of the ledger as the qualified manufacturer submits periodic written reports reporting the VINs of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner

provided in the Internal Revenue Bulletin. If the balance of the compliant-battery ledger for a calendar year of the qualified manufacturer is zero or less than zero, the qualified manufacturer would not be able to submit additional periodic written reports with respect to section 30D.

#### **4. Reconciliation of battery estimates**

Proposed §1.30D-6(d)(4) would provide that, after the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of FEOC-compliant batteries of the qualified manufacturer for such calendar year, including with respect to any changes described in paragraph (d)(3)(iii), at the time and in the manner provided in the Internal Revenue Bulletin.

#### **E. Rule for 2024**

Proposed §1.30D-6(e) would provide rules for new clean vehicles placed in service in 2024. This rule may apply to new clean vehicles for which the qualified manufacturer submits a periodic written report in 2024 as well as new clean vehicles for which a qualified manufacturer submitted a periodic written report in 2023. Thus, for example, a vehicle that was anticipated to be placed in service in 2023 that remains unsold at the end of 2023 is subject to these rules if placed in service in 2024.

Specifically, proposed §1.30D-6(e)(1) would provide that, for new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in such vehicles satisfy the requirements of section 30D(d)(7)(B) and whether batteries contained in the vehicle are FEOC-compliant under the rules of proposed §1.30D-6(b) and (c). The qualified manufacturer would be required to make an attestation with respect to such determinations at the time and in the manner provided in the Internal Revenue Bulletin.

However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before the date that is 30 days after the date these regulations are finalized, provided that the qualified manufacturer has determined that its supply chain of battery components with respect to such vehicles contains only FEOC-compliant battery components: (i) for purposes of the determination of FEOC-compliant batteries and FEOC-compliant battery cells described in parts III.C.2 and III.C.3. of this Explanation of Provisions, the determination of which battery cells or batteries, as applicable, contain FEOC-compliant battery components may be determined without physical tracking; (ii) for purposes of the determination of FEOC-compliant batteries, the determination of which batteries contain FEOC-compliant battery cells may be determined without physical tracking (and without the use of a serial number or other identification system); and (iii) for purposes of the determination that a vehicle contains a FEOC-compliant battery and therefore is a new clean vehicle, as described in part III.C.1. of this Explanation of Provisions, the determination of which vehicles contain FEOC-compliant batteries may be determined without physical tracking (and without the use of a serial number or other identification system).

Under proposed §1.30D-6(e)(2), the determination that a qualified manufacturer's supply chain of battery components contains only FEOC-compliant batteries may be made with respect to specific models or classes of vehicles.

## **F. Inaccurate attestations, certifications or documentation**

### **1. In general**

Proposed §1.30D-6(f)(1) would provide that if the IRS determines, with analytical assistance from the DOE and after review of the attestations, certifications, and documentation described in part III.D. of this Explanation of Provisions, that a qualified manufacturer provided inaccurate attestations, certifications, or documentation, the IRS may take certain actions against the qualified manufacturer, depending on the severity

of the inaccuracy. Such actions would affect new clean vehicles and qualified manufacturers on a prospective basis.

## **2. Inadvertence**

Proposed §1.30D-6(f)(2) would provide that if the IRS determines that the attestations, certifications, or documentation for a new clean vehicle contain errors due to inadvertence, the following may be required: The qualified manufacturer may cure the errors identified, including by a decrease in the compliant-battery ledger of the qualified manufacturer. However, if the errors are not cured, in the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirements of section 30D(d), such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit. If the errors are not cured, in the case of a new clean vehicle that has not been placed in service and for which the qualified manufacturer has not submitted a periodic written report, the qualified manufacturer may not submit a periodic written report certifying compliance with the requirements of section 30D(d). Finally, if the errors are not cured, in the case of a new clean vehicle that has been placed in service, the IRS may require a decrease to the compliant-battery ledger.

## **3. Intentional disregard or fraud**

Proposed §1.30D-6(f)(3) would provide guidance for cases of intentional disregard or fraud. Specifically, the proposed regulations would provide that if the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, and documentation requirements or reported information fraudulently or with intentional disregard, the IRS may determine that all vehicles of the qualified manufacturer that have not been placed in service are no longer considered new clean vehicles eligible for the section 30D credit. In addition, the IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the



manufacturer's status as a qualified manufacturer. The manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the Internal Revenue Bulletin.

### **G. Examples**

Proposed §1.30D-6(g) would provide examples illustrating the application of the proposed rules regarding excluded entities. Example 1 would provide a general set of facts and analysis. Example 2 would provide an example illustrating the rules for third-party suppliers. Example 3 would provide an example illustrating the general rules for applicable critical minerals. Example 4 would provide a comprehensive example with specified battery components and applicable critical minerals (and associated constituent materials).

### **VI. Severability**

Proposed §1.30D-6(h) would provide that if any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

### **Proposed Applicability Dates**

Consistent with the April 2023 proposed regulations, previously proposed §1.30D-2(a) through (h) are proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. Newly proposed §1.30D-2(j) through (m) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

Consistent with the April 2023 proposed regulations, previously proposed §1.30D-3(a) through (c) and (f) are proposed to apply to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023. Newly

proposed §1.30D-3(d) and (e) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

Section 30D(d)(7) provides that the excluded entity provisions apply to vehicles placed in service after December 31, 2023, for battery components, and after December 31, 2024, for applicable critical minerals. Accordingly proposed §1.30D-6 is proposed to apply to new clean vehicles placed in service after December 31, 2023.

Taxpayers may rely on these proposed regulations for vehicles placed in service prior to the date final regulations are published in the **Federal Register**, provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

### **Effect on Other Documents**

This notice of proposed rulemaking modifies proposed §§1.30D-2 and 1.30D-3 of the April 2023 proposed regulations.

### **Special Analyses**

#### **I. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed §1.30D-6 regarding excluded entities will be reflected in the PRA Submissions associated with OMB control number 1545-2311. OMB Control Number 1545–2137 covers Form 8936 and Form 8936-A regarding clean vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure 2022-42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the IRS to provide

information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component attestation or certification requirements in section 30D(e)(1)(A) and (2)(A). In addition, Revenue Procedure 2022-42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022-42 are described in that document and were submitted to the Office of Management and Budget in accordance with the PRA under control number 1545-2137.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

## **II. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

The proposed regulations affect qualified manufacturers that must determine their compliance with the excluded entity requirements in order to certify that their new clean vehicles placed in service after December 31, 2023, qualify for the section 30D credit.

While the tracking and reporting of compliance with the excluded entity requirements is likely to involve significant administrative costs, according to public filings, every qualified manufacturer had total revenues above \$1 billion in 2022. There

are a total of 11 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit. Pursuant to Revenue Procedure 2022-42, Revenue Procedure 2023-33, and following the publication of these proposed regulations, qualified manufacturers will also have to certify that their vehicles comply with the excluded entity requirement and contain batteries that are FEOC-compliant. The proposed regulations provide definitions and general rules for this purposes. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for qualified manufacturers for consistent application of the excluded entity requirements. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity. Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

### **III. Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

### **IV. Executive Order 13132: Federalism**

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State

law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

## **V. Regulatory Planning and Review**

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

### **Comments and Requests for a Public Hearing**

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

### **Statement of Availability of IRS Documents**

Guidance cited in this preamble is published in the Internal Revenue Bulletin and

is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC, 20402, or by visiting the IRS website at <https://www.irs.gov>.

## **Drafting Information**

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department, the DOE, and the IRS participated in their development.

## **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Proposed Amendments to the Regulations**

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 as follows:

### **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order for §1.30D-6 to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.30D-6 also issued under 26 U.S.C. 30D.

\* \* \* \* \*

**Par. 2.** Section 1.30D-0, as proposed to be added at 88 FR 23370 (April 17, 2023) and proposed to be amended at 88 FR 70310 (October 10, 2023), is amended by:

- a. Adding paragraphs (k), (l), and (m) under §1.30D-2;
- b. Revising paragraphs (e) and (f) under §1.30D-3;
- c. Adding paragraph (g) under §1.30D-3; and
- d. Adding an entry in numerical order for §1.30D-6.

The additions and revisions read as follows:

### **§1.30D-0 Table of contents.**

\* \* \* \* \*

§1.30D-2 *Definitions for purposes of section 30D.*

\* \* \* \* \*

- (k) Manufacturer.
- (l) Qualified manufacturer.
- (m) New clean vehicle.

\* \* \* \* \*

§1.30D-3 *Critical mineral and battery component requirements.*

\* \* \* \* \*

- (e) Upfront review of battery component and applicable critical minerals requirements.
- (f) Severability.
- (g) Applicability date.

\* \* \* \* \*

§1.30D-6 *Excluded entities.*

- (a) Definitions.
  - (1) Applicable critical mineral.
  - (2) Assembly.
  - (3) Battery.
  - (4) Battery cell.
  - (5) Battery cell production facility.
  - (6) Battery component.
  - (7) Compliant-battery ledger.
  - (8) Constituent materials.
  - (9) Extraction.
  - (10) Foreign entity of concern.
  - (11) FEOC-compliant.
  - (12) Manufacturing.
  - (13) Non-traceable battery material.
    - (i) In general.
    - (ii) [Reserved]
  - (14) Processing.
  - (15) Recycling.
- (b) Due diligence.
  - (1) In general.
  - (2) Transition rule for non-traceable battery materials.
- (c) Excluded entity restriction.
  - (1) In general.
  - (2) Determination of FEOC-compliant batteries.
  - (3) Determination of FEOC-compliant battery cell.
    - (i) In general.
    - (ii) Temporary allocation-based determination for applicable critical materials contained in constituent materials of a battery cell.
      - (A) In general.
      - (B) Allocation limited to applicable critical minerals in the battery cell.
      - (C) Separate allocation for each class of constituent materials.
      - (D) Allocation within each product line of battery cells.
      - (E) Limitation on number of FEOC-compliant battery cells.
      - (F) Termination of temporary allocation-based determination.
  - (iii) Transition rule for non-traceable battery materials.

- (4) Determination of FEOC-compliant battery components and applicable critical minerals.
  - (i) In general.
  - (ii) Applicable critical minerals.
    - (A) In general.
    - (B) Associated constituent materials.
    - (C) Exception for applicable critical minerals not contained in the battery.
    - (D) Recycling.
  - (iii) Timing of determination of FEOC-compliant status.
    - (iv) Examples.
      - (A) Example 1: Timing of FEOC compliance determination.
      - (B) Example 2: Form of applicable critical mineral.
      - (C) Example 3: Recycling of applicable critical mineral.
- (5) Third-party manufacturers or suppliers.
  - (d) Compliant-battery ledger.
    - (1) In general.
    - (2) Determination of number of batteries.
      - (i) In general.
      - (ii) Upfront review.
      - (iii) Decrease or increase to compliant-battery ledger.
  - (3) Tracking FEOC-compliant batteries.
  - (4) Reconciliation of battery estimates.
- (e) Rule for 2024.
  - (1) In general.
  - (2) Determination.
- (f) Inaccurate attestations, certifications, or documentation.
  - (1) In general.
  - (2) Inadvertence.
  - (3) Intentional disregard of fraud.
- (g) Examples.
  - (1) Example 1: In general.
  - (2) Example 2: Rules for third-party suppliers.
  - (3) Example 3: Applicable critical minerals.
  - (4) Example 4: Comprehensive example.
- (h) Severability.
- (i) Applicability date.

**Par. 3.** Section 1.30D-2, as proposed to be added at 88 FR 23370 (April 17, 2023) and proposed to be amended at 88 FR 70310 (October 10, 2023), is amended by revising paragraphs (a), (f), and (i) and adding paragraphs (k), (l), and (m) to read as follows:

**§1.30D-2 Definitions for purposes of section 30D.**

(a) *In general.* The definitions in this section apply for purposes of section 30D of the Internal Revenue Code (Code) and the section 30D regulations.

\* \* \* \* \*



(f) *Section 30D regulations.* Section 30D regulations means §1.30D–1, this section, and §§1.30D–3 through 1.30D–6.

\* \* \* \* \*

(i) *Applicability date.* Paragraphs (a) through (h) of this section apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. Paragraphs (j) through (m) of this section apply for new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

\* \* \* \* \*

(k) *Manufacturer.* A *manufacturer* means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements provided in section 30D(d)(3) must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards set by the EPA under the Clean Air Act (42 U.S.C. 7521 et seq.) for the subject vehicle.

(l) *Qualified manufacturer.* A *qualified manufacturer* means a manufacturer that meets the requirements described in section 30D(d)(3). The term qualified manufacturer does not include any manufacturer whose qualified manufacturer status has been terminated by the Internal Revenue Service (IRS). The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D, the section 30D regulations, or any guidance under section 30D, including with respect to the periodic written reports described in section 30D(d)(3) and §1.30D-2(m) and any attestations, documentation, or certifications described in §1.30D-3(e) and §1.30D-6(d), at the time and in the

manner provided in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter). See §1.30D-6(f) for additional rules regarding inaccurate determinations and documentation.

(m) *New clean vehicle.* A new clean vehicle means a vehicle that meets the requirements described in section 30D(d). A vehicle does not meet the requirements of section 30D(d) if—

(1) The qualified manufacturer fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the vehicle identification number (VIN) of such vehicle and certifying compliance with the requirement of section 30D(d);

(2) The qualified manufacturer provides incorrect information with respect to the periodic written report for such vehicle;

(3) The qualified manufacturer fails to update its periodic written report in the event of a material change with respect to such vehicle; or

(4) For new clean vehicles placed in service after December 31, 2024, the qualified manufacturer fails to meet the requirements of §1.30D-6(d).

**Par. 4.** Section 1.30D-3, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by:

- a. Revising paragraph (d);
- b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);
- c. Adding new paragraph (e); and
- d. Revising newly redesignated paragraph (g).

The revisions and addition read as follows:

**§1.30D-3 Critical mineral and battery component requirements.**

\* \* \* \* \*

(d) *Excluded entities.* For rules regarding excluded entities, see §1.30D-6.

(e) *Upfront review of battery component and applicable critical minerals requirements.* For new clean vehicles anticipated to be placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter). The IRS, with analytical assistance from the Department of Energy, will review the attestations, certifications, and documentations.

\* \* \* \* \*

(g) *Applicability date.* Paragraphs (a) through (c) and (f) of this section apply to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023. Paragraphs (d) and (e) of this section apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years beginning after December 31, 2023.

**Par. 5.** Section 1.30D-6 is added to read as follows:

**§1.30D-6 Excluded entities.**

(a) *Definitions.* This paragraph (a) provides definitions that apply for purposes of section 30D(d)(7) of the Internal Revenue Code (Code) and this section.

(1) *Applicable critical mineral.* *Applicable critical mineral* means an applicable critical mineral as defined in section 45X(c)(6) of the Code.

(2) *Assembly.* *Assembly*, with respect to battery components, means the process of combining battery components into battery cells and battery modules.

(3) *Battery.* *Battery*, for purposes of a new clean vehicle, means a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the

battery, such as battery cell cases, cans, or pouches.

(4) *Battery cell.* *Battery cell* means a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

(5) *Battery cell production facility.* *Battery cell production facility* means a facility in which battery cells are manufactured or assembled.

(6) *Battery component.* *Battery component* means a component that forms part of a battery and that is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

(7) *Compliant-battery ledger.* A compliant-battery ledger, for a qualified manufacturer for a calendar year, is a ledger established under the rules of paragraph (d) of this section that tracks the number of available FEOC-compliant batteries for such calendar year.

(8) *Constituent materials.* *Constituent materials* means materials that contain applicable critical minerals and that are employed directly in the manufacturing of battery components. Constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

(9) *Extraction.* *Extraction* means the activities performed to harvest minerals or

natural resources from the ground or a body of water. Extraction includes, but is not limited to, operating equipment to harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction concludes when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction includes the physical processes involved in refining. Extraction does not include the chemical and thermal processes involved in refining.

(10) *Foreign entity of concern.* *Foreign entity of concern* (FEOC) has the meaning provided in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) and guidance promulgated thereunder by the Department of Energy (DOE).

(11) *FEOC-compliant.* *FEOC-compliant* means in compliance with the applicable excluded entity requirement under section 30D(d)(7). In particular--

(i) A battery component (other than a battery cell), with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it is not manufactured or assembled by a FEOC;

(ii) An applicable critical mineral, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not extracted, processed, or recycled by a FEOC;

(iii) A battery cell, with respect to a new clean vehicle placed in service after December 31, 2023, and before January 1, 2025, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components;

(iv) A battery cell, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not manufactured or assembled by a

FEOC and it contains only FEOC-compliant battery components and FEOC-compliant applicable critical minerals; and

(v) A battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells (as described in paragraph (a)(11)(iii) or (iv) of this section, as applicable).

(12) *Manufacturing*. *Manufacturing*, with respect to a battery component, means the industrial and chemical steps taken to produce a battery component.

(13) *Non-traceable battery materials*—(i) *In general*. *Non-traceable battery materials* mean specifically identified, low-value battery materials that originate from multiple sources and are commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. For this purpose, low-value battery materials are those that have low value compared to the total value of the battery.

(ii) [Reserved].

(14) *Processing*. *Processing* means the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

(15) *Recycling*. *Recycling* means the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

(b) *Due diligence*—(1) *In general.* The qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. Such due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enable the manufacturer to know with reasonable certainty the provenance of applicable critical minerals, constituent materials, and battery components. Reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after its due diligence that such supplier attestation or certification is incorrect. Due diligence must be conducted by the qualified manufacturer prior to its determining information necessary to establish any compliant-battery ledger under paragraph (d) of this section, and on an ongoing basis.

(2) *Transition rule for non-traceable battery materials.* For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement of paragraph (b)(1) of this section may be satisfied by excluding identified non-traceable battery materials. To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect.

(c) *Excluded entity restriction*—(1) *In general.* In the case of any new clean vehicle placed in service after December 31, 2023, the batteries from which the electric motor of such vehicle draws electricity must be FEOC-compliant. A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles. The determination that a battery is FEOC-compliant is

made as follows:

(i) *Step 1.* First, the qualified manufacturer determines whether battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant, in accordance with paragraph (c)(4) of this section.

(ii) *Step 2.* Next, the FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with paragraph (c)(3)(i) of this section.

Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance with paragraph (c)(3)(ii) of this section. In addition, the determination under paragraph (c)(4) of this section may be made by applying the transition rule for non-traceable battery materials, in accordance with paragraph (c)(3)(iii) of this section.

(iii) *Step 3.* Finally, the battery components, including battery cells, are physically tracked to specific batteries, in accordance with paragraph (c)(2) of this section.

(2) *Determination of FEOC-compliant batteries.* The determination that a battery is FEOC-compliant must be made by physically tracking FEOC-compliant battery components (including battery cells) to such battery. With respect to battery cells, a serial number or other identification system must be used to physically track FEOC-compliant battery cells to such batteries.

(3) *Determination of FEOC-compliant battery cell—(i) In general.* Except as provided in paragraph (c)(3)(ii) of this section, the determination that a battery cell contains FEOC-compliant battery components and FEOC-compliant applicable critical minerals and their associated constituent materials must be made by physically tracking FEOC-compliant battery components to specific batteries cells and by physically tracking the mass of FEOC-compliant applicable critical minerals and their associated



constituent materials to specific batteries cells.

(ii) *Temporary allocation-based determination for applicable critical materials and associated constituent materials of a battery cell—(A) In general.* The determination that a battery cell is a FEOC-compliant battery cell may be based on an allocation of available mass, produced or contracted for, of applicable critical minerals and their associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of mass of applicable critical minerals and associated constituent materials to specific battery cells.

(B) *Allocation limited to applicable critical minerals in the battery cell.* The rules of this paragraph (c)(3)(ii) are limited to applicable critical minerals and their associated constituent materials that are incorporated into a battery cell or its battery components. Battery components must be physically tracked.

(C) *Separate allocation for each class of constituent materials.* Any allocation under this paragraph (c)(3)(ii) with respect to the mass of an applicable critical mineral must be made within the type of associated constituent materials (such as powders of cathode active materials, powders of anode active materials, or foils) in which such mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials with which such applicable critical mineral is not associated, and an allocation of a mass of an applicable critical mineral may not be made from one type of constituent material to another. For example, assume that M, a qualified manufacturer, operates a battery cell production facility. M manufactures a line of battery cells that contains applicable critical mineral Z contained in constituent material 1 and applicable critical mineral Z contained in constituent material 2. With respect to constituent material 1, M procures 20,000,000 kilograms (kg) of applicable critical mineral Z for the battery cell production facility, of which 4,000,000 kg are FEOC-compliant and 16,000,000 kg are not FEOC-compliant. With respect to constituent

material 2, M procures another 15,000,000 kg of applicable critical mineral Z for the battery cell production facility, of which 7,500,000 kg are FEOC-compliant and 7,500,000 kg are not FEOC-compliant. M determines which battery cells are FEOC-compliant through an allocation-based determination with respect to battery cells manufactured or assembled in the battery cell production facility. Under this paragraph (c)(3)(ii)(C), any allocation with respect to the mass of applicable critical mineral Z must be made within the type of constituent materials in which such mineral is contained. Thus, M may not aggregate the 4,000,000 kg mass of FEOC-compliant applicable critical mineral Z contained in constituent material 1 with the 7,500,000 kg mass of FEOC-compliant applicable critical mineral Z contained in constituent material 2, and allocations may not be made from constituent material 1 to constituent material 2. As a result, overall FEOC compliance is constrained by the 20 percent of constituent material 1 that is FEOC-compliant due to having 4,000,000 kg of applicable critical mineral Z, even though 33 percent  $(7,500,000 + 4,000,000)/(20,000,000 + 15,000,000)$  of the total mass of critical mineral Z is compliant.

(D) *Allocation within each product line of battery cells.* Any allocation under this paragraph (c)(3)(ii) with respect to applicable critical minerals and their associated constituent materials must be allocated within one or more specific battery cell product lines of the battery cell production facility.

(E) *Limitation on number of FEOC-compliant battery cells.* If a qualified manufacturer uses an allocation-based determination described in this paragraph (c)(3)(ii), the number of FEOC-compliant battery cells that can be produced from such allocation may not exceed the total number of battery cells for which there is enough of every FEOC-compliant applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates applicable critical

mineral A, which is 20 percent FEOC-compliant and applicable critical mineral B, which is 60 percent FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line will be treated as FEOC-compliant.

(F) *Termination of temporary allocation-based determination.* The rules of this paragraph (c)(3)(ii) do not apply with respect to any new clean vehicle for which the qualified manufacturer is required to provide a periodic written report after December 31, 2026.

(iii) *Transition rule for non-traceable battery materials.* For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under this paragraph (c)(3) may be satisfied by excluding identified non-traceable battery materials (and associated constituent materials). To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect.

(4) *Determination of FEOC-compliant battery components and applicable critical minerals—(i) In general.* The determination of whether battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be made prior to any determination under paragraphs (c)(2) and (3) of this section.

(ii) *Applicable critical minerals—(A) In general.* Except as provided in paragraph (c)(4)(ii)(D) of this section, the determination of whether an applicable critical mineral is FEOC-compliant takes into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step.

(B) *Associated constituent materials.* A constituent material is associated with an

applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a form not listed in section 45X(c)(6).

(C) *Exception for applicable critical minerals not contained in the battery.* An applicable critical mineral is disregarded for purposes of the determination under this paragraph (c)(4) if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery.

(D) *Recycling.* An applicable critical mineral and associated constituent material that is recycled is subject to the determination under this paragraph (c)(4) if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process.

(iii) *Timing of determination of FEOC-compliant status.* Whether an entity is a FEOC is determined as of the time of the entity's performance of the relevant activity, which for applicable critical minerals is the time of extraction, processing, or recycling, and for battery components is the time of manufacturing or assembly. The determination of whether an applicable critical mineral is FEOC-compliant is determined at the end of processing or recycling of the applicable critical mineral into a constituent material, taking into account all applicable steps through and including final processing or recycling.

(iv) *Examples.* The following examples illustrate the rules under this paragraph (c)(4):

(A) *Example 1: Timing of FEOC compliance determination.* Mineral X, an applicable critical mineral, was not extracted by a FEOC but was later processed by a

FEOC. Mineral X is not FEOC-compliant because one step of the extraction and processing was performed by a FEOC. Any battery containing Mineral X is not FEOC-compliant.

(B) *Example 2: Form of applicable critical mineral.* Mineral Y is extracted by a FEOC and is intended to be incorporated into the battery of an electric vehicle. Mineral Y is not in a form listed in section 45X(c)(6) at the time of such extraction, but subsequently it is refined into an applicable critical mineral form listed in section 45X(c)(6) by an entity that is not a FEOC. Mineral Y is not FEOC-compliant pursuant to this paragraph (c)(4) because it was extracted by a FEOC, regardless of its form at the time of extraction. Any battery containing Mineral Y is not FEOC-compliant.

(C) *Example 3: Recycling of applicable critical mineral.* Mineral Z, an applicable critical mineral in a form listed in section 45X(c)(6), was processed by a FEOC in a prior production process. Mineral Z subsequently was derived from recyclable material in a form not listed in section 45X(c)(6). Mineral Z was recycled by an entity that is not a FEOC. Mineral Z is subject to a determination of whether it is FEOC-compliant at the end of the recycling process, because it was at one time an applicable critical mineral. Mineral Z is FEOC-compliant pursuant to this paragraph (c)(4) because it was not recycled by a FEOC.

(5) *Third-party manufacturers or suppliers.* The determinations under paragraphs (c)(2) through (4) of this section may be made by a third-party manufacturer or supplier that operates a battery cell production facility provided that:

(i) The third-party manufacturer or supplier performs the due diligence described in paragraph (b) of this section;

(ii) The third-party manufacturer or supplier provides the qualified manufacturer of the new clean vehicle information sufficient to establish a basis for the determinations under paragraphs (c)(2) through (4) of this section, including information related to the due diligence described in paragraph (c)(5)(i) of this section;

(iii) The third-party manufacturer or supplier is contractually required to provide the information in paragraph (c)(5)(ii) of this section to the qualified manufacturer and is contractually required to inform the qualified manufacturer of any change in the supply chain that affects the determinations of FEOC compliance under paragraph (c)(2) and (4) of this section; and

(iv) If there are multiple third-party manufacturers or suppliers (such as a case in which a qualified manufacturer contracts with a battery manufacturer, who, in turn,

contracts with a battery cell manufacturer or supplier who operates a battery cell production facility), the due diligence and information requirements of this paragraph (c) must be satisfied by each such manufacturer or supplier either directly to the qualified manufacturer or indirectly through contractual relationships.

(d) *Compliant-battery ledger*—(1) *In general.* For new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must determine and provide information to the IRS to establish a compliant-battery ledger for each calendar year, as described in paragraphs (d)(2)(i) and (ii) of this section. One compliant-battery ledger may be established for all vehicles for a calendar year, or there may be separate ledgers for specific models or classes of vehicles to account for different battery cell chemistries or differing quantities of cells in each battery.

(2) *Determination of number of batteries*—(i) *In general.* To establish a compliant-battery ledger for a calendar year, the qualified manufacturer must determine the number of batteries, with respect to new clean vehicles (as described in section 30D(d) and §1.30D-2(m)) for which the qualified manufacturer anticipates providing a periodic written report during the calendar year, that it knows or reasonably anticipates will be FEOC-compliant, pursuant to the requirements of paragraphs (b) and (c) of this section. The determination is based on the battery components and applicable critical minerals (and associated constituent materials) that are procured or contracted for the calendar year and that are known or reasonably anticipated to be FEOC-compliant battery components or FEOC-compliant applicable critical minerals, as applicable.

(ii) *Upfront review.* The qualified manufacturer must attest to the number of FEOC-compliant batteries determined under paragraph (d)(2)(i) of this section and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with paragraphs (b) and (c) of this section, at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with

analytical assistance from the DOE, will review the attestations, certifications, and documentation. Once the IRS determines that the qualified manufacturer provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number is the initial balance in the compliant-battery ledger.

(iii) *Decrease or increase to compliant-battery ledger*—(A) Once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year, and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis, in accordance with paragraph (d)(2)(ii) of this section and the manner provided in the Internal Revenue Bulletin.

(B) The decrease described in paragraph (d)(2)(iii)(A) of this section may decrease the compliant-battery ledger below zero, creating a negative balance in the compliant-battery ledger.

(C) If any decrease described in paragraph (d)(2)(iii)(A) of this section is determined subsequent to the calendar year to which it relates, the decrease must be taken into account in the year in which the change is discovered.

(D) Any remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple compliant-negative battery accounts, any negative balance will first be included in the

compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year, the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

(3) *Tracking FEOC-compliant batteries.* The compliant-battery ledger for a calendar year must be updated to track the qualified manufacturer's available FEOC-compliant batteries, by reducing the balance in the ledger as the qualified manufacturer submits periodic written reports reporting the vehicle identification numbers (VINs) of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner provided in the Internal Revenue Bulletin. If the balance in the compliant-battery ledger of the qualified manufacturer for a calendar year is zero or less than zero, the qualified manufacturer may not submit additional periodic written reports with respect to section 30D until the number of available FEOC-compliant batteries is increased as described in paragraph (d)(2)(iii)(A) of this section.

(4) *Reconciliation of battery estimates.* After the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of the qualified manufacturer's FEOC-compliant batteries for such calendar year, including with respect to any changes described in paragraph (d)(2)(iii) of this section, at the time and in the manner provided in the Internal Revenue Bulletin.

(e) *Rule for 2024--(1) In general.* For new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in vehicles satisfy the requirements of section 30D(d)(7)(B) and whether batteries contained in the vehicle are FEOC-compliant under the rules of paragraphs (b) and (c) of this section.



The qualified manufacturer must make an attestation with respect to such determinations at the time and in the manner provided in the Internal Revenue Bulletin. However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before the date that is 30 days after the date these regulations are finalized, provided that the qualified manufacturer has determined that its supply chains of each battery component with respect such vehicles contain only FEOC-compliant battery components:

(i) For purposes of paragraphs (c)(2) and (3) of this section, the determination of which battery cells or batteries, as applicable, contain FEOC-compliant battery components may be determined without physical tracking;

(ii) For purposes of paragraph (c)(2) of this section, the determination of which batteries contain FEOC-compliant battery cells may be determined without physical tracking (and without the use of a serial number or other identification system); and

(iii) For purposes of paragraph (c)(1) of this section, the determination of which vehicles contain FEOC-compliant batteries may be determined, without physical tracking (and without the use of a serial number or other identification system).

(2) *Determination.* The determination that a qualified manufacturer's supply chains of each battery component contain only FEOC-compliant battery components may be made with respect to specific models or classes of vehicles.

(f) *Inaccurate attestations, certifications or documentation—(1) In general.* If the IRS determines, with analytical assistance from the DOE and after review of the attestations, certification and documentation described in paragraph (d) of this section, that a qualified manufacturer has provided attestations, certifications, or documentation that contain inaccurate information, it may take appropriate action as described in paragraphs (f)(2) and (3) of this section. Such action would affect vehicles and qualified manufacturers on a prospective basis.

(2) *Inadvertence*. If the IRS determines that the attestations, certifications or documentation for a specific new clean vehicle contain errors due to inadvertence, the following may be required:

(i) The qualified manufacturer may cure the errors identified, including by a decrease in the compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(ii) If the errors are not cured, in the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirement of section 30D(d), such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit.

(iii) If the errors are not cured, in the case of a new clean vehicle that has not been placed in service and for which the qualified manufacturer has not submitted a periodic written report certifying compliance with the requirement of section 30D(d), the qualified manufacturer may not submit such periodic written report.

(iv) If the errors are not cured, in the case of a new clean vehicle that has been placed in service, the IRS may require a decrease in the qualified manufacturer's compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(3) *Intentional disregard or fraud*. If the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, or documentation requirements or reported information fraudulently or with intentional disregard, the following may be required:

(i) All vehicles of the qualified manufacturer that have not been placed in service may no longer be considered new clean vehicles eligible for the section 30D credit.

(ii) The IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the manufacturer's status as a qualified manufacturer as described in §1.30D-2(l). The manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the Internal Revenue Bulletin.

(g) *Examples.* The following examples illustrate the rules under paragraphs (b) through (d) of this section:

(1) *Example 1: In general—(i) Facts.* M is a manufacturer of new clean vehicles and batteries. M also manufactures or assembles battery cells at its own battery cell production facility. M manufactures a line of new clean vehicles that it anticipates will be placed in service in calendar year 2025. Each vehicle contains one battery, and each battery contains 1,000 battery cells. All battery cells are produced at the same battery cell production facility. The battery cells are not manufactured or assembled by a FEOC. Each battery cell contains 10 mass of battery component A. M has procured or is under contract to procure 10,000,000 mass of battery component A for the battery cell production facility, of which 6,000,000 mass is from supplier 1 and 4,000,000 mass is from supplier 2.

(ii) *Analysis.* (A) Under paragraph (b) of this section, M must conduct due diligence on all battery components and applicable critical minerals (and associated constituent materials) that are contained in the battery to determine whether such components or minerals are FEOC-compliant.

(B) Under paragraph (c)(4) of this section, M must first determine whether the battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant. From its due diligence, M determines that, of the 10,000,000 mass of battery component A, the 6,000,000 mass from supplier 1 is FEOC-compliant while the 4,000,000 mass from supplier 2 is not FEOC-compliant. M determines that all other battery components and applicable critical minerals (and associated constituent materials) of the battery cell are FEOC-compliant, that the battery cell is not manufactured or assembled by a FEOC, and that all battery components (excluding components of the battery cell) of the battery are FEOC-compliant.

(C) Under paragraph (c)(3) of this section, M must determine which battery cells are FEOC-compliant through the physical tracking of the 6,000,000 mass of FEOC-compliant battery component A to determine which 600,000 (6,000,000/10) battery cells are FEOC-compliant. Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 600,000 FEOC-compliant battery cells to 600 (600,000/1,000) specific batteries.

(D) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 600 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 600 FEOC-

compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, approves the number, a compliant-battery ledger is established with a balance of 600 FEOC-compliant batteries.

(E) M manufactures 100 vehicles that it anticipates will be placed in service in 2025, for which it provides periodic written reports providing the VINs of the vehicles and indicating that such vehicles qualify for the section 30D credit. Under paragraph (d)(3) of this section, the compliant-battery ledger is updated to track the number of FEOC-compliant batteries. The number of batteries contained in the compliant-battery ledger is reduced from 600 to 500. Assuming all of the other requirements of section 30D and the regulations thereunder are met, the 100 vehicles are new clean vehicles that qualify for purposes of section 30D.

(2) *Example 2: Rules for third-party suppliers—(i) Facts.* The facts are the same as example 1, except that M contracts with BM, a battery manufacturer, for the provision of batteries, and BM contracts with BCS, a battery cell supplier that operates a battery cell production facility, for the provision of battery cells.

(ii) *Analysis.* Under paragraph (c)(5) of this section, BCS may make the determination in paragraphs (c)(2) through (4) of this section, provided that M, BM and BCS perform due diligence as described in paragraph (b) of this section. In addition, BM and BCS must provide M with information sufficient to establish a basis for the determinations under paragraphs (c)(2) through (4) of this section, including information related to due diligence. Finally, BM and BCS must be contractually required to provide the required information to M, and must also be required to inform the qualified manufacturer of any change in supply chains that affects the determinations of FEOC compliance under paragraphs (c)(2) and (4) of this section. The contractual requirement may be satisfied if BM and BCS each have the contractual obligation to M. Alternatively, it may be satisfied if BCS has a contractual obligation to BM and BM, in turn, has a contractual obligation to M.

(3) *Example 3: Applicable critical minerals—(i) Facts.* The facts are the same as example 1. In addition, each battery cell contains 20 kilograms (kgs) of applicable critical mineral Z contained in a constituent material. M has procured or is under contract to 20,000,000 kgs of Z for the battery cell production facility, of which 4,000,000 kgs are from supplier 3 and 16,000,000 kgs are from supplier 4.

(ii) *Analysis.* The analysis is the same as in example 1. In addition, from its due diligence, M determines that of the 20,000,000 kg of applicable critical mineral Z, the 4,000,000 kg from supplier 3 is FEOC-compliant while the 16,000,000 kg from supplier 4 is not FEOC-compliant. Under paragraph (c)(3) of this section, M may determine which battery cells are FEOC-compliant through the physical tracking of the 4,000,000 kg of FEOC-compliant applicable critical mineral Z to 200,000 (4,000,000/20) of the battery cells that also contain battery component A, in order to determine which 200,000 battery cells are FEOC-compliant. Alternatively, M may determine which 200,000 battery cells are FEOC-compliant through an allocation of applicable critical mineral Z (but not battery component A) to battery cells, without physical tracking, under paragraph (c)(3)(ii) of this section. Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 200,000 FEOC-compliant battery cells to 200 (200,000/1,000) specific batteries.

(4) *Example 4: Comprehensive example—(i) Facts.* M is a manufacturer of new clean vehicles and batteries. M also manufactures or assembles battery cells at its own battery cell production facility. M manufactures a line of new clean vehicles. Each vehicle contains one battery. All battery cells are produced at the same battery cell production facility. The battery cells are not manufactured or assembled by a FEOC. Each battery contains 1,000 NMC 811 battery cells. M anticipates manufacturing 1,000,000 such battery cells for a line of new clean vehicles that it anticipates will be placed in service in calendar year 2025.

(A) Each battery cell contains 1 cathode electrode, 1 anode electrode, 1 separator, and 1 liquid electrolyte. Thus, M procures 1,000,000 of each battery component for the battery cell production facility.

(B) In addition, each NMC 811 cathode incorporates cathode active material (a constituent material) produced using 2.5 kg of applicable critical minerals, consisting of 0.5 kg of lithium hydroxide, 1.6 kg of nickel sulfate, 0.2 kg of cobalt sulfate, and 0.2 kg of manganese sulfate. Thus, M procures 2,500 metric tons ( $2.5 \text{ kg} * 1,000,000 / 1,000$ ) of applicable critical minerals for the battery cell production facility, resulting in purchase agreements for 500 metric tons of lithium, 1,600 metric tons of nickel, 200 metric tons of cobalt, and 200 metric tons of manganese.

(ii) *Analysis.* (A) Under §1.30D-6(b), M must conduct due diligence on all battery components and applicable critical minerals (and associated constituent materials) that are contained in the battery to determine whether such components or minerals are FEOC-compliant.

(B) Under paragraph (c)(4) of this section, M must first determine whether the battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant. From its due diligence M determines that, of the cathode electrodes, 600,000 are not manufactured by a FEOC and are therefore FEOC-compliant; 400,000 are manufactured by a FEOC and are therefore non-compliant. Of the critical minerals that M has procured, M determines that 250 metric tons of lithium hydroxide, 1,200 metric tons of nickel sulfate, and all of the cobalt sulfate and manganese sulfate are FEOC-compliant. All other battery components and applicable critical minerals of the battery cells are FEOC-compliant.

(C) Under paragraph (c)(3) of this section, M must determine which battery cells are FEOC-compliant through the physical tracking of battery components. M may determine which battery cells are FEOC-compliant through the physical tracking of applicable critical minerals. Alternatively, M may determine which battery cells are FEOC-compliant through an allocation of applicable critical minerals (and associated constituent materials) but not battery components.

(D) Under an allocation-based determination, M has procured 500 metric tons of lithium hydroxide incorporated into a constituent material for the battery cell production facility, of which 50 percent ( $250 / 500$  metric tons) is FEOC-compliant. M has procured 1,600 metric tons of nickel sulfate incorporated into a constituent material for the battery cell production facility, of which 75 percent ( $1,200 / 1,600$  metric tons) is FEOC-compliant. Since the lithium hydroxide is the least compliant applicable critical mineral or component, M allocates the FEOC-compliant lithium hydroxide mass to 50 percent or 500,000 ( $50 \text{ percent} * 1,000,000$ ) of the total battery cells, and to battery cells that

contain FEOC-compliant cathode electrodes and have been allocated FEOC-compliant nickel sulfate. Under paragraph (c)(2)(ii)(E) of this section, the quantity of FEOC-compliant battery cells is limited by the applicable critical mineral (lithium hydroxide) that has the lowest percentage (50 percent) of FEOC-compliant supply.

(E) Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 500,000 FEOC-compliant battery cells to 500 (500,000/1,000) specific batteries.

(F) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 500 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 500 FEOC-compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, has approved the number, a compliant-battery ledger is established with a balance of 500 FEOC-compliant batteries.

(h) *Severability*. The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(i) *Applicability date*. This section applies to new clean vehicles placed in service after December 31, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.