



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

#### [REG-120080-22]

#### RIN 1545-BQ52

#### Section 30D New Clean Vehicle Credit

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations regarding the Federal income tax credit under the Inflation Reduction Act of 2022 for the purchase of qualifying new clean vehicles, including new plug-in electric vehicles powered by an electric battery meeting certain requirements and new qualified fuel cell vehicles. These proposed regulations would affect eligible taxpayers who purchase new vehicles that qualify for the credit.

**DATES:** Comments and Requests for a Public Hearing: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF 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.

Applicability Date of New Critical Mineral and Battery Component Requirements:  
See section III.D of the “Background” section for a discussion of the applicability date of the new critical mineral and battery component requirements.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-120080-22) by following the online

instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.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, whether electronically or on paper, to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG-120080-22), 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, Vivian Hayes at (202) 317-5306 (not a toll-free number) or by email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### **I. Overview**

Section 30D(a) of the Internal Revenue Code (Code) 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 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 of the Code (proposed regulations). To date, no regulations have been proposed pursuant to section 30D.

Section 30D was originally 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 the purchase and placing in service of new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of Public Law 117-169, 136

Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

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, the section 30D credit is treated as a personal credit allowable under subpart A of the Code. Section 30D(c)(2). However, the amount of the section 30D credit that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year business credit under section 38(b) instead of being allowed under section 30D(a). Section 30D(c)(1). 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).

## **II. IRA Amendments to Section 30D**

The IRA made a number of amendments to section 30D. In general, the purpose of these amendments is to promote the purchase and use of new clean vehicles by lower and middle-income Americans, to promote resilient supply chains and domestic manufacturing, to strengthen supply chains with trusted trading partners, to protect against improper credit claims, and to achieve significant carbon emissions reductions. These amendments are specifically described in the following subsections.

### **A. Credit amount and critical mineral and battery component requirements**

The IRA amends the rules for determining the amount of the section 30D credit. Prior to the amendments to section 30D made by section 13401(a) and (e) of the IRA becoming applicable, the amount of the section 30D credit is calculated based on the vehicle's battery capacity. The base amount is \$2,500, plus \$417 for a battery with a capacity of at least 5 kilowatt hours, and an additional \$417 for each kilowatt hour of capacity in excess of 5 kilowatt hours, up to a maximum credit of \$7,500 per vehicle. Section 13401(a) of the IRA amends section 30D(b) of the Code to provide a maximum

credit of \$7,500 per vehicle, consisting of \$3,750 in the case of a vehicle that meets certain requirements relating to critical minerals and \$3,750 in the case of a vehicle that meets certain requirements relating to battery components. The amendments made by section 13401(a) of the IRA apply to vehicles placed in service after the date on which the Secretary of the Treasury or her delegate (Secretary) issues proposed guidance described in new section 30D(e)(3)(B) of the Code relating to the new critical minerals requirements described in new section 30D(e)(1)(A) (Critical Minerals Requirement) and the new battery components requirements described in new section 30D(e)(2)(A) (Battery Components Requirement). See section 13401(k)(3) of the IRA.

New section 30D(e)(1)(A) provides that the Critical Minerals Requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America, is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the Critical Minerals Requirement is set forth in section 30D(e)(1)(B)(i) through (v) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date of issuance of the proposed guidance described in new section 30D(e)(3)(B) of the Code and before January 1, 2024, the applicable percentage is 40 percent. In the case of a vehicle placed in service during calendar year 2024, 2025, and 2026, the applicable percentage is 50 percent, 60 percent, and 70 percent, respectively. In the case of a vehicle placed in service after December 31, 2026, the applicable percentage is 80 percent.

New section 30D(e)(2)(A) provides that the Battery Components Requirement

with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the Battery Components Requirement is set forth in section 30D(e)(2)(B)(i) through (vi) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date of issuance of the proposed guidance described in new section 30D(e)(3)(B) of the Code and before January 1, 2024, the applicable percentage is 50 percent. In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable percentage is 60 percent. In the case of a vehicle placed in service during calendar year 2026, 2027, and 2028, the applicable percentage is 70 percent, 80 percent, and 90 percent, respectively. In the case of a vehicle placed in service after December 31, 2028, the applicable percentage is 100 percent.

#### **B. New clean vehicle definition**

The IRA amends the definition of the vehicles that may qualify for the section 30D credit. Section 13401(c) of the IRA amends section 30D(d) of the Code by making the credit applicable to “new clean vehicles,” instead of “new qualified plug-in electric drive motor vehicles,” applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) and (g)(2) of the IRA, section 30D(d)(1) of the Code defines a “new clean vehicle” as a motor vehicle that satisfies the 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, at such time and in such manner as the Secretary provides, containing specifically enumerated items.

With respect to the requirement that the motor vehicle must be made by a qualified manufacturer, the IRA creates new requirements for manufacturers of vehicles eligible for the section 30D credit applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) the IRA, section 30D(d)(3) of the Code defines a “qualified manufacturer” as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency 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.

The IRA provides that certain fuel cell vehicles may qualify for the section 30D credit. Section 13401(c) of the IRA adds new section 30D(d)(6) to the Code, which includes in the definition of the term “new clean vehicle” applicable to vehicles placed in service after December 31, 2022, any “new qualified fuel cell motor vehicle” (as defined in section 30B(b)(3)) that meets the requirements under section 30D(d)(1)(G) and (H) (North American final assembly and seller reporting requirements).

The IRA disqualifies certain vehicles from the section 30D credit if the battery of

the vehicle contains critical minerals or battery components from a foreign entity of concern. As amended by section 13401(e) of the IRA, section 30D(d)(7) of the Code excludes, after certain specified dates, vehicles placed in service with batteries containing certain critical minerals or battery components from a foreign entity of concern from the definition of the term “new clean vehicle.” In particular, amended section 30D(d)(7) provides that the term “new clean vehicle” does not include (A) 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 (as described in section 30D(e)(1)(A)) 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 (B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in section 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined). These rules will be addressed in future guidance.

### **C. Final assembly requirement**

As described in section II.B of the Background section of this preamble, the IRA requires new clean vehicles to undergo final assembly in North America to be eligible for the section 30D credit. This requirement is applicable to vehicles sold after August 16, 2022. See section 13401(k)(2) of the IRA. New section 30D(d)(5) defines “final assembly” as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

### **D. Elimination of phaseout**

The IRA eliminates the phaseout of the section 30D credit for vehicles made by

manufacturers that have sold at least 200,000 vehicles eligible for the credit for use in the United States after December 31, 2009. Pursuant to section 13401(d) of the IRA this limitation does not apply to vehicles sold after December 31, 2022. See section 13401(k)(5) of the IRA.

### **E. Special rules**

The IRA adds four new special rules under section 30D(f) applicable to vehicles placed in service after December 31, 2022. First, section 30D(f)(8) permits only one section 30D credit to be claimed for each vehicle identification number (VIN). Second, section 30D(f)(9) requires taxpayers to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Third, section 30D(f)(10) denies the section 30D credit to certain high-income taxpayers. More specifically, section 30D(f)(10)(A) provides that no credit is allowed for any taxable year if (i) the lesser of (I) the modified adjusted gross income of the taxpayer for such taxable year, or (II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (ii) the threshold amount (Modified AGI Limitation). New section 30D(f)(10)(B) provides that the threshold amount is (i) in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), \$300,000, (ii) in the case of a head of household (as defined in section 2(b) of the Code), \$225,000, and (iii) in the case of any other taxpayer, \$150,000. New section 30D(f)(10)(C) defines "modified adjusted gross income" as adjusted gross income (AGI) increased by any amount excluded from gross income under sections 911, 931, or 933.

Fourth, section 30D(f)(11) excludes from the section 30D credit vehicles that exceed certain manufacturer's suggested retail price thresholds. New section 30D(f)(11)(A) provides that no credit is allowed for a vehicle with a manufacturer's suggested retail price in excess of the applicable limitation. New section 30D(f)(11)(B) provides that the applicable limitation for each vehicle classification is as follows: in the



case of a van, \$80,000; in the case of a sport utility vehicle, \$80,000; in the case of a pickup truck, \$80,000; and in the case of any other vehicle, \$55,000. New section 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehicle classifications using criteria similar to that employed by the Environmental Protection Agency and the Department of the Energy to determine size and class of vehicles.

Section 13401(i)(4) of the IRA amended section 6213(g)(2) to provide the IRS with math error authority for the omission of a correct VIN included on the return as required under section 30D(f)(9).

Amended section 30D(g) provides rules for transfer of the credit from the taxpayer to certain registered dealers applicable to vehicles placed in service after December 31, 2023. Those rules will be addressed in future guidance.

Amended section 30D(h) provides that no credit is allowed with respect to any vehicle placed in service after December 31, 2032.

#### **F. IRA applicability dates**

Section 13401(k) of the IRA specifies various applicability dates for its amendments to section 30D. As noted previously, except as provided in section 13401(k)(2) through (5) of the IRA, the amendments made by section 13401 of the IRA apply to vehicles placed in service after December 31, 2022. Section 13401(k)(2) of the IRA provides that the amendments made by section 13401(b) of the IRA relating to final assembly apply to vehicles sold after the date of enactment of the IRA (August 16, 2022). Section 13401(k)(3) of the IRA provides that the amendments made by section 13401(a) and (e) of the IRA relating to the per vehicle credit amount dollar limitation and Critical Minerals and Battery Components Requirements apply to vehicles placed in service after the date on which the proposed guidance described in new section 30D(e)(3)(B) is issued by the Secretary. Section 13401(k)(4) of the IRA provides that

the amendments made by section 13401(g) of the IRA relating to transfers of the section 30D credit apply to vehicles placed in service after December 31, 2023. Section 13401(k)(5) of the IRA provides that the amendment made by section 13401(d) of the IRA eliminating the manufacturer limitation applies to vehicles sold after December 31, 2022.

Section 13401(l) of the IRA provides a transition rule for a taxpayer who purchased or entered into a written binding contract to purchase a new qualified plug-in electric drive motor vehicle (as defined in section 30D(d)(1) of the Code, as in effect on the day before the date of enactment of the IRA (August 15, 2022)) after December 31, 2021, and before the date of enactment of the IRA (August 16, 2022), and placed such vehicle in service on or after the date of enactment of the IRA. The transition rule provides that such a taxpayer may elect (at such time, and in such form and manner as the Secretary may prescribe) to treat such vehicle as having been placed in service on the day before the date of enactment of the IRA.

### **III. Prior Guidance, Request for Comments, and Other Documents Relating to the New Clean Vehicle Credit**

#### **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 section 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals; (3) battery components; (4) applicable values; (5) foreign entities of concern; (6) recordkeeping and reporting; (7) tax-exempt entities; (8) registered dealers and eligible entities; (9) the final assembly requirement; (10) vehicle classifications; (11) elections to transfer and advance payments; and (12) 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 of the Code, and to report certain information regarding vehicles produced by such manufacturers that may be eligible for these credits. Information required to be reported includes certifications regarding the Critical Minerals and Battery Components Requirements, as required in sections 30D(e)(1)(A) and (e)(2)(A), once those requirements are applicable. 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. Notices 2023-1 and 2023-16 and 30D White Paper**

On December 29, 2022, the Treasury Department and the IRS published Notice 2023-1, 2023-3 I.R.B. 373, which describes definitions for certain terms in section 30D that the Treasury Department and the IRS intended to include in proposed regulations. The Treasury Department also released a white paper on the anticipated direction, as of December 29, 2022, of the proposed guidance on the Critical Minerals and Battery Components Requirements and the process for determining whether vehicles qualify under these requirements (30D White Paper). See “Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit,” Dec. 29, 2022, <https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf> (last accessed March 28, 2023).

On February 3, 2023, the Treasury Department and the IRS published Notice

2023-16, 2023-8 I.R.B. 479, which modifies Notice 2023-1 by revising the vehicle classification standard that the Treasury Department and the IRS intend to provide in proposed regulations.

#### **D. Proposed guidance described in section 30D(e)(3)(B)**

The publication of these proposed regulations in the *Federal Register* is the issuance of the proposed guidance described in section 30D(e)(3)(B) (as added by section 13401(e) of the IRA). Pursuant to section 13401(a), (e), and (k)(3) of the IRA, the critical minerals and battery components requirements of section 13401(a) and (e) of the IRA amend section 30D with respect to vehicles placed in service after the date on which these proposed regulations are published in the *Federal Register*.

Accordingly, the Critical Minerals and Battery Components Requirements apply to vehicles placed in service after April 17, 2023, the date of publication in the **Federal Register**.

### **Explanation of Provisions**

#### **I. General Rules**

Section 30D(a) and proposed §1.30D-1(a) provide that there is allowed as a credit against the tax imposed by chapter 1 for the taxable year an amount equal to the sum of the credit amounts determined under section 30D(b) with respect to each new clean vehicle placed in service by the taxpayer during the taxable year.

Section 30D(c) and proposed §1.30D-1(b) provide that the section 30D credit may be allowed as a general business credit or a personal credit depending on whether the property is of a character subject to an allowance for depreciation (depreciable vehicle).

Section 30D(c)(1) and proposed §1.30D-1(b)(1) provide that so much of the credit that would be allowed to a taxpayer under section 30D(a) for any taxable year with respect to all new clean vehicles placed in service by the taxpayer during the

taxable year (determined without regard to section 30D(c) and proposed §1.30D-1(b)(1)) that is attributable to one or more depreciable vehicles will be treated as a current year general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). Depreciable vehicles may also be eligible for the credit for qualified commercial clean vehicles under section 45W. However, under section 45W(d)(3), no credit is allowed under section 45W for a vehicle for which a section 30D credit was allowed to any taxpayer for any taxable year. In addition, proposed §1.30D-1(b)(2) would require the apportionment of any section 30D credit with respect to a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable year in which the vehicle is placed in service. The portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the depreciable vehicle would be treated as a general business credit under section 30D(c)(1) and proposed §1.30D-1(b)(1), and the portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of such vehicle would be treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) and proposed §1.30D-1(b)(3).

Section 30D(c)(2) and proposed §1.30D-1(b)(3) provide that the section 30D credit allowed for any taxable year (determined after application of section 30D(c)(1) and proposed §1.30D-1(b)(1)) is treated as a nonrefundable personal credit allowable under subpart A of part IV of subchapter A of chapter 1 (subpart A) for such taxable year. Section 26 of the Code limits the aggregate amount of credits allowed to a taxpayer by subpart A based on the taxpayer's tax liability. Under section 26(a), the aggregate amount of credits allowed to a taxpayer by subpart A cannot exceed the sum of (i) the taxpayer's regular tax liability (as defined in section 26(b)) for the taxable year reduced by the foreign tax credit allowable under section 27 of the Code, and (ii) the

alternative minimum tax imposed by section 55(a) for the taxable year.

## **II. Definitions**

Proposed §1.30D-2 clarifies the definitions of certain terms related to the statutory requirements of the section 30D credit. The definitions contained in proposed §1.30D-2 were substantially described in Notice 2023-1, as modified by Notice 2023-16.

### **A. Final assembly**

Under section 30D(d)(1)(G) and section 13401(k)(2) of the IRA, any vehicle sold after August 16, 2022, must undergo its final assembly in North America to be eligible for the section 30D credit. Section 30D(d)(5) defines “final assembly” as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Proposed §1.30D-2(b) would provide that, for purposes of section 30D(d)(5) of the Code, “final assembly” means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. To establish where final assembly of a new clean vehicle occurred, the taxpayer could rely on the following information: (1) the vehicle’s plant of manufacture as reported in the vehicle identification number (VIN) pursuant to 49 CFR 565; or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

The vehicle’s plant of manufacture as reported in the VIN means the plant where the manufacturer affixes the VIN. See 49 CFR 565.12. The plant of manufacture is

reported in the VIN pursuant to 49 CFR 565.15(d)(2). The Department of Energy, Alternative Fuels Data Center (AFDC), and the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), each provide a VIN decoder to the public, which can be used to identify a vehicle's plant of manufacture. AFDC, VIN Decoder, <https://afdc.energy.gov/laws/electric-vehicles-for-tax-credit> (last accessed March 28, 2023); NHTSA, VIN Decoder, <https://www.nhtsa.gov/vin-decoder> (last accessed March 28, 2023).

Labeling requirements in 49 CFR 583.5 require the final assembly point to be reported on the label affixed to a passenger motor vehicle. Final assembly point means the plant, factory, or other place, which is a building or series of buildings in close proximity, where a new passenger motor vehicle is produced or assembled from passenger motor vehicle equipment and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle. For multi-stage vehicles, the final assembly point is the location where the first stage vehicle is assembled. 49 CFR 583.4(b)(5).

## **B. North America**

Proposed §1.30D-2(d) would provide that for purposes of section 30D(d)(1)(G), "North America" means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, Appendix A, § 1(1). The territory described in 19 CFR part 182, Appendix A, §1(1), which provides rules of origin regulations for the United States-Mexico-Canada Agreement, is defined as (a) for Canada, the following zones or waters as determined by its domestic law and consistent with international law: (i) The land territory, air space, internal waters, and territorial sea of Canada, (ii) the exclusive economic zone of Canada, and (iii) the continental shelf of Canada; (b) for Mexico,

(i) the land territory, including the states of the Federation and Mexico City, (ii) the air space, and (iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea*, done at Montego Bay on December 10, 1982; and (c) for the United States, (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico, (ii) the foreign trade zones located in the United States and Puerto Rico, and (iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea*, the United States may exercise sovereign rights or jurisdiction.

**C. Manufacturer's suggested retail price (MSRP)**

Section 30D(f)(11)(A) provides that no section 30D credit is allowed for a vehicle with an MSRP in excess of the applicable limitation. Section 30D(f)(11)(B) provides that the "applicable limitation" for each vehicle classification is as follows: in the case of a van, \$80,000; in the case of a sport utility vehicle, \$80,000; in the case of a pickup truck, \$80,000; and in the case of any other vehicle, \$55,000.

Proposed §1.30D-2(c) would provide that for purposes of section 30D(f)(11)(A), "manufacturer's suggested retail price" means the sum of: (A) the retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1); and (B) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer, which is not included within the price of such automobile as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2). This price information is reported on the label that is affixed to the windshield or side window of the vehicle, as described in 15 U.S.C. 1232.



#### **D. Vehicle classifications**

For purposes of applying the MSRP limitation under section 30D(f)(11)(A), section 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehicle classifications using criteria similar to that employed by the Environmental Protection Agency (EPA) and the Department of Energy to determine size and class of vehicles.

The Treasury Department and the IRS originally announced an intent to propose use of the vehicle classification standards in 40 CFR 600.002 in Notice 2023-1; however, in Notice 2023-16, the Treasury Department and the IRS modified the expected vehicle classification standard set forth in Notice 2023-1 to instead provide that a vehicle's vehicle classification is expected to be determined consistent with the fuel economy labeling regime described in 40 CFR 600.315-08. Although the EPA vehicle classification standards in both regimes are similar, the fuel economy labeling regime provides for EPA discretion to assign so-called "crossover" vehicles to a class on a case-by-case basis, taking into account consumer perspective and the marketing segment targeted by the manufacturer. EPA, "Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculation of Fuel Economy Estimates," 71 Fed. Reg. 77872, 77913 (Dec. 27, 2006). In addition, the proposed adoption of the fuel economy labeling regime would align the vehicle classification standards for purposes of the section 30D credit with the classification displayed on the vehicle label and on the consumer-facing website FuelEconomy.gov, making it easier for consumers to know which vehicles qualify under the applicable MSRP limitation.

Proposed §1.30D-2(g) would provide that for purposes of section 30D(f)(11)(B), a vehicle's vehicle classification is to be determined consistent with the rules and definitions provided in 40 CFR 600.315-08 for vans, sport utility vehicles, pickup trucks, and other vehicles. Specifically, "van" means a vehicle classified as a van or minivan

under 40 CFR 600.315-08(a)(2)(iii) and (iv), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii); “sport utility vehicle” means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315-08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii); “pickup truck” means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315-08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii); and “other vehicle” means any vehicle classified in one of the classes of passenger automobiles listed in 40 CFR 600.315-08(a)(1), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

#### **E. Placed in service**

Proposed §1.30D-2(e) would provide that for purposes of the section 30D credit, a new clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle. This proposed definition is consistent with the meaning of “placed in service” for purposes of other provisions of the Code under which property is considered to be “placed in service” when the property is “placed in a condition or state of readiness and availability for a specifically assigned function” and as “the date on which the owner of the vehicle took actual possession of the vehicle.” See §§1.46-3(d)(1)(ii) and (4)(i), 1.179-4(e) and 145.4051-1(c)(2); see also §1.1250-4(b)(2); *Consumers Power Co. v. Commissioner*, 89 T.C. 710 (1987); *Noell v. Commissioner*, 66 T.C. 718, 728-729 (1976).

#### **III. The Critical Minerals and Battery Components Requirements**

Section 30D(e) of the Code provides requirements for critical minerals and battery components with respect to the battery from which the electric motor of a new clean vehicle draws electricity. The Critical Mineral and Battery Component

Requirements apply to applicable critical minerals and battery components, respectively, contained in a battery as defined in proposed § 1.30D-3(c)(3).

#### **A. Critical Minerals Requirement**

Proposed §1.30D-3(a) would provide the rules for determining compliance with the Critical Minerals Requirement. In general, proposed §1.30D-3(a) is consistent with the framework for the Critical Minerals Requirement that was described in the 30D White Paper. Proposed §1.30D-3(a) would provide a three-step process for determining the percentage of the value of the applicable critical minerals in a battery that contribute toward meeting the Critical Minerals Requirement.

##### **i. Step 1: Determine procurement chains**

In the first step for determining compliance with the Critical Minerals Requirement, the manufacturer would need to determine the procurement chain or chains for each applicable critical mineral. Proposed §1.30D-3(c)(14) would define a “procurement chain” as a common sequence of extraction, processing, or recycling activities that occur in a common set of locations, concluding in the production of constituent materials. Proposed §1.30D-3(c)(14) would further clarify that sources of a single applicable critical mineral may have multiple procurement chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations. Each applicable critical mineral procurement chain would need to be evaluated separately pursuant to proposed §1.30D-3(a)(3)(ii).

##### **ii. Step 2: Identify qualifying critical minerals**

In the second step for determining compliance with the Critical Minerals Requirement, each applicable critical mineral procurement chain in the battery would need to be evaluated to determine whether critical minerals procured from the chain have been (1) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (2) recycled in North America.

Applicable critical minerals that satisfy this requirement are considered qualifying critical minerals. Proposed §1.30D-3(c)(17) would define “qualifying critical mineral” as an applicable critical mineral that is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America. Proposed §1.30D-3(c)(17) would use a “50% of value added test” to determine whether this definition is satisfied. Thus, an applicable critical mineral would be treated as extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if: (1) 50 percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or (2) 50 percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect. An applicable critical mineral would be treated as recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

The 30D White Paper explained the likely need for transition rules that would provide manufacturers time to develop the necessary capability to certify compliance with the Critical Minerals Requirement throughout their supply chains—especially given the complexity of battery supply chains and the detailed tracking that would be required—while moving towards more secure and resilient critical mineral supply chains. The proposed 50% of value added test would serve that purpose for vehicles placed in service in 2023 and 2024. For later years, however, the Treasury Department and the IRS anticipate moving to a more stringent test for determining if an applicable critical mineral was extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect, or whether an applicable

critical mineral was recycled in North America. This more stringent test would reflect the potential for more detailed tracking throughout manufacturers' supply chains, which may be necessary to certify compliance with the foreign entity of concern requirements described in section 30D(d)(7)(A) (applicable for vehicles placed in service after December 31, 2024).

The Treasury Department and the IRS specifically request comment on the 50% of value added test, and the best approach for adopting a more stringent test for vehicles placed in service in 2025 and later years. For example, under one approach, the standard of 50 percent or more of the value added to the applicable critical mineral for extraction, processing, or recycling in the definition of qualifying critical mineral, could increase incrementally over time (similar to the incremental increase in the applicable critical minerals percentages in section 30D(e)(1)(B) and proposed § 1.30D-3(a)(2)).

Notably, the 50% of value added test would need to be applied separately for each procurement chain of an applicable critical mineral pursuant to proposed §1.30D-3(a)(3)(ii). For example, lithium that undergoes initial processing activities in a plant in Country A and then is transferred to a plant in Country B to undergo final processing activities, culminating in the lithium being incorporated into a constituent material, would be analyzed under this step together with other lithium moving through the same procurement chain. However, if some of the lithium in the prior example instead undergoes final processing activities in a plant in Country C instead of Country B, then there would be two procurement chains for lithium: (1) Country A to Country B and (2) Country A to Country C.

Proposed §1.30D-3(c)(8) would define "extraction" as the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract minerals or natural

resources from mines and wells, or to extract or harvest 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 applicable critical mineral processing. Extraction would include the beneficiation or other physical processes that allow the extracted materials, including ores, clays, and brines, to become transportable. Extraction would include the physical processes involved in refining. Extraction would not include the chemical and thermal processes involved in refining.

Proposed §1.30D-3(c)(13) would define “processing” as the non-physical processes involved in 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 would begin when chemical or thermal processes, or the combination of them, are used on extracted minerals or natural resources or manmade minerals or resources to create a new product that, through subsequent steps in the applicable critical minerals supply chain, will be processed into a final constituent material. Processing would include the chemical or thermal processes involved in refining. Processing would not include the physical processes involved in refining.

Proposed §1.30D-3(c)(6) would define “constituent materials” as materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials could include, but would not be 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. The definition of constituent materials describes the materials that distinguish the steps of extraction, processing, and recycling of critical minerals from the

subsequent steps of manufacturing and assembly of battery components. Constituent materials would be the final products relevant for calculating the value of the applicable critical minerals in the battery.

Constituent materials would mark the end of processing as the point at which no further chemical, physical, or thermal processes are needed to create the final product that is then used in battery component manufacturing. Constituent materials would similarly mark the end of recycling as the point at which no further transformations are needed to create the final product that is then used in battery component manufacturing. All constituent materials contain applicable critical minerals. Once the final constituent material is created, it then is used as an input to a battery component. Some battery components could be made entirely of inputs that do not contain constituent materials. Inputs used to manufacture battery components that do not contain any applicable critical minerals (for example, solvents, conductive additives, etc.) would not be considered to be constituent materials.

Proposed §1.30D-3(c)(19) would define “recycling” as the series of activities during which recyclable materials containing applicable 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. All physical, chemical, and thermal treatments or modifications that convert recycled feedstocks to specification grade constituent materials would be included in recycling. This definition would align with the current methods of direct, hydrometallurgical, or pyrometallurgical recycling that are utilized commercially for reuse of materials for battery applications.

Proposed §1.30D-3(c)(24) would define “value,” with respect to property, as the arm’s-length price that was paid or would be paid for the property by an unrelated

purchaser determined in accordance with the principles of section 482 of the Code and regulations thereunder.

Proposed §1.30D-3(c)(25) would define “value added,” with respect to recycling, extraction, or processing of an applicable critical mineral as the increase in the value of the applicable critical mineral attributable to the relevant activity.

Proposed §1.30D-3(c)(11) would define “North America” as the territory of the United States, Canada, and Mexico as defined in 19 CFR. part 182, Appendix A, § 1(1).

Proposed §1.30D-3(c)(7) would define the term “country with which the United States has a free trade agreement in effect” and list the countries with which the United States has a “free trade agreement in effect.” The term free trade agreement is not defined in the IRA or in the Code. The proposed definition takes into account the term’s meaning, use and context in the statute. The IRA’s amendments to section 30D expand the incentives for taxpayers to purchase new clean vehicles and for vehicle manufacturers to increase their reliance on supply chains in the United States and in countries with which the United States has reliable and trusted economic relationships. The Treasury Department and the IRS recognize that more secure and resilient supply chains are essential for our national security, our economic security, and our technological leadership. The Treasury Department and the IRS propose to identify the countries with which the United States has free trade agreements in effect for purposes of section 30D consistent with the statute’s purposes of promoting reliance on such supply chains and of providing eligible consumers with access to tax credits for the purchase of new clean vehicles.

Based on these considerations, the Treasury Department and the IRS propose criteria the Secretary would consider in identifying these countries. As set forth in proposed §1.30D-3(c)(7)(i), those criteria would include whether an agreement between the United States and another country, as to the critical minerals contained in electric



vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States: (A) reduces or eliminates trade barriers on a preferential basis, (B) commits the parties to refrain from imposing new trade barriers, (C) establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections), and/or (D) reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions on exports.

Applying those factors, the proposed regulations include countries with which the United States has comprehensive free trade agreements (that is, agreements covering substantially all trade in goods and services between the parties, including trade in critical minerals). These are Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. In addition, the Treasury Department and the IRS also propose to include additional countries that the Secretary identifies after considering the factors listed in proposed §1.30D-3(c)(7)(i). One example of such a country is Japan, with which the United States recently concluded a Critical Minerals Agreement (CMA)<sup>1</sup> containing robust obligations to help ensure free trade in critical minerals, including a commitment to refrain from imposing duties on exports of critical minerals that are currently essential to the electric vehicle battery supply chain, a commitment for the United States and Japan to confer on investments in this sector that may affect national security, and detailed undertakings related to the enforcement of labor and environmental laws related to trade in those critical minerals. The CMA was concluded in the context of an earlier trade agreement the United States

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<sup>1</sup> Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains, concluded March 28, 2023, <https://ustr.gov/sites/default/files/2023-03/US%20Japan%20Critical%20Minerals%20Agreement%202023%2003%2028.pdf>.

concluded with Japan in 2019,<sup>2</sup> a related 2019 agreement on digital trade,<sup>3</sup> and the U.S.-Japan Partnership on Trade announced in November 2021.<sup>4</sup> The Treasury Department and the IRS have consulted with the U.S. Trade Representative in applying the proposed factors here.

Based on an evaluation of the criteria in proposed §1.30D-3(c)(7)(i), the Treasury Department and the IRS would make any necessary amendments to the list in proposed §1.30D-3(c)(7)(ii), including adding any additional countries as any new qualifying international agreements enter into force and the Secretary determines that the factors have been met. The Treasury Department and the IRS would similarly make any necessary amendments based on the modification, termination, or expiration of any previously identified free trade agreements. Proposed § 1.30D-3(c)(7)(iii) would provide that the list of countries in proposed § 1.30D-3(c)(7)(ii) may be revised and updated through appropriate publication in the *Federal Register* or in the *Internal Revenue Bulletin*. The treatment of any given country under this overall approach is independent from the inclusion or exclusion of any other.<sup>5</sup>

The Treasury Department and the IRS seek comment on the proposed criteria for identifying countries with which the United States has free trade agreements in effect, other potential approaches for identifying those countries, and the list of countries

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<sup>2</sup> Trade Agreement Between the United States of America and Japan, concluded October 7, 2019, [https://ustr.gov/sites/default/files/files/agreements/japan/Trade\\_Agreement\\_between\\_the\\_United\\_States\\_and\\_Japan.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Trade_Agreement_between_the_United_States_and_Japan.pdf).

<sup>3</sup> Agreement Between the United States of America and Japan Concerning Digital Trade, concluded October 7, 2019, [https://ustr.gov/sites/default/files/files/agreements/japan/Agreement\\_between\\_the\\_United\\_States\\_and\\_Japan\\_concerning\\_Digital\\_Trade.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf).

<sup>4</sup> Office of United States Trade Representative, United States and Japan Announce the Formation of the U.S.-Japan Partnership on Trade, Nov. 17, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/november/united-states-and-japan-announce-formation-us-japan-partnership-trade-0>.

<sup>5</sup> This independent treatment is consistent with proposed §1.30D-3(c)(e).

set forth in proposed §1.30D-3(c)(7)(ii).

**iii. Step 3: Calculate qualifying critical mineral content**

The third step for determining compliance with the Critical Minerals Requirement would involve the calculation of the percentage of the value of qualifying critical minerals contained in a battery. The proposed regulations refer to this percentage as the “qualifying critical mineral content” and define that term under proposed §1.30D-3(c)(18) as the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of a new clean vehicle draws electricity that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or were recycled in North America. Under proposed §1.30D-3(a)(3)(i), qualifying critical mineral content would be calculated as the percentage that results from dividing the total value of qualifying critical minerals by the total value of critical minerals. Proposed §1.30D-3(c)(23) would define “total value of qualifying critical minerals” as the sum of the values of all the qualifying critical minerals contained in a battery described in proposed §1.30D-3(a)(1). Proposed §1.30D-3(c)(22) would define “total value of critical minerals” as the sum of the values of all applicable critical minerals contained in a battery described in proposed §1.30D-3(a)(1).

Proposed §1.30D-3(a)(3)(iii) would require qualified manufacturers to select a date for determining the values associated with the total value of qualifying critical minerals (determined separately for each procurement chain) and the total value of critical minerals. Such date would need to be after the final processing or recycling step for the applicable critical minerals relevant to the certification described in section 30D(e)(1)(A) of the Code. This date would need to be uniformly applied for all applicable critical minerals contained in the battery. Proposed §1.30D-3(a)(15) would define a qualified manufacturer as a manufacturer described in section 30D(d)(3) of the Code.

Proposed §1.30D-3(a)(3)(iv) would provide that a qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for batteries in a group of vehicles, a qualified manufacturer could average the qualifying critical mineral content calculation over a limited period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and proposed §1.30D-2(b)) within North America. The Treasury Department and the IRS seek comment on whether to include any more specific conditions or limitations on this ability to average these calculations

The percentage of qualifying critical minerals content that is calculated in Step 3 would ultimately be compared with the relevant applicable critical minerals percentage provided in proposed §1.30D-3(a)(2) to determine whether a vehicle satisfies the Critical Minerals Requirement described in section 30D(e)(1)(A) of the Code.

## **B. Battery Components Requirement**

Proposed §1.30D-3(b) would provide the rules for determining compliance with the Battery Components Requirement. In general, proposed §1.30D-3(b) is consistent with the framework for the Battery Components Requirement that was described in the 30D White Paper. Proposed §1.30D-3(b) would provide a four-step process for determining the percentage of the value of the battery components in a battery that contribute toward meeting the Battery Components Requirement.

### **i. Step 1: Identify components that are manufactured or assembled in North America**

In the first step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine whether each battery component in a battery was manufactured or assembled in North America. Such

components are referred to in the proposed regulations as “North American battery components” and are defined in proposed §1.30D-3(c)(12) as a battery component substantially all of the manufacturing or assembly of which occurs in North America, without regard to the location of the manufacturing or assembly activities of the components that make up the particular battery component.

Proposed §1.30D-3(c)(3) would define “battery,” for purposes of a new clean vehicle, as 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” would 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. This definition of battery is consistent with the statute because battery modules and cells are the sources “from which the electric motor of such vehicle draws electricity.” Sections 30D(e)(1)(A) and (2)(A). The battery module is the end point for the purpose of calculating the value of battery components.

Proposed §1.30D-3(c)(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. This definition of battery cell would encompass the smallest combination of battery components necessary for the function of energy storage.

Proposed §1.30D-3(c)(5) would define “battery component” as a component that forms part of a battery and which is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components would include, but not be limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent

materials would not be considered a type of battery component, although constituent materials could be manufactured or assembled into battery components. Some battery components could be made entirely of inputs that do not contain constituent materials. Battery components would include any piece of the assembled battery cell that contribute to electrochemical energy storage.

Proposed §1.30D-3(c)(10) would define “manufacturing,” with respect to a battery component, as the industrial and chemical steps taken to produce a battery component. Manufacturing would use industrial and chemical steps starting with constituent materials and other battery components that do not contain constituent materials to create a new battery component.

Proposed §1.30D-3(c)(2) would define “assembly,” with respect to battery components, as the process of combining battery components into battery cells and battery modules.

**ii. Step 2: Determine the incremental value of each battery component and North American battery components**

In the second step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine the incremental value for each battery component. The resulting incremental value for a battery component would be attributable to North America if the battery component is a “North American battery component” as defined in proposed §1.30D-3(c)(12).

Proposed §1.30D-3(c)(9) would define “incremental value,” with respect to a battery component, as the value (as defined in proposed §1.30D-3(c)(24)) determined by subtracting from the value of that battery component the value of the manufactured or assembled battery components, if any, that are contained in that battery component.

Proposed §1.30D-3(c)(20) would define “total incremental value of North American battery components” as the sum of the incremental values of each North American battery component contained in a battery described in proposed §1.30D-

3(b)(1).

**iii. Step 3: Determine the total incremental value of battery components**

In the third step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to total the incremental value of battery components. Proposed §1.30D-3(c)(21) would define “total incremental value of battery components” as the sum of the incremental values of each battery component contained in a battery described in proposed §1.30D-3(b)(1). The total incremental value of battery components could also be calculated by totaling the value of each battery module in the battery.

**iv. Step 4: Calculate the qualifying battery component content**

In the fourth step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine the qualifying battery component content. Proposed §1.30D-3(c)(16) would define “qualifying battery component content” as the percentage of the value of the battery components contained in the battery from which the electric motor of a new clean vehicle draws electricity that were manufactured or assembled in North America. Proposed §1.30D-3(b)(3)(i) would provide that the qualifying battery component content is the percentage that results from dividing the total incremental value of North American battery components (determined in step 2) by the total incremental value of battery components (determined in step 3).

Proposed §1.30D-3(b)(3)(ii) would require qualified manufacturers to select a date for determining the values associated with the total incremental value of North American battery components and the total incremental value of battery components. Such date would need to be after the last manufacturing or assembly step for the battery components relevant to the certification described in section 30D(e)(2)(A) of the Code. This date must be uniformly applied for all battery components contained in the

battery.

Proposed §1.30D-3(b)(3)(iii) would provide that a qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for batteries in a group of vehicles, a qualified manufacturer could average the qualifying battery component content calculation over a limited period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and proposed §1.30D-2(a)) within North America. The Treasury Department and the IRS seek comment on whether to include any more specific conditions or limitations on this ability to average these calculations.

The percentage of qualifying battery component content that would be calculated in Step 4 would ultimately be compared with the relevant applicable battery components percentage provided in proposed §1.30D-3(b)(2) to determine whether a vehicle satisfies the Battery Components Requirement described in section 30D(e)(2)(A) of the Code.

The Treasury Department and the IRS request comments on the Critical Mineral and Battery Component Requirements as they would be implemented in proposed §1.30D-3, including the distinction between processing of applicable critical minerals and manufacturing and assembly of battery components, and related definitions.

### **C. Excluded entities**

Section 30D(d)(7) of the Code 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 (as described in section 30D(e)(1)(A)) 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 (as described in section 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined). The Treasury Department and the IRS intend to issue guidance with respect to section 30D(d)(7) at a later date.

#### **IV. Special Rules**

Proposed §1.30D-4 would provide special rules with respect to the section 30D credit.

##### **A. No Double Benefit**

Section 30D(f)(2) and proposed §1.30D-4(a)(1) would provide that the amount of any deduction or other credit allowable under chapter 1 for a vehicle for which a section 30D credit is allowable must be reduced by the amount of the section 30D credit allowed under section 30D(a) for such vehicle determined without regard to section 30D(c), which may treat all or a portion of the aggregate credit allowed under section 30D(a) as a current year general business credit under section 38(b).

Proposed §1.30D-4(a)(2) would provide that a section 30D credit that has been allowed with respect to a vehicle in a taxable year before the taxable year in which a credit under section 25E is allowable for that vehicle does not reduce the amount of the allowable section 25E credit. Accordingly, a taxpayer who otherwise satisfies the requirements of section 25E would be eligible to claim the section 25E credit for a vehicle for which another taxpayer previously claimed the section 30D credit.

Proposed §1.30D-4(a)(3) would provide that no credit is allowed under section 45W with respect to any vehicle for which a credit was allowed under section 30D. This rule, which is based on section 45W(d)(3), precludes both the section 30D credit and the section 45W credit from being allowed for the same vehicle, whether in the same or

different taxable years.

**B. Limitation based on modified adjusted gross income**

Section 30D(f)(10) and proposed §1.30D-4(b) would provide that no section 30D(a) credit is allowed for any taxable year if (i) the lesser of (I) the modified AGI of the taxpayer for such taxable year or (II) the modified AGI of the taxpayer for the preceding taxable year exceeds (ii) the threshold amount (Modified AGI Limitation). The threshold amount is \$300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), \$225,000 in the case of a head of household (as defined in section 2(b) of the Code), and \$150,000 for all other taxpayers. “Modified adjusted gross income” is defined in section 30D(f)(10)(C) as the taxpayer’s AGI increased by any amount excluded from gross income under sections 911, 931, or 933 of the Code. Proposed §1.30D-4(b)(4) provides that if the taxpayer’s filing status changes (for example, from single to head of household) in this two-year period, the taxpayer satisfies the Modified AGI Limitation if the taxpayer’s modified AGI does not exceed the threshold amount in either taxable year based on the applicable filing status for that taxable year.

Proposed §1.30D-4(b)(5)(i) would provide that, except as provided in proposed §1.30D-4(b)(5)(ii), in the case of a new clean vehicle that is placed in service by a corporation or other taxpayer that is not an individual for whom AGI is computed under section 62, the Modified AGI Limitation does not apply. Corporations and such other taxpayers do not have AGI computed under section 62, so the special rule in section 30D(f)(10) establishing a Modified AGI Limitation does not apply to these taxpayers.

Proposed §1.30D-4(b)(5)(ii) would provide that in the event that the new clean vehicle is placed in service by a partnership or an S corporation, and the section 30D credit is claimed by individuals who are direct or indirect partners of that partnership or shareholders of that S corporation, the Modified AGI Limitation will apply to those

partners or shareholders. The Treasury Department and the IRS request comments on whether a similar rule should be provided for trusts or other types of entities that place in service a new clean vehicle.

### **C. Multiple owners and passthrough entity ownership of a single vehicle**

In certain instances, multiple taxpayers may purchase, place in service, and be titled as owners of a single vehicle. For example, a married couple that files separate tax returns may jointly purchase and take possession of a new clean vehicle that qualifies for the section 30D credit and both spouses may be titled as owners of the vehicle. However, the structure of section 30D provides for one taxpayer to claim the section 30D credit per vehicle placed in service. See generally section 30D(a), (b), (f)(8), (f)(9) and section 6213(g)(2)(T) of the Code. Section 30D does not contain rules for allocation or proration of the section 30D credit with respect to a single vehicle to multiple taxpayers placing that vehicle in service, and such an allocation or proration would present challenges from a tax administration perspective.

Proposed §1.30D-4(c)(1) would provide that, except as provided in proposed §1.30D-4(c)(2), the amount of the section 30D credit attributable to a new clean vehicle may be claimed on only one tax return. In the event multiple owners place in service a new clean vehicle, no allocation or proration of the credit would be available. Proposed §1.30D-4(c)(3)(i) would provide that the name and taxpayer identification number of the owner claiming the credit under section 30D(a) should be listed on the seller's report pursuant to section 30D(d)(1)(H). Accordingly, multiple owners of a new clean vehicle would inform the seller which owner will claim the section 30D credit so that the seller can identify that taxpayer on the seller's report. The credit would be allowed only on the tax return of the owner listed in the seller's report.

Proposed §1.30D-4(c)(2) would provide that in the case of a new clean vehicle placed in service by a partnership or S corporation, while the partnership or

S corporation is the vehicle owner, the section 30D credit is allocated among the partners of the partnership under §1.704-1(b)(4)(ii) or among the shareholders of the S corporation under sections 1366(a) and 1377(a) of the Code and claimed on the tax returns of the partners or shareholder(s). Proposed §1.30D-4(c)(3)(i) would provide that in the case of a new clean vehicle placed in service by a partnership or S corporation, the name and tax identification number of the partnership or S corporation that placed the new clean vehicle in service should be listed on the seller's report pursuant to section 30D(d)(1)(H).

## **V. Severability**

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.

## **Effect on Other Documents**

This proposed rulemaking hereby makes IRS Notices 2023-1, 2023-3 I.R.B. 373 and 2023-16, 2023-8 I.R.B. 479 obsolete.

## **Proposed Applicability Dates**

Proposed §1.30D-1 is proposed to apply to new clean vehicles placed in service after the date of publication of the Treasury Decision adopting these rules as final rules in the *Federal Register*.

Proposed § 1.30D-2 is proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The amendments made to section 30D by the IRA generally apply to vehicles placed in service after December 31, 2022, with certain exceptions. The definitions in proposed § 1.30D-2 were substantially described

in Notice 2023-1, which was released on December 29, 2022.<sup>6</sup> The definitions in proposed § 1.30D-2 generally relate to statutory rules applicable to vehicles placed in service on or after January 1, 2023. These proposed regulations are proposed to apply to vehicles placed in service on or after January 1, 2023, for taxable years ending after the date these proposed regulations are published in the *Federal Register* to improve certainty for taxpayers and to provide clear rules for tax administration.

Proposed § 1.30D-3 is proposed to apply to new clean vehicles placed in service after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] for taxable years ending after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Pursuant to section 13401(a), (e), and (k)(3) of the IRA, the critical minerals and battery components requirements of section 13401(a) and (e) of the IRA amend section 30D with respect to vehicles placed in service after the date on which these proposed regulations are published in the *Federal Register*. Accordingly, the Critical Minerals and Battery Components Requirements in proposed § 1.30D-3 are proposed to apply to vehicles placed in service after the date of publication of these proposed regulations for taxable years ending after the date of publication of these proposed regulations.

Proposed § 1.30D-4 is proposed to apply to new clean vehicles placed in service after the date of publication of the Treasury Decision adopting these rules as final rules in the *Federal Register*.

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.

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

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<sup>6</sup> Notice 2023-16, released February 3, 2023, modified Notice 2023-1, regarding the vehicle classification standard set forth in Notice 2023-1 in a manner that allowed additional new clean vehicles to be eligible for the section 30D credit. Notice 2023-16 provided that taxpayers could rely on these modified expected definitions for new clean vehicles placed in service on or after January 1, 2023.

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at <https://www.irs.gov>.

## **Special Analyses**

### **I. Regulatory Planning and Review – Economic Analysis**

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

### **II. Paperwork Reduction Act**

Any collection burden associated with rules described in these proposed regulations is previously accounted for in OMB Control Number 1545-2137. These proposed regulations do not alter previously accounted for information collection requirements and do not create new collection requirements. OMB Control Number 1545-2137 covers Form 8936 and Form 8936-A regarding electric 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 Secretary 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 certification requirements in sections 30D(e)(1)(A) and (e)(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 Paperwork Reduction Act under control number 1545-2137.

The requirement to determine the final assembly location in proposed §1.30D-2(b) by relying on (1) the vehicle's plant of manufacture as reported in the vehicle identification number (VIN) pursuant to 49 CFR 565 or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3) is accounted for by the Department of Transportation in OMB Control Numbers 2127-0510 and 2127-0573.

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.

### **III. 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 two types of business entities: (1) qualified manufacturers that must trace and report on their critical minerals and battery components in order to certify that their new clean vehicles qualify for the section 30D credit, and (2) businesses that may earn the section 30D credit when purchasing and placing in service a new clean vehicle.

While the tracking and reporting of critical minerals and battery components is likely to involve significant administrative costs, according to public filings, all qualified manufacturers had total revenues above \$1B in 2022. There are a total of 21 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit.<sup>7</sup> Pursuant to Revenue Procedure 2022-42 and following the publication of these proposed regulations, qualified manufacturers will also have to certify that their vehicles qualify under the Critical Minerals and Battery Components Requirements. The proposed regulations provide definitions and general rules for the section 30D credit, including rules for qualified manufacturers to comply with the Critical Mineral and Battery Component Requirements. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for qualified manufacturers for consistent application of critical minerals and battery components calculations and for taxpayers purchasing new clean vehicles that qualify for the section 30D credit. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity.

Business purchasers of clean vehicles who take the section 30D credit must

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<sup>7</sup> The list of manufacturers is available at the following IRS website: <https://www.irs.gov/credits-deductions/manufacturers-and-models-for-new-qualified-clean-vehicles-purchased-in-2023-or-after#:~:text=If%20you%20bought%20and%20placed,Internal%20Revenue%20Code%20Section%2030D.>



satisfy reporting requirements that are largely the same as those faced by individuals accessing the section 30D credit to purchase clean vehicles. Taxpayers will continue to file Form 8936, *Qualified Plug-In Electric Drive Motor Vehicle Credit*, to claim the section 30D credit. As was the case for the section 30D credit prior to amendments made by the IRA, taxpayers can rely on qualified manufacturers to determine if the vehicle being purchased qualifies for the section 30D credit and the credit amount. The estimated burden for individual and business taxpayers filing this form is approved under OMB control number 1545-0074 and 1545-0123. To make it easier for a taxpayer to determine the potential section 30D credit available for a specific vehicle, the proposed regulations provide business entities with tools and definitions to ascertain whether any vehicles purchased would be eligible for the credit. The VIN reporting required by section 30D(f)(9) and described in the proposed regulations was included in prior section 30D reporting.

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.

#### **IV. Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 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 in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately \$198 million. This 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.

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

Executive Order 13132 (Federalism) prohibits an agency (to the extent practicable and permitted by law) from promulgating any regulation that has federalism implications, unless the agency meets the consultation and funding requirements of section 6 of the Executive order, if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law. 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.

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

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including their economic impact and any alternative approaches that should be considered during the rulemaking process. In addition, the Treasury Department and the IRS request comments on the specific issues noted in the previous sections of this preamble.

Any comments submitted, whether electronically or on paper, 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 as prescribed in this preamble under the "DATES" heading. 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 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic

hearing will be made accessible to people with disabilities.

## **Drafting Information**

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

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

Income taxes, Reporting and recordkeeping requirements.

## **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### **PART 1 INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.30D-1 also issued under 26 U.S.C. 30D.

Section 1.30D-2 also issued under 26 U.S.C. 30D.

Section 1.30D-3 also issued under 26 U.S.C. 30D.

Section 1.30D-4 also issued under 26 U.S.C. 30D and 26 U.S.C. 45W(d)(3).

**Par 2.** Sections 1.30D-0, 1.30D-1, 1.30D-2, 1.30D-3, and 1.30D-4 are added to read as follows:

Sec.

\* \* \* \* \*

1.30D-0 Table of contents.

1.30D-1 Credit for new clean vehicles.

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

1.30D-3 Critical mineral and battery component requirements.

1.30D-4 Special rules.

\* \* \* \* \*

## **§1.30D-0 Table of contents.**

This section lists the captions contained in §§1.30D-1 through 1.30D-4.

### **§1.30D-1 Credit for new clean vehicles.**

- (a) In general.
- (b) Treatment of credit.
  - (1) Business credit treated as part of general business credit.
  - (2) Apportionment of section 30D credit.
  - (3) Personal credit limited based on tax liability.
- (c) Severability.
- (d) Applicability date.

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

- (a) In general.
- (b) Final assembly.
- (c) Manufacturer's suggested retail price.
- (d) North America.
- (e) Placed in service.
- (f) Section 30D regulations.
- (g) Vehicle classifications.
  - (i) Van.
  - (ii) Sport utility vehicle.
  - (iii) Pickup truck.
  - (iv) Other vehicle.
- (h) Severability.
- (i) Applicability date.

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

- (a) Critical minerals requirement.
  - (1) In general.
  - (2) Applicable critical minerals percentage.
  - (3) Determining qualifying critical mineral content.
    - (i) In general.
    - (ii) Separate determinations required for each procurement chain.
    - (iii) Time for determining value.
    - (iv) Application of qualifying critical mineral content to vehicles.
- (b) Battery components requirement.
  - (1) In general.
  - (2) Applicable battery components percentage.
  - (3) Determining qualifying battery component content.
    - (i) In general.
    - (ii) Time for determining value.
    - (iii) Application of qualifying battery component content to vehicles.
- (c) Definitions.
  - (1) Applicable critical mineral.
  - (2) Assembly.
  - (3) Battery.
  - (4) Battery cell.
  - (5) Battery component.
  - (6) Constituent materials.
  - (7) Country with which the United States has a free trade agreement in effect.

- (8) Extraction.
- (9) Incremental value.
- (10) Manufacturing.
- (11) North America.
- (12) North American battery component.
- (13) Processing
- (14) Procurement chain.
- (15) Qualified manufacturer.
- (16) Qualifying battery component content.
- (17) Qualifying critical mineral.
- (18) Qualifying critical mineral content.
- (19) Recycling.
- (20) Total incremental value of North American battery components.
- (21) Total incremental value of battery components.
- (22) Total value of critical minerals.
- (23) Total value of qualifying critical minerals.
- (24) Value.
- (25) Value added.
- (d) Excluded entities.
- (e) Severability.
- (f) Applicability date.

#### §1.30D-4 Special rules

- (a) No double benefit.
  - (1) In general.
  - (2) Application to credit for previously-owned clean vehicles under section 25E.
  - (3) Application to credit for qualified clean vehicles under section 45W.
- (b) Limitation based on modified adjusted gross income.
  - (1) In general.
  - (2) Threshold amount.
  - (3) Modified adjusted gross income.
  - (4) Special rule for change in filing status.
  - (5) Application to taxpayers other than individuals.
    - (i) In general.
    - (ii) Application to passthrough entities.
- (c) Multiple owners and passthrough entity ownership of a single vehicle.
  - (1) In general.
  - (2) Passthrough entities.
  - (3) Seller Reporting.
    - (i) In general.
    - (ii) Passthrough entities.
  - (4) Example.
  - (d) Severability.
  - (e) Applicability date.

#### **§1.30D-1 Credit for new clean vehicles.**

(a) *In general.* Section 30D(a) of the Internal Revenue Code (Code) allows as a credit against the tax imposed by chapter 1 of the Code (chapter 1) for the taxable year of a taxpayer an amount equal to the sum of the credit amounts determined under

section 30D(b) with respect to each new clean vehicle purchased by the taxpayer that the taxpayer places in service during the taxable year. For purposes of the section 30D regulations (as defined in §1.30D-2(f)), the term *section 30D credit* means the credit allowable to a taxpayer for a taxable year under section 30D(a) and the section 30D regulations with respect to all vehicles placed in service by the taxpayer during the taxable year. Section 1.30D-2 provides definitions that apply for purposes of section 30D and the section 30D regulations. Section 1.30D-3 provides rules regarding the critical mineral and battery component requirements of section 30D(e). Section 1.30D-4 provides guidance regarding the limitations and special rules in section 30D(f).

(b) *Application with other credits--(1) Business credit treated as part of general business credit--(i) In general.* Section 30D(c)(1) requires that so much of the section 30D credit that would be allowed under section 30D(a) for any taxable year (determined without regard to section 30D(c) and this paragraph (b)) that is attributable to a depreciable vehicle must be treated as a general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the use of which is 50 percent or more business use in the taxable year such vehicle is placed in service, the section 30D credit that would be allowed under section 30D(a) for that taxable year (determined without regard to section 30D(c) and this paragraph (b)) that is attributable to such depreciable vehicle must be treated as a general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). See paragraph (b)(2) of this section for rules applicable in the case of a depreciable vehicle the use of which is less than 50 percent business use in the taxable year such vehicle is placed in service. See paragraph (b)(3) of this section for rules applicable to a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) or paragraphs (b)(2)(ii) or (b)(3) of this section.

(ii) *Depreciable vehicle.* For purposes of this paragraph (b), a *depreciable vehicle* is a vehicle of a character subject to an allowance for depreciation.

(2) *Apportionment of section 30D credit.* In the case of a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable year in which the vehicle is placed in service, the taxpayer's section 30D credit for that taxable year with respect to that vehicle must be apportioned as follows:

(i) The portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the vehicle is treated as a general business credit under section 30D(c)(1) and paragraph (b)(1) of this section (and not allowed under section 30D(a) or paragraph (b)(3) of this section).

(ii) The portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of the vehicle is treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) and paragraph (b)(3) of this section.

(3) *Personal credit limited based on tax liability.* Section 26 of the Code limits the aggregate amount of credits allowed to a taxpayer by subpart A of part IV of subchapter A of chapter 1 (subpart A) based on the taxpayer's tax liability. Under section 26(a), the aggregate amount of credits allowed to a taxpayer by subpart A cannot exceed the sum of the taxpayer's regular tax liability (as defined in section 26(b)) for the taxable year reduced by the foreign tax credit allowable under section 27 of the Code, and the alternative minimum tax imposed by section 55(a) for the taxable year. Section 30D(c)(2) provides that the section 30D credit allowed under section 30D(a) for any taxable year (determined after application of section 30D(c)(1) and paragraphs (b)(1) and (2) of this section) is treated as a credit allowable under subpart A for such taxable year, and the section 30D credit allowed under section 30D(a) is therefore subject to the limitation imposed by section 26.

(c) *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 agencies' intention that the remaining provisions shall continue in effect.

(d) *Applicability date.* This section applies to new clean vehicles placed in service after [DATE OF PUBLICATION OF FINAL RULE].

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

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

(b) *Final assembly* means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. To establish where final assembly of a new clean vehicle occurred for purposes of the requirement in section 30D(d)(1)(G) that final assembly of a new clean vehicle occur within North America, the taxpayer may rely on the following information:

(1) The vehicle's plant of manufacture as reported in the vehicle identification number pursuant to 49 CFR 565; or

(2) The final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

(c) *Manufacturer's suggested retail price* means the sum of the prices described in paragraphs (c)(1) and (2) of this section as reported on the label that is affixed to the windshield or side window of the vehicle, as described in 15 U.S.C. 1232.

(1) The retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1).

(2) The retail delivered price suggested by the manufacturer for each accessory



or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer, which is not included within the price of such automobile as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2).

(d) *North America* means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, appendix A, section 1(1).

(e) *Placed in service*. A new clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(f) *Section 30D regulations* means §1.30D-1, this section, and §§1.30D-3 and 1.30D-4.

(g) *Vehicle classifications--(1) In general*. The vehicle classification of a new clean vehicle is to be determined consistent with the rules and definitions provided in 40 CFR 600.315-08 and this paragraph (g) for vans, sport utility vehicles, and pickup trucks, and other vehicles.

(2) *Van* means a vehicle classified as a van or minivan under 40 CFR 600.315-08(a)(2)(iii) and (iv), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(3) *Sport utility vehicle* means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315-08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(4) *Pickup truck* means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315-08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(5) *Other vehicle* means any vehicle classified in one of the classes of passenger automobiles listed in 40 CFR 600.315-08(a)(1), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(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 agencies' intention that the remaining provisions shall continue in effect.

(i) *Applicability date.* This section applies to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023.

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

(a) *Critical minerals requirement--(1) In general.* The critical minerals requirement described in section 30D(e)(1)(A) of the Internal Revenue Code (Code), with respect to the battery from which the electric motor of a new clean vehicle draws electricity, is met if the qualifying critical mineral content of such battery is equal to or greater than the applicable critical minerals percentage (as defined in paragraph (a)(2) of this section), as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary of the Treasury or her delegate (Secretary).

(2) *Applicable critical minerals percentage.* For purposes of paragraph (a)(1) of this section, section 30D(e)(1)(B) provides the *applicable critical minerals percentage*, which is based on the year in which a vehicle is placed in service by the taxpayer and set forth in paragraphs (a)(2)(i) through (v) of this section.

(i) In the case of a vehicle placed in service after April 17, 2023, and before January 1, 2024, the applicable critical minerals percentage is 40 percent.

(ii) In the case of a vehicle placed in service during calendar year 2024, the applicable critical minerals percentage is 50 percent.

(iii) In the case of a vehicle placed in service during calendar year 2025, the applicable critical minerals percentage is 60 percent.

(iv) In the case of a vehicle placed in service during calendar year 2026, the applicable critical minerals percentage is 70 percent.

(v) In the case of a vehicle placed in service after December 31, 2026, the applicable critical minerals percentage is 80 percent.

(3) *Determining qualifying critical mineral content--(i) In general.* Qualifying critical mineral content with respect to a battery described in paragraph (a)(1) of this section is calculated as the percentage that results from dividing:

(A) The total value of qualifying critical minerals, by

(B) The total value of critical minerals.

(ii) *Separate determinations required for each procurement chain.* The portion of an applicable critical mineral that is a qualifying critical mineral must be determined separately for each procurement chain.

(iii) *Time for determining value.* A qualified manufacturer must select a date for determining the values described in paragraphs (a)(3)(i)(A) and (B) of this section. Such date must be after the final processing or recycling step for the applicable critical minerals relevant to the certification described in section 30D(e)(1)(A).

(iv) *Application of qualifying critical mineral content to vehicles.* A qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for batteries in a group of vehicles, a qualified manufacturer may average the qualifying critical mineral content calculation over a period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and §1.30D-2(b)) within North America.

(b) *Battery components requirement--(1) In general.* The battery components requirement described in section 30D(e)(2)(A) of the Code, with respect to the battery from which the electric motor of a new clean vehicle draws electricity, is met if the qualifying battery component content of such battery is equal to or greater than the applicable battery components percentage (as defined in paragraph (b)(2) of this

section), as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary.

(2) *Applicable battery components percentage.* For purposes of paragraph (b)(1) of this section, section 30D(e)(2)(B) provides the *applicable battery components percentage*, which is based on the year in which a vehicle is placed in service by the taxpayer as set forth in paragraphs (b)(2)(i) through (vi) of this section.

(i) In the case of a vehicle placed in service after April 17, 2023, and before January 1, 2024, the applicable battery components percentage is 50 percent.

(ii) In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable battery components percentage is 60 percent.

(iii) In the case of a vehicle placed in service during calendar year 2026, the applicable battery components percentage is 70 percent.

(iv) In the case of a vehicle placed in service during calendar year 2027, the applicable battery components percentage is 80 percent.

(v) In the case of a vehicle placed in service during calendar year 2028, the applicable battery components percentage is 90 percent.

(vi) In the case of a vehicle placed in service after December 31, 2028, the applicable battery components percentage is 100 percent.

(3) *Determining qualifying battery component content--(i) In general.* Qualifying battery component content with respect to a battery described in paragraph (b)(1) of this section is calculated as the percentage that results from dividing--

(A) The total incremental value of North American battery components, by

(B) The total incremental value of battery components.

(ii) *Time for determining value.* A qualified manufacturer must select a date for determining the incremental values described in paragraphs (b)(3)(i)(A) and (B) of this section. Such date must be after the last manufacturing or assembly step for the

battery components relevant to the certification described in section 30D(e)(2)(A) of the Code.

(iii) *Application of qualifying battery component content to vehicles.* A qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for batteries in a group of vehicles, a qualified manufacturer may average the qualifying battery component content calculation over a period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and §1.30D-2(b)) within North America.

(c) *Definitions.* The following definitions apply for purposes of this section:

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

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

(3) *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* 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 component* means a component that forms part of a battery and

which 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 considered 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.

(6) *Constituent materials* means materials that contain applicable critical minerals and 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.

(7) *Country with which the United States has a free trade agreement in effect--(i) In general.* The term “country with which the United States has a free trade agreement in effect” means any of those countries identified in paragraph (c)(7)(ii) of this section or that the Secretary may identify in the future. The criteria the Secretary will consider in determining whether to identify a country under this paragraph (c)(7) include whether an agreement between the United States and that country, as to the critical minerals contained in electric vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States:

- (A) Reduces or eliminates trade barriers on a preferential basis;
- (B) Commits the parties to refrain from imposing new trade barriers;
- (C) Establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections); and/or

(D) Reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions.

(ii) *Free trade agreements in effect.* The countries with which the United States currently has a free trade agreement in effect are: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

(iii) *Updates.* The list of countries in paragraph (c)(7)(ii) may be revised and updated through appropriate guidance published in the *Federal Register* or in the *Internal Revenue Bulletin* (see §601.601(d) of this chapter).

(8) *Extraction* means the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract or 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.

(9) *Incremental value*, with respect to a battery component, means the value determined by subtracting from the value of that battery component the value of the manufactured or assembled battery components, if any, that are contained in that battery component.

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

(11) *North America* means the territory of the United States, Canada, and Mexico

as defined in 19 CFR part 182, appendix A, section 1(1).

(12) *North American battery component* means a battery component substantially all of the manufacturing or assembly of which occurs in North America, without regard to the location of the manufacturing or assembly activities of any components that make up the particular battery component.

(13) *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.

(14) *Procurement chain* means a common sequence of extraction, processing, or recycling activities that occur in a common set of locations with respect to an applicable critical mineral, concluding in the production of constituent materials. Sources of a single applicable critical mineral may have multiple procurement chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations.

(15) *Qualified manufacturer* means a manufacturer described in section 30D(d)(3) of the Code.

(16) *Qualifying battery component content* means the percentage of the value of the battery components contained in the battery from which the electric motor of a new clean vehicle draws electricity that were manufactured or assembled in North America.

(17) *Qualifying critical mineral* means an applicable critical mineral that is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

(i) An applicable critical mineral is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if:



(A) Fifty (50) percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or

(B) Fifty (50) percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect.

(ii) An applicable critical mineral is recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

(18) *Qualifying critical mineral content* means the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of a new clean vehicle draws electricity that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

(19) *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.

(20) *Total incremental value of North American battery components* means the sum of the incremental values of each North American battery component contained in a battery described in paragraph (b)(1) of this section.

(21) *Total incremental value of battery components* means the sum of the incremental values of each battery component contained in a battery described in paragraph (b)(1) of this section.

(22) *Total value of critical minerals* means the sum of the values of all applicable

critical minerals contained in a battery described in paragraph (a)(1) of this section.

(23) *Total value of qualifying critical minerals* means the sum of the values of all the qualifying critical minerals contained in a battery described in paragraph (a)(1) of this section.

(24) *Value*, with respect to property, means the arm's-length price that was paid or would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 of the Code and regulations thereunder.

(25) *Value added*, with respect to recycling, extraction, or processing of an applicable critical mineral, means the increase in the value of the applicable critical mineral attributable to the relevant activity.

(d) *Excluded entities*. [IRS will address excluded entities in the final rule.]

(e) *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 agencies' intention that the remaining provisions shall continue in effect.

(f) *Applicability date*. This section applies to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023.

#### **§1.30D-4 Special rules.**

(a) *No double benefit--(1) In general*. Under section 30D(f)(2) of the Internal Revenue Code (Code), the amount of any deduction or other credit allowable under chapter 1 of the Code for a vehicle for which a credit is allowable under section 30D(a) must be reduced by the amount of the section 30D credit allowed for such vehicle (determined without regard to section 30D(c)).

(2) *Application to credit for previously-owned clean vehicles under section 25E*. A section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a credit under section 25E of the Code is allowable for that vehicle does not reduce the amount allowable under section 25E.

(3) *Application to credit for qualified clean vehicles under section 45W.* Pursuant to section 45W(d)(3) of the Code, no credit is allowed under section 45W with respect to any vehicle for which a credit was allowed under section 30D.

(b) *Limitation based on modified adjusted gross income--(1) In general.* No credit is allowed under section 30D(a) for any taxable year if--

(i) The lesser of --

(A) The modified adjusted gross income of the taxpayer for such taxable year, or

(B) The modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds

(ii) The threshold amount.

(2) *Threshold amount.* For purposes of paragraph (b)(1) of this section, the threshold amount applies to individual taxpayers based on the return filing status for the taxable year, as set forth in paragraphs (b)(2)(i) through (iii) of this section.

(i) In the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), the threshold amount is \$300,000,

(ii) In the case of a head of household (as defined in section 2(b) of the Code), the threshold amount is \$225,000.

(iii) In the case of a taxpayer not described in paragraph (b)(2)(i) or (ii) of this section, the threshold amount is \$150,000.

(3) *Modified adjusted gross income.* For purposes of section 30D(f)(10) and this paragraph (b), the term *modified adjusted gross income* means adjusted gross income (as defined in section 62 of the Code) increased by any amount excluded from gross income under section 911, 931, or 933 of the Code.

(4) *Special rule for change in filing status.* If the taxpayer's filing status for the taxable year differs from the taxpayer's filing status in the preceding taxable year, the taxpayer satisfies the limitation described in paragraph (b)(1) of this section if the

taxpayer's modified AGI does not exceed the threshold amount in either year based on the applicable filing status for that taxable year.

(5) *Application to taxpayers other than individuals--(i) In general.* Except as provided in paragraph (b)(4)(ii) of this section, the modified adjusted gross income limitation of this paragraph (b) does not apply in the case of a new clean vehicle placed in service by a corporation or other taxpayer that is not an individual for whom adjusted gross income is computed under section 62.

(ii) *Application to passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, where the section 30D credit is claimed by individuals who are direct or indirect partners of that partnership or shareholders of that S corporation, the modified adjusted gross income limitation of this paragraph (b) will apply to those partners or shareholders.

(c) *Multiple owners and passthrough entity ownership of a single vehicle--(1) In general.* Except as provided in paragraph (c)(2) of this section, the amount of the section 30D credit attributable to a new clean vehicle may be claimed on only one tax return. In the event a new clean vehicle is placed in service by multiple owners, no allocation or proration of the section 30D credit is available.

(2) *Passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, while the partnership or S corporation is the vehicle owner, the section 30D credit is allocated among the partners of the partnership under §1.704-1(b)(4)(ii) or among the shareholders of the S corporation under sections 1366(a) and 1377(a) of the Code and claimed on the tax returns of the ultimate partners' or of the S corporation shareholder(s).

(3) *Seller reporting--(i) In general.* The name and taxpayer identification number of the vehicle owner claiming the section 30D credit must be listed on the seller's report pursuant to section 30D(d)(1)(H). The credit will be allowed only on the tax return of the

owner listed in the seller's report.

(ii) *Passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, the name and tax identification number of the partnership or S corporation that placed the new clean vehicle in service must be listed on the seller's report pursuant to section 30D(d)(1)(H).

(4) *Example.* A married couple jointly purchases and places in service a new clean vehicle that qualifies for the section 30D credit and puts both of their names on the title. When the couple prepares to file their Federal income tax return, they choose to file using the married filing separately filing status. The section 30D credit may only be claimed by one of the spouses on that spouse's tax return, and the other spouse may not claim any amount of the section 30D credit with respect to that new clean vehicle. The spouse that claims the section 30D credit must be the same spouse listed on the seller report received pursuant to section 30D(d)(1)(H).

(d) *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 agencies' intention that the remaining provisions shall continue in effect.

(e) *Applicability date.* This section applies to new clean vehicles placed in service after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.