

February 5, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen,

We write to express our support for the renewed focus on securing America's economic competitiveness and national security by strengthening the domestic manufacturing sector for innovative energy technologies such as battery energy storage systems and electric vehicles (EVs). The onshoring of these critical industrial capabilities will not only benefit U.S. workers, their families, and communities but also comes at a vitally important time when more domestic investment is needed to remain competitive with our global adversaries.

The undersigned organizations collectively represent every step of the supply chain for battery storage and electric vehicle manufacturing. Our operations are significant economic contributors that create thousands of high-paying jobs, millions of dollars in state tax revenue to fund essential community services, and research and training that ensures the U.S. remains globally competitive.

We write today to urge the Department of the Treasury and the Internal Revenue Service to consider that **direct and indirect material costs and costs related to the domestic extraction of raw materials are value-added activities and should be eligible to claim the Section 45X Advanced Manufacturing Production Tax Credit (45X).**

Critical Mineral Production Under 45X

To date, the Biden-Harris Administration has worked to invest in America – from assessing our inherent vulnerability within mineral supply chains essential to modern renewable energy technologies to supporting domestic mine processing projects through once-in-a-generation public-private funding partnerships. Through these actions, a solid foundation for a new era of American manufacturing is being laid. The Inflation Reduction Act (IRA) of 2022 (Pub. L. 117-169) includes landmark programs essential to reducing our outsized reliance on imported minerals from countries that do not share our democratic values or align with the United States' globally leading environmental, labor, and safety standards.

In December 2023, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) issued draft guidance (88 FR 86844) to implement 45X, a provision whose effective implementation underpins the success of the IRA and the clean energy transition.

Section 45X creates a new tax credit that provides \$35 per kWh for each battery cell, \$10 per kWh for each battery module, and covers 10 percent of the costs of production of the applicable critical materials, which will significantly drive down the costs of domestic clean energy manufacturing. Unlike other eligible components, applicable critical minerals are not subject to a credit phaseout after 2029, underscoring Congressional intent that the IRA incentivizes the onshoring of the critical minerals supply chain.

If implemented thoughtfully, the 45X credit will ensure the success of current American industrial policy over the next decade by facilitating the deployment of domestically-produced clean energy technologies—particularly electric vehicles. However, the proposed guidance states that the only critical mineral production costs eligible to be counted toward the production tax credit are the downstream value-added activities that include chemical conversion and purification (i.e., processing). This concept would not provide a tax credit for the costs of domestic extraction of critical minerals, a key part of onshoring the supply chain. Nor would it address situations in which an entity extracts the minerals and transfers them to another likely unrelated party who refines or chemically processes the raw mineral.

45X and Clean Vehicle Incentives

The Section 30D New Clean Vehicle Tax Credit (30D) was modified by the IRA and reduces the cost of new EVs by \$7,500, provided the vehicle purchaser and manufacturer meet the necessary qualifications. For manufacturers, this means meeting increasingly stringent domestic content requirements that require sourcing battery components and critical minerals either domestically or from free trade agreement (FTA) countries. Because both requirements must be met for an EV to be eligible for the 30D credit, significant investment will continue to be necessary to scale domestic battery manufacturing and critical mineral production capacity and maximize the impact of the 30D credit. Thoughtful implementation of the 45X credit recognizes its role as a key enabling tool to meet 30D sourcing requirements and is central to the success of broader U.S. industrial strategy.

The clean vehicle and manufacturing incentives in the IRA have two key policy objectives: to increase EV deployment and to counter foreign influence by building domestic clean energy supply chains. Designed to complement each other, the Section 30D New Clean Vehicle Tax Credit and the Section 45X Advanced Manufacturing Production Tax Credit will be the main drivers of these policy outcomes. As proposed, the 45X guidance will achieve neither and, in fact, could serve as a hindrance to the success of both credits. Without a robust, secure supply of domestic critical minerals and battery components, increasingly stringent sourcing requirements tied to 30D eligibility could make fewer vehicles eligible over time. The decision to deny the 45X credit for raw materials costs will curtail future domestic supply, worsening an increasing minerals bottleneck rather than alleviating it.

We appreciate Treasury and IRS's concerns about preventing double counting and reducing fraud, waste, and abuse and strongly support the need for upholding the integrity of the 45X credit. We also share Treasury and IRS' goals of ensuring the value of the credit is retained domestically. However, as proposed, 45X would eliminate the ability to even single count direct and indirect materials costs and extraction costs, amounting to a missed opportunity to incentivize the development of a domestic critical minerals supply chain.

Collectively, the undersigned organizations have serious concerns regarding the proposed guidance. As proposed, the impact of the 45X credit is significantly reduced. Further guidance must permit each party in the U.S. supply chain, including extraction and refining, to claim a tax credit on the value-added costs the party incurs, provided the mineral ultimately reaches the requisite purity.

Congress intended the 45X tax credit to work in tandem with the clean vehicle credit's sourcing requirements to stimulate domestic production of critical minerals and reduce the United States' reliance on imported minerals. To stimulate greater security of our domestic critical mineral supply chains and unlock the intended impact of the statute, the undersigned organizations urge the Department of the Treasury and the IRS to consider that **direct and indirect material costs and costs related to the domestic extraction of raw materials are value-added activities and should be eligible to claim the 45X credit.**

We appreciate your attention to this important issue and look forward to the agency's expeditious update to address the shortcomings in the draft guidance.

Sincerely,

Zero Emission Transportation Association (ZETA)
National Mining Association (NMA)
Alaska Miners Association
American Critical Minerals Association
American Exploration & Mining Association
American Lithium Corp.
American Rare Earths Ltd.
Arizona Mining Association
Battery Materials & Technology Coalition (BMTc)
Coeur Mining
Colorado Mining Association
Lundin Mining – Eagle Mine
First Mode
GraphiteOne
General Motors
Hecla Mining
Idaho Mining Association
Ioneer USA

Jervois
Liebherr
Lithium Americas
Materion Natural Resources
Metallic Minerals Corporation
Mining Minnesota
Montana Mining Association
MP Materials
Nevada Battery Coalition
Nevada Mining Association
NewRange Copper Nickel
NioCorp
Nyrstar
Perpetua Resources
Piedmont Lithium
Ramaco Resources
Rio Tinto
Sibanye Stillwater
Society for Mining, Metallurgy, and Exploration
South32
Talon Metals
Teck Resources
TerraVolta
Tesla
The Women's Mining Coalition
U.S. Battery Machine Builders Coalition
USA Rare Earth, LLC.
Utah Mining Association

CC:

U.S. House of Representatives Committee on Ways and Means
U.S. House of Representatives Committee on Natural Resources
U.S. Senate Committee on Energy and Natural Resources
U.S. Senate Committee on Finance