INTERNAL REVENUE
BULLETIN

IRS

# HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–22
May 28, 2024

**These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.**

## ADMINISTRATIVE

### Rev. Proc. 2024-25, page 1333.

This revenue procedure provides the 2025 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Pension Excise Tax Regulations.

## ADMINISTRATIVE, INCOME TAX

### T.D. 9995, page 1241.

These final regulations provide guidance regarding general provisions and special rules for §§ 25E and 30D, as well as rules related to the Critical Minerals and Battery Components Requirements of section 30D(e). Furthermore, these final regulations provide guidance for elections to transfer clean vehicle credits under §§ 25E(f) and 30D(g). These final regulations provide guidance to qualified manufacturers of new clean vehicles to comply with rules regarding foreign entities of concern (FEOC) and excluded entities. These final regulations provide guidance for qualified manufacturers of new clean vehicles to comply with rules to determine if the battery components and applicable critical minerals contained in a vehicle battery satisfy the requirements of § 30D(d)(7) and are FEOC-compliant. Finally, the final regulations also define the omission of a correct vehicle identification number for purposes of § 6213.

## ESTATE TAX, GIFT TAX

### T.D. 9996, page 1317.

These final regulations provide guidance under section 2642(g) describing the circumstances and procedures under which an extension of time will be granted by the Internal Revenue Service (IRS) to make certain allocations and elections related to the generation-skipping transfer (GST) tax. Since the enactment of section 2642(g) in 2001, the IRS has granted relief for such allocations and elections under the regulatory authority of section 301.9100-1 through the private letter ruling program. In order to reduce taxpayers' compliance burden attendant to requesting relief under section 301.9100-1, the final regulations set forth nonexclusive factors that the IRS will consider in determining whether a transferor, or the executor of a transferor's estate, has met the standards of reasonableness, good faith, and lack of prejudice to the interests of the Government so that the IRS may grant relief. Henceforward, taxpayers requesting relief for certain allocations and elections related to the GST tax must seek relief under section 2642(g) and cannot obtain relief under section 301.9100-1.

## EXEMPT ORGANIZATIONS

### Rev. Proc. 2024-22, page 1332.

This revenue procedure obsoletes Rev. Proc. 82-2, 1982-1 C.B. 367, which identified the circumstances in which an organization could satisfy § 1.501(c)(3)-1(b)(4) (requiring that the assets of a section 501(c)(3) organization be dedicated to an exempt purpose) by operation of the law of certain States or the District of Columbia. Due to material changes in the law of many jurisdictions since 1982, the jurisdictional list set forth in Rev. Proc. 82-2 is no longer accurate.

### Rev. Rul. 2024-10, page 1240.

This revenue ruling obsoletes Rev. Rul. 75-38, 1975-1 C.B. 161, which identified the District of Columbia and each State with statutory provisions that, in 1975, satisfied the private foundation governing instrument requirements of section 508(e). Due to material changes in the laws of a number of jurisdictions since 1975, the jurisdictional list set forth in Rev. Rul. 75-38 is no longer accurate.

**Finding Lists begin on page ii.**

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

**Part I.—1986 Code.**
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

**Part II.—Treaties and Tax Legislation.**
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

**Part III.—Administrative, Procedural, and Miscellaneous.**
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

**Part IV.—Items of General Interest.**
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

# Part I

## Section 508.—Special Rules with Respect to Section 501(c)(3) Organizations

26 CFR 1.508-3: Governing instruments.

## Rev. Rul. 2024-10

This revenue ruling obsoletes Rev. Rul. 75-38, 1975-1 C.B. 161, which identified the State laws and circumstances that the Internal Revenue Service (IRS) previously concluded would permit an organization to satisfy the private foundation governing instrument requirements of § 508(e) of the Internal Revenue Code (Code).[1] A number of the State laws identified in Rev. Rul. 75-38 have materially changed, and a revenue ruling cannot be relied upon to the extent it is predicated on State law and that State law has materially changed. *See* Rev. Proc. 89-14, 1989-1 C.B. 814.

**LAW AND ANALYSIS**

Section 508(e) provides that a private foundation will not be exempt from Federal income taxation under § 501(a) unless its governing instrument includes provisions the effects of which are to require its income for each taxable year to be distributed at such time and in such manner as not to subject the private foundation to tax under § 4942 and to prohibit the private foundation from engaging in any act of self-dealing (as defined in § 4941(d)), from retaining any excess business holdings (as defined in § 4943(c)), from making any investments in such manner as to subject the private foundation to tax under § 4944, and from making any taxable expenditures (as defined in § 4945(d)). Section 1.508-3(a) provides a general rule that is consistent with § 508(e).

Section 1.508-3(d)(1) provides, however, that a private foundation's governing instrument will be deemed to satisfy the requirements of § 1.508-3(a) if valid provisions of State law have been enacted that:

(1) Require it to act or refrain from acting so as not to subject the private foundation to the taxes imposed by §§ 4941, 4942, 4943, 4944, and 4945; or

(2) Treat the required provisions as contained in the private foundation's governing instrument.

Rev. Rul. 75-38 identified 48 States and the District of Columbia as jurisdictions with statutory provisions in effect at the time of its publication that satisfied the requirements of § 508(e). Rev. Rul. 75-38 also noted exceptions included in those statutory provisions, such as cases in which a court determines that the provisions do not apply to a particular private foundation or in which a private foundation expressly opts out of the statutory provisions through a provision in its governing instrument.

Section 7.01(5) of Rev. Proc. 89-14 cautions taxpayers, IRS personnel, and others concerned to determine whether a revenue ruling on which they seek to rely has been revoked, modified, declared obsolete, distinguished, clarified, or otherwise affected by subsequent legislation, treaties, regulations, revenue rulings, revenue procedures, or court decisions. Section 7.01(6) of Rev. Proc. 89-14 provides that if the conclusion of a revenue ruling is predicated upon a certain provision or interpretation of law other than Federal tax law, taxpayers, IRS personnel, and others generally must determine whether such relevant non-Federal tax law has changed materially from that used in the revenue ruling on which they seek to rely. Therefore, under section 7.01(5) and (6) of Rev. Proc. 89-14, a revenue ruling cannot be relied upon to the extent it is predicated on State law and that State law has materially changed.

A number of the statutory provisions considered in Rev. Rul. 75-38 have since been amended, repealed, or replaced. Rev. Rul. 75-38 therefore no longer provides an accurate list of the jurisdictions with statutory provisions that satisfy the requirements of § 508(e) or of the exceptions to those statutory provisions.

In addition, Rev. Rul. 75-38 does not address potential differences in the State statutory provisions that apply depending on whether an organization is formed as a charitable trust or as a not-for-profit (or nonstock) corporation. While most States have enacted statutory provisions having the effects described in § 508(e) for both charitable trusts and not-for-profit corporations, there are a small number of States with statutory provisions that satisfy the requirements of § 508(e) for charitable trusts or not-for-profit corporations but not both.

For the foregoing reasons, this revenue ruling is being published to obsolete Rev. Rul. 75-38.

A private foundation is responsible for verifying whether the requirements of § 508(e) are satisfied by applicable State law if its governing instrument does not include the provisions described in § 508(e). A private foundation can ensure that it satisfies the requirements of § 508(e) by including the provisions described in § 508(e) in its governing instrument. Publication 557, *Tax-Exempt Status for Your Organization* (currently available at: https://www.irs.gov/pub/irs-pdf/p557.pdf), provides samples of governing instrument provisions that a private foundation may include in its governing instrument to satisfy the requirements of § 508(e).

**EFFECT ON OTHER REVENUE RULINGS**

Rev. Rul. 75-38, 1975-1 C.B. 161, is obsoleted as of May 24, 2024.

**DRAFTING INFORMATION**

The principal author of this revenue ruling is Christopher Hyde of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue ruling, contact Mr. Hyde at (202) 317-5800 (not a toll-free number).

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

*26 CFR 1.25E-1, 1.25E-2, 1.25E-3, 1.30D-1, 1.30D-2, 1.30D-3, 1.30D-4, 1.30D-5, 1.30D-6, 301.6213-2*

# T.D. 9995

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service
## 26 CFR Parts 1 and 301

# Clean Vehicle Credits under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern

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

**ACTION:** Final regulations.

**SUMMARY**: This document contains final regulations regarding Federal income tax credits under the Inflation Reduction Act of 2022 (IRA) for the purchase of qualifying new and previously-owned clean vehicles, including new and previously-owned plug-in electric vehicles powered by an electric battery meeting certain requirements and new qualified fuel cell motor vehicles. In addition, the final regulations provide guidance for taxpayers who purchase qualifying vehicles and intend to transfer the amount of any previously-owned clean vehicle credit or new clean vehicle credit to dealers that are entities eligible to receive advance payments of either credit. The final regulations also provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or new clean vehicle credits, and rules regarding recapture of the credits. Finally, the final regulations provide guidance on the meaning of three new definitions added to the exclusive list of mathematical or clerical errors relating to certain assessments of tax without a notice of deficiency.

**DATES:** *Effective date*: These regulations are effective on July 5, 2024.

*Applicability dates:* For dates of applicability, *see* §§1.25E-1(h), 1.25E-2(i), 1.25E-3(k), 1.30D-1(d), 1.30D-2(d), 1.30D-3(h), 1.30D-4(j), 1.30D-5(k), 1.30D-6(j), and 301.6213-2(c).

**FOR FURTHER INFORMATION CONTACT:** Rika Valdman or Maggie Stehn of the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 25E and 30D of the Internal Revenue Code (Code), and to the Procedure and Administration Regulations (26 CFR part 301) under section 6213 of the Code.

I. *Section 25E*

Section 13402 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the IRA, added section 25E to the Code. The credit under section 25E (section 25E credit) is a personal credit allowable under subpart A of the Code.

Section 25E(a) provides that, in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit is allowed for the taxable year equal to the lesser of: (1) $4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle.

Section 25E(b)(1) sets a limitation based on modified adjusted gross income (Modified AGI) and provides that no credit is allowed for any taxable year if (A) 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 (B) the threshold amount. The threshold amount is set forth in section 25E(b)(2) and varies based on a taxpayer's filing status. In the case of a taxpayer filing a joint return or who is a surviving spouse (as defined in section 2(a) of the Code), the threshold amount is $150,000. In the case of a taxpayer who is a head of household (as defined in section 2(b)), the threshold amount is $112,500. In the case of any other taxpayer, the threshold amount is $75,000. Section 25E(b)(3) defines Modified AGI as adjusted gross income (AGI) increased by any amount excluded from gross income under section 911, 931, or 933 of the Code.

Section 25E(c) defines certain terms for purposes of the section 25E credit. Section 25E(c)(1) defines "previously-owned clean vehicle" as a motor vehicle:

(A) the model year of which is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle;

(B) the original use of which commences with a person other than the taxpayer;

(C) that is acquired by the taxpayer in a qualified sale; and

(D) that (i) meets the requirements of section 30D(d)(1)(C), (D), (E), (F), and (H) (except for section 30D(d)(1)(H)(iv)), or (ii) is a motor vehicle that (I) satisfies the requirements under section 30B(b)(3)(A) and (B), and (II) has a gross vehicle weight rating (GVWR) of less than 14,000 pounds.

Section 25E(c)(2) defines a "qualified sale" as a sale of a motor vehicle (A) by a dealer (as defined in section 30D(g)(8)); (B) for a sale price that does not exceed $25,000; and (C) that is the first transfer since the date of enactment of the IRA to a qualified buyer other than the person with whom the original use of such vehicle commenced.

Under section 25E(c)(3), "qualified buyer" means, with respect to a sale of a motor vehicle, a taxpayer (A) who is an individual; (B) who purchases such vehicle for use and not for resale; (C) with respect to whom no deduction is allowable with respect to another taxpayer under section 151 of the Code; and (D) who has not been allowed a section 25E credit for any sale during the 3-year period ending on the date of the sale of such vehicle.

Section 25E(c)(4) defines "motor vehicle" and "capacity" to have the meaning given such terms in section 30D(d)(2) and (4), respectively.

Section 25E(d) provides that no credit is allowed under section 25E(a) with respect to any vehicle unless the taxpayer includes the vehicle identification number (VIN) of such vehicle on the return of tax for the taxable year.

Section 25E(e) and (f) provide, respectively, that rules similar to the rules of section 30D(f) (without regard to paragraph (10) or (11) thereof) and the rules of section 30D(g) apply for purposes of section 25E. Section 13402(e)(2) of the IRA provides that the ability of a taxpayer to elect to transfer a section 25E credit under section 25E(f) applies to vehicles placed in service by the taxpayer after December 31, 2023.

Section 25E(g) provides that no section 25E credit is allowed with respect to a vehicle acquired after December 31, 2032.

II. *Section 30D*

A. *In general*

Section 30D(a) provides a credit (section 30D credit) 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.

Section 30D was originally enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 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 the 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).

B. *IRA amendments to Section 30D*

1. Credit Amount and Critical Minerals and Battery Components 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, the amount of the section 30D credit was calculated based on the vehicle's battery capacity. The base amount was $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) 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) of the Code) 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), 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) 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) 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.

2. New Clean Vehicle Definition

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." This amendment is 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 that 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 that are applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) of 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 (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*)) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

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.

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 (FEOC). 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 FEOC from the definition of the term "new clean vehicle." In particular, amended section 30D(d)(7) (FEOC Restriction) 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 FEOC (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 FEOC (as so defined).

3. 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.

4. 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 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 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. 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 AGI as 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 (MSRP) thresholds. New section 30D(f)(11)(A) provides that no credit is allowed for a vehicle if the MSRP of the vehicle exceeds 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 EPA and the Department of the Energy (DOE) to determine size and class of vehicles.

5. Transfer of Credit

The IRA added new section 30D(g) to the Code, which allows the taxpayer to elect to transfer the section 30D credit in certain situations for vehicles placed in service after December 31, 2023.

Section 30D(g)(1) provides that subject to such regulations or other guidance as the Secretary determines necessary, a taxpayer may elect to transfer a section 30D credit with respect to a new clean vehicle to an eligible entity (credit transfer election).[1] If the taxpayer who acquires a new clean vehicle makes a credit transfer election under section 30D(g) with respect to such vehicle, the section 30D credit that would otherwise be allowed to such taxpayer with respect to such vehicle is allowed to the eligible entity specified in such election (and not the taxpayer).

Section 30D(g)(2) defines an "eligible entity" with respect to the vehicle for which the section 30D credit is allowed as the dealer that sold such vehicle to the taxpayer and that satisfies the following four requirements set forth in section 30D(g)(2)(A) through (D): (i) the dealer, subject to section 30D(g)(4), must be registered with the Secretary for purposes of section 30D(g)(2), at such time, and in such form and manner, as the Secretary prescribes; (ii) the dealer, prior to the credit transfer election and not later than at the time of sale, must have disclosed to the taxpayer purchasing such vehicle the manufacturer's suggested retail price, the value of the section 30D credit allowed and any other incentive available for the purchase of such vehicle, and the amount provided by the dealer to such taxpayer as a condition of the credit transfer election; (iii) the dealer, not later than at the time of sale, must have paid the taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) an amount equal to the credit otherwise allowable to such taxpayer; and (iv) the dealer with respect to any incentive otherwise available for the purchase of a vehicle for which a section 30D credit is allowed, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, must have ensured that the availability or use of such incentive does not limit the ability of a taxpayer to make a credit transfer election, and such election does not limit the value or use of such incentive.

Section 30D(g)(3) addresses the timing of the transfer and provides that any credit transfer election cannot be made by the taxpayer any later than the date on which the vehicle for which the section 30D credit is allowed is purchased.

Section 30D(g)(4) provides that upon determination by the Secretary that a dealer has failed to comply with the requirements described in section 30D(g)(2), the Secretary may revoke the dealer's registration.

Section 30D(g)(5) provides that with respect to any payment described in section 30D(g)(2)(C), such payment is not includible in the gross income of the taxpayer and is not deductible with respect to the dealer.

Section 30D(g)(6) addresses the application of certain other requirements to the transfer of credit and provides that in the case of any credit transfer election with respect to any vehicle: (i) the basis reduction and no double benefit requirements of section 30D(f)(1) and (2) apply to the taxpayer who acquired the vehicle in the same manner as if the section 30D credit determined with respect to such vehicle were allowed to such taxpayer; (ii) the election in section 30D(f)(6) to not take the section 30D credit does not apply; and (iii) the VIN requirement of section 30D(f)(9) is treated as satisfied if the eligible entity provides the VIN of such vehicle to the Secretary in such manner as the Secretary may provide.

Section 30D(g)(7)(A) provides for the establishment of a program to make advance payments to eligible entities in an amount equal to the cumulative amount of the credits allowed with respect to any vehicles sold by such entity for which a credit transfer election described in section 30D(g)(1) has been made. Section 30D(g)(7)(B) provides that rules similar to the rules of section 6417(d)(6) of the Code apply for purposes of the advance payment rules, and section 30D(g)(7)(C) provides that for purposes of 31 U.S.C. 1324, the payments under section 30D(g)(7)(A) are treated in the same manner as a refund due from a credit provision referred to in 31 U.S.C. 1324(b)(2).

Section 30D(g)(8) defines the term "dealer" as a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles. Section 30D(g)(9) defines an "Indian tribal government" as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of section 30D(g) (that is, August 16, 2022) pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Section 30D(g)(10) provides that in the case of any taxpayer who has made a credit transfer election with respect to a new clean vehicle and received a payment from an eligible entity, if the section 30D credit would otherwise (but for section 30D(g)) not be allowable to such taxpayer pursuant to the application of the Modified AGI limitation of section 30D(f)(10), the income tax imposed on such taxpayer under chapter 1 of the Code for the taxable year in which such vehicle was placed in service must be increased by the amount of the payment received by such taxpayer.

Section 13401(k)(4) of the IRA provides that the ability for a taxpayer to elect to transfer a section 30D credit under section 30D(g) applies to vehicles placed in service after December 31, 2023.

[1] As discussed in section VIII of this Background section, on October 10, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-113064-23) in the *Federal Register* (88 FR 70310), that referred to this election as the "vehicle transfer election." However, "credit transfer election" is a more descriptive and appropriate term, so these final regulations adopt the defined term "credit transfer election" to refer to the election by a taxpayer to transfer a section 25E or section 30D credit to an eligible entity.

6. Termination

The IRA added new section 30D(h) to the Code, which provides that no credit is allowed with respect to any vehicle placed in service after December 31, 2032.

III. *Section 45W*

Section 13403(a) of the IRA added section 45W to the Code, which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033. A taxpayer can claim a section 45W credit for purchasing and placing in service a qualified commercial clean vehicle, as defined in section 45W(c), during the taxable year. Section 45W(e) provides that no section 45W credit is allowed with respect to any vehicle unless the taxpayer includes the VIN of such vehicle on the tax return for the taxable year.

IV. *Section 6213(g)(2)*

Section 6213(b)(1) authorizes the IRS to make certain assessments of mathematical or clerical errors without first issuing a notice of deficiency under section 6213(a). 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 required under sections 25E(d), 30D(f)(9), and 45W(e) to be included on a return. *See* section 6213(g)(2)(T)-(V).

V. *Notice 2022-46*

On October 24, 2022, the Treasury Department and the IRS published Notice 2022-46, 2022-43 I.R.B. 306. The notice requested general comments on issues arising under sections 25E and 30D. Regarding section 30D, the notice requested specific comments concerning: (1) definitions; (2) critical minerals; (3) battery components; (4) applicable values; (5) FEOCs; (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. Regarding section 25E, the notice requested specific comments concerning: (1) qualification as a "previously-owned clean vehicle"; (2) the rules of section 30D(f) that should be applied under section 25E(e); (3) the rules of section 30D(g) that should be applied under section 25E; and (4) terms that may require definitions or further guidance. Stakeholders submitted more than 800 comments in response to Notice 2022-46. Those comments informed the development of the notices of proposed rulemaking relating to sections 25E and 30D discussed in section VII of this Background section.

VI. *Revenue Procedures*

On December 27, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-42, 2022-52 I.R.B. 565, which sets forth the procedures under section 30D(d)(3) for qualified manufacturers to enter into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary providing VINs and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require. The revenue procedure also provides the procedures for persons selling vehicles to report the information required to be reported to the IRS in order for such vehicles to be eligible for the section 25E credit or the section 30D credit.

On October 23, 2023, the Treasury Department and the IRS published Revenue Procedure 2023-33, 2023-43 I.R.B. 1135. The revenue procedure sets forth the procedures under sections 25E(f) and 30D(g) for the transfer of the section 25E credit and the 30D credit from the taxpayer to an eligible entity. In addition, the revenue procedure supersedes certain provisions of Rev. Proc. 2022-42.

On December 18, 2023, the Treasury Department and the IRS published Revenue Procedure 2023-38, 2023-51 I.R.B. 1544. The revenue procedure provides procedural rules for qualified manufacturers of new clean vehicles to comply with the reporting, certification, and attestation requirements regarding the excluded entity restriction, under which the IRS, with analytical assistance from the DOE, will review compliance with the excluded entity restrictions. In addition, Rev. Proc. 2023-38 updates and consolidates the procedural rules for qualified manufacturers with respect to the section 25E credit, the section 30D credit, and the qualified commercial clean vehicle credit under section 45W. The revenue procedure supersedes certain provisions of Rev. Proc. 2022-42 and Rev. Proc. 2023-33.

On February 26, 2024, the Treasury Department and the IRS published Revenue Procedure 2024-12, 2024-9 I.R.B. 677. The revenue procedure provides a temporary extension of time to submit seller reports to the IRS under the procedures set out in Rev. Proc. 2022-42 and Rev. Proc. 2023-33 for the transfer of section 25E credits and 30D credits.

VII. *Notice 2023-1, Notice 2023-16, and 30D White Paper*

On January 17, 2023, 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 of the proposed guidance on the Critical Minerals Requirement and Battery Components Requirement and the process for determining whether vehicles qualify under these requirements, as of December 29, 2022. *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 16, 2024).

On February 21, 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 intended to provide in proposed regulations.

VIII. *Notices of Proposed Rulemaking*

On April 17, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-120080-22) in the *Federal Register* (88 FR 23370), containing proposed regulations under section 30D (April Proposed Regulations). The April Proposed Regulations provided proposed definitions for certain terms related to section 30D; proposed rules regarding personal and business use of new clean vehicles and other special rules; and additional proposed rules related to the Critical Minerals and Battery Components Requirements of section 30D(e) in proposed §1.30D-3.

On October 10, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-113064-23) in the *Federal Register* (88 FR 70310), which provided proposed guidance for elections to transfer clean vehicle credits under sections 25E(f) and 30D(g) (October Proposed Regulations). The October Proposed Regulations provided proposed guidance for taxpayers intending to transfer the section 25E credit and the section 30D credit to dealers that are entities eligible to receive advance payments of such credits. The October Proposed Regulations also provided proposed guidance for how dealers become eligible entities to receive advance payments of the section 25E credit and the section 30D credit. In addition, the October Proposed Regulations provided proposed guidance regarding basic and definitional provisions in for section 25E, recapture of the section 25E and section 30D credits, and math error authority under section 6213.

On December 4, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-118492-23) in the *Federal Register* (88 FR 84098), which provided guidance regarding the excluded entities limitation of section 30D(d)(7) (December Proposed Regulations). The December Proposed Regulations provided proposed definitions and proposed rules for qualified manufacturers of vehicles to determine eligibility for the section 30D clean vehicle credit regarding the excluded entity restrictions, under which vehicles placed in service beginning in 2024 are not eligible if the battery contains battery components manufactured or assembled by a FEOC, and vehicles placed in service beginning in 2025 are not eligible if the battery contains applicable critical minerals extracted, processed, or recycled by a FEOC.

IX. *Department of Energy Guidance*

Concurrently with the release of the December Proposed Regulations, the DOE released proposed guidance in the *Federal Register*, which provides proposed interpretations of certain terms used in the definition of FEOC set forth in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (IIJA), and as cross-referenced in section 30D(d)(7). Concurrently with the release of these final regulations, the DOE is releasing final regulations under section 40207(a)(5) of the IIJA.

Section 40207(a)(5) of the IIJA defines FEOC to include foreign entities covered by specific designations, inclusions, and allegations by Federal agencies as described in section 40207(a)(5)(A), (B), and (D), as well as foreign entities ‘‘owned by, controlled by, or subject to the jurisdiction or direction of a government’’ of a covered nation under section 40207(a)(5)(C). Covered nations are defined in 10 U.S.C. 4872(d)(2) as the People’s Republic of China, the Russian Federation, the Democratic People’s Republic of Korea, and the Islamic Republic of Iran, as of the date of publication of the these final regulations and the DOE final guidance. Finally, section 40207(a)(5)(E) of the IIJA provides that a FEOC includes a foreign entity that the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, determines is engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States. The DOE final guidance provides an interpretation of section 40207(a)(5)(C) of the IIJA. In particular, the DOE final guidance provides definitions for the terms ‘‘government of a foreign country,’’ ‘‘foreign entity,’’ ‘‘subject to the jurisdiction,’’ and ‘‘owned by, controlled by, or subject to the direction of.’’ In general, an entity incorporated in, headquartered in, or performing the relevant activities in a covered nation would be classified as a FEOC. For purposes of these rules, an entity would be ‘‘owned by, controlled by, or subject to the direction’’ of another entity if 25 percent or more of the entity’s board seats, voting rights, or equity interest are cumulatively held by such other entity. In addition, licensing agreements or other contractual agreements may also create control. Finally, ‘‘government of a foreign country’’ is defined to include subnational governments and certain current or former senior foreign political figures.

**Summary of Comments and Explanation of Revisions**

The Treasury Department and the IRS received over 180 written and electronic comments in response to the April Proposed Regulations, the October Proposed Regulations, and the December Proposed Regulations (collectively, the proposed regulations). A public hearing on the proposed regulations was held on January 31, 2024. Copies of written comments and the list of speakers at the public hearing are available at https://www.regulations.gov or upon request.

After full consideration of the comments received on the proposed regulations and the testimony presented at the public hearing, this Treasury Decision adopts the proposed regulations with clarifying changes and additional modifications in response to the comments and testimony as described in this Summary of Comments and Explanation of Revisions.

Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations for which no comments were received are adopted without substantive change. Comments that merely summarize the proposed regulations, recommend statutory revisions to section 25E, section 30D, or other statutes, address issues that are outside the scope of this rulemaking (such as proposed changes to other guidance), or recommend changes to IRS forms, are beyond the scope of these regulations and are not adopted. In addition, comments that relate to the revenue procedures or notices described in section VI and VII of this Background section are beyond the scope of these regulations and are not adopted. The final regulations include non-substantive modifications, including modifications that promote consistency across definitions, rules, and examples, rearrange provisions, and improve the overall clarity of the guidance. Such modifications are not addressed in the Summary of Comments and Explanation of Revisions.

Section I of this Summary of Comments and Explanation of Revisions addresses the comments and revisions applicable only to section 25E. Section II of this Summary of Comments and Explanation of Revisions addresses the comments and revisions applicable to both section 25E and section 30D. Section III of this Summary of Comments and Explanation of Revisions addresses the comments and revisions applicable only to section 30D. Section IV of this Summary of Comments and Explanation of Revisions addresses the comments and revisions applicable to section 6213. Section V of this Summary of Comments and Explanation of Revisions addresses the applicability dates of these final regulations.

I. *Section 25E Credit*

A. *Definitions*

1. Previously-Owned Clean Vehicle

Proposed §1.25E-1(b)(5) defined the term "previously-owned clean vehicle" by reference to the statutory definition provided in section 25E(c)(1). A commenter noted that the proposed definition of "previously-owned clean vehicle" does not address whether a previously-owned vehicle purchased from a dealership would be eligible for the section 25E credit. Another commenter requested that the Treasury Department and the IRS provide a definition of "vehicle."

Section 25E(c)(1) provides a definition of "previously-owned clean vehicle" and criteria to be considered a "motor vehicle." Section 25E(c)(4) defines "motor vehicle" by reference to section 30D(d)(2), which defines that term as any vehicle that is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and that has at least four wheels. Further, section 25E(c)(2) defines "qualified sale" in part, as a sale of a motor vehicle by the dealer. Under the plain language of section 25E, a sale of a previously-owned clean vehicle by a dealer is eligible for the section 25E credit, provided the other requirements of section 25E are satisfied. Accordingly, the final regulations do not adopt these comments.

The final regulations clarify that vehicles that may qualify as previously-owned clean vehicles include battery electric vehicles, plug-in hybrid electric vehicles, fuel cell motor vehicles, and plug-in hybrid fuel cell motor vehicles.

2. Qualified Sale

i. Motor vehicle reference and price cap

Section 25E(c)(2) defines "qualified sale" as a sale of a motor vehicle by a dealer (as defined in section 30D(g)(8)), for a sale price that does not exceed $25,000, and that is the first transfer since August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced. Proposed §1.25E-1(b)(8)(i) tracked the statutory definition.

A commenter recommended that the final regulations substitute "previously-owned clean vehicle" for "motor vehicle" in the definition of "qualified sale" in proposed §1.25E-1(b)(8)(i). In addition, multiple commenters requested changes to the $25,000 maximum sale price amount in the definition of "qualified sale."

Section 25E(c)(2) uses the term "motor vehicle" in the definition of "qualified sale." In order to maintain consistency with the statutory definition of "qualified sale," the final regulations do not adopt this comment. With regard to the comments suggesting a change to the sale price limitation, section 25E(c)(2)(B) provides that the sale price may not exceed $25,000. Because the $25,000 sale price limitation is statutory, the final regulations do not adopt this comment.

ii. First transfer rule

Proposed §1.25E-1(b)(8)(ii) provided that to be a qualified sale, a transfer must be the first transfer since August 16, 2022, as shown by vehicle history, of a previously-owned clean vehicle after the sale to the person with whom the original use of such vehicle commenced. The proposed regulation further provided that the taxpayer may rely on the dealer's provision of the vehicle history in determining whether the first transfer rule is satisfied.

A commenter recommended that the final regulations change the term "vehicle history" to "vehicle history report" in proposed §1.25E-1(b)(8)(ii) and define "vehicle history report" as a report "issued by an approved provider at www.vehiclehistory.bja/ojp.gov/nmvtis_vehiclehistory." The website recommended by the commenter provides a list of National Motor Vehicle Title Information System (NMVTIS) approved data providers. This website is maintained by the Department of Justice. The commenter further suggested removing the dealer limitation from the last sentence of proposed §1.25E-1(b)(8)(ii) and tying the vehicle history report to the time of sale.

Proposed §1.25E-1(b)(8)(ii) identified "vehicle history" as the mechanism for verifying whether a transfer is the first transfer of the vehicle for purposes of the qualified sale definition. The Treasury Department and the IRS agree that substituting the term "vehicle history report" for "vehicle history" adds clarity to the rule. The Treasury Department and the IRS further agree that requiring the taxpayer to obtain the vehicle history report from the dealer is overly restrictive, and that the vehicle history report should be obtained at the time of sale or as part of the sale transaction in order to satisfy the first transfer rule. Accordingly, the final regulations adopt these comments. Further, the Treasury Department and the IRS have determined that vehicle history reports issued by NMVTIS-approved data providers may be used to verify whether a transfer is the first transfer of the vehicle. However, the Treasury Department and the IRS lack sufficient information to determine whether limiting vehicle history reports to those issued by NMVTIS-approved data providers would place an undue burden on taxpayers. As a result, the final regulations adopt the comment, in part, by adding a definition of "vehicle history report" and clarifying that the term includes reports from NMVTIS-approved data providers.

Another commenter expressed concern that the proposed first transfer rule is more restrictive than the statutory language and could severely limit the applicability of the section 25E credit. The commenter suggested that the most straightforward way to determine if a car had previously been sold to a qualified buyer would be to exclude vehicles for which a credit under

25E had previously been claimed. The commenter recommended that the final regulations allow one section 25E credit per VIN (regardless of whether the credit is claimed with respect to the first transfer since August 16, 2022, or the first transfer to a qualified buyer) in place of the proposed first transfer rule.

One of the statutory requirements to be a qualified sale is that the sale be the first transfer to a qualified buyer since the enactment of section 25E, other than to the person with whom the original use of the vehicle commenced. The commenter's suggestion that the final regulations adopt a one section 25E credit per VIN rule is inconsistent with the statutory language and Congressional intent, because it would allow a transfer to a second qualified buyer to be eligible for the credit in situations where the first qualified buyer did not claim the section 25E credit or was not eligible to claim the credit (for example, if the first qualified buyer's MAGI exceeds the limitation). Further, the commenter's suggestion, if adopted, would be unadministrable because taxpayers have no way of verifying whether a section 25E credit has previously been claimed with respect to a prior sale of a particular vehicle. Such information is not part of a vehicle history report and is otherwise inaccessible to taxpayers. While the IRS has that information, it cannot share that information without violating the taxpayer confidentiality restrictions in section 6103. As a result, taxpayers making purchasing decisions would not know which previously sold vehicles were eligible for the section 25E credit in advance of their vehicle purchase, which would disincentivize the purchase of previously-owned clean vehicles. Accordingly, the final regulations do not adopt this comment.

As for the commenter's concern that the proposed first transfer rule is more restrictive than the statutory language, the first transfer rule is consistent with how Congress expected the statute to operate[2] and is necessary to protect confidential taxpayer information consistent with section 6103. Once there has been a sale of a previously-owned clean vehicle, there is no information source from which a subsequent buyer could ascertain or verify whether the prior sale was to a qualified buyer. For example, vehicle history reports do not include information as to whether a previous buyer was an individual, whether the previous buyer was a dependent, or whether the previous buyer had claimed the section 25E credit in the prior three years. As noted above, in cases where the previous buyer has claimed the section 25E credit, the IRS would have the information necessary to determine whether the prior transfer was to a qualified buyer, but such taxpayer information is protected from disclosure by statute, under section 6103. The first transfer rule, by allowing the section 25E credit to the first transfer after the date of enactment of 25E as determined by the vehicle's vehicle history report, provides certainty to buyers and dealers in a manner that is consistent with the taxpayer confidentiality mandates of section 6103. In addition, the proposed first transfer rule is consistent with Congressional intent to incentivize the deployment of clean vehicles.

The final regulations thus adopt the proposed first transfer rule without substantive change. As noted earlier, the first transfer rule is an element of the definition of "qualified sale." The final regulations merge proposed §1.25E-1(b)(8)(i) and (ii) and finalize the definition of "qualified sale" as §1.25E-1(b)(14). Further, the final regulations move the language regarding taxpayer reliance on the vehicle history report from the definition of "qualified sale" to a standalone rule in §1.25E-1(f), and clarify that reliance on a vehicle history report applies in the case where there has been a prior sale and return or resale described in §1.25E-2(c). For additional clarity, the final regulations add an example that illustrates how the first transfer rule works in the context of dealer-to-dealer transfers.

3. Sale Price

Section 25E(a)(2) and (c)(2)(B) provide that the sale price of a previously-owned clean vehicle is taken into account for purposes of determining the amount of the section 25E credit and whether a particular sale is a qualified sale of the vehicle. Proposed §1.25E-1(b)(9) defined the "sale price" of a previously-owned clean vehicle as the total sale price agreed upon by the buyer and dealer in a written contract at the time of sale, including any delivery charges and after the application of any incentives, but excluding separately-stated taxes and fees required by law. Under the proposed definition, the sale price of a previously-owned clean vehicle was determined before the application of any trade-in value. Proposed §1.25E-1(b)(2) provided that for purposes of the definition of "sale price," the term "incentive" means any reduction in total sale price offered to and accepted by a taxpayer from the dealer or manufacturer, other than a reduction, whether in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle or otherwise, pursuant to section 25E(f) and §1.25E-3.

One commenter requested clarification regarding the term "incentives," noting that manufacturer and distributor rebates and incentives are typically not available for previously-owned vehicles. The commenter did not reference the proposed definition of "incentive" in its comment letter. The proposed definition addresses the commenter's concern by broadly defining "incentive" to include reductions in price by manufacturers and dealers. In other words, the proposed definition does not limit incentives to price reductions provided by manufacturers and distributors. Therefore, no clarification is needed. However, because the term "incentive" is relevant to both sale price determinations for purposes the $25,000 sale price cap in section 25E(c)(2)(B) and the eligible entity definition in section 30D(g)(2)(B)(ii) and (D), the final regulations include separate definitions of "incentive" that apply to those provisions. In addition, with regard to the definition of "incentive" for purposes of sale price determinations, the final regulations clarify that an "incentive" means any reduction in price offered

[2] See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117th Congress* (JCS-1-23), December 2023 at page 254.

to and accepted by a taxpayer from the dealer or manufacturer. This clarification is necessary because the proposed definition only looked to incentives available to taxpayers from the dealer or manufacturer, which could disadvantage consumers by artificially lowering the $25,000 sale price cap in cases where the incentive was not accepted by the taxpayer.

Several commenters requested modifications to the proposed definition of "sale price." Two commenters requested a narrower definition. Specifically, one commenter suggested that the proposed definition of sale price be amended so that fees and charges allowed by a state or locality, such as titling and registration charges for out-of-state buyers and charges associated with perfecting a lienholder's security interest, be excluded from the sale price because the amount of such fees is not easily knowable at the time of sale. Another commenter recommended modifying the proposed definition of "sale price" to exclude documentation fees because of long-standing practice in the automotive industry to charge such fees to cover a dealer's processing and administrative costs associated with a sale. The inclusion of dealer document fees and charges allowed by a state or locality in the sale price would allow dealers to allocate a portion of the sale price of the vehicle to such fees in order to avoid the $25,000 sale price cap in section 25E(c)(2)(B). Accordingly, the final regulations do not adopt these comments.

A commenter suggested the proposed definition of "sale price" be amended to include the total transaction amount, less any government-imposed taxes or fees, and including all add-ons and any non-government fees to prevent dealers from capturing a large portion of the credit as profit. The proposed definition already effectively does what the commenter suggests by excluding only separately-stated taxes and fees as required by law. Accordingly, the final regulations do not adopt this comment.

#### 4. Other Definitions Applicable to Section 25E

The Treasury Department and the IRS received comments related to other definitions applicable to section 25E that are also applicable to section 30D. Section II of this Summary of Comments and Explanation of Revisions discusses comments received and modifications made to definitions applicable to both section 25E and section 30D.

### B. *Limitations based on Modified AGI*

The proposed regulations restated the Modified AGI limitation of section 25E(b) at proposed §1.25E-1(b)(3) and (c)(1).

Several commenters suggested that the qualifying income threshold for the section 25E credit should be increased. Because these limitations are statutory, the final regulations do not adopt this comment.

### C. *Branded title*

Proposed §1.25E-2(d) provided that a title to a previously-owned clean vehicle indicating that such vehicle has been damaged or is otherwise a branded title does not impact the vehicle's eligibility for a section 25E credit.

A commenter suggested that the section 25E credit program should not be used to incentivize consumers to purchase unsafe or unreliable vehicles, such as those that have been determined to be a total loss, salvage, or junk, and encouraged the Treasury Department and the IRS to consider making such vehicles ineligible for the section 25E credit. The commenter further suggested that title status reflected in the NMVTIS should be determinative because all states, insurance companies, and junk and salvage yards are required by law to regularly report information about vehicles that have been determined to be a total loss, salvage, or junk to NMVTIS.

Vehicle titles indicate whether the title is clean (meaning the vehicle has never been declared a total loss) or branded (indicating the vehicle has sustained serious damage, such as in the case of salvage title, or that there is some other significant problem with the vehicle, as in the case of a lemon title brand). State law generally governs the titling of vehicles. Each State and the District of Columbia has different standards for determining when a vehicle title must be branded. Further, although there are broad categories of title brands that are common across jurisdictions, such as salvage title, the thresholds for applying those title brands varies. These variations can lead to the practice of title washing, which is a method of removing a title brand by retitling the vehicle in a jurisdiction that does not recognize the title brand. The Treasury Department and the IRS do not want to incentivize the purchase of unsafe or unreliable vehicles. However, modifying proposed §1.25E-2(d) to exclude certain title brands could lead to an increase in title washing, which, in turn, could lead to increased fraud regarding previously-owned vehicles. This would negatively impact consumers of previously-owned clean vehicles. Moreover, the statute does not exclude branded titles, and there is no indication that Congress intended to exclude such vehicles. Accordingly, the final regulations do not adopt these comments.

## II. *Crossover Provisions in Section 25E and Section 30D*

### A. *Definitions*

This section of the Summary of Comments and Explanation of Revisions addresses definitions that apply to both section 25E and section 30D. Unless otherwise specified, the final regulations move the definitions relating to section 30D from §§1.30D-2, 1.30D-3(c), 1.30D-5(a), and 1.30D-6(a) to §1.30D-2(b).

#### 1. Dealer

Section 25E(c)(2)(A) cross references section 30D(g)(8) with regard to the term "dealer." Under section 30D(g)(8), the term "dealer" means a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation to engage in the sale of vehicles.

Proposed §§1.25E-1(b)(1) and 1.30D-5(a)(2) defined "dealer" as provided in section 30D(g)(8), except that the proposed term did not include persons licensed solely by a territory of the United

States.[3] Under the proposed regulations, the term included a dealer licensed in any jurisdiction described in section 30D(g)(8) (other than one licensed solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which its licensed. The definition of dealer in the proposed regulations did not include persons licensed solely by a territory because clean vehicle credits generally are not allowed for vehicles used predominantly outside of the 50 States and the District of Columbia. *See* sections 30D(f)(4), 25E(e), 50(b)(1), and 7701(a)(9) of the Code.

A commenter suggested that the definition of "dealer" should include licensed dealers in territories or possessions of the United States, but only for purposes of vehicles sold for use and not for resale in the 50 states or the District of Columbia.

Such a rule would create verification issues for the IRS and place administrative burdens on certain dealers and purchasers of clean vehicles. At a minimum, buyers purchasing clean vehicles from dealers licensed in territories of the United States would be required to provide an attestation or certificate to the dealer indicating that the buyer intended to use the vehicle in the United States and not resell it. In addition, predominant use of the vehicle in a territory subsequent to such a statement of intent would make the vehicle ineligible for a clean vehicle credit. Pursuant to section 30D(g)(1), the Secretary has authority to prescribe necessary regulations with respect to that subsection. Accordingly, the final regulations do not adopt this comment.

A separate comment requested guidance on the circumstances in which an original equipment manufacturer (OEM) is considered a "dealer" for purposes of section 30D(g)(8). In response to this comment, the Treasury Department and the IRS note that an OEM may be a dealer if licensed in any jurisdiction described in section 30D(g)(8) and §§1.25E-1(b) or 1.30D-2(b), as applicable.

2. Placed in Service

The year in which a vehicle is placed in service is relevant for a number of rules under section 25E and section 30D, including the applicable percentages for the Critical Minerals and Battery Components Requirements of section 30D(e) and the FEOC Restriction, which impose manufacturer sourcing requirements for the clean vehicle battery.

Proposed §§1.25E-1(b)(4) and 1.30D-2(e) provided that a vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle. The proposed definition is consistent with the meaning of "placed in service" for purposes of other Code provisions. *See* §1.46-3(d)(1)(ii) and (4)(i) and §1.179-4(e) (property is considered placed in service when "placed in a condition or state of readiness and availability for a specifically assigned function"); §145.4051-1(c)(2) ("a vehicle shall be considered placed in service on the date on which the owner of the vehicle took actual possession of the vehicle"); *see also* §1.1250-4(b)(2) ("property is placed in service on the date on which it is first used"); *Consumers Power Co. v. Commissioner,* 89 T.C. 710 (1987); *Noell v. Commissioner,* 66 T.C. 718, 728-729 (1976).

The proposed definition is also consistent with the IRS's and the Tax Court's interpretation of "placed in service" as used in section 30D(a), which was not amended by the IRA, and while not precedential or binding, reflects the prevailing view. *See e.g., Trout v. Comm'r of Internal Revenue*, T.C. Summ. Op. 2015-66, 2015 WL 7423818, at *4 (T.C. Nov. 19, 2015) ("[t]he Court will look at whether the vehicle was 'in a condition or state of readiness and availability' for the 'specifically assigned function' for which petitioners purchased it to determine when petitioners placed the [vehicle] in service."); *Podraza v. Comm'r of Internal Revenue*, T.C. Summ. Op. 2015-67, 2015 WL 7423525 (T.C. Nov. 19, 2015) (same); IRS PLR 201312034 (Mar. 22, 2013) ("the taxable year in which the taxpayer may claim the credit on their return is defined as the year in which the vehicle is 'placed in service,' which requires that the taxpayer have actual possession of the vehicle…").

The Treasury Department and the IRS received several comments regarding the definition of "placed in service." One commenter suggested that for purposes of the section 30D credit, the definition of "placed in service" be modified to mean the date of vehicle manufacture. The commenter further noted that the proposed definition will cause significant confusion for consumers if the clean vehicle they want to buy is no longer credit-eligible because the vehicle was not placed in service at the correct time.

Several other commenters requested that "placed in service" be defined as the date of manufacture for purposes of the vehicle manufacturing requirements (specifically, the Critical Minerals and Battery Components Requirements and the FEOC Restriction) of section 30D. Another commenter raised concerns with the proposed definition of "placed in service" based on vehicle possession because some taxpayers: (1) may never take possession of the vehicle, such as cases involving leases and gifts, (2) may take possession before a vehicle is sold, (3) may take possession at the time a vehicle is sold, or (4) may take possession after a vehicle is sold, such as cases in which the taxpayer preorders a vehicle. The commenter recommended that the definition of "placed in service" be the date on which a vehicle is registered by a United States jurisdiction that administers on-road vehicle registration laws.

The final regulations adopt the definition in proposed §§1.25E-1(b)(4) and 1.30D-2(e), with minor clarifying changes, because the definition is consistent with existing guidance, as well as case law relating to when a vehicle is placed in service. Further, the Treasury Department and the IRS do not adopt a definition of "placed in service" for purposes of the Critical Minerals and Battery Components Requirements and the FEOC Restriction that differs from the definition for purposes of section 30D(a), because in cases in which the same term is used in a single section the term is presumed to have the same meaning throughout. *Mertens v. Hewitt Assocs*., 508 U.S. 248, 260, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993). Accordingly, the final regulations do not adopt these comments.

[3] Section 30D(g)(8) uses the term "territory or possession," but the proposed regulations and these final regulations use the term "territory" since both terms have the same meaning.

### 3. Sale

The term "sale" is not defined in section 25E, section 30D, or the proposed regulations applicable to those sections. A commenter suggested that a definition of the term "sale" be added to the final regulations for purposes of sections 25E and 30D. The commenter recommended that the term "sale" be defined as "an enforceable contract to transfer ownership of a vehicle from a dealer to a taxpayer."

The term "sale" is relevant to the determination of whether there is a qualified sale for purposes of section 25E(c)(2) and the applicable recapture provisions under sections 25E and 30D. The commenter's proposed definition is overly broad and would not require that the transfer of ownership be made for consideration provided by the buyer. Further, section 25E(a) provides that the section 25E credit is only allowed for a qualified sale of a previously-owned clean vehicle. Section 25E(c)(2)(A) defines the term "qualified sale," in part, as a sale by a dealer. Similarly, the credit transfer election framework incentivizes the purchase of previously-owned clean vehicles and new clean vehicles from dealers. Dealers have well-established practices with regard to vehicle sales and what constitutes a sale transaction. Based on the foregoing, the Treasury Department and the IRS have determined that a definition of "sale" is unnecessary. Accordingly, the final regulations do not adopt this comment.

## B. *Special rules*

### 1. Recapture

Section 25E(e) provides that, for purposes of section 25E, rules similar to the rules of section 30D(f) apply. Section 30D(f)(5) instructs the Secretary to provide regulations for recapturing the benefit of any section 30D credit with respect to any property that ceases to be eligible for the section 30D credit. Proposed §§1.25E-2(c) and 1.30D-4(d) provided corresponding rules under section 30D(f)(5) for cancelled sales, returns, and resales of the vehicle. The final regulations clarify that for purposes of section 30D(f)(5), and by extension, section 25E(e), the amount of the benefit recaptured due to such an event is considered an increase to tax imposed by chapter 1 of the Code.

#### i. Cancelled sale

Proposed §§1.25E-2(c)(1)(i) and 1.30D-4(d)(1)(i) provided the Federal income tax consequences that apply if the sale of a vehicle between the taxpayer and seller is cancelled before the taxpayer places the vehicle in service (that is, before the taxpayer takes possession of the vehicle).

A commenter recommended that part of the definition of "cancelled sale" be changed from "taxpayer places the vehicle in service" to "the vehicle is placed in service." Section 25E(a) expressly requires the previously-owned clean vehicle to be placed in service by a qualified buyer. Similarly, section 30D(a) expressly requires the new clean vehicle to be placed in service by the taxpayer. Accordingly, the final regulations do not adopt this comment because a clean vehicle placed in service by someone other than the qualified buyer or taxpayer, as applicable, would not qualify for the credit.

#### ii. Vehicle returns

Proposed §§1.25E-2(c)(1)(ii) and 1.30D-4(d)(1)(ii) addressed the Federal income tax consequences that apply if the taxpayer returns the vehicle to the seller within 30 days of placing the vehicle in service.

The Treasury Department and the IRS received multiple comments regarding the proposed vehicle return rules in proposed §§1.25E-2(c)(1)(ii) and 1.30D-4(d)(1)(ii). A commenter requested that the final regulations clarify that once a contract for the purchase of a clean vehicle is signed by the buyer and seller, the 30-day return period is for credit recapture purposes only and that state contract law governs whether the buyer can void the sale. One commenter agreed that 30 days is an appropriate length of time for qualified vehicle returns. Another commenter recommended deleting the 30-day limitation. That commenter also suggested changing "of placing such vehicle in service" to "after it is placed in service" and "the vehicle history" to "a vehicle history report as of the date of such sale." In addition, a commenter recommended that, in general, the Treasury Department and the IRS regulate returns after the vehicle is registered.

Dealers generally have return policies that range from several days up to 30 days, so the proposed rules regarding returns within 30 days reflect industry practice. The final regulations maintain the 30-day return rule, with one modification. Specifically, the final regulations, for purposes of 25E, modify the reference to "the vehicle history" by changing it to "a vehicle history report obtained on the date of such subsequent sale or as part of such subsequent sale transaction" to conform with modifications to the definition of "qualified sale" described in section I.A.2 of this Summary of Comments and Explanation of Revisions. The final regulations also add a definition of "vehicle history report" and clarify that the term includes reports from NMVTIS-approved data providers. In addition, the Treasury Department and the IRS confirm that the vehicle return rules in the final regulations relate only to the section 25E and 30D credits and have no impact on the voidability of the sales contract for the clean vehicle, which is governed by state contract law. Otherwise, the final regulations do not adopt these comments.

### 2. Resales

Proposed §§1.25E-2(c)(1)(iii) and 1.30D-4(d)(1)(iii) treat the taxpayer as having purchased a clean vehicle with an intent to resell such vehicle if the resale occurs within 30 days of the taxpayer placing the vehicle in service.

A commenter noted that it largely agreed with the proposed resale rules, but suggested that for purposes of section 25E, the final regulations include an exception for subsequent sales by dealers that are unaware of prior resales as of the date of the subsequent sale. The commenter did not suggest an exception for purposes of section 30D resales given that a resale of a vehicle will render it used, thereby making the vehicle ineligible for the section 30D credit. The commenter also suggested changing "placing the vehicle" in service to "it being placed" in service. Another commenter stated that 30 days is an appropriate length of time for the resale rule.

The recapture rule in proposed §1.25E-2(c)(1)(iii) did not address sales by dealers. Proposed §1.25E-2(c)(1)(iii) addressed sales by individual buyers within 30 days and provided that recapture in the event of such resale is recaptured from the taxpayer, not the dealer. Accordingly, the final regulations retain the rules in proposed §§1.25E-2(c)(1)(iii) and 1.30D-4(d)(1)(iii) and do not adopt these comments.

3. Other returns or resales

Proposed §§1.25E-2(c)(1)(iv) and 1.30D-4(d)(iv) provided a rule for returns or resales occurring more than 30 days after the date on which the taxpayer places the vehicle in service. Generally, taxpayers returning or reselling a clean vehicle more than 30 days after the date the taxpayer places it in service will remain eligible for the section 25E or section 30D credit for the purchase of such vehicle. The proposed regulations provided that, in the case of a new clean vehicle that is returned or resold, the vehicle, once returned or resold, is not available for original use by another taxpayer and, therefore, is not eligible for a section 30D credit. Similarly, in the case of a previously-owned clean vehicle that is returned or resold, the vehicle, once returned or resold, is generally not eligible for the section 25E credit upon a subsequent sale pursuant to the first transfer rule described in proposed §1.25E-1(b)(8)(ii). In the case of a return occurring more than 30 days after the date on which the taxpayer places the vehicle in service, the seller report is not required to be updated because the taxpayer generally will be eligible for the clean vehicle credit in this circumstance. In addition, in the case of a resale of such vehicle, the seller report is not required to be updated because the seller would not have knowledge of the subsequent resale. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that credit transfer election remains in effect and the value of any transferred credit pursuant to the clean vehicle credit transfer rules generally is not subject to recapture and is not an excessive payment.

Although the proposed regulations did not provide an automatic clean vehicle credit recapture rule for returns or resales more than 30 days after a return or resale, the IRS may determine, based upon the facts and circumstances of a particular case, that a clean vehicle was purchased with the intent to return or resell and may disallow the clean vehicle credit in such case.

One commenter noted that dealers regularly place new clean vehicles in use for longer than 30 days as loaners, rentals, or company vehicles, and that the period of time the vehicle is in use varies but is normally longer than 30 days. The commenter suggested that the section 30D credit obtained by the dealer on its purchase of the vehicle should not be recaptured if, after a period of more than 30 days of use as a loaner, the dealer reclassifies the vehicle as used and subsequently sells it to a third party. The commenter requested the addition of an example to the final regulations addressing this scenario.

The final regulations adopt the comment and add an example to §1.30D-4(e) that illustrates the application of the vehicle return rules to a scenario in which the dealer purchases a new clean vehicle, uses it as a demonstrator, and later sells the vehicle.

4. Recapture after transfer election

One commenter requested that an example be added to the final regulations that addresses who would be responsible for repaying a credit in the event the taxpayer made an election to transfer the credit and later learned that the sale of the previously-owned clean vehicle to the taxpayer was not a qualified sale.

In general, whether the sale of a previously-owned clean vehicle is a qualified sale will be determined at the time of sale. For example, the taxpayer may rely on the vehicle history report obtained at the time of sale or as part of the sale transaction to determine whether the first transfer rule is satisfied. In the case of recapture, as described in §§1.25E-2(c) and 1.30D-4(e), responsibility for recapture of a clean vehicle credit depends upon the circumstances of recapture. In the case of a vehicle return within 30 days of placing a clean vehicle in service in which the taxpayer made a credit transfer election, the eligible entity must repay the amount of the credit as an excessive payment. In contrast, if the taxpayer resells the vehicle within 30 days of placing the clean vehicle in service rather than returning it to the eligible entity, the amount of the transferred credit is recaptured from the taxpayer.

Another commenter requested additional information about specific procedures regarding recapture, including clarification as to whether both parties would be notified, how such notification might occur, and when recapture would occur.

Generally, recapture is reported via self-assessment by the eligible entity or taxpayer. In the event of recapture from the eligible entity, the eligible entity must report the recapture via the dealer registration system as described in §§1.25E-3(c)(1) and 1.30D-5(c)(1), as finalized. In the event of recapture from the taxpayer, the taxpayer must report the recapture amount as an increase in tax imposed by chapter 1 of the Code on the taxpayer's Federal income tax return for the taxable year in which the recapture occurred.

A commenter requested that the final regulations clarify whether a taxpayer would be liable for repayment of the credit or a portion of the credit if a transfer election is made but the taxpayer's regular tax liability is less than the total amount of the credit transferred. With respect to the section 25E credit, this situation is addressed in proposed §1.25E-3(e)(1)(i) and proposed §1.25E-3(e)(5) Example 1. With respect to the section 30D credit, this situation is addressed in proposed §1.30D-5(e)(1)(i) and §1.30D-5(e)(5) Example 1. These provisions and examples are adopted in the final regulations at §1.25E-3(e)(1)(i), §1.25E-3(e)(5) Example 1, §1.30D-5(e)(1)(i), and §1.30D-5(e)(5) Example 1. Accordingly, no additional clarification is needed and the final regulations do not adopt this comment.

5. Requirement to File a Complete Income Tax Return

Proposed §§1.25E-2(f) and 1.30D-4(g) provided that taxpayers must file an income tax return, together with Schedule A (Form 8936), *Clean Vehicle Credit*

*Amount*, or successor form, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 of the Code that includes all of the information required on the forms and in the instructions, for the taxable year in which the clean vehicle is placed in service to be entitled to the credit under section 25E or section 30D. The final regulations under section 30D clarify that this requirement also applies to information returns because a partnership or S corporation may claim a section 30D credit as a general business credit under section 38.

A commenter noted that some taxpayers may transfer a credit to a dealer and then fail to file a return or fail to attach Form 8936 to their return, and that dealers will have little incentive to inform taxpayers of their future filing obligations in order to qualify for the credit. The commenter recommended that the final regulations clarify that failing to file a return or failing to attach Form 8936 to a return will not alone subject the taxpayer to the credit recapture rules.

Proposed §§1.25E-3(h) and 1.30D-5(g) provide a reporting requirement for taxpayers who transfer a section 25E credit or section 30D credit to a dealer, but do not provide for recapture of the credit as a consequence of failing to fulfill these requirements. Although a taxpayer may not otherwise be required to file an income tax return for a particular taxable year, the taxpayer is required to file an income tax return and attach a Form 8936 and Schedule A (Form 8936) to ensure timely processing of their tax return and to demonstrate their eligibility for the credit. This reporting requirement assists the IRS in the collection of accurate information necessary to effectively administer the section 25E and section 30D credits. The statutory text provides the IRS with sufficient authority to impose this requirement to ensure program integrity, including the ability to recapture the credit where necessary. See sections 25E(f), 30D(g)(1) and 30D(g)(10); see also section 6011. Accordingly, a clarification has been made in the final regulations. The final regulations regarding credit transfer elections under section 30D also clarify that this includes information returns.

C. *Transfer rules*

1. Disclosure and assurance

Section 30D(g) generally establishes a set of rules under which a taxpayer may transfer a section 30D credit to certain dealers, referred to as eligible entities, in which case the eligible entity (and not the taxpayer) is allowed the section 30D credit. In exchange, the eligible entity must pay the taxpayer an amount equal to the transferred section 30D credit (with such payment being made either in cash or in the form of a partial payment or down payment for the purchase of the vehicle). Section 25E(f) provides that, for purposes of section 25E, rules similar to the rules of section 30D(g) apply.

Proposed §§1.25E-3 and 1.30D-5 provided transfer rules under section 30D(g) (and section 25E(f) by cross reference to section 30D(g)), including the establishment of an advance payment program for such transfers. The proposed regulations did not specifically address the requirements under section 30D(g)(2)(B)(ii) and (D) relating to the disclosure by the dealer of other incentives.

A commenter requested that the final regulations define the term "incentive" for purposes of the disclosure requirement and suggested a definition similar to the one in proposed §1.25E-1(b)(2). The commenter also requested that the final regulations provide an attestation for dealers and taxpayers to use in conjunction with creditable sales to satisfy the assurance requirement.

The Treasury Department and the IRS agree that the final regulations should include a definition of "incentive" for purposes of section 30D(g)(2)(B)(ii) and (D). Because the section 30(g) credit transfer rules also apply to section 25E by reason of the cross reference in section 25E(f), the definition of "incentive" for the section 25E and 30D eligible entity requirements should align. Accordingly, the final regulations add a definition of "incentive" to §§1.25E-1(b) and 1.30D-5(b) that applies for purposes of the eligible entity requirements. Under that definition, "incentive" means any reduction in price available to the taxpayer from the dealer or manufacturer, including as in combination with other incentives, other than a reduction in the form of a partial payment or down payment for the purchase of a clean vehicle pursuant to section 30D(g)(2)(C).

2. Definitions

Proposed §§1.25E-3(b) and 1.30D-5(a) provided definitions that apply for purposes of the transfer of a clean vehicle credit.

i. Advance payment program

Proposed §§1.25E-3(b)(1) and 1.30D-5(a)(1) defined "advance payment program" as the program described in section 30D(g)(7) (and section 25E(f) by cross reference to section 30D(g)) and the proposed regulations under which an eligible entity may receive an advance payment from the IRS in the case of a credit transfer election made by an electing taxpayer. The advance payment program is the exclusive means by which an eligible entity may receive a transferred clean vehicle credit.

Several commenters requested that the section 25E and 30D credits be refundable regardless of tax liability. Other commenters requested that the credits be available for a taxpayer to use as a down payment at the time of the sale. In contrast, another commenter, requested that taxpayers without sufficient tax liability be required to repay the excess credit amount because, the commenter argued, Congress intended for the credit to be a non-refundable credit. One commenter requested clarification on how the credit will work in 2024 and beyond compared to previous years. Another commenter suggested that the proposed regulations allow 30D credits to be carried forward.

The section 25E and 30D credits are nonrefundable credits under the Code that cannot be carried forward; however, pursuant to sections 25E(f) and 30D(g), such credits may be transferred to an eligible entity beginning in 2024, regardless of the tax liability of the taxpayer or the eligible entity for the applicable tax year. Sections 25E(f) and 30D(g) do not provide for repayment in the event of insufficient tax liability. In exchange for the transferred credit, the eligible entity must pay the taxpayer an amount equal to the transferred clean vehicle credit, with such payment being made either in cash or in the form of a partial payment or down payment for the purchase of the vehicle. The proposed regulations described the transfer of the clean vehicle credits, including examples of cases in which a taxpayer may not have sufficient tax liability to claim the full amount of the credit (for example, Example 1 of proposed §1.30D-5(d)(5)(i)). Accordingly, the final regulations do not adopt the comment to require repayment of an excess credit amount. Proposed §§1.25E-3 and 1.30D-5 already provided the other rules requested by commenters, and no additional clarification is needed. Accordingly, no changes are needed in the final regulations to address these comments.

ii. Electing taxpayer

Under proposed §§1.25E-3(b)(3) and 1.30D-5(a)(4), "electing taxpayer" means the individual that purchases and places in service a clean vehicle and that elects to transfer a clean vehicle credit associated with that vehicle that would otherwise be allowable to that individual.

A commenter requested that businesses that purchase new clean vehicles be allowed to use the credit transfer option under section 30D(g). Because the election to transfer a credit under section 30D(g) is limited to the credit allowable under section 30D, the Treasury Department and the IRS have determined that a taxpayer may not elect to transfer a general business credit for a new clean vehicle allowable under section 38 pursuant to section 30D(c)(1). Proposed §1.30D-1(b)(1) provided that in the event a depreciable vehicle's use is 50 percent or more business use in the taxable year the vehicle is placed in service, it will be creditable entirely under section 38 as a general business credit rather than under section 30D. Thus, the use of a new clean vehicle must be predominantly personal for a taxpayer to be able to make the election to transfer the credit under section 30D(g). Accordingly, the final regulations do not adopt this comment.

iii. Eligible entity

Under proposed §§1.25E-3(b)(4) and 1.30D-5(a)(5), "eligible entity" means a registered dealer that meets certain requirements and, by reason of meeting those requirements, is eligible to receive advance payments from the IRS under the advance payment program.

A commenter suggested clarifying that an eligible entity is a registered dealer that is eligible to receive payments under the advance payment program by virtue of meeting the statutory and regulatory requirements. Proposed §§1.25E-3(b)(4) and 1.30D-5(a)(5) already provided the rule requested in this comment, and no additional clarification is needed. Accordingly, the final regulations do not adopt this comment.

iv. Time of sale

Under proposed §§1.25E-3(b)(6) and 1.30D-5(a)(7), "time of sale" means the date the clean vehicle is placed in service. Under the proposed regulations, the date the clean vehicle is placed in service is the date the taxpayer takes possession of the vehicle.

A commenter suggested that "time of sale" be defined as the date of sale on the seller report, and noted that physical possession may occur before, after, or at the time of sale (or at no time) and is not relevant to when a sale has occurred. The date a taxpayer takes possession of the vehicle is a date certain that completes the transaction of purchasing a vehicle, whereas a date on the seller report does not guarantee the taxpayer will take possession of the vehicle and place it in service. As discussed in section II.A.2 of this Summary of Comments and Explanation of Revisions, defining "placed in service" as the date a taxpayer takes possession of the vehicle is consistent with other provisions of the Code and prior interpretations of section 30D(a). Accordingly, the final regulations do not adopt this comment.

3. Dealer Registration

Proposed §§1.25E-3(c)(2) and 1.30D-5(b)(2) provided rules regarding dealer tax compliance. Specifically, the proposed regulations provided that if the dealer is not in dealer tax compliance for any of the taxable periods during the most recent five taxable years, the dealer may register nonetheless to become a registered dealer. However, the proposed regulations provided that in such cases the dealer cannot receive advance payments under the advance payment program until the dealer's tax compliance issue is resolved. This is because the dealer, while registered, is not an eligible entity until it comes into dealer tax compliance.

One commenter suggested creating an exemption from the dealer tax compliance requirement to address the unique nature of its sales model in which all advance payments of transferred credits ultimately reside with the corporate parent and not with one of the subsidiaries in the organization structure that may be deemed out of tax compliance.

A commenter asserted that dealers play a purely ministerial role in the credit transfer process, and their tax compliance status does not impact the dealer's ability to facilitate a credit transfer. The commenter requested that to the extent the final regulations do not remove the dealer tax compliance provision, the compliance lookback period should be for a maximum of three years rather than the five provided in the proposed regulations. In addition, the commenter requested that the final regulations clarify that the dealer tax compliance requirement applies for advance payment purposes only and has no impact on a registered dealer's sales or seller reporting.

Pursuant to section 30D(g)(1) and (g)(7), participation in the advance payment program is elective and is subject to the requirements and conditions that the Secretary determines necessary. An advance payment system for dealers presents unique tax administration challenges because it involves the IRS making payments to dealers regardless of their tax liability and doing so outside of the normal tax filing system, with its built-in compliance and enforcement mechanisms. The dealer tax compliance requirement ensures that the entities receiving advance payments have satisfied their own Federal tax obligations, which aids in fraud prevention and tax administration. For these reasons, the final regulations retain the dealer tax compliance requirement. Further, the final regulations retain the five-year lookback period because the longer period better facilitates the IRS's ability to determine whether there are enforcement concerns with regard to a particular dealer. The final regulations also add an express statement that dealer tax compliance is required before describing the consequences of noncompliance. No clarification is needed regarding the scope of the dealer tax compliance requirement because it is clear from the placement of the requirement in the provisions relating to the transfer of the section 25E and 30D credits that such requirement applies only for purposes of the advance payment program and not for other dealer activities, such as the issuance of seller reports.

4. Form of Payment from Eligible Entity to Electing Taxpayer

Proposed §§1.25E-3(e)(3) and 1.30D-5(d)(3) provided that the Federal income tax treatment of the payments associated with a credit transfer election are the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for the purchase of the clean vehicle.

A commenter noted that in some states, dealers are prohibited under state law to promise to pay or otherwise tender cash if a vehicle is financed. The commenter recommended that the credit transfer election be available only for a reduction in sale price without the payment of cash in states where cash payments from dealers for financed vehicles are prohibited under state law. Proposed §§1.25E-3(e)(3) and 1.30D-5(d)(3) included examples that illustrate the application of the payment rules referenced by the commenter. The examples in proposed §§1.25E-3(e)(5)(ii) and 1.30D-5(d)(5)(ii) address a scenario in which the eligible entity makes the payment to the electing taxpayer in the form of a reduction in sale price (rather than as cash) and concluded that the eligible entity is eligible to receive an advance payment. Although addressed in the examples, reductions in sale price are not explicitly addressed in proposed §§1.25E-3(e)(3) and 1.30D-5(d)(3), which articulate the rules illustrated in the examples. Accordingly, the final regulations adopt proposed §§1.25E-3(e)(3) and 1.30D-5(d)(3) with language clarifying that reductions in sale price are acceptable forms of payment by an eligible entity.

5. Vehicle identification number requirement

Proposed §§1.25E-2(e)(4) and 1.30D-5(d)(4) impose certain additional requirements for credit transfer elections. Among those rules, the proposed regulations provided that the vehicle identification number requirements of section 30D(f)(9) and, by reason of section 25E(e), section 25E(d), would be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the IRS in the form and manner set forth in guidance published in the *Internal Revenue Bulletin*. The final regulations, consistent with the Secretary's general authority under section 30D(g)(1), provide that the electing taxpayer must provide its vehicle identification number with its Federal income tax return for the taxable year in which the vehicle is placed in service. Reporting of the vehicle identification number by both the electing taxpayer and the eligible entity is necessary to reconcile the advance payments under the credit transfer program with the eligibility of the electing taxpayer, which helps safeguard program integrity.

6. Increases in Tax

i. Recapture from taxpayer

Section 30D(g)(10) provides that, in the case of any taxpayer who has made a credit transfer election and received a payment from an eligible entity, if the section 30D credit would otherwise (but for section 30D(g)) not be allowable to such taxpayer pursuant to the application of the Modified AGI limitation, the tax imposed on such taxpayer under chapter 1 of the Code for the taxable year in which such vehicle was placed in service will be increased by the amount of the payment received by such taxpayer. Because section 25E(f) cross references to section 30D(g), similar rules apply with respect to the section 25E credit.

Proposed §§1.25E-3(g)(1) and 1.30D-5(f)(1) provided that, in the case of a clean vehicle credit that would otherwise not be allowable to a taxpayer that made a credit transfer election because the taxpayer exceeds the limitation based on Modified AGI, the income tax imposed on the taxpayer under chapter 1 of the Code for the taxable year in which the vehicle was placed in service is increased by the amount of the payment received by the taxpayer pursuant to the credit transfer election. The taxpayer in such a case must report recapture of the additional amount on its income tax return for the taxable year during which the vehicle was placed in service.

A commenter suggested that §§1.25E-3(g)(1) and 1.30D-5(f)(1) should be revised to apply recapture to taxpayers purchasing clean vehicles for resale or for primarily nonpersonal use. Regarding the purchase for resale aspect of this comment, proposed §§1.25E-2(c)(1)(iii)(E) and 1.30D-4(f)(1)(iii)(E) provided that the value of any transferred credit will be collected from the taxpayer in the event the taxpayer resells the vehicle within 30 days of placing the vehicle in service. Therefore, the proposed regulations already addressed the purchase for resale aspect of this comment and further clarification is not necessary. Regarding the aspect of the comment related to recapture in the event of primary nonpersonal use of the vehicle, Revenue Procedure 2023-33 provides that a taxpayer must attest to the IRS under penalty of perjury that the taxpayer is an individual for purposes of section 25E, or that the taxpayer will use the vehicle predominantly for personal use for purposes of section 30D. Because nonpersonal use of vehicles is adequately addressed in sub-regulatory guidance, additional clarification is not necessary. Accordingly, the final regulations do not adopt this comment.

Another commenter requested that the final regulations clarify who is responsible for recapture and under what circumstances. The final regulations, as described in this section of the Summary of Comments and Explanation of Revisions, make clear who is subject to recapture. Accordingly, the final regulations do not adopt this comment.

Based on the foregoing, the final regulations adopt proposed §§1.25E-2(c)(1)(iii)(E) and 1.30D-4(f)(1)(iii)(E) without modification.

ii. Excessive payment to an eligible entity

Section 30D(g)(7)(B) and section 25E(f) (by cross reference to section

30D(g)) provide that rules similar to the rules of section 6417(d)(6) apply for purposes of the advance payment program. Proposed §§1.25E-3(g)(2) and 1.30D-5(f)(2) provided that, in the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity by chapter 1 of the Code, for the taxable year in which such determination is made will be increased by the sum of the amount of the excessive payment, plus an amount equal to 20 percent of such excessive payment. The proposed regulations further provided that the rule applies regardless of whether such entity would otherwise be subject to chapter 1 tax. The additional amount of 20 percent, however, will not apply if the eligible entity demonstrates to the IRS that the excessive payment was due to reasonable cause, which is presumed to be the case for a clean vehicle returned within 30 days of placing such vehicle in service. *See* proposed §§1.25E-3(g)(2)(ii) and 1.30D-5(f)(2)(ii).

The proposed regulations provided that an excessive payment means, with respect to an advance payment to an eligible entity pursuant to a credit transfer election made by an electing taxpayer, an advance payment made to a registered dealer that fails to meet the requirements to be an eligible entity. Additionally, the proposed regulations define "excessive payment" as an advance payment to an eligible entity with respect to a clean vehicle to the extent the payment exceeds the amount of the clean vehicle credit that would be otherwise allowable to the electing taxpayer with respect to the vehicle. *See* proposed §§1.25E-3(g)(2)(iii) and 1.30D-5(f)(2)(iii). However, any excess payment attributable to a taxpayer exceeding the limitation based on Modified AGI is not treated as an excessive payment to an eligible entity.

A commenter requested clarification that "reasonable cause" includes an eligible entity's reliance on a manufacturer's calculations for purposes of the Critical Minerals and Battery Components Requirements, as shown on https://fueleconomy.gov or elsewhere. Specifically, the commenter requested that the final regulations clearly provide that eligible entities will not be liable for mistaken determinations with respect to those requirements.

Section 4.03 of Revenue Procedure 2022-42 provides that a taxpayer may rely on the information and certifications (which include certifications with respect to the Critical Minerals and Battery Components Requirements and the FEOC Restriction) contained in the qualified manufacturer's periodic written reports. Therefore, in the case of a mistaken calculation by the qualified manufacturer in a periodic written report, the taxpayer is not denied the section 30D credit. Accordingly, if that taxpayer transfers the credit under the advance payment program, the excess of the advance payment to the dealer over the credit otherwise allowable to the taxpayer would be zero, and there is no excessive payment under proposed §1.30D-5(f)(2)(iii). Consequently, the eligible entity would have no liability and no need to demonstrate reasonable cause. For clarity, the final regulations incorporate the provisions of section 4.03 of Revenue Procedure 2022-42 regarding taxpayer reliance on manufacturer certifications regarding qualified manufacturer status, and certifications and information a qualified manufacturer provides to the IRS in periodic written reports. The final regulations also delineate what taxpayer reliance means in this context. In addition, the final regulations add an example to §§1.25E-2(g) and 1.30D-5(g)(3) that illustrate that an excessive payment does not arise in the situation described by the commenter.

7. Two Credit Transfer Elections per Year

Proposed §§1.25E-3(i) and 1.30D-5(h) provided that a taxpayer may make no more than two credit transfer elections per taxable year. The proposed regulations further provided that in the case of a joint income tax return, each spouse may make two transfer elections per taxable year, for a maximum of four credit transfer elections in a taxable year. These proposed rules were intended to ensure program integrity by limiting credit transfer elections to vehicle sales that appear to be for legitimate nonbusiness individual use.

A commenter recommended that the requirements of proposed §§1.25E-3(i) and 1.30D-5(h) be deleted because there is no basis in section 25E or section 30D for these restrictions. The commenter noted that an eligible entity working with a taxpayer on a credit transfer would have no ability to determine whether the taxpayer would have already made two transfer elections. Section 30D(g)(1) provides that the credit transfer election is "[s]ubject to such regulations or other guidance as the Secretary determines necessary." Section 25E(f) adopts section 30D(g) by reference. Therefore, the Treasury Department and the IRS have the authority to regulate the credit transfer election to ensure program integrity and sound tax administration. Moreover, pursuant to Revenue Procedure 2023-33, the taxpayer will attest to the IRS directly that they have not made more than two transfer elections per year, and the dealer may rely on the taxpayer's attestation. Accordingly, the final regulations do not adopt this comment.

III. *New Clean Vehicle Credit – Section 30D*

A. *Definitions*

Section 1.30D-2 of the April Proposed Regulations provided general definitions related to the section 30D credit. Section 1.30D-3(c) of the April Proposed Regulations provided definitions applicable for purposes of the Critical Minerals and Battery Components Requirements. Section 1.30D-6(a) of the December Proposed Regulations provided definitions applicable for purposes of the FEOC Restriction. In the Explanation of Provisions to the December Proposed Regulations, the Treasury Department and the IRS noted that terms relevant to both the Critical Minerals and Battery Components Requirements described in proposed §1.30D-3 and the FEOC Restriction of proposed §1.30D-6 should be interpreted consistently between those provisions.

Consistent with this statement, the final regulations retain proposed §1.30D-2, with certain modifications described in this section of the Summary of Comments and Explanation of Revisions, and generally move the definitions from proposed §1.30D-3 and proposed §1.30D-6 to §1.30D-2(b). However, the final regulations, under §1.30D-3, retain certain definitions that are directly relevant to the calculations under the Critical Minerals and Battery Components Requirements; those definitions are cross-referenced in §1.30D-2(b). Section 1.30D-2(b) also cross-references definitions in proposed §1.30D-5, which provides rules for the credit transfer election (described in section II.C of this Summary of Comments and Explanation of Revisions).

The discussion in this section of the Summary of Comments and Explanation of Revisions only addresses new definitions, definitions that have been modified, or definitions for which comments were received.

1. Applicable Critical Mineral

Proposed §§1.30D-3(c)(1) and 1.30D-6(a)(1), consistent with section 30D(e)(1), defined an "applicable critical mineral" as an applicable critical mineral defined in section 45X(c)(6).

In addition, proposed §1.30D-6(c)(4)(ii)(A) provided that the determination of whether an applicable critical mineral is FEOC-compliant takes into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step. Proposed §1.30D-6(c)(4)(ii)(A) provided an exception to this general rule in the case of recycling (as discussed in this Summary of Comments and Explanation of Revisions at section III.A.25). Proposed §1.30D-6(c)(4)(ii)(C) further provided that, for purposes of determining whether an applicable critical mineral is FEOC-compliant, an applicable critical mineral is disregarded if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery.

Several commenters asked for clarification with respect to graphite. Specifically, the commenters requested clarification as to whether graphite that is of a purity of less than 99.9 percent graphitic carbon, but that is purified to a minimum purity of 99.9 percent carbon, is an applicable critical mineral under section 45X(c)(6) and thus section 30D. These comments were considered in the context of the section 45X proposed regulations. As explained in the Explanation of Provisions to the section 45X proposed regulations: "Some stakeholders have questioned whether this definition could be interpreted to refer to a particular crystalline structure of carbon, that is, 99.9 percent carbon in a graphitic form. [. . .] Consistent with the general intent of section 45X, proposed §1.45X-4(b)(14) would clarify that the term '99.9 percent graphitic carbon by mass' means graphite that is 99.9 percent carbon by mass." The Treasury Department and the IRS will continue to consider this issue as part of finalizing of the section 45X regulations. The form of graphite that is an applicable critical mineral for the purposes of section 30D will be the form that is determined to be an applicable critical mineral in the 45X final regulations.

Several commenters requested clarity as to whether synthetic graphite is an applicable critical mineral. Those commenters requested that the final regulations explicitly state that both graphite variations, synthetic and natural, qualify as an applicable critical mineral. A separate commenter suggested that, because natural and synthetic graphite have entirely different processing procedures, synthetic graphite should not be categorized as an applicable critical mineral. These comments were also considered in the context of the section 45X proposed regulations. Proposed §1.45X-4(b)(14) would provide that "[t]he term *graphite* means natural or synthetic graphite that is purified to a minimum purity of 99.9 percent graphitic carbon by mass." The Treasury Department and the IRS will continue to consider this issue as part of finalizing of the section 45X regulations. The form of graphite that is an applicable critical mineral for the purposes of section 30D will be the form that is determined to be an applicable critical mineral in the section 45X final regulations.

Several commenters requested clarification on whether other critical minerals are subject to the Critical Minerals Requirement and the FEOC Restriction. One commenter requested that the final regulations provide clarification with respect to hydrofluoric acid (HF). HF may be produced from fluorspar that is purified to a minimum purity of 97 percent calcium fluoride by mass. In these cases, the fluorspar is an applicable critical mineral (under section 45X(c)(6)(K)) and the HF would be an associated constituent material, both of which would be subject to the Critical Minerals Requirement and the FEOC Restriction. The commenter noted that in other cases, HF may be made with lower purity fluorspar or through phosphate mining (without fluorspar). The commenter requested clarification that such HF is still subject to the Critical Minerals Requirement and the FEOC Restriction. Similarly, another commenter requested clarity as to whether nickel, manganese, cobalt, and lithium that do not meet the purity requirements of section 45X(c)(6) are subject to the Critical Minerals Requirement and the FEOC Restriction. This commenter recommended that such lower-purity minerals not be subject to these rules.

One commenter recommended expanding the definition of "applicable critical mineral" to include other chemical forms of the critical minerals identified in section 45X(c)(6), such as nitrates, hydroxides, oxides, oxide hydroxides, carbonates, and chlorides. Another commenter stated that the critical minerals list excludes important minerals, such as iron and phosphorous, that are prevalent in FEOC-made batteries, and that this exclusion may introduce a loophole whereby FEOC-made batteries using non-listed critical minerals may be eligible for the critical mineral portion of the 30D credit. That commenter requested that the Treasury Department and the IRS issue additional rules to address non-U.S. critical minerals. Finally, one commenter noted that many minerals that enter battery supply chains prior to attaining the purity level listed in section 45X or becoming an associated constituent material come from FEOCs. That commenter expressed support for extending FEOC-compliance for critical minerals throughout production, even if the mineral is not in a final form listed in section 45X(c)(6) during each step.

In response to these comments, the Treasury Department and the IRS note that under the plain language of sections 30D(e)(1) and 45X(c)(6), minerals other than those specified in section 45X(c)(6) are not applicable critical minerals, and are therefore not subject to the Critical Minerals Requirement and the FEOC Restriction. In addition, the rules of proposed §§1.30D-6(c)(4)(ii)(A) and 1.30D-

6(c)(4)(ii)(C) provided additional clarity regarding classification as an applicable critical mineral in cases in which the form of the mineral changes during the steps of extraction, processing, or recycling. The final regulations extend this clarification to the Critical Minerals Requirement by incorporating it into the definition of "applicable critical mineral."

The final regulations adopt the definition in proposed §§1.30D-3(a)(1), 1.30D-6(c)(1), 1.30D-6(c)(4)(ii)(A), and 1.30D-3(c)(4)(ii)(C), with the modification described above, consolidate it, and move it to §1.30D-2(b) with the modification described previously. Specifically, the final regulations, like the proposed regulations, provide that "applicable critical mineral" means an applicable critical mineral defined in section 45X(c)(6). The final regulations clarify that the requirements under §§1.30D-3 and 1.30D-6 with respect to an applicable critical mineral take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into an associated constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step of production. The final regulations further clarify that an applicable critical mineral is disregarded for purposes of the Critical Minerals Requirement and the FEOC Restriction if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery.

In addition, the final regulations incorporate the special rule for recycling in proposed §1.30D-6(c)(4)(ii)(A) into the definition of "recycling" in §1.30D-2(b). The final regulations also provide an example that illustrates when the determinations under the Critical Minerals Requirement and the FEOC Restriction take place with respect to an applicable critical mineral.

2. Assembly

Proposed §§1.30D-3(c)(2) and 1.30D-6(a)(2) defined "assembly," with respect to battery components, as the process of combining battery components into battery cells and battery modules. The final regulations adopt the definition of "assembly" in proposed §§1.30D-3(c)(2) and 1.30D-6(a)(2), consolidate it into a single provision, and move it to §1.30D-2(b).

One commenter stated that the definition of "assembly" could allow for abuse under the Battery Components Requirement by allowing a North American manufacturer, for example, to simply affix two Chinese batteries together, which would be considered assembly of a North American battery component. However, in this situation, the incremental value, for purposes of determining the total incremental value of North American battery components (that is, the numerator in the qualifying battery component content that is compared to the applicable percentages of section 30D(e)(2)(B)), would only be the value of the affixed batteries, less the value of the batteries prior to assembly. Because that incremental value would be minimal, the potential for abuse as described by the commenter would also be minimal. Accordingly, the final regulations do not adopt this comment.

3. Associated Constituent Materials

Proposed §1.30D-6(c)(4)(ii)(B) provided that in determining whether an applicable critical mineral is FEOC-compliant, a constituent material is associated with an applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a form not listed in section 45X(c)(6).

The Critical Minerals Requirement under proposed §1.30D-3 incorporated the same concept by providing that the portion of an applicable critical mineral that is a qualifying critical mineral must be determined separately for each procurement chain. Proposed §1.30D-3(c)(14) defined "procurement chain" as 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.

These determinations necessarily encompass steps in the procurement chain in which the applicable critical mineral is transformed into a form not listed in section 45X(c)(6). Accordingly, the final regulations add a definition of "associated constituent material" to §1.30D-2(b), which provides that, with respect to an applicable critical mineral, an "associated constituent material" is a constituent material that has been processed or recycled from such mineral into the constituent material with which it is associated, even if that processing or recycling transformed such mineral into a form not listed in section 45X(c)(6).

4. Battery

Proposed §§1.30D-3(c)(3) and 1.30D-6(a)(3) defined "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. Under proposed §§1.30D-3(c)(3) and 1.30D-6(a)(3), the term "battery" did 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. The final regulations adopt the definition of "battery" in §§1.30D-3(c)(3) and 1.30D-6(a)(3), consolidate it into a single provision, and move the definition to §1.30D-2(b).

The Treasury Department and the IRS received comments both in support of and in opposition to the proposed definition of "battery." Several commenters requested a broader definition of "battery," while other commenters criticized the definition of battery as too broad. Similarly, several commenters disagreed with the definition of "battery" and recommended that it be defined as a complete battery pack. The Explanation of Provisions to the April Proposed Regulations noted that the proposed definition of "battery" is consistent with the language and purpose of section 30D because battery modules and cells are the sources "from which the electric motor of such vehicle draws electricity." *See* sections 30D(e)(1)(A) and (2)(A). Consistent with this, items that do not directly contribute to the electrochemical storage of energy within the battery are not the subject of the IRA's incentives to shift to more secure and resilient electric vehicle battery supply chains. Such items are generally low-value commodities that are specific to the end-use of the energy storage technology, rather than the process of storing energy. The proposed definition of "battery" is in keeping with the statutory purpose of incentivizing the resiliency and security of the highest-value and most specialized portions of the battery supply chain. In addition, the functional definition of "battery" in the proposed regulations allows for technological changes, as the definition will not be obsolete if battery pack structures change in the future, but is also consistent with current industry practice, as electrochemical batteries are currently standard. Accordingly, the final regulations do not adopt these comments.

In addition, one commenter requested that the definition of "battery" exclude thermal management systems and other components that do not directly contribute to energy storage. Because the definition of "battery" already excludes such systems and such other components, no modification to the definition of "battery" is required.

Finally, one commenter noted the necessity of future conversations about the definitions of "battery" and "battery component" to reflect technological advances. The Treasury Department and the IRS will continue to monitor technology in this area in coordination with the DOE. The Treasury Department and the IRS welcome additional comments in the future that discuss technological changes with respect to electric vehicle batteries.

5. Battery Cell

Proposed §§1.30D-3(c)(4) and 1.30D-6(a)(4) defined "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 proposed definition of battery cell encompassed the smallest combination of battery components necessary for the function of energy storage. The final regulations adopt the definition of "battery cell" in proposed §§1.30D-3(c)(4) and 1.30D-6(a)(4), consolidate it into a single provision, and move it to §1.30D-2(b).

A commenter requested that the guidance align the definitions of "battery cell" and "battery component" with those in section 45X(c)(5). However, section 30D does not adopt those definitions by refer-such vehicle draws electricity." Section 30D(e)(1)(A) and (2)(A). In addition, this definition is consistent with the purpose of section 30D to provide incentives to move toward more secure and resilient electric vehicle battery inputs. Inputs that do not directly contribute to the electrochemical processes necessary for energy storage (for example, thermal management systems, battery management systems, housing/enclosure components) are generally lower-value and specific to the end use of the battery, rather than the process of storing energy. The same reasoning applies to battery components. As noted by the Joint Committee on Taxation, the battery components requirement in section 30D(e)(2)(A) is "intended to incentivize the manufacturing or assembly of high-value battery components, such as battery cells, in North America."[4] Accordingly, because the proposed definition is consistent with the statutory text and purpose, the final regulations do not adopt these comments.

Finally, multiple commenters raised questions and provided recommendations relating to separators, many of which relate to the determination under the Battery Components Requirement (discussed in section III.B.2 of this Summary of Comments and Explanation of Revisions). One commenter requested clarification as to the incremental value of a coated separator, and recommended that the incremental value be determined by subtracting the value of an uncoated separator (a lithium-ion battery separator) from the value of the coated separator (a ceramic coated separator). Another commenter, noting that "substantially all" in the definition of "North American Battery Component" was vague, requested that the final regulations state that a separator coated in North America is a North American Battery Component (regardless of where the pre-coated separator was manufactured). This commenter stated that up to 60 percent of the value added by the separator comes from the coating process. In contrast, another commenter requested that the final regulations clarify that coating a separator is not manufacturing or assembly, to ensure that a separator coated in North America is not considered a North American Battery Component if the pre-coated separator was manufactured outside of North America. A different commenter advocated against the inclusion of base film and coating materials used to make such separator in the definition of "battery component" for purposes of the Battery Components Requirement and the FEOC Restriction. In addition, one commenter requested that the bare film and binders incorporated into a ceramic-coated separator be classified as battery sub-components and noted that these items should qualify under either the Critical Minerals Requirement or the Battery Components Requirement if manufactured in North America or a country with which the United States has a free trade agreement in effect. This commenter also made suggestions with respect to various other government rules that may apply to coated separators, which are outside the scope of these final regulations.

In response to these comments, the Treasury Department and the IRS note that a coated separator is a battery component. In general, the base film and coating are battery materials, not battery components, because they are processed rather than manufactured or assembled. If those battery materials contain applicable critical minerals, those battery materials are constituent materials. The final regulations clarify this in the definition of "battery component" and the new definition of "battery materials."

Finally, several commenters discussed the relationship between the Battery Components Requirement and the FEOC Restriction. One commenter encouraged the Treasury Department and the IRS to use the same definition of "battery component" for purposes of the Battery Components Requirement and the FEOC Restriction. In contrast, another commenter suggested that the final regulations adopt a broader definition of "battery component" for purposes of the FEOC Restriction that includes components otherwise included in the definition of "constituent material" for purposes of the Critical Minerals Requirements. As noted in the Explanation of Provisions to the December Proposed Regulations, the Treasury Department and the IRS intend that terms relevant to both the Critical Minerals and Battery Components Requirement and the FEOC Restriction be interpreted consistently. Consistent with that, the final regulations include one general definition of "battery component" for purposes of section 30D, and do not adopt the comment suggesting a broader definition for purposes of the FEOC Restriction.

The final regulations, in §1.30D-2(b), adopt a definition of "battery component" that clarifies the treatment of separators and incorporates the new definition of "battery materials." The definition is modified to improve clarity regarding the relationship between battery components, constituent materials, and battery materials.

7. Battery Materials

To further clarify the line between battery components and constituent materials, the final regulations add a definition of "battery materials" to §1.30D-2(b). The final regulations define "battery materials" as direct and indirect inputs to battery components that are produced through processing, rather than manufacturing or assembly. Battery materials are not considered a type of battery component, although battery materials may be manufactured or assembled into battery components. The three categories of battery materials are applicable critical minerals, constituent materials, and battery materials without applicable critical minerals. Examples of battery materials that may or may not contain applicable critical minerals include a separator base film (if not manufactured or assembled) and separator coating. Examples of battery materials without applicable critical minerals include conductive additives, copper foils prior to graphite deposition, and electrolyte solvents.

8. Clean Vehicle Battery

The final regulations add a definition of "clean vehicle battery" to §1.30D-2(b). Consistent with section 30D(d)(1)(F) and 30D(e), the final regulations define

[4] Joint Committee on Taxation, Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117 Congress* (JCS 1-23), December 2023, at 252, n.1070.

"clean vehicle battery," with respect to a new clean vehicle, means the battery from which the electric motor of the vehicle draws electricity to propel such vehicle.

### 9. Compliant-battery Ledger

Proposed §1.30D-6(a)(7) defined "compliant-battery ledger," for a qualified manufacturer for a calendar year, as a ledger that tracks the number of available FEOC-compliant batteries for such calendar year. Proposed §1.30D-6(d) set forth rules applicable to compliant-battery ledgers. The Treasury Department and the IRS received several comments about the rules for establishing, updating, and reconciling the compliant-battery ledger. These comments are included as part of the discussion of proposed §1.30D-6(d) in section III.D.3 of this Summary of Comments and Explanation of Revisions.

The final regulations adopt the proposed definition and move it to §1.30D-2(b).

### 10. Constituent Materials

Proposed §§1.30D-3(c)(6) and 1.30D-6(a)(8) defined "constituent materials" as materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials could 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. As explained in the Explanation of Provisions to the April Proposed Regulations, 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 are the final products relevant for calculating the value of the applicable critical minerals in the battery.

The Treasury Department and the IRS received multiple comments with respect to the definition of "constituent materials." Several commenters expressed support for the proposed definition. However, other commenters criticized the definition as not supported by the statute; as at odds with section 45X, which includes "electrode active materials" as qualifying battery components; and as an inappropriate reclassification of items that should be battery components, and thus subject to the Battery Components Requirement. One commenter suggested that constituent materials be included within the definition of "battery component" or otherwise phased in to allow for additional time to relocate production facilities to North America. Another commenter indicated that the definition of "constituent materials" could be exploited to exclude critical minerals.

In response to these comments, the Treasury Department and the IRS note that although section 30D does not define "battery component," it consistently refers to components as "manufactured or assembled," and it consistently refers to "applicable critical minerals" as "extracted, processed, or recycled." To avoid a gap in the supply chain between applicable critical minerals and battery components, the proposed regulations introduced the concept of constituent materials to make clear that materials downstream of applicable critical minerals, but still processed rather than manufactured or assembled, belong in the analysis of a battery's applicable critical minerals. Section 30D looks to a material's production steps to determine its status as an applicable critical mineral or a battery component. The constituent materials concept does not alter how the statute works; rather, it clarifies how the statute applies to certain materials.

One commenter suggested modifying the definition of "constituent materials" to include domestic alternatives that serve the same purpose as constituent materials but do not contain applicable critical minerals. The final regulations do not adopt this comment because the commenter's proposal would be at odds with the Critical Minerals Requirement and the FEOC Restriction (as applicable to applicable critical minerals).

Other commenters raised questions with respect to whether specific materials are constituent materials. One commenter asked for clarification as to whether foils, such as a copper foil that does not contain any applicable critical minerals, are constituent materials. Another commenter asked for clarity with respect to polyvinylidene fluoride (PVDF). Noting that PVDF made from fluorine (in the form of an applicable critical mineral) would be a constituent material, the commenter asked for clarification about the classification of PVDF that is not made from an applicable critical mineral, such as PVDF sourced from phosphate rock. The final regulations clarify that battery materials may not contain applicable critical minerals. Further, the Treasury Department and the IRS note that the materials referenced by these commenters (foils and PVDF) would both be considered battery materials without applicable critical minerals.

One commenter sought clarification of whether lithium hexafluorophosphate is considered an electrolyte salt for purposes of the definition of constituent materials. If an applicable critical mineral in a form specified in section 45X(c)(6) is used to produce lithium hexafluorophosphate, and this material is integrated into a battery component, the material would be considered a constituent material.

A separate commenter requested that the final regulations clarify that carboxymethylcellulose (CMC), made from wood pulp or linter pulp, is not a constituent material. The commenter notes that CMC does not contain applicable critical minerals. The Treasury Department and the IRS note that, while CMC is used in the manufacture of a battery component as a binder or coating for the production of anode electrodes by deposition of anode active material onto copper foil, CMC itself does not contain an applicable critical mineral, and therefore would not be considered a constituent material.

Finally, one commenter requested clarification with respect to powders of cathode active materials (CAM), which is listed as a constituent material. The commenter noted that the list does not expressly include precursor materials used for making CAM or other intermediate materials incorporating the critical minerals that are used to produce the CAM. The commenter specifically recommended adding these items to the list and including references to the relevant applicable critical minerals by revising the definition to include powders of precursor cathode active materials and any other intermediate products incorporating critical minerals such as manganese, nickel, or cobalt, powders of cathode active materials. The final regulations provide, in the definition of "applicable critical mineral," that determinations under the Critical Minerals Requirement and the FEOC Restriction with respect to an applicable critical mineral take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material. Thus, the final regulations clarify that these precursor or other intermediate materials are relevant for both the Critical Minerals Requirement and the FEOC Restriction.

The final regulations adopt the definition of "constituent materials" in proposed §§1.30D-3(a)(8) and 1.30D-6(c)(6), consolidate it into a single provision, and move it to §1.30D-2(b). In addition, the final regulations clarify that battery materials without applicable critical minerals are not constituent materials.

12. Country with which the United States has a Free Trade Agreement in effect

Proposed §1.30D-3(c)(7) defined the term "country with which the United States has a free trade agreement in effect" and listed the countries with which the United States has free trade agreements in effect. As noted in the Explanation of Provisions to the April Proposed Regulations, the term free trade agreement is not defined in the IRA or in the Code. Proposed §1.30D-3(c)(7)(i) set forth criteria for the identification of a country with which the United States has a free trade agreement in effect, including 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.

Proposed §1.30D-3(c)(7)(ii) identified twenty 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). In addition, the Treasury Department and the IRS proposed to include additional countries identified by the Secretary, after consideration of the listed criteria, and identified Japan as an additional country. On March 28, 2023, the United States and Japan concluded a Critical Minerals Agreement (CMA), which contained robust obligations to help ensure free trade in critical minerals.[5]

Proposed §1.30D-3(c)(7)(iii) provided that the list of identified 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 of the Statement of Procedural Rules (26 CFR part 601)).

The final regulations adopt this definition and move it to §1.30D-2(b). At this time, the Treasury Department and the IRS have not identified any additions to the list of identified countries. The final regulations continue to include Japan on the list of countries with which the United States has free trade agreements in effect. After consulting with the United States Trade Representative in applying the relevant factors for identifying free trade agreements, the Treasury Department and the IRS have concluded that Japan is a country with which the United States has a free trade agreement in effect. The Treasury Department and the IRS specifically sought comments 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 set forth in proposed §1.30D-3(c)(7)(ii).

The Treasury Department and the IRS received several comments with respect to this definition. One comment requested guidance identifying at what stage a trade agreement is considered in effect, noting the signature date of an agreement is frequently different from the trade agreement's implementation date. The commenter requested that the completion date be considered the date that a trade agreement is in effect. As an initial matter, international agreements to which the United States is a party, including those referred to in the §1.30D-2(b) definition of "country with which the United States has a free trade agreement in effect," ordinarily identify the date on which they enter into force and therefore are "in effect," as that term is used in section 30D. Consistent with the approach described in the proposed rules and adopted in the final rules, the Treasury Department and the IRS will also "make any necessary amendments to the list . . . including adding any additional countries as any new qualifying international agreements enter into force and the Secretary determines that the [applicable] factors have been met." The Treasury Department and the IRS have determined that the assessment of whether an agreement is in effect is something that the Secretary will evaluate in the context of individual agreements that may be considered in determining whether to add individual countries to the list of countries with which the United States has free trade agreements in effect.

One commenter requested defining "country" to include geographical areas that are of an international nature and do not belong to any one country, such as international waters. The ordinary meaning of "country" does not include areas beyond national jurisdiction. Therefore, the final regulations do not adopt this comment.

Several comments suggested that the proposed definition of "free trade agreement" expands the regulatory regime and undercuts Congressional intent. Relatedly, a comment specifically criticized the inclusion of Japan on the list on the basis of the CMA. Other commenters supported the inclusion of Japan on the basis of the CMA. Another commenter suggested that the proposed regulations impermissibly expand the Secretary's authority to define

[5] 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

"free trade agreement," and that the regulatory definition departs from its accepted meaning. Several commenters suggested defining free trade agreements to include arrangements, including plurilateral agreements, in which the United States and a foreign economy agree to at least some strategic and/or economic partnerships, including government procurement, even if the agreement was not labeled a free trade agreement.

As noted earlier in this discussion and in the Explanation of Provisions to the April Proposed Regulations, the term "free trade agreement" is not defined in the IRA or in the Code, and the definition in the proposed regulations is consistent with the statute and its purpose, as reflected in the term's ordinary meaning, use, and context in section 30D and in the broader IRA. As also noted in the Explanation of Provisions to the April Proposed Regulations, the purpose of the IRA's amendments to section 30D is to 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, which is essential for our national security, our economic security, and our technological leadership. The proposed definition of "country with which the United States has a free trade agreement in effect" is consistent with these statutory purposes.. In particular, the criteria identified in the proposed definition that must be met for an instrument to be determined to be a free trade agreement include whether an agreement between the United States and another country includes commitments related to reducing or eliminating trade barriers on a preferential basis, refraining from imposing new trade barriers, establishing high-standard disciplines in trade-related areas, and reducing or eliminating restrictions on exports or committing the parties to refrain from imposing such restrictions, all in the context of the overall commercial and economic relationship between the country in question and the United States. Based on the criteria above, Japan was identified as a country with which the United States has a free trade agreement in effect. In particular, the United States-Japan CMA was identified as a free trade agreement under these criteria because it includes robust obligations, such as a commitment to refrain from imposing duties on exports of critical minerals that are currently essential to the electric vehicle battery supply chain, and a commitment for the United States and Japan to confer on best practices regarding review of investments in the critical minerals sector for purposes of assisting a determination of the effect of such investments on national security. The CMA also includes detailed terms related to the relationships of labor and environmental laws to trade in critical minerals and cooperation on non-market policies and practices of non-parties affecting trade in critical minerals. The CMA was concluded in the context of an earlier trade agreement the United States concluded with Japan in 2019, a related 2019 agreement on digital trade, and the U.S.-Japan Partnership on Trade announced in November 2021.

Several commenters addressed issues relating to labor standards, environmental standards, economic and national security, transparency, and enforceability. One commenter requested that the United States Geological Survey be consulted as to the environmental standards and compliance and enforcement histories of specified non-domestic sources. Another commenter encouraged the Treasury Department and the IRS to collaborate with the Department of State to leverage the Minerals Security Partnership (MSP) to secure supply chains needed to scale domestic battery production while establishing higher labor standards, greater transparency, improved environmental practices, and greater value-added benefits for communities located in countries with significant mineral endowments. The Treasury Department and the IRS appreciate these concerns and note that they are appropriately reflected in the criteria identified in the proposed regulations, specifically as high-standard disciplines in key areas affecting trade. The Treasury Department and the IRS will consult with appropriate agencies across the Federal government in applying the listed criteria in the future.

Relatedly, several commenters raised concerns about whether countries with which the United States does not have free trade agreements in effect could launder applicable critical minerals through procurement chains involving countries with which the United States has free trade agreements in effect. The Treasury Department and the IRS have determined that the upfront review process in §1.30D-3(d) of the final regulations (described in section III.B.3 of this Summary of Comments and Explanation of Revisions), which involves due diligence and requires documentation of critical mineral supply chains, will promote accurate tracing of the full critical mineral supply chain.

Another commenter suggested including a broad set of critical minerals in any future critical minerals agreement. The commenter noted that limiting future critical mineral agreements to a limited subset of applicable critical minerals has the potential to limit innovation. In response to this comment, the Treasury Department and the IRS note that the determination under the Critical Minerals Requirement with respect to "any country with which the United States has a free trade agreement in effect," would not be limited in the case of critical minerals agreements by the scope of minerals covered by such critical minerals agreement. Once the Secretary determines that a country qualifies as a country with which the United States has a free trade agreement in effect, any applicable critical minerals within the meaning of section 45X(c)(6) extracted or processed in that country are eligible. Finally, several commenters requested that additional countries be added to the list, including Argentina, the Philippines, members of the European Union, and the United Kingdom. At this time, the Treasury Department and the IRS have not identified agreements in effect with the suggested countries within the meaning of section 30D. The Treasury Department and the IRS will continue to work with the United States Trade Representative and across the Federal government to apply the listed criteria to determine if it is appropriate to list additional countries.

13. Extraction

Proposed §§1.30D-3(c)(8) and 1.30D-6(a)(9) defined "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. Under the proposed definition, 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 applicable critical mineral processing. Extraction includes the beneficiation or other physical processes that allow the extracted materials, including ores, clays, and brines, to become transportable. Extraction also includes the physical processes involved in refining, but not the chemical and thermal processes involved in refining.

Several commenters requested clarity on the line between extraction and processing. Section III.A.22 of the Summary of Comments and Explanation of Revisions addresses these comments.

One commenter suggested that the definition of "extraction" be expanded to include critical minerals not physically taken from the ground, citing innovations in producing graphite from biomass that no longer require physical ground extraction. The proposed definition of "extraction" includes the extraction of minerals or natural resources from the waste or residue of prior extraction. Therefore, it is unnecessary to modify the definition of "extraction" in the manner the commenter suggests. However, the final regulations clarify that extraction also includes crude oil extraction to the extent processes applied to that crude oil yield an applicable critical mineral as a byproduct. The final regulations also clarify that extraction does not include activities that begin with a recyclable commodity (as such activities themselves constitute recycling).

The final regulations adopt the definition of "extraction" in the proposed regulations, consolidate it into a single provision with the clarification described previously, and move it to §1.30D-2(b).

14. Final Assembly

Proposed §1.30D-2(b) provided that, consistent with section 30D(d)(5), "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 proposed regulations provided that a taxpayer could rely on the following information: (1) the vehicle's plant of manufacture as reported in the 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 final regulations adopt the proposed definition of "final assembly" without change.

The proposed regulations provided two different methods for determining whether a vehicle meets the North American final assembly requirement, either via the VIN or the vehicle label, to ensure that this information was available and accessible for taxpayers. For nearly all vehicles, both methods will provide the same final assembly location. 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 DOE, Alternative Fuels Data Center (AFDC), and the Department of Transportation, National Highway Traffic Safety Administration (NHSTA), 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; NHTSA, VIN Decoder, https://www.nhtsa.gov/vin-decoder. Labeling requirements in 49 CFR 583.5 require the final assembly point to be reported on the label affixed to a passenger motor vehicle as defined in 49 U.S.C. § 32304(11) (which limits such vehicles to those with GVWR of 8,500 pounds or less). 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 labeling requirements provide that the final assembly point is the location where the first stage vehicle is assembled. 49 CFR 583.4(b)(5). Multi-stage vehicles are vehicles manufactured in two or more stages by which an incomplete vehicle becomes a completed vehicle and may involve multiple manufacturers. *See* 49 CFR 567.3 for definitions of "incomplete vehicle" and "completed vehicle."

A commenter stated that the proposed rule would allow taxpayers to use the vehicle's plant of manufacture reported on the VIN, rather than the final assembly point, for multi-stage vehicles. However, existing vehicle labeling requirements in 49 CFR part 583 apply to both single-stage and multi-stage vehicles with GVWR of 8,500 pounds or less. Therefore, such requirements provide a final assembly point for both types of vehicles. The proposed regulations provided flexibility to taxpayers in determining whether the section 30D credit final assembly requirement is met by allowing taxpayers to look to either the plant of manufacture identified in the VIN or the vehicle label final assembly point. In the limited situations in which the VIN and vehicle label may provide different final assembly locations, the proposed regulations allowed taxpayers to choose the standard that is more favorable to them. Moreover, the VIN and vehicle labels will diverge only in certain limited situations with respect to a multi-stage vehicle, and most multi-stage vehicles have a GVWR of more than 8,500 pounds, and are, therefore, not subject to the part 583 vehicle labeling requirements. Furthermore, it is important to leverage existing standards that provide accessible information to taxpayers, and such information is more accessible if taxpayers have multiple ways to obtain it. Accordingly, the final regulations do not adopt this comment.

Another commenter requested that the final regulations define "final assembly" more broadly, to include assembly of body panels, painting, chassis assembly, trim installation, and other assembly and fabrication processes that are currently found in established final assembly plants, to maximize the incentive for production in the United States. Section 30D(d)(5) and the proposed definition of "final assembly" look to the plant, factory, or other place at which all component parts necessary for the mechanical operation of the vehicle are included with the vehicle. Consistent with the commenter's suggestion, this is generally the location where the chassis of the vehicle is assembled, because at that point the vehicle may be mechanically operable. In addition, the two reliance standards described in the proposed regulations, the vehicle's plant of manufacture as reported in the VIN, and the final assembly point reported on the vehicle label, generally also look to the location where the chassis of the vehicle is assembled. The other processes suggested by the commenter (body panel assembly, painting, and trim installation) do not affect mechanical operation of the vehicle and therefore are inconsistent with the definition of "final assembly" for purposes of 30D. Moreover, the VIN and labeling standards also would not consider such processes in determining the vehicle's plant of manufacture or final assembly point. To provide accessible information to taxpayers and to create an administrable rule, especially because the final assembly rule was immediately effective upon passage of the IRA,[6] the Treasury Department and the IRS determined it was necessary to leverage existing reporting of final assembly rather than create an alternative definition that relies on information that is not currently available to the public. The Treasury Department and the IRS consulted with the Department of Transportation in developing the proposed and final regulations regarding final assembly. Because the proposed definition of "final assembly" is consistent with the statutory definition and provides an administrable rule, the final regulations do not adopt this comment with respect to processes other than chassis assembly.

Another commenter stated that entities already in the process of constructing production facilities should not be held at a disadvantage given the economic opportunity of creating additional domestic jobs. The North American final assembly requirement in section 30D(d)(1)(G) is prescribed by statute, and the IRA provided an immediately applicable effective date for this provision (August 17, 2022). Accordingly, the final regulations do not adopt this comment.

15. Foreign Entity of Concern

Proposed §1.30D-6(a)(10), consistent with section 30D(d)(7), defined "foreign entity of concern" to have the same meaning as in section 40207(a)(5) of the Infrastructure Investment and Jobs Act and guidance promulgated thereunder by the DOE. The final regulations adopt the proposed definition and move it to §1.30D-2(b).

The definition of "foreign entity of concern" under section 40207(a)(5) of the Infrastructure Investment and Jobs Act is under the jurisdiction of the DOE. On December 1, 2023, contemporaneous with the issuance of the December Proposed Regulations, the DOE issued proposed interpretative guidance relating to the definition. 88 FR 84082 (published December 4, 2023). A number of commenters to the December Proposed Regulations made requests or suggestions with respect to the definition. These comments are outside of the scope of these regulations, and are not further addressed in this Summary of Comments and Explanation of Revisions.

Similarly, several commenters requested more detailed thresholds and processes for determining the involvement of FEOC entities based on entity ownership, control of, and/or acting jurisdiction. The determination of whether an entity is owned by, controlled by, or subject to the jurisdiction of a FEOC is within the jurisdiction of the DOE and its interpretive guidance. Accordingly, the comments are outside of the scope of these final regulations. One commenter also requested that the final regulations address the potential for arbitrage by artificially increasing the value of a critical mineral or battery component not based in or under the control of a FEOC. Because the FEOC Restriction is not based on value of materials, the final regulations do not adopt this comment.

16. FEOC-compliant

Proposed §1.30D-6(a)(11), adopted and moved to §1.30D-2(b) of the final regulations, defined "FEOC-compliant" to mean in compliance with the applicable excluded entity requirement under section 30D(d)(7). The definition provided specific rules with respect to a clean vehicle battery, a battery component (other than a battery cell), a battery cell, and an applicable critical mineral. A number of commenters raised questions with respect to the due diligence required to determine if an item is FEOC-compliant or commented on the FEOC Restriction. These comments are addressed in section III.D of this Summary of Comments and Explanation of Revisions.

17. Manufacturer

Proposed §1.30D-2(k) provided, consistent with section 30D(d)(3), that "manufacturer" means any manufacturer within the meaning of the regulations prescribed by the EPA for purposes of the administration of title II of the Clean Air Act (CAA) (42 U.S.C. 7521 et seq.) and as defined in 42 U.S.C. 7550(1).

Under 42 U.S.C. 7550(1) and 40 CFR 1068.30 under the CAA regulations, multiple parties may be a manufacturer with respect to a vehicle. To address this situation, the proposed definition also provided that, if multiple manufacturers are involved in the production of a vehicle, the requirements provided in section 30D(d)(3), which must be met for a vehicle to qualify for the section 30D, 45W and 25E credits, must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards (CAA emissions reporting requirements) set by the EPA under the CAA for the subject vehicle. The purpose of the proposed multiple manufacturer rule was to provide a clear rule for OEMs and other parties that may be considered a manufacturer under the CAA regulations.

One commenter suggested that the final regulations modify the definition of "manufacturer" to include upstream members of the critical mineral supply chain, including cell manufacturers, cathode

[6] The final assembly requirement amendments made to section 30D in the IRA were applicable to vehicles sold after the date of enactment of the IRA. Pub. L. 117-169 §13401(k)(2).

manufacturers, and anode manufacturers, in addition to the OEMs. Because the proposed regulations define a manufacturer by referring to the CAA regulations, if an upstream manufacturer is covered by the CAA regulations, that party will be a manufacturer under section 30D. However, if the upstream manufacturer is not covered by the CAA regulations, the statute would not include such manufacturers in the definition of "manufacturer." Accordingly, the final regulations do not adopt this comment.

Another commenter requested that the multiple manufacturer rule be modified to include upfitters as manufacturers. Upfitters purchase new internal combustion engine (ICE) motor vehicles from manufacturers and then modify them into clean vehicles prior to the vehicle being placed in service by the ultimate purchaser. Because the ICE vehicle manufacturer is subject to the CAA emissions reporting requirements, neither the upfitter nor the ICE vehicle manufacturer would be able to meet the requirements of section 30D(d)(1)(C) and (3) under the multiple manufacturer rule in the proposed regulations. As a result, the vehicles modified by the upfitter would be ineligible for the section 25E, 30D, and 45W credits.

The Treasury Department and the IRS have concluded that including upfitters in the definition of "manufacturer" is consistent with the statutory language of section 30D and the CAA regulations, as well as Congressional intent to incentivize the development and purchase of non-ICE vehicles. Accordingly, the final regulations modify the multiple manufacturer rule to allow a manufacturer that modifies a new vehicle into either a new clean vehicle or a qualified commercial clean vehicle to enter into an agreement under section 30D(d)(3) if such modification occurs prior to the new motor vehicle being placed in service.

The same commenter requested that the final regulations allow this rule to apply retroactively for purposes of the section 45W credit for upfitters that modify new vehicles into qualified commercial clean vehicles. Section III.A.23 of this Summary of Comments and Explanation of Revisions concerning the definition of qualified manufacturer addresses this comment.

One commenter suggested that final regulations provide robust oversight of OEMs, including mandatory reporting of certain economic impacts including the collective bargaining status of final assembly plants, and repurposing the EPA's Clean School Bus Program's OEM Job Quality and Workforce Development questionnaire. This comment is beyond the scope of the final regulations and is not adopted.

The final regulations adopt the proposed definition of "manufacturer" with the modification regarding upfitters. In addition, the final regulations move the definition to §1.30D-2(b).

18. Manufacturer's Suggested Retail Price (MSRP)

Proposed §1.30D-2(c) provided that for purposes of the MSRP limitation in 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. 1232.17.

One commenter stated that the determination of MSRP by manufacturers is not well-regulated, and that the final regulations should restrict manufacturers from setting an artificially low MSRP. The commenter suggested that the MSRP should be the actual out the door price paid, and should be limited so that the average cash price paid by consumers does not exceed the MSRP set by manufacturers. Another commenter suggested that the vehicle's base price (exclusive of accessories) be used to determine whether a vehicle's price is under the limitation to be eligible for the section 30D credit.

Section 30D(f)(11) restricts vehicle eligibility for the section 30D credit on the basis of MSRP, not on the basis of actual price paid. In addition, the Treasury Department and the IRS have determined that the MSRP should include not just the base MSRP described in 15 U.S.C. 1232(f)(1), but also the portion of the MSRP described in 15 U.S.C. 1232(f)(2) (each accessory or item of optional equipment, physically attached to the automobile at the time of its delivery to the dealer) because looking solely at base MSRP could encourage manufacturers to artificially lower the base MSRP and increase the amount of the MSRP allocated to accessories or items of optional equipment in an attempt to circumvent the MSRP limitations. Accordingly, the final regulations do not adopt the comments.

The final regulations adopt the proposed definition and move it to §1.30D-2(b).

19. New Clean Vehicle

Proposed §1.30D-2(m) defined "new clean vehicle" as a vehicle that meets the requirements described in section 30D(d). Under the proposed regulations, a new clean vehicle would not include any vehicle for which the qualified manufacturer: (1) fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the VIN of such vehicle and certifying compliance with the requirements of section 30D(d); (2) provides incorrect information with respect to the periodic written report for such vehicle; (3) fails to update its periodic written report in the event of a material change with respect to such vehicle; or (4) fails to meet the requirements of proposed §1.30D-6(d) for new clean vehicles placed in service after December 31, 2024. For purposes of section 30D(d)(6), the term "new clean vehicle" includes any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) that meets the requirements under section 30D(d)(1)(G) and (H).

Several commenters suggested that the Treasury Department and the IRS not allow leased vehicles to bypass the stringent domestic-sourcing requirements under section 30D by making the section 45W credit available for such vehicles. Another commenter asked whether the Modified AGI limitation would apply to the lessor or lessee if a clean vehicle is leased to individuals and, if used for business purposes, would fall within section 45W. Section 30D and section 45W each include a no double benefit rule. *See* section 30D(f)(2) and section 45W(d)(3). This demonstrates that under the statutory framework, certain vehicles may qualify for both the section 30D credit and the section 45W credit, and that in such instances, the taxpayer must choose which credit to claim. Further, as described in IRS Fact Sheet FS-2023-22, Topic G, Q5-7, a taxpayer that leases clean vehicles to its customers as its business may be eligible to claim the section 45W credit if the taxpayer is the owner of such vehicles for Federal income tax purposes. The owner of the vehicle is determined based on whether the lease is respected as a lease or is recharacterized as a sale for Federal income tax purposes. The Modified AGI limitation, if applicable, applies to the owner of the vehicle who places it in service for use or lease, and not to the lessee. Accordingly, the final regulations do not adopt these comments.

One commenter expressed concern that vehicles used in a courtesy transportation program would be ineligible for the section 30D credit upon a later sale due to the original use rule of section 30D(d)(1)(A). Because the original use rule is statutory, the final regulations do not adopt this comment. However, the owner of the vehicle that is used in a courtesy transportation program may itself be able to claim a section 30D credit.

Section 30D(d)(1)(F) requires the vehicle to be propelled to a significant extent by an electric motor that 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. One commenter requested that the final regulations define "significant extent" in the context of section 30D(d)(1)(F), but did not propose a definition. Given the purpose of this requirement to distinguish ICE vehicles from battery electric vehicles and plug-in hybrid electric vehicles, and the possibility for technical change in this area, it would be impracticable to precisely define the term. For these reasons, the final regulations do not adopt this comment.

Finally, one commenter suggested making the VINs of eligible vehicles available in an accessible, dealer-facing database, which would allow dealers to use a common source to readily identify which vehicles are eligible for the section 30D credit, reduce confusion, and improve deployment. This comment is outside of the scope of these final regulations. However, the Treasury Department and the IRS, together with the DOE, have provided public-facing information regarding vehicle eligibility via the IRS website and https://fueleconomy.gov and will continue to develop such information in a way that is accessible to dealers and taxpayers.

The final regulations adopt the proposed definition of "new clean vehicle" with clarifying language that new clean vehicles include battery electric vehicles, plug-in hybrid electric vehicles, fuel cell motor vehicles, and plug-in hybrid fuel cell motor vehicles.

### 20. New Qualified Fuel Cell Motor Vehicle

To provide additional clarity to taxpayers, the final regulations add a definition of a "new qualified fuel cell motor vehicle" to §1.30D-2(b) that is consistent with section 30D(d)(6). Specifically, the final regulations define "new qualified fuel cell motor vehicle" to be any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) that meets the requirements under section 30D(d)(1)(G) (that is, the final assembly in North America requirement) and (H) (that is, the seller report requirement), and that does not have a clean vehicle battery. This definition includes otherwise qualifying vehicles that have only a "start-stop" battery, because such a battery is not a clean vehicle battery.

### 21. Non-traceable Battery Materials / Impracticable-to-trace Battery Materials

Proposed §1.30D-6(a)(13)(i) defined "non-traceable battery materials" to mean specifically identified low-value battery materials that may originate from multiple sources and are often commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. Proposed §1.30D-6(a)(13)(ii), which was reserved, would have provided the specific list of identified non-traceable battery materials. In the Explanation of Provisions to the December Proposed Regulations, the Treasury Department and the IRS, after extensive consultation with the DOE, stated that they would consider whether the following applicable critical minerals (and associated constituent materials) may be designated as identified non-traceable battery materials: applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives.

The Treasury Department and the IRS received a number of comments with respect to the definition of "non-traceable battery materials" as well as the related FEOC Restriction transition rule for non-traceable battery materials. Section III.D of this Summary of Comments and Explanation of Revisions discusses these comments.

Consistent with the expectation and requirement that OEMs will develop thorough tracing processes in the future, even while such processes do not now exist, the final regulations retain the list but change the name to "impracticable-to-trace battery materials." The final regulations adopt the proposed definition and move it to §1.30D-2(b). Specifically, the final regulations define "identified impracticable-to-trace battery materials" as applicable critical minerals in the following circumstances: graphite contained in anode materials (both synthetic and natural) and applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives.

### 22. Processing

Proposed §§1.30D-3(c)(13) and 1.30D-6(a)(14) defined "processing" as 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. The proposed regulations further provided that processing begins 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. Under the proposed regulations, processing included the chemical or thermal processes involved in refining, but did not include the physical processes involved in refining.

One commenter requested that the final regulations include high temperature heat treatment among the listed non-physical processes involved in refining that constitute processing to ensure that graphitization is included as processing. High temperature heat treatment is a thermal process, so it is already included in the definition of processing. Therefore, the commenter's requested modification is unnecessary.

Another commenter specifically requested that the final regulations address a fact pattern in which lithium carbonate is procured from an ally of the United States that is not a country with which the United States has a free trade agreement in effect, but is processed into both lithium hydroxide and cathode active material in the United States or a country with which the United States has a free trade agreement in effect. Lithium carbonate is a form of an applicable critical mineral specified in 45X(c)(6); therefore, it is subject to the Critical Minerals Requirement. Lithium carbonate that is procured from a region that is not in the United States or a country with which the United States has a free trade agreement in effect but is processed in the United States may be counted in the numerator of the qualifying critical mineral content calculation to the extent of the value added in the United States.

A number of commenters requested clarification on the line between extraction and processing. One commenter requested that the final regulations clarify that minor treatments necessary to render raw materials transportable are not processing (as chemical or thermal refining), but are instead extraction (as beneficiation). Another commenter noted that evolving technologies, such as glycine leaching technology, simplify value chains and may not uniquely fit into the proposed definitions of "extraction" or "processing." One commenter recommended narrowing the definition of "processing" to exclude processes performed during battery manufacturing. Another commenter requested that the final regulations provide additional examples of different procurement chains that illustrate where the extraction and processing steps begin and end. Finally, another commenter proposed alternative definitions of "extraction" and "processing" that conform with the commenter's view of industry practice, rather than distinguish between physical and non-physical processes. That same commenter requested that the final regulations clarify that smelting nickel is extraction rather than processing, again consistent with the commenter's view of industry practice. The Treasury Department and the IRS note that smelting nickel is a thermal process and is therefore already included in the proposed definition of "processing." Further, the proposed regulations expressly list, in the definitions of "extraction" and "processing," production steps that are generally high value add, and it is likely not possible to generate an exhaustive list given the variety of production steps that may apply to the various applicable critical minerals. Moreover, the proposed regulations are more administrable than a rule based on industry standards, which may change in the future. Accordingly, the final regulations do not adopt these comments.

The final regulations adopt the definition of "processing" in proposed §§1.30D-3(c)(13) and 1.30D-6(a)(14), consolidate it into a single provision, and move it to §1.30D-2(b).

23. Qualified Manufacturer

Proposed §1.30D-3(c)(15), applicable to the Critical Minerals and Battery Components Requirements, defined a "qualified manufacturer" as a manufacturer described in section 30D(d)(3). Proposed §1.30D-2(l), applicable as a general definition for section 30D purposes, similarly defined a "qualified manufacturer" as a manufacturer that meets the requirements described in section 30D(d)(3). In addition, proposed §1.30D-2(l) provided that the term "qualified manufacturer" does not include any manufacturer whose qualified manufacturer status has been terminated by the IRS for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D, including with respect to the periodic written reports described in section 30D(d)(3) and proposed §1.30D-2(m), and any attestations, documentation, or certifications described in proposed §§1.30D-3(e) and 1.30D-6(d), at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

As in discussed in section III.A.17 of this Summary of Comments and Explanation of Revisions concerning the definition of "manufacturer," a commenter requested that the proposed multiple manufacturer rule be modified to include upfitters as manufacturers. The same commenter requested that the final regulations allow upfitters to rely on any final regulations as of January 1, 2023, register as qualified manufacturers after the final regulations are published, and include in such upfitters' first periodic written report to the IRS information regarding all vehicles that the upfitter asserts are eligible for the section 45W credit. This comment is outside the scope of the final regulations because (i) it pertains to the section 45W credit, and (ii) the qualified manufacturer registration process is addressed in Revenue Procedure 2023-33 and other sub-regulatory guidance. Accordingly, the final regulations do not adopt this comment.

However, in considering the comment regarding upfitters, the Treasury Department and the IRS have determined that it is necessary to clarify when qualified manufacturer status is determined. Accordingly, the final regulations clarify that, for purposes of determining whether the qualified manufacturer requirement of section 30D(d)(1)(C) is met, a new clean vehicle is made by a qualified manufacturer if it is made by a manufacturer that is a qualified manufacturer at the time a written report is submitted to the IRS under a qualified manufacturer agreement, as described in section 30D(d)(3). This rule is consistent with section 30D, as well as its underlying purpose of incentivizing clean vehicle deployment. Further, under this rule, a vehicle made by a manufacturer that was not a qualified manufacturer at the time of production may still qualify as a new clean vehicle, provided the manufacturer becomes a qualified manufacturer and submits a written report to the IRS prior to the time the vehicle is sold. In addition, The Treasury Department and the IRS lack authority to provide retroactive relief with respect to vehicles that were sold prior to the time the qualified manufacturer submitted a periodic written report to the IRS under the qualified manufacturer agreement. Finally, the qualified manufacturer requirements of sections 30D(d)(1)(C) and 30D(d)(3), and therefore these final regulations, also apply for purposes of sections 25E and 45W. *See* sections 25E(c)(1)(D)(i) and 45W(c)(1). Therefore, a vehicle made by a manufacturer that was not a qualified manufacturer at the time of production — including a vehicle produced prior to enactment of the IRA, when there were no qualified manufacturer rules with respect to section 30D — may qualify as a previously-owned clean vehicle, provided the manufacturer becomes a qualified manufacturer and submits a written report to the IRS prior to the time the vehicle is sold. Consistent with this rule and with the statute, the final regulations provide that the IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirement of section 25E or section 45W or any regulations thereunder.

The final regulations adopt the proposed definition of "qualified manufacturer" with the modification described previously, and move it §1.30D-2(b).

24. Recycling

Proposed §§1.30D-6(a)(15) and 1.30D-3(c)(19) defined "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. Under the proposed regulations, all physical, chemical, and thermal treatments or modifications that convert recycled feedstocks to specification grade constituent materials are included in recycling. The Explanation of Provisions to the April Proposed Regulations noted that this definition aligns with the current methods of direct, hydrometallurgical, or pyrometallurgical recycling that are utilized commercially for reuse of materials for battery applications.

In addition, proposed §1.30D-6(c)(4)(ii)(D), provided that, for purposes of the FEOC Restriction, an applicable critical mineral and associated constituent material that is recycled is subject to the FEOC-compliance determination if the recyclable material (1) contains an applicable critical mineral, (2) contains material that was transformed from an applicable critical mineral, or (3) is used to produce an applicable critical mineral at any point during the recycling process. Under the proposed regulations, the determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant took into account only activities that occurred during the recycling process.

One commenter noted that the definition of "recycling" is vague and does not clearly define which recycling steps (for example, shredding, separating, producing black mass, and critical mineral refinement processing) can and cannot occur within a FEOC. The commenter requested that the final regulations clarify that all recycling activities must occur in a non-FEOC facility for the recycled material to qualify as FEOC-compliant in a new clean vehicle battery. Under the proposed regulations, the determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant already takes into account all recycling activities. Accordingly, the suggested clarification is unnecessary.

Another commenter recommended that the Treasury Department and the IRS work with the DOE and other agencies to develop safeguards to prevent batteries from being recycled before the end of their useful lives by entities seeking to convert non-FEOC-compliant batteries into FEOC-compliant batteries through recycling. Critical minerals and associated constituent materials are subject to both the Critical Minerals Requirement and the FEOC Restriction. The Critical Minerals Requirement generally looks to the value of the recycled materials. Due to this requirement, as well as market forces, it will generally be uneconomical to recycle batteries before the end of their useful lives for purposes of the FEOC Restriction. Accordingly, the final regulations do not adopt this comment.

The final regulations consolidate the definition of "recycling" in proposed §§1.30D-3(c)(19), 1.30D-6(a)(15), and 1.30D-6(c)(4)(ii)(D) into a single provision, and move it to §1.30D-2(b). Specifically, the final regulations 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 clean vehicle battery. Under the final regulations, all physical, chemical, and thermal treatments or modifications that convert recycled feedstocks to specification-grade constituent materials are included in recycling. Further, recycled applicable critical minerals and associated constituent materials are only subject to the requirements under §§1.30D-3 and 1.30D-6 if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The requirements under §§1.30D-3 and 1.30D-6 only take into account activities that occurred during the recycling process.

The final regulations also add an example that illustrates which activities are taken into account with respect to recycling for purposes of the Critical Minerals Requirement and the FEOC Restriction.

25. Section 30D Regulations

Proposed §1.30D-2(f) defined "section 30D regulations" to mean §§1.30D-1 through 1.30D-4. The final regulations modify the definition to mean §§1.30D-1 through 1.30D-6, and move it to §1.30D-2(b).

26. Seller Report

Proposed §1.30D-2(j) defined "seller report" as the report described in section 30D(d)(1)(H) and provided by the seller of a vehicle to the taxpayer and the IRS in the manner provided in, and containing the information described in, guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The proposed regulations further provided that the seller report must be provided to the IRS electronically. In addition, the proposed regulations provided that the term "seller report" does not include a report rejected by the IRS due to the information contained therein not matching IRS records. The final regulations adopt the proposed definition and move it to §1.30D-2(b).

One commenter requested that the IRS issue a form, with related instructions, for making seller reports to taxpayer/purchasers as required by §30(D)(d)(1)(H). The Treasury Department and the IRS have issued such a form, Form 15400, *Clean Vehicle Seller Report*.

27. Value

Proposed §1.30D-3 defined "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. The final regulations adopt the proposed definition and move it to §1.30D-2(b).

One commenter recommended that the Treasury Department and the IRS consider how the term "value" might be defined in a manner that accommodates and incentivizes further technological innovation, increased performance and efficiency, and minimization of environmental impacts. The commenter, however, did not propose a specific modification to the definition. The final regulations, consistent with the proposed regulations, define "value" in accordance with longstanding tax law principles.

28. Vehicle Classifications

Proposed §1.30D-2(g) provided that the vehicle classification of a new clean vehicle is to be determined consistent with the EPA's fuel economy labeling 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).

One commenter commended the Treasury Department's and the IRS's decision to align the section 30D vehicle classification definitions with existing EPA regulations, which incorporate certain classification flexibility. For added clarity, the commenter recommended that the final regulations adopt by reference less specific pin cites in the EPA fuel economy labeling regulations to better reflect EPA's general classification authority. In particular, the commenter suggested that the final regulations define a sport utility vehicle by citing 40 CFR 600.315-08(a)(1), which states that the EPA Administrator may classify passenger automobiles by car line into one of the classes based on interior volume index or seating capacity except for those that the Administrator determines are most appropriately placed in a different classification. Additionally, the commenter suggested that the final regulations define pickup truck by citing 40 CFR 600.315-08(a)(2) or 40 CFR 600.315-08 generally rather than 40 CFR 600.315-08(a)(3)(ii). After consultation with the EPA, the Treasury Department and the IRS agree that a more general cross-reference to EPA's classification authority is warranted, given the authority not only in 40 CFR 600.315-08(a)(3)(ii) but also in 40 CFR 600.315-08(a)(1) and (2). The final regulations adopt the comment and modify the definitions accordingly.

Another commenter requested that the MSRP limitation under section 30D(f)(11)(B) be expanded to apply to all crossover vehicles similar to the regime described in 40 CFR 600.315-08, which would further incentivize automakers to onshore electric vehicle supply chains by making additional vehicles eligible for the section 30D credit. The Treasury Department and the IRS note that crossover vehicles are included in the vehicle classifications subject to the appropriate MSRP limitation. Under the EPA fuel economy labeling regulations, crossover vehicles may be categorized as either a sport utility vehicle or other vehicle. The Treasury Department and the IRS adopted the EPA fuel economy labeling definitions in part because they are reported on the vehicle label and are accessible on https://fueleconomy.gov, making the classification accessible to both consumers and the IRS. In addition, the EPA fuel economy labeling definitions provide some discretion, which EPA may exercise to align its classifications with consumer expectations regarding vehicle type. Because the proposed regulations already adopt the regime suggested by commenters and because the MSRP limitation is prescribed by statute, the final regulations do not adopt this comment.

A different commenter requested that low-speed vehicles be included in the "other vehicles" classification under proposed §1.30D-2(g)(5), noting that they are commercial, street-legal vehicles. However, as the commenter notes, a new clean vehicle must be treated as a motor vehicle for purpose of title II of the Clean Air Act as described in section 30D(d)(1)(D). Under section 216 of the title II of the Clean Air Act, a motor vehicle is defined as "any self-propelled vehicle designed for transporting persons or property on a street or highway." 42 U.S.C. § 7550(2). EPA regulations at 40 CFR 85.1703(e)(1) further define a motor vehicle under title II of the Clean Air Act to exclude vehicles with maximum speeds of 25 miles per hour, which excludes low-speed vehicles. Because section 30D requires new clean vehicles to meet Clean Air Act standards, which exclude low-speed vehicles, the final regulations do not adopt this comment.

Some commenters praised the proposed implementation of the fuel economy labeling regime, whereas others claimed there is a potential for misclassifying vehicles given the lessened emphasis on weight and other physical characteristics as major classification factors under EPA standards as compared to gas-powered vehicles. In particular, a commenter stated the proposed vehicle classification regime is arbitrary and unreliable, due to the EPA's subjective authority granted without explicit authorization found in title I of the IRA. The commenter requested that the final regulations use objective vehicle classification standards, such as those found in 40 CFR 600.002, rather than subjective EPA determinations. An additional commenter stated that light trucks and SUVs in particular may be misclassified as passenger cars if physical characteristics are overlooked for emissions.

The Treasury Department and the IRS previously considered adopting the vehicle classification definitions used by the CAFE standards in 40 CFR 600.002, as described in Notice 2023-1. After consultation with the DOE and the EPA, as provided for in section 30D(f)(11)(C), the Treasury Department and the IRS determined that the fuel economy labeling standards in 40 CFR 600.315-08 better reflect consumer expectations and marketing practices regarding vehicle classifications. In addition, the vehicle classification, as determined under the fuel economy labeling standards, is shown on the vehicle label and is otherwise accessible on https://fueleconomy.gov, making the classification accessible to both consumers and the IRS. In contrast, a particular vehicle's classification under the CAFE standard is not publicly available information under current practices. For these reasons, the final regulations do not adopt the comments.

The final regulations adopt the proposed definition, with more general cross-references to EPA's classification authority, and move it to §1.30D-2(b).

B. *Critical minerals and battery components requirements*

Section 30D(e) provides requirements for critical minerals and battery components with respect to clean vehicle batteries. The Critical Minerals and Battery Components Requirements apply to applicable critical minerals and battery components, respectively, contained in a battery. The April Proposed Regulations set forth rules for the Critical Minerals and Battery Components Requirements in proposed §1.30D-3. The final regulations reorganize the rules of the Critical Minerals and Battery Components Requirements.

First, the proposed regulations included, in proposed §1.30D-3(c), definitions applicable for purposes of the Critical Minerals and Battery Components Requirements. As noted previously in section III.A of this Summary of Comments and Explanation of Revisions, the final regulations move many of these definitions to §1.30D-2(b), as general definitions for purposes of section 30D and the section 30D regulations. The final regulations retain the definitions applicable to the calculations of the Critical Minerals Requirement in §1.30D-3(c)(1), and the definitions applicable to and the Battery Components Requirement in §1.30D-3(c)(2). Second, the final regulations include rules for the calculation of qualifying critical mineral content for purposes of the Critical Minerals Requirement in §1.30D-3(a), and for the calculation of qualifying battery component content for purposes of the Battery Components Requirement in §1.30D-3(b). Third, the final regulations finalize, as §1.30D-3(d),[7] the rules for upfront review of the Critical Minerals and Battery Components Requirements. Fourth, the final regulations add a new rule for new qualified fuel cell motor vehicles as §1.30D-3(e). Finally, in response requests from commenters, the final regulations add examples that illustrate the calculations under the Critical Minerals and Battery Components Requirements as §1.30D-3(f).

1. Critical Minerals Requirement

Proposed §1.30D-3(a)(1) provided that that Critical Minerals Requirement was met if the qualifying critical mineral content of the clean vehicle battery of the vehicle is equal to or exceeds the applicable critical minerals percentage provided in section 30D(e)(1)(B) and proposed §1.30D-3(a)(2). Proposed §1.30D-3(c)(18) defined "qualifying critical mineral content" as the percentage of the value of the applicable critical minerals contained in the clean vehicle battery 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.

The April Proposed Regulations provided a three-step process (50% Value Added Test) for determining the qualifying critical mineral content of a clean vehicle battery.

First, qualified manufacturer would determine the procurement chain or chains for each applicable critical mineral. Proposed §1.30D-3(c)(14) defined 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. In addition, proposed §1.30D-3(c)(14) clarified 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 be evaluated separately pursuant to proposed §1.30D-3(a)(3)(ii).

Second, qualified manufacturers would evaluate each applicable critical mineral procurement chain in the clean vehicle battery 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) defined "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 that is recycled in North America. Proposed §1.30D-3(c)(17) used a 50

[7] The April Proposed Regulations reserved proposed §1.30D-3(d) for excluded entities. The December Proposed Regulations modified proposed §1.30D-3(d) to include a cross reference to the rules for excluded entities in proposed §1.30D-6. These final regulations finalize those rules in §1.30D-6; §1.30D-3(d) is deleted as unnecessary.

percent threshold to determine whether an applicable critical mineral is a "qualifying critical mineral." Thus, under the proposed regulations, an applicable critical mineral was 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. Proposed §1.30D-3(c)(25) defined "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.

Third, qualified manufacturers would calculate qualifying critical mineral content. 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) defined ''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) defined ''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) required 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 needs 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 and should be uniformly applied for all applicable critical minerals contained in the battery.

Proposed §1.30D-3(a)(3)(iv) provided that a qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the clean vehicle 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 received numerous comments with respect to the Critical Minerals Requirement. To the extent comments relate to general definitions, such as "constituent material," "extraction," or "processing," they are addressed in section III.A of this Summary of Comments and Explanation of Revisions.

Many commenters expressed criticism or concerns relating to the Critical Minerals Requirement. Several criticized the requirement as too strict. For example, one commenter stated that classifying the supply chains of the United States' allies as non-qualifying would damage the development of a North American supply chain. Section 30D(e)(1) requires an analysis of the location of supply chain activities (that is, extraction, processing, and recycling). Accordingly, the final regulations do not adopt these comments.

Similarly, one commenter requested that the Critical Minerals Requirement be restricted to nickel, cobalt, lithium, manganese, and graphite, as minerals. Because section 30D(e)(1)(A) defines "applicable critical minerals" by reference to section 45X(c)(6), which includes a broader list of minerals than the five noted by the commenter, the final regulations do not adopt this comment.

Many comments addressed the 50% Value Added Test. Multiple comments were supportive of the tests, while others recommended that the final regulations adopt a different rule. One commenter suggested that, for lithium and nickel, the final regulations replace the 50% Value Added Test with rules that specify which combinations of extraction and processing are necessary for qualification as qualifying critical mineral content. Two commenters recommended that the 50% Value Added Test be replaced with a determination based on change in tariff classifications. Several comments asserted that the 50% Value Added Test was not strict enough. One commenter stated that the 50% Value Added Test impermissibly stretches the statute by substantially diluting the applicable percentage requirement of section 30D(e)(1)(B). Similarly, another commenter states that the 50% Value Added Test improperly dilutes section 30D(e)(1)(B), and that it improperly bifurcates the Critical Minerals Requirement into separate tests for extraction and processing. Several commenters proposed that the 50% Value Added Test be increased to a higher percentage. Another commenter requested that the 50% Value Added Test be eliminated entirely after 2024. A different commenter requested that guidance describing a more stringent test under the Critical Minerals Requirement be provided as soon as possible, in order to provide clarity to taxpayers, OEMs, and battery suppliers. However, another commenter suggested that the IRS and the Treasury Department refrain from drafting a replacement to the 50% Value Add Test until supply chains are more mature.

An applicable critical mineral may undergo multiple steps of each of extraction, processing, or recycling that occur in multiple locations, and section 30D(e)(1)(A) does not specify how to determine whether an applicable critical mineral was extracted, processed, or recycled in a statutorily-required location. To account for this, the 50% Value Added Test was developed to determine whether an applicable critical mineral procurement chain was sufficiently produced in a statutory-required location to count toward meeting the Critical Minerals Requirement. The 50% Value Added Test allows qualified manufacturers to make an objective determination of when an applicable critical mineral was produced in a manner that would qualify under section 30D(e)(1)(A). While some commenters have criticized the 50 percent threshold as too low, this percentage, as noted in the Explanation of Provisions to the April Proposed Regulations, was intended as a transition rule while ensuring that a significant portion of the extraction, processing, or recycling activities was performed in a statutorily required location. The percentage was designed with the purposes of section 30D(e)(1) in mind and to allow qualified manufacturers time to transition supply chains in anticipation of a more stringent rule.

The final regulations adopt the Traced Qualifying Value Test, described more fully after the discussion of comments in this section of the Summary of Comments and Explanation of Revisions. This test is more precise than the 50% Value Added Test, as it requires an OEM to fully trace any value added in each procurement chain that it applies toward the Critical Minerals Requirement. It is also generally more stringent, because the OEM may treat as qualifying only a percentage of value of an applicable critical mineral, and not the full value. The Traced Qualifying Value Test credits the share of value added by extraction or processing in the United States or a country with which the United States has a free trade agreement in effect, or recycling in North America, in determining whether the Critical Minerals Requirement is met. By looking to the highest value-added percentage of the three specified activities (extraction, processing, or recycling) for each applicable critical mineral procurement chain, the Traced Qualifying Value Test appropriately implements the statutory language requiring only one of the three specified activities with respect to an applicable critical mineral to occur in a qualifying place in order to have the value of an applicable critical mineral count toward satisfying the Critical Minerals Requirement.

In response to comments suggesting alternative approaches to determining whether the Critical Minerals Requirement is satisfied, the Treasury Department and the IRS have determined that specifying combinations of extraction and processing steps would not be administrable given the potential number of permutations. Moreover, specifying combinations only for certain minerals would be at odds with the rules of section 30D(e)(1), which apply to all critical minerals. Similarly, the Treasury Department and the IRS have determined that determining qualifying mineral content based on a change in tariff classification would not be administrable or provide certainty to OEMs because changes in tariff classification may not provide the clear standards required for purposes of tax credit eligibility determinations.

The final regulations adopt the Traced Qualifying Value Test, which is described further below after the discussion of comments in this section of the Summary of Comments and Explanation of Revisions, for taxable years ending after May 6, 2024. In response to commenters who supported the 50% Value Added Test or who supported a longer transition period, the final regulations permit use of the 50% Value Added Test as an optional transition rule for vehicles for which a qualified manufacturer provides a periodic written report prior to January 1, 2027, and require the 50% Value Added Test for vehicles for which a qualified manufacturer provides a periodic written report prior to May 6, 2024.

Several commenters to the April Proposed Regulations raised questions about how the FEOC Restriction applied to applicable critical minerals. These questions were answered in the December Proposed Regulations, which are finalized herein.

Several commenters raised questions relating to the calculation under the 50% Value Added Test. These questions may be relevant under these final regulations for either the 50% Value Added Test (as it is retained as a transition rule) or for the Traced Qualifying Value Test, and so are addressed herein. For example, one commenter requested clarification on whether lithium carbonate or lithium ore corresponding to lithium carbonate should be used to calculate the total value of qualifying critical minerals. The final regulations clarify, in the definition of "applicable critical mineral" in §1.30D-2(b), that the Critical Minerals Requirement and FEOC Restriction determinations with respect to an applicable critical mineral take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into an associated constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step of production. Thus, both the lithium carbonate and lithium ore should be taken into account. Several commenters raised specific questions about specific components of the calculation. Another commenter requested that the final regulations clarify that, under step three of the 50% Value Added Test calculation, the total value of qualifying critical minerals and total value of critical minerals means the value of the corresponding constituent materials. Because a constituent material may be composed of an applicable critical mineral that has multiple procurement chains, or of multiple critical minerals, their values may not necessarily correspond to the value of the associated constituent material. Accordingly, the final regulations do not adopt this comment. Another commenter asked whether a weighted average is used for purposes of the 50% Value Added Test if an applicable critical mineral has two or more procurement chains. The same commenter asked if the 50% Value Added Test can be satisfied by adding percentages across extraction and processing. Under both the proposed and final regulations, the 50% Value Added Test does not use a weighted average, and the percentages must be examined separately for each of extraction, processing, or recycling. Relatedly, two commenters noted that the proposed regulations did not provide a methodology for distributing the value-add across procurement chains. The proposed regulations required a separate analysis of each procurement chain and did not allow for analysis across procurement chains. Because allowing analysis across procurement chains would be at odds with the supply-chain tracing requirements of section 30D(e)(1), the final regulations do not adopt these comments.

One commenter asked for clarification on how to determine value added in cases in which multiple applicable critical minerals are processed together, and recommended that the final regulations provide that value added be allocated to each applicable critical mineral based on weight. The proposed regulations defined "value added" with respect to recycling, extracting, or processing of an applicable critical mineral as the increase in the value of the applicable critical mineral attributable to the relevant activity; the proposed regulations did not provide a specific rule for a case in which multiple applicable critical minerals are processed together. In response to this comment, the final regulations clarify that, in the case in which multiple applicable critical mineral procurement chains are part of the same processing or recycling activity, value added should be allocated to each procurement chain based on relative mass.

The proposed regulations allowed qualified manufacturers to average qualifying critical mineral content 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. The Treasury Department and the IRS received a number of comments on this rule. Several commenters were supportive of the proposed rule or sought a broader averaging rule. One commenter asked that the final regulations expressly allow for an 18-month averaging period. One commenter requested that the final regulations consider also allowing qualified manufacturers to average critical mineral content over batteries produced at a particular facility. Similarly, another commenter requested that the final regulations allow automakers to calculate, on a company-wide basis, their volume or percentage of qualifying critical minerals and allocate such minerals to specific batteries or vehicles on a unit-by-unit or VIN-by-VIN basis. On the other hand, several commenters raised concerns that the averaging rule could allow for manipulation. One commenter suggested limitations on the averaging rule, and requested that the final regulations require automakers to offer a clear explanation of how they perform the calculation, and demonstrate to the IRS that the calculation will neither exclude any vehicles with a battery that the automaker brings to market, nor double count any vehicles. The commenter also suggested that the IRS limit an automaker's ability to switch between groupings of vehicles (for purpose of calculating the average) to minimize the opportunity to manipulate the calculation. The commenter further recommended that automakers be allowed to choose a test period (preferably as late as possible in the year) over which to calculate average values to take advantage of growing qualifying supply chains, but with sufficient time to ensure the automaker can determine vehicle eligibility for the tax credit before the beginning of a calendar year. Another commenter noted that averaging qualifying critical mineral content by alternative periods of time by model line, plant, class, or combination thereof with final assembly in North America may prove an administrative burden and result in an increased risk of manipulation, citing how anode and cathode critical minerals could move through the procurement supply chain to manipulate value calculations. A separate commenter expressed concern that the averaging rules could allow OEMs to source critical minerals from outside the United States and countries with which the United States has free trade agreements in effect, yet still satisfy the Critical Minerals Requirement. The Treasury Department and the IRS have determined that the proposed rules reflect a reasonable balancing of these considerations by allowing averaging, but limiting it to groups of vehicles that may share the same procurement chains (that is, vehicles from the same model line, plant, class, or some combination of thereof). In addition, the upfront review process, finalized as §1.30D-3(d), provides a mechanism for review and verification of OEM calculations, which will prevent manipulation. Finally, the time periods of a year, quarter, or month are exemplary and do not prevent averaging over a different time period. However, the averaging period should be consistent with any rules and procedures established by the upfront review process. Accordingly, the final regulations do not adopt these comments.

Several commenters raised concerns with respect to the volatility of mineral pricing. One such commenter requested that qualified manufacturers be given the option to elect to average the most common critical mineral's value with the historical values of that material based on previous annual contracts. Others requested a historical lookback period of between eighteen months to five years. Another commenter requested that the Treasury Department and the IRS allow for multiple methods of calculation to address market fluctuations. Specifically, the commenter recommended that to address market fluctuations, the previous year's average mineral price could be used, or a five-year average. The commenter further noted that this would take into account the very large difference in the value of the different materials, but mitigate against market volatility. A commenter suggested the Treasury Department and the IRS provide the option to use widely-recognized and trusted market indices to serve as an acceptable estimation of the price of a particular step in the procurement chain for which actual prices for certain procurement chains or portions of the procurement chain cannot be determined by the manufacturer. The commenter noted that contracts with suppliers usually indicate what the "controllable piece" is, essentially what cost of that supplier's value-add is within the overall cost of the supplied product. However, contracts typically do not provide a set cost for inputs, as those inputs are price flexible based on the mineral markets, meaning that using an established mineral market index for cost estimation would more closely reflect the real-world prices paid for that material. The commenter indicated that these indices may include those commonly cited in U.S. Geological Survey reports. Finally, commenters proposed adopting a safe harbor provision due to the price volatility of critical minerals, which would enable producers of critical minerals to relocate sourcing operations to the United States or countries with which the United States has free trade agreements in effect. The Treasury Department and the IRS acknowledge these commenters' concerns relating to mineral valuation and volatility. The averaging rules of the proposed and final regulations are intended, in part, to address these concerns by allowing qualified manufacturers to determine qualifying critical mineral content based on an average value (rather than the value at a specific time that may be unusually high or low) and by allowing qualified manufacturer flexibility in determining the averaging period. Similarly, the proposed and final regulations allow qualified manufacturers to choose a date, after the final processing or recycling step, for the determination of value, which also provides flexibility. Accordingly, the final regulations do not adopt these comments.

Several commenters commented on sourcing and OEM due diligence. One commenter suggested that the final regulations require qualified manufacturers to engage in detailed tracing, and provide related documentation to the IRS. That commenter suggested that the processes of the EU Battery Regulation could provide a model. Another commenter encouraged the Treasury Department and the IRS to work closely with the DOE, Environmental Protection Agency, and Department of Transportation to explore how a digital battery identifier could help facilitate material sourcing transparency and improve the efficiency of battery repurposing and recycling. Several commenters suggested adopting standards based on Organisation for Economic Co-operation and Development (OECD) standards. A commenter requested clarification on what due diligence is required with respect to battery supply chains, particularly in instances in which intermediate materials may not be sold on an open market. The upfront review process of §1.30D-3(d) is intended to provide clear rules and a clear process for automakers to provide information regarding due diligence with respect to the Critical Minerals and Battery Components Requirements to the IRS. The Treasury Department and the IRS are considering future sub-regulatory guidance with respect to the upfront review process.

Finally, one commenter raised concerns that unexpected events could affect the supply of either applicable critical minerals or battery components, and suggested that the Treasury Department and the IRS allow for a temporary waiver request process in such cases, allowing the affected minerals or components to be excluded from the calculation under the Critical Minerals or Battery Components Requirements. The commenter set out a detailed scheme for the waiver process. Another commenter similarly requested a waiver process in cases in which certain production steps are affected by either market volatility or unexpected events. The Treasury Department and the IRS determined that the averaging rules under the Critical Minerals and Battery Components Requirements allow for flexibility in the case of both price fluctuations and unexpected events. In addition, allowing OEMs or their suppliers a waiver with respect to certain production steps could be subject to manipulation. Accordingly, these comments are not adopted.

As under the proposed regulations, the final regulations, under §1.30D-3(a)(1), provide that the Critical Minerals Requirement is met if the qualifying critical mineral content of the clean vehicle battery of the vehicle is equal to or exceeds the applicable critical minerals percentage provided in section 30D(e)(1)(B) and §1.30D-3(a)(2). The proposed regulations included the 50% Value Added Test for determination of the qualifying critical mineral content. In the Explanation of Provisions to the April Proposed Regulations, the Treasury Department and the IRS anticipated that the 50% Value Added Test would serve as a transition rule, which would provide manufacturers time to develop the necessary capability to certify compliance with the Critical Minerals Requirement throughout their supply chains, and the final regulations would move to a more stringent test. Certain commenters criticized the April NPRM rules as inconsistent with the statute, while others have been supportive. Several commenters asked for additional clarity as to how to make the calculations and for specific examples. Others asked that the calculation in the proposed rule be made permanent. Other than as described above, commenters generally did not identify alternative proposals for the Critical Minerals requirement. Consistent with this, and taking into account the comments received, the final regulations adopt the following rules for determining qualifying critical mineral content.

For vehicles for which a qualified manufacturer provides a periodic written report on or after May 6, 2024, §1.30D-3(a)(3), as finalized, provides a three-step process (Traced Qualifying Value Test) for the calculation under the Critical Minerals Requirement.

First, the qualified manufacturer determines each procurement chain, as defined in §1.30D-3(c)(1)(i), consistent with the April Proposed Regulations.

Second, the qualified manufacturer must determine the "traced qualifying value" of all applicable critical minerals" and the "total traced qualifying value." These definitions are introduced in the final regulations. "Traced qualifying value" is defined, in §1.30D-3(c)(1)(vii) as, with respect to an applicable critical mineral that is extracted and processed into a constituent material, the value of the applicable critical mineral multiplied by the greater of (A) the value added to the applicable critical mineral by extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect, divided by the total value added from extraction of the applicable critical mineral; or (B) the value added to the applicable critical mineral by processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect, divided by the total value added from processing of the applicable critical mineral. "Traced qualifying value" is defined as, with respect to an applicable critical mineral that is recycled into an associated constituent material, the value of the applicable critical mineral multiplied by the percentage obtained by dividing the value added to the applicable critical mineral by recycling that occurred in North America by the total value added from recycling of the applicable critical mineral. "Valued added" is defined in §1.30D-3(c)(1)(viii), consistent with the April Proposed Regulations. Section 1.30D-3(a)(3)(ii) provides that the traced qualifying value of an applicable critical mineral, including the percentage or percentages necessary to determine the traced qualifying value, must be determined separately for each procurement chain. "Total traced qualifying value," in §1.30D-3(c)(1)(iv), is defined as the sum of the traced qualifying values of all applicable critical minerals contained in the clean vehicle battery.

Third, the qualified manufacturer determines the qualifying critical mineral content. Section 1.30D-3(a)(3)(i) provides that qualifying critical mineral content is determined by dividing the total traced qualifying value (calculated in step 2) by the total value of critical minerals. The final regulations, consistent with the proposed regulations, provide in §1.30D-3(c)(1)(v) that the "total value of critical minerals" means the sum of the values of all applicable critical minerals contained in a clean vehicle battery.

Section 1.30D-3(a)(3)(iii) requires qualified manufacturers to select a date for determining the values associated with the total traced qualifying value (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.

Section 1.30D-3(a)(3)(iv) provides that a qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the clean vehicle 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, calendar quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly within North America.

As noted above, the Traced Qualifying Value Test is more precise than the 50% Value Added Test, as it requires an OEM to fully trace any value added in each procurement chain that it applies toward the Critical Minerals Requirement. It is also generally more stringent, because the OEM may treat as qualifying only a percentage of value of an applicable critical mineral, and not the full value. The Treasury Department and the IRS also considered adapting the 50% Value Added Test to require a higher threshold percentage than 50%, but such an approach results in a "cliff effect" whereby the value of applicable critical minerals just below the threshold percentages is not applied toward the Critical Minerals Requirement while the full value of applicable critical minerals just above the threshold percentage is treated as qualifying, which could lead to counter-intuitive results and increased potential for gaming. By contrast, the Traced Qualifying Value Test incentivizes each incremental increase in value-added activities in the United States and free trade agreement partner countries or in North America, as applicable. For these reasons, the Treasury Department and the IRS have determined that this test is the most effective of the potential alternatives considered in furthering the statutory purpose of transitioning to secure clean vehicle battery supply chains in the United States and allied countries.

In order to allow for a transition to the Traced Qualifying Value Test, the final regulations provide that, for vehicles for which a qualified manufacturer provides a periodic written report on or after May 6, 2024 and prior to January 1, 2027, a qualified manufacturer may calculate qualifying critical mineral content under the 50% Value Added Test. Finally, the regulations finalize the 50% Value Added Test for vehicles for which a qualified manufacturer provides a periodic written report prior to May 6, 2024.

2. Battery Components Requirement

The final regulations adopt the Battery Components Requirement of the April Proposed Regulations without change. Section §1.30D-3(c)(2)(iii) defines "qualifying battery component content" as the percentage of the value of the battery components contained in the clean vehicle battery that were manufactured or assembled in North America. As finalized in §1.30D-3(b)(1), the Battery Components Requirement is met if the qualifying battery component content of a clean vehicle battery is equal to or exceeds the applicable battery components percentage provided in section 30D(e)(2)(B) and §1.30D-3(a)(2).

The final regulations 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.

First, qualified manufacturers determine whether each battery component in a battery was a "North American battery component," that is, 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 (as defined in §1.30D-3(c)(2)(ii).

Second, qualified manufacturers determine the "total incremental value of North American battery components," that is, the sum of the incremental values of each North American battery component contained in clean vehicle battery (as defined in §1.30D-3(c)(2)(v)). "Incremental value" is defined as, with respect to the battery component, the value of that battery component minus the value of the manufactured or assembled battery components, if any, that are contained in that battery component (as defined in §1.30D-3(c)(2)(i)).

Third, qualified manufacturers determine the "total incremental value of battery components," that is, the sum of the incremental values of each battery component contained in a clean vehicle battery (as defined in §1.30D-3(c)(2)(iv)).

Fourth, qualified manufacturers determine the qualifying battery component content, by 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), as provided in §1.30D-3(b)(3)(i).

Section 1.30D-3(b)(3)(ii) requires 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 needs to be after the last manufacturing or assembly step for the battery components relevant to the certification described in section 30D(e)(2)(A). This date must be uniformly applied for all battery components contained in the battery.

Section 1.30D-3(b)(3)(iii) provides that a qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the clean vehicle 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, a calendar quarter, or a 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) of the final regulations) within North America.

Finally, the final regulations, in §1.30D-3(c)(2)(iv), clarify that the battery module is the end point for the purpose of calculating the value of battery components. This clarification was noted in the Explanation of Provisions to the April Proposed Regulations. In addition, the final regulations clarify that, in the case of a cell-to-pack battery design with no modules, the battery cell is the end point for the purpose of calculating the value of battery components.

The Treasury Department and the IRS received a number of comments with respect to the Battery Components Requirement. Comments with respect to generally applicable definitions, such as "assembly," "battery," "battery component," or "manufacturing," are discussed in section III.A of this Summary of Comments and Explanation of Revisions. This section discusses comments with respect to the calculation required to determine compliance with the Battery Components Requirement.

One commenter criticized the Battery Components Requirement and noted that it may reduce efficiency, cost effectiveness, and innovation with respect to battery components. In response to this, the Treasury Department and the IRS note that the Battery Components Requirement is mandated by the statute. Similarly, another commenter recommended that battery components manufactured or assembled in Japan be considered as qualifying. However, this is prohibited by the statute because battery components must be manufactured or assembled in North America to meet the Battery Components Requirement.

A commenter asked for a more detailed components list along with calculation examples that include the components in the list. As discussed in section III.A.6 of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS decline to amend the list of battery components. However, the final regulations add a new definition for the term "battery materials," and clarify that battery materials are not battery components. In addition, the Treasury Department and the IRS have included in the Summary of Comments and Explanation of Revisions to the final regulations an example calculation under the Battery Components Requirement that references specific components.

Proposed §1.30D-3(b)(3)(iii) provided flexible rules that allow a qualified manufacturer to 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. One commenter raised a concern that these rules were too flexible and could create gaming opportunities. The commenter suggested that the final regulations clearly describe which vehicle characteristics may be averaged together and directly state that any combination of characteristics not identified in the final regulations may not be averaged together. Because the category of vehicle characteristics is open-ended, may vary by manufacturer, and is subject to change in the future, it is not practicable to specify certain vehicle characteristics that are necessary for grouping. In addition, a specified list of vehicle characteristics may not correspond to the vehicle procurement chains of particular manufacturers. For these reasons, the Treasury Department and the IRS appreciate the concerns raised by this comment, but have concluded that the flexibility of the proposed rule is necessary in order to provide an administrable rule to qualified manufacturers. In addition, the upfront review process described in proposed §1.30D-3(e), discussed in section III.B.3 of this Summary of Comments and Explanation of Revisions, will also help prevent gaming of the Battery Components Requirement calculations. This commenter also suggested that the Treasury Department and the IRS maintain the right to update which characteristics may be averaged together in the future, should changes be necessary. In response to this, the Treasury Department and the IRS will continue to study this issue as the Treasury Department and the IRS gain experience with the upfront review process.

Finally, two commenters suggested that the final regulations consider allowing for a waiver of the Critical Minerals and Battery Components Requirements in certain cases. The statute does not provide for a waiver program; thus, the final regulations do not adopt these comments. Commenter proposals for a waiver process are discussed in more detail in section III.B.1 of this Summary of Comments and Explanation of Revisions.

### 3. Upfront Review

Proposed §1.30D-3(e) provided for an upfront review to assess a qualified manufacturer's conformance with the Critical Minerals and Battery Components Requirements. Specifically, proposed §1.30D-3(e) provided that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications, and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The IRS, with analytical assistance from the DOE, will review the attestations, certifications, and documentation. This rule is finalized as §1.30D-3(d).

One commenter stated that, if final regulations require qualified manufacturer submissions, the Treasury Department and the IRS should develop a system to protect confidential business secrets. In response to this, the Treasury Department and the IRS note that they intend to continue to engage with OEMs and other stakeholders to develop the rules under the upfront review process.

### 4. Rule for New Qualified Fuel Cell Motor Vehicles

The final regulations provide in §1.30D-3(e) that the requirements of section 30D(e) and §1.30D-3 (Critical Minerals and Battery Components Requirements) are deemed to be satisfied with respect to new qualified fuel cell motor vehicles. Thus, the amount of the credit with respect to these vehicles, under section 30D(b), is $7,500. However, a qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) with a clean vehicle battery, such as a plug-in hybrid fuel cell electric vehicle, would be subject to the Critical Minerals and Battery Components Requirements because it draws electricity from the clean vehicle battery.

Because new qualified fuel cell motor vehicles do not have a clean vehicle battery, these vehicles do not have applicable critical minerals or battery components contained in such battery that would be subject to the Critical Minerals and Battery Components Requirements. The IRA's enactment of section 30D(d)(6), which provides that new qualified fuel cell motor vehicles are new clean vehicles if such vehicles meet the North American final assembly and seller reporting requirements (*see* section 30D(d)(1)(G) and (H)), indicates that Congress intended for these vehicles to be eligible for the section 30D credit. Therefore, the better reading of section 30D as a whole is that new qualified fuel cell motor vehicles are eligible for the full section 30D credit amount of $7,500.

C. *Special rules*

Proposed §1.30D-4 provided special rules with respect to the section 30D credit. Among those rules, proposed §1.30D-4(b)(5)(i) provided 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. One commenter expressed concern about individuals circumventing the Modified AGI limitation by having a non-grantor trust place in service an otherwise qualifying vehicle, suggesting that an anti-abuse rule would prevent such occurrences. In response to this comment, the final regulations provide that the Modified AGI limitation applies to individuals, estates, and non-grantor trusts. For estates and non-grantor trusts, Modified AGI is AGI as determined under section 67(e) of the Code. The final regulations also provide that the $150,000 threshold amount applies to estates and non-grantor trusts for purposes of the Modified AGI limitation, and that an estate or non-grantor trust will be treated as having Modified AGI above the threshold amount for any year in which it is not in existence. The Treasury Department and the IRS will also continue to monitor this issue. In further response to this comment, the final regulations also clarify the applicability of this credit to grantor trusts, and provide that, to the extent that the grantor or another person is treated as owning all or part of a trust under sections 671 through 679 of the Code, the section 30D credit is allocated to such grantor or other person in accordance with §1.671-3(a)(1). In addition, the Modified AGI limitation applies based on the Modified AGI of the grantor or other deemed owner, not the Modified AGI of the trust or any other beneficiary.

The final regulations also clarify that with regard to partnerships and S corporations, the Modified AGI limitation applies on a partner or shareholder level. Finally, consistent with the preceding, the final regulations provide that the Modified AGI limitation does not apply to corporations and taxpayers other than individuals, estates, trusts, and partners or shareholders of passthrough entities.

D. *FEOC restriction*

Section 30D(d)(7), the excluded entities provision or FEOC Restriction, 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 FEOC (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act), 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 FEOC (as so defined).

Several commenters either criticized the FEOC Restriction or requested that these applicability dates be delayed in order to give the industry time to reconfigure their supply chains. Similarly, commenters noted that the FEOC Restriction may be problematic for land-based sourcing of nickel, cobalt, and manganese in particular. As the FEOC Restriction and its applicability dates are statutory, the final regulations do not adopt these comments.

Proposed §1.30D-6(a) provided definitions for terms relevant to the FEOC Restriction and proposed §1.30D-6. The final regulation moves these definitions to §1.30D-2(b), and include a new §1.30D-6(a) that is a general statement of the FEOC Restriction rules. Otherwise, the final regulations adopt the structure and framework of proposed §1.30D-6, with the modifications described herein.

1. Due Diligence and Transition Rule for Non-traceable Battery Materials

Proposed §1.30D-6(b) provided due diligence requirements for qualified manufacturers to determine compliance with the FEOC Restriction. Proposed §1.30D-6(b)(2) provided a temporary exception to the due diligence requirements for identified non-traceable battery materials.

i. Due diligence

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

The due diligence must be conducted by the qualified manufacturer prior to its determination of any information to establish a compliant-battery ledger described in proposed §1.30D-6(d), and on an ongoing basis. A battery is not considered FEOC-compliant unless the qualified manufacturer has conducted such due diligence with respect to all such components and applicable critical minerals of the battery and provided required attestations or certifications described in section III.D. of this Summary of Comments and Explanation of Revisions.

The Treasury Department and the IRS received a number of comments relating to the due diligence requirement.

As noted previously, proposed §1.30D-6(b)(1) provided that due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification. The proposed regulations did not specify a tracing system. Several commenters requested that the final regulations create an industry standard for due diligence to avoid confusion and provide a standardized system. One such commenter suggested that the Catena-X battery passport, used in Europe, as a model while another commenter recommended against adopting such rules because the commenter considered them to be burdensome and largely untested. Another commenter suggested defining "due diligence" according to certain OECD standards. That same commenter suggested requiring use of digital battery identifiers (that is, battery passports). Another commenter suggested that until mineral supply chain tracing becomes standardized, voluntary standards using multi-stakeholder governance with independent, publicly available, third-party auditing (such as the Initiative for Responsible Mining Assurance's standard), can assist. Finally, one commenter expressed a desire to better understand expectations for supply chain tracing and offered to assist the Treasury Department and qualified manufacturers in implementing effective traceability mechanisms.

The Treasury Department and the IRS appreciate the number of comments about due diligence. However, the broad range of perspectives offered by the commenters counsels against mandating a universal standard at this time. The Treasury Department and the IRS will continue to monitor industry standards, battery passports, and other methodologies for tracing, and will consider this issue for future guidance.

The Treasury Department and the IRS also received comments with respect to the due diligence requirements and upstream suppliers of the OEMs. One commenter requested that the final regulations require battery manufacturers and suppliers of battery components and applicable critical minerals to cooperate and provide information to qualified manufacturers. Alternatively, the commenter requested that battery manufacturers be required to directly submit information to the IRS and provide qualified manufacturers with certification that any items are FEOC-compliant. Section 30D does not provide authority to require submissions by upstream suppliers, either to the qualified manufacturer or to the IRS. Section 30D(d)(3) authorizes information reporting to the Secretary regarding new clean vehicles only by qualified manufacturers. Qualified manufacturers may seek to incorporate reporting and assurances by their battery suppliers as part of their supply contracts, but such an arrangement would be outside the scope of these regulations. Accordingly, the final regulations do not adopt this comment.

Two commenters raised issues with respect to battery supplier reliance on further upstream suppliers. Proposed §1.30D-6(b)(1) specified that reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after due diligence that such supplier attestation or certification is incorrect. The two commenters requested that the reasonable reliance rule be extended to third-party manufacturers or suppliers who conduct due diligence under proposed §1.30D-6(c)(5). The Treasury Department and the IRS agree with these commenters. Accordingly, the final regulations also specify that that reasonable reliance on a supplier attestation or certification will also be considered due diligence if the third-party manufacturer or supplier (described in §1.30D-6(c)(5)) does not know or have reason to know after due diligence that such supplier attestation or certification is incorrect.

One commenter stated that additional clarification is needed to identify the elements of reasonable reliance and due diligence beyond the attestation of the supplier. For instance, suppliers may, in certain circumstances, be reluctant to share certain sourcing information as proprietary and competitive in nature. The commenter asked whether a supplier statement based on undisclosed information could be reasonably relied upon. In addition, the commenter sought more information about implications of a qualified manufacturer's reasonable reliance on supplier attestations that prove later to be inaccurate, such as whether the qualified manufacturer's reasonable reliance would act as a shield against a penalty. Another commenter suggested that Treasury should consider establishing a process for certifying that suppliers are not FEOCs. The commenter posited that such a process could mirror existing U.S. government certification, accreditation, or registration processes, such as International Traffic in Arms Regulations (ITAR) registration or National Institute of Standards and Technologies (NIST) certification.

The Treasury Department and the IRS appreciate the commenters' desire for certainty regarding the procedures for establishing reasonable reliance and due diligence. As described in proposed §1.30D-6(f), the IRS will consider a range of remedial options in the event of inaccurate attestations, certification, or documentation, and the IRS will exercise discretion in pursuing any of the specified options on the basis of the unique facts and circumstances of the inaccuracy, including reasonable reliance on supplier information. In addition, parties to supply contracts may include a provision for such attestations as part of their contracts.

ii. Transition rule for impracticable-to trace-battery materials

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

Proposed §1.30D-6(a)(13)(i) defined "non-traceable battery materials" to mean specifically identified low-value battery materials that may originate from multiple sources and are often commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. For this purpose, low-value battery materials are those that have low value compared to the total value of the battery. Proposed §1.30D-6(a)(13)(ii) was reserved to contain the specific list of identified non-traceable battery materials. While proposed §1.30D-6(a)(13)(ii) was reserved, the Explanation of Provisions to the December Proposed Regulations identified as exemplar materials, for potential inclusion on the list, applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives.

As noted in section III.A. of this Summary of Comments and Explanation of Revisions, consistent with the expectation and requirement that OEMs will develop tracing processes in the future, the final regulations retain the list but change the name to "impracticable-to-trace battery materials," in order to better describe the rationale underlying the list.

The Treasury Department and the IRS received many comments with respect to the list of identified nontraceable battery materials as well as the proposed transition rules.

Several commenters requested changes to the meaning of "low value."[8] One commenter requested that low value be determined by reference to the battery as a whole, and not just the total value of applicable critical minerals. Similarly, another commenter requested that "low value" be defined with respect to a specified percentage relative to the value of the battery. Several commenters requested that "low value" be defined as less than 5 percent or 10 percent of the value of the battery. However, another commenter proposed that "low value" be defined as less than 5 percent of the total value of the critical minerals in the batteries. Finally, one commenter objected to a definition based on value, noting that, apart from certain cathode materials, the economic value of every other component in lithium ion batteries is low relative to the total value of the battery. The final regulations do not adopt these comments, as the determination of low-value is not an operative rule with respect to the impracticable-to-trace battery materials list. Instead, the Explanation of Provisions to the December Proposed Regulations only noted the low-value of certain materials, relative to the value of the clean vehicle battery, for the purpose of identifying materials that qualified manufacturers could not feasibly trace. However, the as noted in this Summary of Comments and Explanation of Revisions, the term "low-value" is not defined as a specific percentage. Instead, a low-value battery material is one for which qualified manufacturers have not historically conducted due diligence or tracing, due to its relatively low value in relation to either the battery or the applicable critical minerals in the battery.

Several commenters supported the development of a specific list of nontraceable battery materials as this would provide the greatest clarity and certainty for the supply chain. Several commenters also requested a full enumerated list of materials. Many commenters requested certainty as soon as possible. Several commenters requested that the non-traceable battery materials rule be made permanent. On the other hand, several commenters supported the transition rule for non-traceable battery materials, agreed with the temporary nature of the rule, and were in favor of this approach over other alternatives, such as a de minimis rule or set of criteria for exclusion. Many commenters agreed with the exemplar materials identified in the Explanation of Provisions to the December Proposed Regulations (that is, applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives). A few commenters suggested clarification regarding other materials. One commenter requested that the final rule exclude low value anode materials from the tracing requirements. Some commenters requested that applicable critical minerals contained in foils be added to the list. Other commenters recommended that low-value materials, comprising less than five or ten percent of the value of all critical minerals in a battery, be excluded from sourcing requirements under any final rule and specifically lists cobalt, zinc, tungsten, yttrium, titanium, graphite, and fluorspar as potential low-value materials. Finally, one commenter requested that constituent materials be added to the list. That commenter gave the specific example of the electrolyte, and noted that the battery manufacturer may have difficulty conducting due diligence with respect to electrolytes, due to the tiers of upstream suppliers as well as the need to request confidential commercial information.

Other commenters noted that certain minerals or materials should not be included in the definition of non-traceable battery materials. One commenter noted that consultation with industry is needed to develop a list, because many materials either can be traceable or will be traceable before 2027. Several commenters took issue with the exemplar materials identified in the Explanation of Provisions to the April Proposed Regulations. Some commenters disputed the idea that applicable critical minerals contained in electrolyte salts and electrode binders are non-traceable. One commenter noted that special electrolyte salts and additives (SESAs) are never commingled during transport or usage and may be traced to the source through a certification of origin. Other commenters specifically enumerated minerals that they asserted were traceable, including magnesium, magnesium sulfate, manganese sulphate monohydrate and related manganese materials and manganese oxides; fluorspar, fluorspar-based hydrofluoric acid, fluorine compounds, polyvinylidene fluoride

[8] The Explanation of Provisions to the December Proposed Regulations noted that, where battery materials make up only a very small percentage of the value of the battery as a whole, many industry participants had little reason to trace the source of these materials prior to the passage of the IRA. On the other hand, that Explanation of Provisions identified exemplar materials that accounted for less than two percent of the value of applicable critical minerals in the battery.

(PVDF) and PVDF binder technology; rare earth elements; lithium and Lithium hexafluorophosphate (LiPF6); cobalt; and nickel. Finally, one commenter suggested that the list of non-traceable battery materials only include non-essential battery materials that have ready substitutes. The commenter contrasted those materials with essential battery materials (such as fluorinated salts and fluorinated binders) that are essential to making an EV battery and have no meaningful substitutes. The commenter recommended that such essential battery materials not be added to the nontraceable battery materials list.

Several comments raised questions relating to the justifications for the identified non-traceable battery materials list. One commenter, while generally supportive of the proposed rules, stated that all materials are in fact able to be traced.

Finally, several commenters suggested that the final regulations adopt a different approach for a transition rule. One commenter requested that the final regulations provide a detailed list of low-value and non-traceable battery materials that form part of constituent materials, so that battery manufacturers do not have to trace materials to specific upstream suppliers. Another commenter proposed establishing a dynamic list of non-traceable battery materials rather than a static list. Several commenters also suggested that the final regulations provide a list of criteria for manufacturers to apply to determine what materials are excludible. Similarly, several commenters recommended that the final regulations adopt a de minimis threshold, with some suggesting a five percent threshold and others a ten percent threshold. One commenter requested that the Treasury Department and the IRS remove the non-traceable battery materials transition rule and replace it with an exemption from due diligence for battery materials produced by DOE Office of Manufacturing Energy and Supply Chains battery grant awardees. Finally, one commenter requested a three- to four-year grace period for certain applicable critical minerals, such as graphite and powders of cathode active materials.

Balancing all of the varying and opposing considerations reflected in these comments, the final regulations do not adopt a de minimis percentage threshold. The statute does not provide guidance for determining a numerical de minimis percentage. Instead, the statute compels qualified manufacturers to conduct due diligence in order to determine that vehicles satisfy the FEOC Restriction. The final transition rule requires due diligence in light of existing tracing capabilities and the practicalities of mineral and battery component supply chains, such as the presence of commingling. Instead of adopting a numerical de minimis percentage, the final regulations retain the proposed list and the related transition rules from the proposed regulations, but generally include only the exemplar materials identified in the Explanation of Provisions to the April Proposed Regulations.

In addition, however, graphite contained in anode materials is added to the list of impracticable-to-trace battery materials. Several commenters raised issues relating to graphite. Many commenters that supported the transition rule also generally supported including graphite on the list. One commenter noted that graphite accounts for only 3 to 4 percent of EV battery value, and that it is especially difficult to trace because battery cell manufacturers frequently mix synthetic and natural graphite together. Another commenter requested clarification of whether the FEOC analysis for synthetic graphite (1) begins with the petroleum coke from which synthetic graphite is derived or, instead, (2) goes all the way upstream to the oil extraction. This commenter noted that, in the latter case, tracing would not be possible. However, a different commenter stated that the "battery coke" used by the EV industry to make synthetic graphite is not produced from a nontraceable supply chain, and that such battery coke (unlike commodity cokes) is not commingled prior to shipment to an end user. Taking these comments under consideration, the Treasury Department and the IRS have determined that, due to the commingling of natural and synthetic graphite, as well as the difficulty of tracing synthetic graphite fully upstream, graphite contained in anode materials is an impracticable-to-trace material. Consequently, the final regulations include graphite contained in anode materials on the list of identified impracticable-to-trace battery materials.

The final regulations add a definition of "impracticable-to-trace battery materials" to §1.30D-2(b), and specify identified impracticable-to-trace battery materials as applicable critical minerals in the following circumstances: graphite contained in anode materials and applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives. Section 1.30D-6(b)(2) provides that for any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement may be satisfied by excluding identified impracticable-to-trace battery materials (and associated constituent materials). Section §1.30D-6(c)(3)(iii) provides that identified impracticable-to-trace battery materials (and associated constituent materials) may be excluded from the determination of whether a battery cell is FEOC-compliant.

In addition, the proposed regulations provided that, to use these transition rules, qualified manufacturers must submit a report during the up-front review process demonstrating how the qualified manufacturer will comply with the FEOC Restriction once the transition rules end. The final regulations keep this requirement and further clarify that this report must include information about efforts made to date to secure a FEOC-compliant battery supply once the transition rule is no longer in effect. Additional requirements related to this report will be described in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The Treasury Department and the IRS anticipate that such requirements will include robust documentation of efforts made to date to secure FEOC-compliant battery supply, such as potential suppliers engaged, offtake agreements, and contracts entered into with domestic or compliant suppliers. Finally, the Treasury Department and the IRS note that the inclusion of materials on the impracticable-to-trace battery materials list does not relieve any person from compliance obligations with respect to any other laws or requirements of other federal agencies or international organizations, including U.S. sanctions law administered by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

2. FEOC Compliance

Proposed §1.30D-6(c) provided the rules for determining whether battery components, battery cells, and applicable critical minerals (and associated constituent materials) are FEOC-compliant. These rules generally required the physical tracking of applicable critical minerals, battery cells, and battery components. However, proposed §1.30D-6(c)(3)(ii)(A) provided that the determination that a battery cell is a FEOC-compliant battery cell may be made through an allocation of the available mass of applicable critical minerals and associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of the mass of applicable critical minerals (and associated constituent materials) to specific battery cells. This allocation-based determination was an exception to the general rule, which required specific tracking. Proposed §1.30D-6(c)(3)(ii)(F) provided that the allocation-based exception would be a temporary rule for any new clean vehicle for which the qualified manufacturer provides a periodic written report before January 1, 2027.

In the Explanation of Provisions to the December Proposed Regulations the Treasury Department and the IRS requested comments on whether industry practices are likely to develop that allow for physical tracking before December 31, 2032, and, if not, whether the allocation-based determination should be included as a permanent compliance approach rather than as a temporary transition rule.

In response, several commenters expressed appreciation for the allocation-based determination. Commenters also requested that the rule be made permanent, due to the inability to quickly modify supply chains and the impracticability or impossibility of physically tracing applicable critical minerals. One commenter appreciated the inclusion of the transition rule in allowing allocation-based determinations for critical minerals and constituent materials, as well as the transition rule regarding non-traceable materials. One commenter noted that the time frame for the temporary allocation-based approach (ending December 31, 2026) is very short and was not sure it would be sufficient for manufacturers to alter their supply chains, as needed. The commenter further recommended that the proposed transition rule for allocation-based accounting be made permanent for the duration of the section 30D tax credit. In response to these comments, these final regulations make the allocation-based determination a permanent rule. Informed by the consensus view from the comments and consultation with the DOE, the Treasury Department and the IRS recognize that it may be difficult to de-commingle supply chains by 2027. In addition, it would be difficult and impracticable to track individual masses of applicable critical minerals through the supply chain in order to determine which masses are FEOC-compliant and which are not. Moreover, allocation-based accounting is consistent with the purposes of the statute, because it encourages OEMs and their suppliers to ensure secure supply chains; under an allocation-based accounting rule, the number of new clean vehicles that OEMs are able to produce is limited by the supply of the lowest-quantity FEOC-compliant critical mineral.

In addition, several commenters requested changes to the calculation-based methodology under the allocation-based accounting rule. Two commenters requested that the allocation be of total aggregated mass of FEOC-compliant applicable critical minerals, rather than limiting the FEOC-compliant battery cells to the critical mineral that has the lowest percentage of FEOC-compliant supply. The Treasury Department and the IRS disagree with these comments. Under the total aggregated mass approach suggested by the commenters, a qualified manufacturer with 0 percent FEOC-compliant mass of a specific applicable critical mineral would still have FEOC-compliant batteries based on the total mass of FEOC-compliant applicable critical minerals. This result would be inconsistent with the purposes of section 30D(d)(7). Accordingly, the final regulations do not adopt these comments.

Two commenters recommended that the final regulations adopt a mass balance approach with respect to allocated accounting. A full mass balance approach would require full physical tracing across long procurement chains for arrays of materials into the battery materials production. Given concerns with the ability of manufacturers to implement a robust tracking process in the near term to this level of specificity, the final regulations do not adopt this approach.

Proposed §1.30D-6(c)(3)(iii) provided that for new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under proposed §1.30D-6(c)(3) may be satisfied by excluding non-traceable battery materials, and their associated constituent materials. As described in section III.D.1.ii. of this Summary of Comments and Explanation of Revisions, this rule is finalized with respect to identified impracticable-to-trace battery materials.

3. Compliant-battery ledger

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

The Treasury Department and the IRS received several comments with respect to the compliant-battery ledger.

Several commenters noted that the upfront review process is both novel and complicated, and will require continued conversation between OEMs and the Treasury Department and the IRS. One such commenter commended the Treasury Department and the IRS's willingness to engage with manufacturers to support compliance and also asked for sufficient advance notice to qualified manufacturers regarding the upfront review process. Another noted that the process of establishing the mechanisms of the compliant-battery ledger will be an iterative process. In response to this, the Treasury Department and the IRS note that they intend to continue to engage with OEMs and other stakeholders to develop the rules under the upfront review process.

One commenter requested further clarification on the administrative procedures and necessary documentation requirements on areas such as FEOC-compliant certification and compliant-battery ledger. In response, the Treasury Department and the IRS generally note that initial guidance with respect to the upfront review process was issued in Revenue Procedure 2023-38.

Section 5.08 of Revenue Procedure 2023-38 requires qualified manufacturers to report any decrease to the ledger within 30-days of discovery. One commenter requested that this 30-day time period be extended. Although the comment is outside the scope of these final regulations, the Treasury Department and the IRS note that they will continue to study how best to administer the rules for establishing and updating compliant-battery ledgers.

One commenter raised a concern that the compliant-battery ledger may allow for noncompliance because batteries need not be tracked to specific vehicles. Proposed §1.30D-6(c)(1) requires the physical tracking of batteries to specific new clean vehicles via serial number or other identification system. Therefore, the commenter's concern is already addressed.

Finally, two commenters requested additional mechanisms for the upfront review process. First, one commenter requested that the Treasury Department and the IRS create a safe harbor system through which sourcing plans and licensing agreements of a proposed transaction are submitted for review and clearance. This commenter suggested that the Treasury Department's Committee on Foreign Investment in the United States process could provide a model. Second, several commenters noted that OEMs may have difficulty verifying information due to confidentiality obligations as well as the lack of harmonization among suppliers, and proposed that the Treasury Department and the IRS create an online portal to allow OEMs and suppliers to match information. The Treasury Department and the IRS intend that the upfront review process will be an iterative process in which attestations, certifications, and documentation regarding the section 30D sourcing requirements are submitted for review to the IRS, with analytical assistance from the DOE. This process allows for additional information to be requested of and supplied by qualified manufacturers. In addition, qualified manufacturers may rely on determinations provided by third-party manufacturers or suppliers, provided the requirements in §1.30D-6(c)(5) are met.

4. Rule for New Qualified Fuel Cell Motor Vehicles

The final regulations add §1.30D-6(g) to clarify that the FEOC Restriction does not apply to new qualified fuel cell motor vehicles. However, a qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) with a clean vehicle battery, such as a plug-in hybrid fuel cell electric vehicle, would be subject to the FEOC Restriction.

Because new qualified fuel cell motor vehicles do not contain clean vehicle batteries, these vehicles do not have applicable critical minerals or battery components contained in such battery that would subject the vehicles to the FEOC Restriction. Thus, the rule regarding new qualified fuel cell vehicles flows naturally from the statute.

IV. *Section 6213(g)(2)*

The IRA added three new definitions to the exclusive list of "mathematical or clerical errors" in section 6213(g)(2). These new definitions are set out in sections 6213(g)(2)(T), (U), and (V). Section 6213(g)(2)(T) provides that the term "mathematical or clerical error" means an omission of a correct VIN required under section 30D(f)(9) (relating to the credit for new clean vehicles) to be included on a return; section 6213(g)(2)(U) provides that the term "mathematical or clerical error" means an omission of a correct VIN required under section 25E(d) (relating to the credit for previously-owned clean vehicles) to be included on a return; and section 6213(g)(2)(V) provides that the term "mathematical or clerical error" means an omission of a correct VIN required under section 45W(e) (relating to the credit for qualified commercial clean vehicles) to be included on a return.

The flush language added in 1998 to the end of section 6213(g)(2) regarding whether a taxpayer is treated as having omitted a correct taxpayer identification number does not provide the clarification that is necessary to determine the meaning of "an omission of a correct vehicle identification number" under sections 6213(g)(2)(T) through (V). Accordingly, proposed §301.6213-2 provided rules for determining whether the IRS is authorized to use math error authority to make a summary assessment if there has been an "omission of a correct vehicle identification number" on a taxpayer's return on which the taxpayer is claiming or electing to transfer the credits under sections 30D, 25E and 45W.

A comment recommended that the proposed regulation be modified to clarify how it applies to taxpayers who rely on a seller report containing mistakenly entered VINs, or taxpayers who rely on manufacturers' incorrect determinations that a vehicle is eligible for the section 25E or 30D credit if the vehicle is in fact ineligible for either credit.

Vehicle sellers can prevent the situation described by the commenter by submitting the seller report described in §§1.25E-1(b)(19) and §1.30D-2(b)(48), which must be submitted electronically by the seller to the IRS at the time of sale. The reported VIN's eligibility is checked against qualified manufacturer reporting to the IRS at the time of submission of the seller report. The taxpayer then receives a copy of the seller report only after VIN eligibility is verified through the seller reporting process in real time. Accordingly, the seller report should not contain an incorrect VIN or VIN for a vehicle that was ineligible for a clean vehicle credit. Vehicle sellers are advised to ensure they accurately enter the VIN of the clean vehicle the taxpayer is purchasing when submitting the seller report and to be cautious in finalizing transactions in any case in which a VIN's eligibility has not been confirmed by the IRS through an electronically submitted seller report. Taxpayers should also ensure that the VIN listed on their seller report matches the VIN of the clean vehicle actually purchased. In addition, the taxpayer can rely on the information and certifications contained in the qualified manufacturer written reports for the sections 25E and 30D credits pursuant to §§1.25E-2(h) and 1.30D-4(h).

V. Applicability Dates

The final rules modify the applicability dates of the proposed rules for uniformity and administrability across the various rules included in the April, October, and December Proposed Regulations. Consistent with the authority in section 7805(b)(1), the applicability dates generally are modified to apply to taxable years ending after the latest publication date of the proposed regulations to which the section relates. Accordingly, the section 25E final regulations generally apply to taxable years ending after October 10, 2023, and the section 30D final regulations generally apply to taxable years ending after December 4, 2023.

The regulatory applicability dates also align with certain statutory applicability dates. For example, the rules regarding transfer of the section 25E and 30D credits in §§1.25E-3 and 1.30D-5 apply to clean vehicles placed in service after December 31, 2023, in taxable years ending after December 31, 2023, to reflect the statutory applicability date of vehicles acquired (section 25E) or placed in service (section 30D) after December 31, 2023. Similarly, the rules related to the FEOC Restriction in §1.30D-6 reflect the statutory applicability date of vehicles placed in service after December 31, 2023.

**Special Analyses**

I. *Regulatory Planning and Review*

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

II. *Paperwork Reduction Act*

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

Any collection burden associated with rules described in these final regulations is previously accounted for in OMB Control Number 1545-2137. These final 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 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 as defined in §1.30D-2(b) by relying on (1) the vehicle's plant of manufacture as reported in the 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.

For purposes of the PRA, the reporting burden associated with the collection of information in §§1.25E-3 and 1.30D-5 regarding credit transfer elections will be reflected in the PRA Submissions associated with Revenue Procedure 2023-33. The OMB control number for Revenue Procedure 2023-33 is 1545-2311.

A Federal 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*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the proposed rule.

In connection with the April and December Proposed Regulations, the Secretary certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

April Proposed Regulations: The regulations proposed in April 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 $1 billion in 2022. There are a total of 13 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit.

Qualified manufacturers also have to certify that their vehicles qualify under the Critical Minerals and Battery Components Requirements. The regulations provide definitions and general rules for the section 30D credit, including rules for qualified manufacturers to comply with the Critical Minerals and Battery Components Requirements. The Treasury Department and the IRS intend that the 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 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, Clean 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 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.

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

While the tracking and reporting of compliance with the FEOC Restriction is likely to involve significant administrative costs, according to public filings, every qualified manufacturer had total revenues above $1 billion in 2022. There are a total of 13 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit. Qualified manufacturers also have to certify that their vehicles comply with the FEOC Restriction and contain batteries that are FEOC-compliant. The regulations provide definitions and general rules for this purposes. Accordingly, the Treasury Department and the IRS intend that the rules provide clarity for qualified manufacturers for consistent application of the FEOC Restriction. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity.

For these reasons, it is hereby certified that §§1.30D-1, 1.30D-3, 1.30D-4(a)-(e) and 1.30D-6, and the accompanying definitions in §1.30D-2 that were proposed in the April and December Proposed Regulations, do not have a significant economic impact on a substantial number of small entities.

In connection with the October Proposed Regulations, the Treasury Department and the IRS presented an IRFA to invite comments on both the number of entities affected and the economic impact on small entities. No comments were received specific to these areas of inquiry. In the absence of comments in response to the October Proposed Regulations, this FRFA is presented with the final rule.

In addition, pursuant to section 7805(f) of the Code, the April, October, and December proposed regulations preceding this final rule were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

A. *Need for and objectives of the rule*

The final regulations provide the eligibility rules and key definitions regarding the section 25E and section 30D credits to allow taxpayers to know whether their purchase of a previously-owned clean vehicle or new clean vehicle is eligible for the section 25E and section 30D credits, respectively. In addition, the final regulations provide rules regarding the recapture authority under sections 25E(e) and 30D(f)(5), so that taxpayers and the IRS have clear rules regarding when a clean vehicle may cease being eligible for the section 25E and section 30D credits. Further, the final regulations provide rules regarding the omission of a correct VIN for purposes of math error authority as described in section 6213(g)(2). Clear rules regarding the exercise of math error authority will provide for efficient and fair tax administration.

The final regulations provide guidance for purposes of taxpayers electing to transfer vehicle credits under sections 25E(f) and 30D(g) to eligible entities, and for eligible entities participating in the advance payment program with respect to those transferred credits. The final regulations provide rules regarding the process for taxpayers to elect to transfer the credits and for eligible entities to register and receive advance payments from the IRS, and rules regarding the Federal income tax treatment of the credit transfer election, including recapture and excessive payments. The final rules regarding the credit transfer election ensure certainty regarding the consequences of the transfer election, decrease the risk of fraud, and expedite the process by which an eligible entity may receive an advance payment under section 25E(f) or 30D(g).

The final rules are expected to encourage taxpayers to increase the placing in service of new and previously-owned clean vehicles. Thus, the Treasury Department and the IRS intend and expect that the final rules will deliver benefits across the economy and environment that will beneficially impact various industries, including clean vehicle manufacturers and dealers.

B. *Issues raised by public comments in response to the IRFA*

As previously noted, there were no comments filed that specifically addressed the impact of the proposed rules and policies on small entities or the number of potentially impacted entities presented in the IRFA. Additionally, no comments were filed by the Chief Counsel of Advocacy of the Small Business Administration.

C. *Affected small entities*

The Small Business Administration estimates in its 2023 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these final regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the Summary of Comments and Explanation of Revisions to this final regulation and in this FRFA, these rules may affect a variety of different businesses across several different industries, but will primarily affect dealers of new and previously-owned clean vehicles that would like to be eligible entities to receive a transferred credit from the buyers of a clean vehicle. The Treasury Department and the IRS currently estimate the number of dealers of new clean vehicles to be approximately 16,000, and the number of dealers of previously-owned clean vehicles to be approximately 36,000.

Of the estimated 16,000 dealers of new clean vehicles, we estimate that 10,000 will have receipts in excess of $25 million; 3,000 will have receipts between $10-$25 million; 1,000 will have receipts between $5-10 million, and 2,000 will have receipts under $5 million. Of the estimated 36,000 dealers of previously-owned clean vehicles, we estimate that 500 will have receipts in excess of $25 million; 1,500 will have receipts between $10-$25 million; 2,000 will have receipts between $5-10 million, and 32,000 will have receipts under $5 million.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this final rule.

D. *Impact of the rules*

The recordkeeping and reporting requirements would increase for taxpayers who elect to transfer the section 25E or 30D credit to an eligible entity. In addition, the recordkeeping and reporting requirements would increase for dealers who seek to qualify as eligible entities and participate in the advance payment program. Although the Treasury Department and the IRS do not have sufficient data to precisely determine the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in section II of the Special Analyses regarding the PRA. The Treasury Department and the IRS estimate that, based on the total of 52,000 dealers of new (16,000) and previously-owned (36,000) clean vehicles, it will take approximately one hour to register as entities eligible to receive advance payments of credits under sections 25E and 30D, for a total of 52,000 hours total. The Treasury Department and the IRS further estimate that there are approximately 950,000 taxpayers who will purchase new clean vehicles and 28,750 taxpayers who will purchase previously-owned clean vehicles who will elect to transfer their respective credits to the eligible entity, for a total of 978,750 elections annually. The Treasury Department and the IRS estimate each election will take approximately 15 minutes to complete, for a total burden of approximately 244,688 hours per year.

E. *Steps taken to minimize impacts on small entities and alternatives considered*

The Treasury Department and the IRS considered various alternatives in promulgating these final regulations. Significant alternatives considered include: (1) the sale price definition in §1.25E-1(b)(16); (2) the first transfer rule described in §1.25E-1(b)(14)(ii); (3) the recapture rules provided in §§1.25E-2(c) and 1.30D-4(e), and (4) the dealer registration requirements provided in §§1.25E-3(c) and 1.30D-5(c).

Regarding the sale price definition in §1.25E-1(b)(16), the Treasury Department and the IRS considered the appropriate scope of the definition and how the definition of sale price should be consistent with or diverge from the definition of manufacturer's suggested retail price for purposes of section 30D(f)(11). The definition of "manufacturer's suggested retail price" in §1.30D-2(b) refers to a statutory definition in 15 U.S.C. 1232 that is used for purposes of vehicle labeling on the vehicle window sticker. That definition includes optional accessories or items included by the manufacturer at the time of delivery to the dealer but excludes delivery charges to the dealer. For previously-owned clean vehicles, however, there are not similar vehicle labeling standards that provide a standard for defining sale price. In addition, in a previously-owned clean vehicle sale, the dealer and buyer may negotiate to characterize a portion of the sale price as a separately stated fee or charge (other than those required by law) to avoid the section 25E sale price cap of $25,000. To prevent this type of recharacterization, §1.25E-1(b)(16) defines sale price to mean the total sale price agreed upon by the buyer and the dealer, including any delivery charges. This definition specifically excludes separately-stated taxes and fees required by State or local law because such taxes and fees are not subject to negotiation or recharacterization by the dealer and buyer.

The Treasury Department and the IRS considered various alternatives to the first transfer rule described in §1.25E-1(b)(14)(ii). This rule is necessary to determine whether a sale of a previously-owned clean vehicle is a qualified sale pursuant to section 25E(c)(2). One of the requirements to be a qualified sale is that the sale be the first transfer to a qualified buyer since the enactment of section 25E other than to the person with whom the original use of the vehicle commenced. However, some of the characteristics of being a qualified buyer are unknowable to the dealer and the buyer in a subsequent sale, including that a qualified buyer be an individual, not be a dependent, and not have claimed the section 25E credit in the prior three years. As a result, if a previously-owned clean vehicle is transferred more than once after the date of enactment of section 25E, there is no way for the parties after the first transfer to know if the first transfer was to a qualified buyer. Because the IRS may have access to some information necessary to determine whether a first transfer was to a qualified buyer, the Treasury Department and the IRS considered alternatives to the first transfer rule such as a look-up tool regarding prior claims of the section 25E credit for a particular vehicle or information regarding prior vehicle purchasers. However, disclosure of this information raises significant confidentiality issues. Accordingly, the Treasury Department and the IRS have provided the first transfer rule to provide certainty to buyers and dealers as to which transfer of a previously-owned clean vehicle is the first transfer and will qualify for the section 25E credit by relying on the vehicle history report.

The Treasury Department and the IRS considered alternatives to the recapture rules provided in §§1.25E-2(c) and 1.30D-4(e). Given the increased availability and benefits of the section 30D credit and the new section 25E credit arising because the credit can be transferred to an eligible entity and is not limited by the taxpayer's tax liability, the Treasury Department and the IRS determined it was necessary to provide rules regarding when the value of the clean vehicle credits can be recaptured. The Treasury Department and the IRS also considered the appropriate length of time within which a return or resale of a vehicle would make the taxpayer ineligible for the credit. Longer and shorter periods of time were considered. Based on industry standard return policies, including money-back guarantees, the Treasury Department and the IRS determined that it was appropriate to deny the benefit of the credit if the vehicle was returned within 30 days. In addition, the Treasury Department and the IRS determined it was reasonable to assume an intent to resell the vehicle, making the purchase of the vehicle ineligible, if the vehicle was resold within 30 days.

Finally, with respect to the dealer registration requirements provided in §§1.25E-3(c) and 1.30D-5(c), the Treasury Department and the IRS considered various processes by which a seller could become an eligible entity and participate in the advance payment program. The Treasury Department and the IRS considered a process that did not require submission of a significant amount of information prior to the dealer becoming an eligible entity, but such an approach could require more back-end compliance. To ensure efficient tax administration and reduce fraud, the Treasury Department and the IRS determined that an up-front, electronic registration process was necessary for the IRS to effectively review and validate eligible entity status. In addition, the Treasury Department and the IRS determined that dealers must submit identity information and attestations regarding their participation in the advance payment program to ensure program integrity. Finally, the Treasury Department and the IRS determined that dealer tax compliance was necessary to ensure that advance payments are being paid only to compliant dealers.

F. *Duplicative, overlapping, or conflicting Federal rules*

The final rule does not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Summary of Comments and the Explanation of Revisions, the final rules merely provide requirements, procedures, and definitions related to the credit transfer election for sections 25E and 30D. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

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 final 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 final 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.

VI. *Regulatory Planning and Review*

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

VII. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

**Statement of Availability of IRS Documents**

The IRS Revenue Procedures, Notices, and other guidance cited in this preamble is published in the *Internal Revenue Bulletin* and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC, 20402, or by visiting the IRS website at *https://www.irs.gov*.

**Drafting Information**

The principal authors of the regulations are Rika Valdman, Maggie Stehn, Nicole Stenchever, Mark C. Frantz, Jr., James Williford, and Iris Chung of 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 final regulations.

**List of Subjects**

**26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Penalties, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 301 as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§1.25E-1 through

1.25E-3, and 1.30D-1 through 1.30D-6 to read in part as follows:

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

* * * * *

Section 1.25E-1 also issued under 26 U.S.C. 25E.

Section 1.25E-2 also issued under 26 U.S.C. 25E.

Section 1.25E-3 also issued under 26 U.S.C. 25E, 26 U.S.C. 30D(g)(1) and (g)(10), and 26 U.S.C. 6011.

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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).

Section 1.30D-5 also issued under 26 U.S.C. 30D and 26 U.S.C. 6011.

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

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**Par 2.** Sections 1.25E-0 through 1.25E-3 are added to read as follows:

Sec.

* * * * *

**1.25E-0 Table of contents.**
**1.25E-1 Credit for previously-owned clean vehicles.**
**1.25E-2 Special rules.**
**1.25E-3 Transfer of credit.**

* * * * *

**§1.25E-0 Table of contents.**

This section lists the captions contained in §§1.25E-1 through 1.25E-3.

**§1.25E-1 Credit for previously-owned clean vehicles.**

(a) In general.
(b) Definitions.
(1) Advance payment program.
(2) Credit transfer election.
(3) Dealer.
(4) Dealer tax compliance.
(5) Electing taxpayer.
(6) Eligible entity.
(7) Excessive payment.
(8) Incentive.
(i) For purposes of sale price.
(ii) For purposes of eligible entity requirements.
(9) Modified adjusted gross income.
(10) Placed in service.
(11) Previously-owned clean vehicle.
(12) Qualified buyer.
(13) Qualified manufacturer.
(14) Qualified sale.
(15) Registered dealer.
(16) Sale price.
(17) Section 25E regulations.
(18) Seller report.
(19) Time of sale.
(20) Vehicle history report.
(c) Limitation based on modified adjusted gross income.
(1) In general.
(2) Threshold amount.
(3) Special rule for change in filing status.
(d) Credit may be claimed on only one tax return.
(1) In general.
(2) Seller reporting.
(e) Examples.
(1) Example 1: First transfer since enactment of section 25E.
(2) Example 2: Multiple transfers since enactment of section 25E.
(3) Example 3: Multiple transfers; commercial purchaser.
(4) Example 4: Multiple transfers; buyer exceeds modified adjusted gross income limitation.
(5) Example 5: Multiple transfers; buyer elects to not take credit.
(6) Example 6: Multiple transfers; sale between dealers.
(f) Reliance on vehicle history report for purposes of determining whether sale is a qualified sale.
(g) Severability.
(h) Applicability date.

**§1.25E-2 Special rules.**

(a) In general.
(b) No double benefit.
(1) In general.
(2) Interaction between section 25E and 30D credits.
(c) Recapture.
(1) In general.
(i) Cancelled sale.
(ii) Vehicle return.
(iii) Resale.
(iv) Other returns and resales.
(2) Recapture rules in the case of a credit transfer election.
(3) Example: Vehicle return.
(d) Branded title.
(e) Seller registration.
(f) Requirement to file income tax return.
(g) Taxpayer reliance on manufacturer certifications and periodic written reports to IRS.
(h) Severability.
(i) Applicability date.

**§1.25E-3 Transfer of credit.**

(a) In general.
(b) Definitions.
(1) Advance payment program.
(2) Credit transfer election.
(3) Dealer tax compliance.
(4) Electing taxpayer.
(5) Eligible entity.
(6) Registered dealer.
(7) Time of sale.
(c) Dealer registration.
(1) In general.
(2) Dealer tax compliance required.
(3) Suspension of registration.
(4) Revocation of registration.
(d) Credit transfer election by electing taxpayer.
(e) Federal income tax consequences of credit transfer election.
(1) Tax consequences for electing taxpayer.
(2) Tax consequences for eligible entity.
(3) Form of payment from eligible entity to electing taxpayer.
(4) Additional requirements.
(5) Examples.
(i) Example 1: Electing taxpayer's regular tax liability less than amount of credit.
(A) Facts.
(B) Analysis.
(ii) Example 2: Non-cash payment by eligible entity to electing taxpayer.
(A) Facts.
(B) Analysis.
(iii) Example 3: Eligible entity is a partnership.
(A) Facts.
(B) Analysis.
(f) Advance payments received by eligible entities.
(1) In general.
(2) Requirements for a registered dealer to become an eligible entity.

(g) Increase in tax.

(1) Recapture if electing taxpayer exceeds modified adjusted gross income limitation.

(2) Excessive payments.

(i) In general.

(ii) Reasonable cause.

(iii) Excessive payment defined.

(iv) Special rule for cases in which electing taxpayer's modified adjusted gross income exceeds the limitation.

(3) Examples.

(i) Example 1: Registered dealer is not an eligible entity.

(A) Facts.

(B) Analysis.

(ii) Example 2: Incorrect manufacturer certifications.

(A) Facts.

(B) Analysis.

(h) Return requirement.

(i) Two credit transfer elections per year.

(j) Severability.

(k) Applicability date.

**§1.25E-1 Credit for previously-owned clean vehicles.**

(a) *In general*. Section 25E(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 lesser of $4,000, or the amount equal to 30 percent of the sale price of a previously-owned clean vehicle, if that previously-owned clean vehicle is placed in service during the taxable year by a taxpayer that acquired the previously-owned clean vehicle in a qualified sale in which that taxpayer is a qualified buyer. This section provides definitions and generally applicable rules that apply for purposes of determining the credit under section 25E and the section 25E regulations (section 25E credit). Section 1.25E-2 provides special rules under section 25E(e) and other special rules with respect to the section 25E credit. Section 1.25E-3 provides rules under section 25E(f).

(b) *Definitions*. The definitions in this paragraph (b) apply for purposes of section 25E and the section 25E regulations.

(1) *Advance payment program*. *Advance payment program* means advance payment program as defined in §1.25E-3(b)(1).

(2) *Credit transfer election*. *Credit transfer election* means credit transfer election as defined in §1.25E-3(b)(2).

(3) *Dealer*. *Dealer* has the meaning provided in section 25E(c)(2)(A) by reference to section 30D(g)(8) of the Code, except that the term does not include persons licensed solely by a territory of the United States, and includes a dealer licensed by any jurisdiction described in section 30D(g)(8) (other than one licensed solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which it is licensed.

(4) *Dealer tax compliance*. *Dealer tax compliance* means dealer tax compliance as defined in §1.25E-3(b)(3).

(5) *Electing taxpayer*. *Electing taxpayer* means electing taxpayer as defined in §1.25E-3(b)(4).

(6) *Eligible entity*. *Eligible entity* means eligible entity as defined in §1.25E-3(b)(5).

(7) *Excessive payment*. *Excessive payment* means excessive payment as defined in §1.25E-3(g)(2)(iii).

(8) *Incentive*—(i) *For purposes of sale price.* For purposes of the definition of *sale price* in §1.25E-1(b)(16), *incentive* means any reduction in price offered to and accepted by a taxpayer from the dealer or manufacturer, other than a reduction in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle pursuant to section 25E(f) and §1.25E-3.

(ii) *For purposes of eligible entity requirements*. For purposes of the eligible entity requirements for a credit transfer election pursuant to sections 25E(f) and 30D(g)(2)(B) and (D), *incentive* means any reduction in price offered to the taxpayer by the dealer or manufacturer of the previously-owned clean vehicle, including in combination with other incentives, other than a reduction in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle pursuant to section 25E(f) and §1.25E-3.

(9) *Modified adjusted gross income*. *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.

(10) *Placed in service*. A previously-owned clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(11) *Previously-owned clean vehicle*. *Previously-owned clean vehicle* has the meaning provided in section 25E(c)(1). Vehicles that may qualify as previously-owned clean vehicles include battery electric vehicles, plug-in hybrid electric vehicles, fuel cell motor vehicles, and plug-in hybrid fuel cell motor vehicles.

(12) *Qualified buyer*. *Qualified buyer* means, with respect to a sale of a motor vehicle, a taxpayer—

(i) Who is an individual;

(ii) Who purchases such vehicle for use and not for resale;

(iii) With respect to whom no deduction is allowable to another taxpayer under section 151 of the Code; and

(iv) Who has not been allowed a credit under section 25E and this section for any sale during the three-year period beginning three years before the date of the sale of such vehicle and ending on the date of the sale of such vehicle.

(13) *Qualified manufacturer*. *Qualified manufacturer* means qualified manufacturer as defined in §1.30D-2(b)(42).

(14) *Qualified sale*. *Qualified sale* means a sale of a motor vehicle—

(i) By a dealer;

(ii) For a sale price that does not exceed $25,000; and

(iii) That is a sale to a qualified buyer (other than the person with whom the original use of such vehicle commenced), and that is the first transfer of the motor vehicle since August 16, 2022 (other than a transfer to a dealer).

(15) *Registered dealer*. *Registered dealer* means registered dealer as defined in §1.25E-3(b)(6).

(16) *Sale price*. The *sale price* of a previously-owned clean vehicle means the total price agreed upon by the taxpayer and dealer in a written contract at the time of sale, including any delivery charges and after the application of any incentives. The sale price of a previously-owned clean vehicle does not include separately stated taxes and fees required by State or local law. The sale price of a previously-owned clean vehicle is determined before the application of any trade-in value.

(17) *Section 25E regulations*. *Section 25E regulations* means this section and §§1.25E-2 and 1.25E-3.

(18) *Seller report*. *Seller report* means the report described in section 25E(c)(1)(D)(i) by reference to section 30D(d)(1)(H) that the seller of a previously-owned clean vehicle provides to the taxpayer and the IRS in the manner provided in, and containing the information described in, guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The seller report must be transmitted to the IRS electronically. The term *seller report* does not include a report rejected by the IRS due to the information contained therein not matching IRS records.

(19) *Time of sale*. *Time of sale* means time of sale as defined in §1.25E-3(b)(7).

(20) *Vehicle history report. Vehicle history report* means a report that provides the ownership history of a motor vehicle. *Vehicle history report* includes a vehicle history report issued by a data provider approved by the National Motor Vehicle Title Information System.

(c) *Limitation based on modified adjusted gross income*—(1) *In general*. Under section 25E(b)(1), no section 25E credit is allowed 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 section 25E(b)(1) and paragraph (c)(1) of this section, the threshold amount is determined based on the taxpayer's return filing status for the taxable year, as set forth in paragraphs (c)(2)(i) through (iii) of this section. *See* section 25E(b)(2).

(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 $150,000.

(ii) In the case of a head of household (as defined in section 2(b)), the threshold amount is $112,500.

(iii) In the case of a taxpayer not described in paragraph (c)(2)(i) or (ii) of this section, the threshold amount is $75,000.

(3) *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, then the taxpayer satisfies the limitation in section 25E(b)(1) and paragraph (c)(1) of this section if the taxpayer's modified adjusted gross income does not exceed the threshold amount in either year based on the applicable filing status for that taxable year.

(d) *Credit may be claimed on only one tax return*—(1) *In general*. The amount of the section 25E credit attributable to a previously-owned clean vehicle may be claimed on only one Federal income tax return, including on a joint return for which one of the spouses is listed on the seller report. In the event a previously-owned clean vehicle is placed in service by multiple taxpayers who do not file a joint return, such as married individuals filing separate returns, no allocation or proration of the section 25E credit is available.

(2) *Seller reporting.* The name and taxpayer identification number of the taxpayer claiming the section 25E credit must be listed on the seller report pursuant to sections 25E(c)(1)(D)(i) and 30D(d)(1)(H). The credit will be allowed only on the Federal income tax return of the taxpayer listed in the seller report.

(e) *Examples*. The following examples illustrate the application of the rules in this section.

(1) *Example 1: First transfer since enactment of section 25E*. On August 1, 2022, a dealer sells a previously-owned vehicle that satisfies the requirements of section 25E(c)(1)(A), (B), and (D). On May 7, 2024, a dealer sells the vehicle to a qualified buyer, X, for a sale price of $24,000. X places the vehicle in service the same day. The May 7, 2024, sale to X is the first transfer of the vehicle since the enactment of section 25E.. The May 7, 2024, sale is a qualified sale pursuant to section 25E(c)(2) and paragraph (b)(14) of this section. As a result, the vehicle also satisfies the requirement of section 25E(c)(1)(C) and is a previously-owned clean vehicle as defined in section 25E(c)(1) and paragraph (b)(11) of this section.

(2) *Example 2: Multiple transfers since enactment of section 25E*. On July 1, 2023, a dealer sells a previously-owned vehicle that satisfies the requirements of section 25E(c)(1)(A), (B), and (D) to an individual, X, for a sale price of $30,000. X places the vehicle in service the same day. This is the first transfer of the vehicle since the enactment of section 25E. On May 7, 2024, a dealer sells the vehicle to an individual, Y, for a sale price of $24,500. The July 1, 2023, sale of the vehicle to X is not a qualified sale because the sale price exceeds the $25,000 limitation described in section 25E(c)(2)(B) and paragraph (b)(14) of this section. The May 7, 2024, sale to Y is not a qualified sale because it is not the first transfer since the enactment of section 25E.

(3) *Example 3: Multiple transfers; commercial purchaser*. The facts are the same as in paragraph (e)(2) of this section (*Example 2*), except that X is a partnership and the July 1, 2023, sale is for a sale price of $24,000. Although the vehicle is a previously-owned clean vehicle as defined in section 25E(c)(1) and paragraph (b)(11) of this section, no section 25E credit is allowed in relation to the sale because X is not a qualified buyer. The May 7, 2024, sale to Y is not a qualified sale because it is not the first transfer since enactment of section 25E.

(4) *Example 4: Multiple transfers; buyer exceeds modified adjusted gross income limitation*. The facts are the same as in paragraph (e)(2) of this section (*Example 2*), except the July 1, 2023, sale is for a sale price of $24,000 and X's modified adjusted gross income exceeds the limitation described in section 25E(b)(2) and paragraph (c) of this section. No section 25E credit is allowed in relation to the July 1, 2023, sale to X because X's modified adjusted gross income exceeds the limitation described in section 25E(b)(2) and paragraph (c) of this section. The May 7, 2024, sale to Y is not a qualified sale because it is not the first transfer since the enactment of section 25E.

(5) *Example 5: Multiple transfers; buyer elects to not take credit.* The facts are the same as in paragraph (e)(2) of this section (*Example 2*), except the July 1, 2023, sale is for a sale price of $24,000 and X elects to not claim the section 25E credit. The May 7, 2024, sale to Y is not a qualified sale because it is not the first transfer since the enactment of section 25E.

(6) *Example 6: Multiple transfers; sale between dealers.* On July 1, 2023, a dealer, D1, sells a previously-owned vehicle that satisfies the requirements of section 25E(c)(1)(A), (B), and (D) to another dealer, D2, for $18,000. D1 and D2 are not individuals. On August 1, 2024, D2 sells the vehicle to an individual, Y, for a sale price of $24,500. Y places the vehicle in service the same day. Y satisfies the modified adjusted gross income limitation in section 25E(b)(2) and paragraph (c) of this section. The July 1, 2023, sale to D2 is ignored because it is a transfer between dealers. Further, with regard to the July 1, 2023, sale, D2 is not a qualified buyer because D2 is not an individual. The May 7, 2024, sale to Y is a qualified sale because it is the first transfer that is regarded since the enactment of section 25E.

(f) *Reliance on vehicle history report for purposes of determining whether sale is a qualified sale*. A taxpayer may rely on a vehicle history report obtained on the date of sale or as part of the sale transaction to determine whether the requirements of section 25E(c)(2)(C) and paragraph (b)(14) of this section are satisfied, including in the case where there has been a prior sale and return or resale described in §1.25E-2(c).

(g) *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.

(h) *Applicability date*. This section applies to previously-owned clean vehicles placed in service after December 31, 2022, in taxable years ending after October 10, 2023.

**§1.25E-2 Special rules.**

(a) *In general*. This section provides guidance under section 25E(e) of the Internal Revenue Code (Code), which incorporates rules similar to the rules of section 30D(f) of the Code, other than section 30D(f)(10) or 30D(f)(11). Unless otherwise provided in this section, the rules of section 30D(f) apply to section 25E and the section 25E regulations in the same manner by replacing, if applicable, any reference to section 30D or the section 30D credit with a reference to section 25E or the section 25E credit. This section also provides guidance regarding other special rules with respect to the section 25E credit.

(b) *No double benefit*—(1) *In general*. Under sections 25E(e) and 30D(f)(2), the amount of any deduction or other credit allowable under chapter 1 of the Code (chapter 1) for a vehicle for which a section 25E credit is allowable must be reduced by the amount of the section 25E credit allowed for such vehicle.

(2) *Interaction between section 25E and section 30D credits*. A section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a section 25E credit is allowable for that vehicle does not reduce the amount allowable under section 25E.

(c) *Recapture*—(1) *In general*. This paragraph (c) provides rules regarding the recapture of the section 25E credit.

(i) *Cancelled sale*. If the sale of a previously-owned clean vehicle between the taxpayer and dealer is cancelled before the taxpayer places the vehicle in service, then—

(A) The taxpayer may not claim the section 25E credit with respect to the vehicle;

(B) The sale will be treated as not having occurred (and no transfer of the vehicle is considered to have occurred by reason of the cancelled sale), and the vehicle will, therefore, still be eligible for the section 25E credit upon a subsequent sale meeting the requirements of section 25E and the section 25E regulations;

(C) The seller report must be rescinded by the seller in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter); and

(D) The taxpayer cannot make a credit transfer election under section 25E(f) and §1.25E-3 with respect to the cancelled sale.

(ii) *Vehicle return*. If a taxpayer returns a previously-owned clean vehicle to the dealer within 30 days of placing such vehicle in service, then—

(A) The taxpayer cannot claim the section 25E credit with respect to the vehicle;

(B) The sale will be treated as having occurred (and a transfer of the vehicle is therefore considered to have occurred by reason of the sale), and the vehicle will not qualify for the section 25E credit upon a subsequent sale;

(C) The seller report must be updated by the seller; and

(D) A credit transfer election made pursuant to section 25E(f) and §1.25E-3, if applicable, will be treated as nullified and any advance payment made pursuant to section 25E(f) and §1.25E-3, if applicable, will be collected from the eligible entity as an excessive payment pursuant to §1.25E-3(g)(2).

(iii) *Resale*. If a taxpayer resells a previously-owned clean vehicle within 30 days of placing the vehicle in service, then the taxpayer is treated as having purchased such vehicle with the intent to resell, and—

(A) The taxpayer cannot claim the section 25E credit with respect to the vehicle;

(B) The sale to the taxpayer will be treated as having occurred (and a transfer of the vehicle is therefore considered to have occurred by reason of the sale), and the vehicle will not qualify for the section 25E credit upon a subsequent sale;

(C) The seller report will not be updated;

(D) A credit transfer election made pursuant to section 25E(f) and §1.25E-3, if applicable, will remain in effect and any advance payment made pursuant to section 25E(f) and §1.25E-3 will not be collected from the eligible entity; and

(E) The amount of any transferred credit will be collected from the taxpayer as an increase in tax imposed by chapter 1 of the Code for the taxable year in which the vehicle was placed in service.

(iv) *Other returns and resales*. In the case of a vehicle return not described in paragraph (c)(1)(ii) of this section or a resale not described in paragraph (c)(1)(iii) of this section, the previously-owned clean vehicle will not be eligible for the section 25E credit upon a subsequent sale.

(2) *Recapture rules in the case of a credit transfer election*. For additional recapture rules that apply in the case of a credit transfer election, see §1.25E-3(g)(1). For excessive payment rules that apply in the case of an advance payment made to an eligible entity, see §1.25E-3(g)(2).

(3) *Example: Vehicle return*. On May 1, 2024, a dealer, D, sells a vehicle that satisfies the requirements of section 25E(c)(1) to a qualified buyer, X. X returns the vehicle to D within 30 days of placing the vehicle in service, and does not claim the section 25E credit. On July 9, 2024, D sells the vehicle to a qualified buyer, Y, for a sale price of $24,000. The vehicle history report obtained on July 9, 2024, reflects the May 1, 2024, sale and subsequent return of the vehicle. The July 9, 2024, sale of the vehicle is not a qualified sale because it is not the first transfer of the vehicle after the enactment of section 25E. Therefore, no section 25E credit is allowed in relation to that sale. It is irrelevant that X did not claim the section 25E credit with respect to the May 1, 2024, sale.

(d) *Branded title*. A title to a previously-owned clean vehicle indicating that such vehicle has been damaged, or is otherwise a branded title, does not impact the vehicle's eligibility for a section 25E credit.

(e) *Seller registration*. A seller must register with the IRS in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter) for purposes of filing seller reports (as defined in §1.25E-1(b)(18)).

(f) *Requirement to file income tax return.* No section 25E credit is allowed unless the taxpayer claiming such credit files a Federal income tax return for the taxable year in which the previously-owned clean vehicle is placed in service. The taxpayer must attach to such return a completed Form 8936, *Clean Vehicle Credits*, or successor form, that includes all information required by the form and instructions. The taxpayer must also attach a completed Schedule A (Form 8936), *Clean Vehicle Credit Amount*, or successor form or schedule, that includes all information required by the schedule and instructions, such as the vehicle identification number of the previously-owned clean vehicle.

(g) *Taxpayer reliance on manufacturer certifications and periodic written reports to IRS.* A taxpayer who acquires a previously-owned clean vehicle in a qualified sale and places it in service may rely on the manufacturer's certification concerning the manufacturer's status as a qualified manufacturer. A taxpayer also may rely on the information and certifications contained in the qualified manufacturer's periodic written reports to the IRS for purposes of determining whether a vehicle is a previously-owned clean vehicle. The procedures for such written reports are established in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). To the extent a taxpayer relies on such certifications or information, the previously-owned clean vehicle the taxpayer acquires will be deemed to meet the requirements of section 25E(c)(1)(D) (except the section 30D(d)(1)(H) requirement cross-referenced in section 25E(c)(1)(D)(i), which must be satisfied separately), provided the certifications or information relied upon by the taxpayer support this result. *See* §1.25E-3(g)(3)(ii) for an example that illustrates the interplay between the rule in this paragraph (g) and the excessive payment rule in §1.25E-3(g)(2).

(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 previously-owned clean vehicles placed in service after December 31, 2022, in taxable years ending after October 10, 2023.

**§1.25E-3 Transfer of credit.**

(a) *In general*. This section provides rules related to the transfer and advance payment of the section 25E credit pursuant to section 25E(f) of the Internal Revenue Code (Code) by cross reference to section 30D(g) of the Code. Under the rules of section 30D(g) and this section, a taxpayer may elect to transfer a section 25E credit to an eligible entity, and the eligible entity may receive an advance payment for such credit, provided certain requirements are met. *See* paragraph (d) of this section for rules applicable to credit transfer elections. *See* paragraph (f) of this section for rules applicable to advance payments of transferred section 25E credits. Section 30D(g)(2) sets forth certain requirements that a dealer must satisfy to be an eligible entity for credit transfer and advance payment purposes. Section 30D(g)(2)(A) requires registration with the IRS. *See* paragraph (c) of this section for rules related to dealer registration. Section 30D(g)(2)(B) through (D) and paragraph (f)(2) of this section impose additional requirements that a registered dealer must satisfy in order to be an eligible entity for credit transfer and advance payment purposes.

(b) *Definitions*. This paragraph (b) provides definitions that apply for purposes of section 25E(f) and this section. *See* §1.25E-1(b) for definitions that are generally applicable to section 25E and the section 25E regulations.

(1) *Advance payment program*. *Advance payment program* means the program described in paragraph (f)(1) of this section.

(2) *Credit transfer election*. *Credit transfer election* has the meaning provided in sections 25E(f) and 30D(g), and paragraph (d) of this section.

(3) *Dealer tax compliance*. *Dealer tax compliance* means that the dealer has filed all required Federal information and tax returns, including for Federal income and employment tax purposes, and the dealer has paid all Federal tax, penalties, and interest due as of the time of sale. A dealer that has entered into an installment agreement with the IRS for which a dealer is current on its obligations (including required filings) is treated as being in dealer tax compliance.

(4) *Electing taxpayer*. *Electing taxpayer* means an individual who purchases and places in service a previously-owned clean vehicle and elects to transfer the section 25E credit that would otherwise be allowable to such individual to an eligible entity pursuant to section 25E(f) and paragraph (d) of this section. A taxpayer is an electing taxpayer only if the taxpayer makes certain attestations to the registered dealer, pursuant to procedures provided in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter), including that the taxpayer does not anticipate exceeding the modified adjusted gross income limitation of section 25E(b)(1) and §1.25E-1(b).

(5) *Eligible entity*. *Eligible entity* has the meaning provided in section 30D(g)(2) and paragraph (f)(2) of this section.

(6) *Registered dealer*. *Registered dealer* means a dealer that has completed registration with the IRS as provided in paragraph (c) of this section.

(7) *Time of sale*. *Time of sale* means the date the previously-owned clean vehicle is placed in service, as defined in §1.25E-1(b)(10).

(c) *Dealer registration*—(1) *In general*. A dealer must register with the IRS in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter) for the dealer to receive credits transferred by an electing taxpayer pursuant to section 25E(f) and paragraph (d) of this section.

(2) *Dealer tax compliance required*. A dealer must be in dealer tax compliance to complete and maintain its registration with the IRS. If the dealer is not in dealer tax compliance for any of the taxable periods during the last five taxable years, then the dealer may complete its initial registration with the IRS, but the dealer will not be eligible for the advance payment program (and, therefore, the dealer will not be eligible to receive transferred section 25E credits) until the compliance issue is resolved. The IRS will notify the dealer in writing that the dealer is not in dealer tax compliance, and the dealer will have the opportunity to address any failure through regular procedures. If the failure is corrected, the IRS will complete the dealer's registration, and, provided all other requirements of section 25E(f) and this section are met, the dealer will then be allowed to receive transferred section 25E credits and participate in the advance payment program. Additional procedural guidance regarding this paragraph is set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

(3) *Suspension of registration*. A registered dealer's registration may be suspended pursuant to the procedures described in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). Any

decision made by the IRS relating to the suspension of a registered dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(4) *Revocation of registration*. A registered dealer's registration may be revoked pursuant to the procedures described in guidance published in the *Internal Revenue Bulletin* (see §601.601). Any decision made by the IRS relating to the revocation of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(d) *Credit transfer election by electing taxpayer*. For a previously-owned clean vehicle placed in service after December 31, 2023, an electing taxpayer may elect to apply the rules of section 25E(f) and this section to make a credit transfer election with respect to the vehicle so that the section 25E credit is allowed to the eligible entity specified in the credit transfer election (and not to the electing taxpayer) pursuant to the advance payment program described in paragraph (f) of this section. The electing taxpayer, as part of the credit transfer election, must transfer the entire amount of the credit that would otherwise be allowable to the electing taxpayer under section 25E with respect to the vehicle, and the eligible entity specified in the credit transfer election must pay the electing taxpayer an amount equal to the amount of the credit included in the credit transfer election. A credit transfer election must be made no later than the time of sale, and must be made in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). Once made, a credit transfer election is irrevocable.

(e) *Federal income tax consequences of credit transfer election*—(1) *Tax consequences for electing taxpayer*. In the case of a credit transfer election, the Federal income tax consequences for the electing taxpayer are as follows—

(i) The amount of the section 25E credit that the electing taxpayer elects to transfer to the eligible entity under section 30D(g) (by reason of section 25E(f)) and paragraph (d) of this section may exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess, if any, is not subject to recapture on the basis that it exceeded the electing taxpayer's regular tax liability;

(ii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) (by reason of 25E(f)) and paragraph (d) of this section to an electing taxpayer pursuant to a credit transfer election is not includible in the gross income of the electing taxpayer; and

(iii) The payment made by an eligible entity under section 30D(g)(2)(C) (by reason of section 25E(f)) and paragraph (d) of this section is treated as repaid by the electing taxpayer to the eligible entity as partial payment of the sale price of the previously-owned clean vehicle. Thus, the repayment by the electing taxpayer is included in the electing taxpayer's basis in the previously-owned clean vehicle prior to the application of the basis reduction rule of section 30D(f)(1) that applies by reason of section 25E(e) and §1.25E-2(a).

(2) *Tax consequences for eligible entity*. In the case of a credit transfer election, the Federal income tax consequences for the eligible entity are as follows—

(i) The eligible entity is allowed the section 25E credit with respect to the previously-owned clean vehicle and may receive an advance payment pursuant to section 30D(g)(7) (by reason of section 25E(f)) and paragraph (f) of this section;

(ii) Advance payments received by the eligible entity are not treated as a tax credit in the hands of the eligible entity and may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for the taxable year in which the sale occurs;

(iii) An advance payment received by the eligible entity is not included in the gross income of the eligible entity;

(iv) The payment made by an eligible entity under section 30D(g)(2)(C) (by reason of section 25E(f)) and paragraph (d) of this section to an electing taxpayer is not deductible by the eligible entity;

(v) The payment made by an eligible entity to the electing taxpayer under section 30D(g)(2)(C) (by reason of section 25E(f)) and paragraph (d) of this section is treated as paid by the electing taxpayer to the eligible entity as partial payment of the sale price of the previously-owned clean vehicle. Thus, the repayment by the electing taxpayer is treated as an amount realized by the eligible entity under section 1001 of the Code and the regulations under section 1001; and

(vi) If the eligible entity is a partnership or an S corporation, then—

(A) The IRS will make the advance payment to such partnership or S corporation equal to the amount of the section 25E credit allowed that is transferred to the eligible entity;

(B) Such section 25E credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) The amount of the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code.

(3) *Form of payment from eligible entity to electing taxpayer*. The tax treatment of the payment made by the eligible entity to the electing taxpayer described in paragraphs (e)(1) and (2) of this section is the same regardless of whether the payment is made in cash, in the form of a partial payment or down payment for the purchase of the previously-owned clean vehicle, or as a reduction in sale price (without the payment of cash) of the previously-owned clean vehicle.

(4) *Additional requirements*. In the case of a credit transfer election, the following additional rules apply:

(i) The requirements of section 30D(f)(1) (regarding basis reduction) and 30D(f)(2) (regarding no double benefit), by reason of section 25E(e), apply to the electing taxpayer as if the credit transfer election were not made (so, for example, the electing taxpayer must reduce the electing taxpayer's basis in the vehicle by the amount of the section 25E credit, regardless of the credit transfer election).

(ii) Section 30D(f)(6) (regarding the election not to take the credit), by reason of section 25E(e), will not apply (in other words, by electing to transfer the credit, the electing taxpayer is electing to take the credit).

(iii) Section 30D(f)(9) (regarding the vehicle identification number requirement), by reason of section 25E(e), and section 25E(d) (regarding the vehicle identification number requirement) will be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the IRS in the form and manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The electing taxpayer must also provide the vehicle identification number with their Federal income tax return for the taxable year in which the vehicle is placed in service. *See* section 6213(g)(2)(U) of the Code and §301.6213-2 of this chapter for rules relating to the omission of a correct vehicle identification number.

(5) *Examples*. The following examples illustrate the rules of paragraph (e) of this section.

(i) *Example 1: Electing taxpayer's regular tax liability less than amount of credit*—(A) *Facts*. T, an individual, purchases a previously-owned clean vehicle from a dealer, D, which is a C corporation. T satisfies the requirements to be an electing taxpayer and elects to transfer the section 25E credit to D. D is a registered dealer and satisfies the requirements to be an eligible entity. The sale price of the vehicle is $24,000. The section 25E credit otherwise allowable to T is $4,000. D makes the payment required to be made to T in the form of a cash payment of $4,000. T uses the $4,000 as a partial payment for the vehicle. T pays D an additional $20,000 from other funds. T's regular tax liability for the year is less than $4,000.

(B) *Analysis*. Under paragraph (e)(1)(i) of this section, T may transfer the credit to D, even though T's regular tax liability is less than $4,000, and no amount of the credit will be recaptured from T on the basis that the allowable credit exceeded T's regular tax liability. D's $4,000 payment to T is not included in T's gross income, and the sale price of the vehicle is $24,000 (including both the $4,000 payment and the additional $20,000 paid by T from other funds), prior to the application of the basis reduction rule of section 30D(f)(1) (by reason of section 25E(e)). After application of the basis reduction rule, T's basis in the vehicle is $20,000. D is eligible to receive an advance payment of $4,000 for the transferred section 25E credit as provided in section 30D(g)(7) (by reason of section 25E(e)) and paragraph (f) of this section. Under paragraph (e)(2) of this section, D may receive the advance payment regardless of whether D's regular tax liability is less than $4,000. The advance payment is not treated as a credit toward D's tax liability (if any), nor is it included in D's gross income. Further, D's $4,000 payment to T is not deductible, and D's amount realized is $24,000 upon the sale of the vehicle (including both the $4,000 payment from D to T that T uses as a partial payment, and the additional $20,000 paid by T from other funds).

(ii) *Example 2: Non-cash payment by eligible entity to electing taxpayer*—(A) *Facts*. The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that D makes the payment to T in the form of a reduction in the sale price of the vehicle (rather than as a cash payment).

(B) *Analysis*. Paragraph (e)(3) of this section provides that the application of paragraphs (e)(1) and (2) of this section is not dependent on the form of payment from an eligible entity to an electing taxpayer (for example, a payment in cash or a payment in the form of a reduction in sale price). Thus, the analysis is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*).

(iii) *Example 3: Eligible entity is a partnership*—(A) *Facts*. The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that D is a partnership.

(B) *Analysis*. The analysis as to T is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*). Because D is a partnership, paragraph (e)(2)(vi) of this section applies. Thus, the advance payment is made to the partnership, the credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to the partnership (and not allocated or otherwise allowed to its partners) for such taxable year. The amount of the advance payment is not treated as tax exempt income to the partnership for purposes of the Code.

(f) *Advance payments received by eligible entities*—(1) *In general*. An eligible entity may receive advance payments from the IRS (corresponding to the amount of the section 25E credit for which a credit transfer election was made by an electing taxpayer to transfer the credit to the eligible entity pursuant to section 30D(g) (by reason of section 25E(f)) and paragraph (d) of this section) before the eligible entity files its Federal income tax return or information return, as appropriate, for the taxable year with respect to which the credit transfer election corresponds. This advance payment program is the exclusive mechanism for an eligible entity to receive the section 25E credit transferred pursuant to section 25E(f) and paragraph (d) of this section. An eligible entity receiving a transferred section 25E credit may not claim the credit on a tax return.

(2) *Requirements for a registered dealer to become an eligible entity*. A registered dealer qualifies as an eligible entity, and may therefore receive an advance payment in connection with a credit transfer election, if it meets the following requirements:

(i) The registered dealer submits all required registration information and is in dealer tax compliance;

(ii) The registered dealer retains information regarding the credit transfer election for three calendar years beginning with the year immediately after the year in which the vehicle is placed in service, as described in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter);

(iii) The registered dealer meets any other requirements set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter) or in forms and instructions; and

(iv) The registered dealer meets any other requirements of section 25E(f) by reference to section 30D(g), including those in section 30D(g)(2)(B) through (E).

(g) *Increase in tax*—(1) *Recapture if electing taxpayer exceeds modified adjusted gross income limitation*. If an electing taxpayer has modified adjusted gross income that exceeds the limitation in section 25E(b) and §1.25E-1(b), then the income tax imposed on such taxpayer under chapter 1 of the Code (chapter 1) for the taxable year in which the vehicle was placed in service is increased by the amount of the payment received by the taxpayer. The electing taxpayer must recapture such amounts on the Federal income tax return described in paragraph (h) of this section.

(2) *Excessive payments*—(i) *In general*. This paragraph provides rules under section 25E(f) by reference to section 30D(g)(7)(B), which provides that rules similar to the rules of section 6417(d)(6) of the Code apply to the advance payment program. In the case of any advance payment to an eligible entity that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity under chapter 1, regardless of whether such entity would otherwise be subject to tax under chapter 1, for the taxable year in which such determination is made will be increased by the sum of the following amounts—

(A) The amount of the excessive payment; plus

(B) An amount equal to 20 percent of such excessive payment.

(ii) *Reasonable cause*. The amount described in paragraph (g)(2)(i)(B) of this section will not apply to an eligible entity if the eligible entity demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. In the case of a previously-owned clean vehicle (with respect to which a credit transfer election was made by the electing taxpayer) that is returned to the eligible entity within 30 days of being placed in service, the eligible entity will be treated as having demonstrated that the excessive payment resulted from reasonable cause.

(iii) *Excessive payment defined*. Excessive payment means an advance payment made—

(A) To a registered dealer that fails to meet the requirements to be an eligible entity provided in paragraph (f)(2) of this section; or

(B) Except as provided in paragraph (g)(2)(iv) of this section, to an eligible entity with respect to a previously-owned clean vehicle to the extent the payment exceeds the amount of the credit that, without application of section 25E(f) and this section, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such tax year.

(iv) *Special rule for cases in which electing taxpayer's modified adjusted gross income exceeds the limitation*. Any excess described in paragraph (g)(2)(iii)(B) of this section that arises due to the electing taxpayer exceeding the limitation based on modified adjusted gross income in section 25E(b) and §1.25E-1(b) is not an excessive payment. Instead, the amount of the advance payment is recaptured from the taxpayer under section 25E(e) and paragraph (g)(1) of this section.

(3) *Examples*. The following examples illustrate the excessive payment rules in paragraph (g)(2) of this section.

(i) *Example 1: Registered dealer is not an eligible entity*—(A) *Facts*. In 2024, D, a registered dealer, receives an advance payment of $4,000 with respect to a credit transferred pursuant to section 25E(f) and paragraph (d) of this section for a previously-owned clean vehicle, vehicle V. In 2025, the IRS determines that D was not an eligible entity with respect to vehicle V at the time it received the advance payment in 2024 because D failed to satisfy one of the requirements of section 30D(g)(2) (applicable by reason of section 25E(e)) and paragraph (f)(2) of this section. D is unable to show reasonable cause for the failure.

(B) *Analysis*. Under paragraph (g)(2)(i) of this section, the tax imposed on D is increased by the amount of the excessive payment if the advance payment received by D constitutes an excessive payment. Under paragraph (g)(2)(iii) of this section, the entire amount of the $4,000 advance payment received by D is an excessive payment because D did not meet the requirements to be an eligible entity under section 30D(g)(2) (applicable by reason of section 25E(f) and paragraph (f)(2) of this section). Additionally, because D cannot show reasonable cause for its failure to meet these requirements, the tax imposed under chapter 1 on D is increased by $4,800 in 2025 (the taxable year of the IRS determination). This is comprised of the $4,000 excessive payment plus the $800 penalty, calculated as 20% of the $4,000 excessive payment (20% x $4,000 = $800). This treatment applies regardless of whether D is otherwise subject to tax under chapter 1 (for example, if D is a partnership).

(ii) *Example 2: Incorrect manufacturer certifications*—(A) *Facts*. In 2024, T, a taxpayer, makes an election to transfer a $4,000 credit pursuant to section 25E(f) and paragraph (d) of this section to registered dealer, E, with respect to vehicle V. M, the manufacturer of vehicle V, certified to the IRS that vehicle V has a battery with a capacity of not less than 7 kilowatt hours (kwh). T and vehicle V otherwise meet the eligibility requirements for the section 25E credit. T, in reliance on the manufacturer's certification to the IRS regarding vehicle V's battery capacity, transfers the section 25E credit to E. Subsequent to T's purchase of vehicle V and election to transfer the $4,000 credit to E, M reports to the IRS that vehicle V has a battery capacity of less than 7 kwh.

(B) *Analysis.* Section 1.25E-2(g) provides that T may rely on the information and certifications provided in M's written report to the IRS for purposes of determining whether vehicle V is a previously-owned clean vehicle, as defined in section 25E(c)(1) and §1.25E-1(b)(11). Because T relied on M's certification to the IRS regarding vehicle V's battery capacity and T and vehicle V otherwise meet the eligibility requirements for the section 25E credit, vehicle V is deemed to meet the requirements of section 30D(d)(1)(F) (as cross-referenced in section 25E(c)(1)(D)(i)). Under paragraph (g)(2)(iii)(B) of this section, an advance payment to an eligible entity with respect to a vehicle is an excessive payment to the extent the payment exceeds the amount of the credit that, without a credit transfer election, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such taxable year. Because the amount of the credit that would be allowable to T for 2024 is $4,000, and T transferred the $4,000 credit to E, there is no excessive payment with respect to E.

(h) *Return requirement*. An electing taxpayer that makes a credit transfer election must file a Federal income tax return for the taxable year in which the credit transfer election is made and indicate such election on the return in accordance with the instructions to the form on which the return is made. The electing taxpayer must attach to such return a completed Form 8936, *Clean Vehicle Credits*, or successor form, that includes all information required by the form and instructions. The electing taxpayer must also attach a completed Schedule A (Form 8936), *Clean Vehicle Credit Amount*, or successor form or schedule, that includes all information required by the schedule and instructions, such as the vehicle identification number of the previously-owned clean vehicle.

(i) *Two credit transfer elections per year*. A taxpayer may make no more than two credit transfer elections per taxable year, consisting of either two elections to transfer section 30D credits, or one section 30D credit and one election to transfer a section 25E credit. In the case of taxpayers who file a joint return, each individual taxpayer may make no more than two credit transfer elections per taxable year.

(j) *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 will continue in effect.

(k) *Applicability date*. This section applies to previously-owned vehicles placed in service after December 31, 2023, in taxable years ending after December 31, 2023.

Par 3. Sections 1.30D-0 through 1.30D-6 are added to read as follows:

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(54) Value.
(55) Value added.
(56) Vehicle classification.
(i) In general.
(ii) Van.
(iii) Sport utility vehicle.
(iv) Pickup truck.
(v) Other vehicle.
(c) Severability.
(d) Applicability date.

**§1.30D-3 Critical minerals and battery components requirements.**

(a) Critical minerals requirement.
(1) In general.
(2) Applicable critical minerals percentage.
(i) In general.
(ii) Vehicles placed in service between April 18, 2023, and December 31, 2023.
(iii) Vehicles placed in service during calendar year 2024.
(iv) Vehicles placed in service during calendar year 2025.
(v) Vehicles placed in service during calendar year 2026.
(vi) Vehicles placed in service during calendar year 2027 and later.
(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.
(4) Temporary safe harbor for determining qualifying critical mineral content for vehicles for which a qualified manufacturer submits a periodic written report on or after May 6, 2024 and before January 1, 2027.
(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.
(v) Consistent determination required for all procurement chains.
(5) Rule for determining qualifying critical mineral content for vehicles for which a qualified manufacturer submitted a periodic written report before May 6, 2024.
(b) Battery components requirement.
(1) In general.
(2) Applicable battery components percentage.
(i) In general.
(ii) Vehicles placed in service between April 18, 2023, and December 31, 2023.
(iii) Vehicles placed in service during calendar year 2024 or 2025.
(iv) Vehicles placed in service during calendar year 2026.
(v) Vehicles placed in service during calendar year 2027.
(vi) Vehicles placed in service during calendar year 2028.
(vii) Vehicles placed in service in calendar year 2029 and later.
(3) Determining qualifying battery component content.
(i) In general.
(ii) Time for determining value.
(iii) Application of qualifying battery component content to vehicles.
(iv) End point for determination.
(c) Definitions.
(1) Certain terms relevant to the critical minerals requirement.
(i) Procurement chain.
(ii) Qualifying critical mineral.
(A) In general.
(B) Extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect.
(C) Recycled in North America.
(iii) Qualifying critical mineral content.
(iv) Total traced qualifying value.
(v) Total value of critical minerals.
(vi) Total value of qualifying critical minerals.
(vii) Traced qualifying value.

(A) Extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect.
(B) Recycled in North America.
(viii) Value added.
(2) Certain terms relevant to the battery components requirement.
(i) Incremental value.
(ii) North American battery component.
(iii) Qualifying battery component content.
(iv) Total incremental value of battery components.
(v) Total incremental value of North American battery components.
(d) Upfront review of critical minerals and battery components requirements.
(e) New qualified fuel cell motor vehicles.
(f) Examples.
(1) Example 1: Critical minerals requirement.
(i) Facts.
(ii) Analysis.
(2) Example 2: Critical minerals requirement temporary safe harbor.
(i) Facts.
(ii) Analysis.
(3) Example 3: Battery components requirement.
(i) Facts.
(ii) Analysis.
(g) Severability.
(h) Applicability date.
(1) In general.
(2) Upfront review and traced qualifying value.

**§1.30D-4 Special rules.**

(a) No double benefit.
(1) In general.
(2) Interaction between section 30D and section 25E credits.
(3) Interaction between section 30D and section 45W credits.
(b) Limitation based on modified adjusted gross income.
(1) In general.
(2) Threshold amount.
(3) Special rule for change in filing status.
(4) Application to estates and trusts.
(i) Estates and non-grantor trusts.
(ii) Grantor trusts.
(5) Application to passthrough entities.
(6) Other taxpayers.
(c) Credit may generally be claimed on only one tax return.
(1) In general.
(2) Exception for passthrough entities.
(3) Seller reporting.
(i) In general.
(ii) Passthrough entities.
(4) Example.
(d) Grantor trusts.
(e) Recapture rules.
(1) In general.
(i) Cancelled sale.
(ii) Vehicle return.
(iii) Resale.
(iv) Other vehicle returns and resales.
(2) Recapture rules in the case of a credit transfer election.
(3) Example: Demonstrator vehicle.
(f) Seller registration.
(g) Requirement to file return.
(h) Taxpayer reliance on manufacturer certifications and periodic written reports to the IRS.
(i) Severability.
(j) Applicability date.

**§1.30D-5 Transfer of credit.**

(a) In general.
(b) Definitions.
(1) Advance payment program.
(2) Credit transfer election.
(3) Dealer.
(4) Dealer tax compliance.
(5) Electing taxpayer.
(6) Eligible entity.
(7) Incentive.
(8) Registered dealer.
(9) Sale price.
(10) Time of sale.
(c) Dealer registration.
(1) In general.
(2) Dealer tax compliance required.
(3) Suspension of registration.
(4) Revocation of registration.
(d) Credit transfer election by electing taxpayer.
(e) Federal income tax consequences of the credit transfer election.
(1) Tax consequences for electing taxpayer.
(2) Tax consequences for eligible entity.
(3) Form of payment from eligible entity to electing taxpayer.
(4) Additional requirements.
(5) Examples.
(i) Example 1: Electing taxpayer's regular tax liability less than amount of credit.
(A) Facts.
(B) Analysis.
(ii) Example 2: Non-cash payment by eligible entity to electing taxpayer.
(A) Facts.
(B) Analysis.
(iii) Example 3: Eligible entity is a partnership.
(A) Facts.
(B) Analysis.
(f) Advance payments received by eligible entities.
(1) In general.
(2) Requirements for a registered dealer to become an eligible entity.
(3) Suspension of registered dealer eligibility.
(4) Revocation of registered dealer eligibility.
(g) Increase in tax.
(1) Recapture if electing taxpayer exceeds modified adjusted gross income limitation.
(2) Excessive payments.
(i) In general.
(ii) Reasonable cause.
(iii) Excessive payment defined.
(iv) Special rule for cases in which the electing taxpayer's modified adjusted gross income exceeds the limitation.
(3) Examples.
(i) Example 1: Registered dealer is not an eligible entity.
(A) Facts.
(B) Analysis.
(ii) Example 2: Incorrect manufacturer certifications.
(A) Facts.
(B) Analysis.
(h) Return requirement.
(i) Two credit transfer elections per year.
(j) Severability.
(k) Applicability date.

**§1.30D-6 Foreign entity of concern restriction.**

(a) In general.
(b) Due diligence required.
(1) In general.
(2) Transition rule for impracticable-to-trace battery materials.
(c) FEOC compliance.
(1) In general.

(i) Step 1.
(ii) Step 2.
(iii) Step 3.
(2) FEOC-compliant batteries.
(3) FEOC-compliant battery cells.
(i) In general.
(ii) Allocation-based determination for applicable critical minerals and associated constituent materials of a battery cell.
(A) In general.
(B) Allocation limited to applicable critical minerals in the battery cell.
(C) Separate allocation required for each type of associated constituent material.
(*1*) In general.
(*2*) Example.
(D) Allocation within each product line of battery cells.
(E) Limitation on number of FEOC-compliant battery cells.
(iii) Transition rule for impracticable-to-trace battery materials.
(4) FEOC-compliant battery components and applicable critical minerals.
(i) In general.
(ii) Timing of determination of FEOC or FEOC-compliant status.
(iii) Example: Timing of FEOC compliance determination.
(5) Third-party manufacturers or suppliers.
(i) Due diligence required.
(ii) Provision of required information to qualified manufacturer.
(iii) Contractual obligations.
(iv) Additional requirements in case of multiple third-party manufacturers or suppliers.
(d) Compliant-battery ledger.
(1) In general.
(2) Determination of number of batteries.
(i) In general.
(ii) Upfront review.
(iii) Decrease or increase to compliant-battery ledger.
(3) Tracking FEOC-compliant batteries.
(4) Reconciliation of battery estimates.
(e) Rule for 2024.
(1) In general.
(2) Determination.
(f) Inaccurate attestations, certifications, or documentation.
(1) In general.
(2) Inadvertence.
(i) Inaccurate information may be cured by qualified manufacturer.
(ii) Consequences if errors not cured.
(3) Intentional disregard or fraud.
(i) All vehicles ineligible for credit.
(ii) Termination of written agreement.
(g) Rules inapplicable to new qualified fuel cell motor vehicles.
(h) Examples.
(1) Example 1: In general.
(i) Facts.
(ii) Analysis.
(2) Example 2: Rules for third-party suppliers.
(i) Facts.
(ii) Analysis.
(3) Example 3: Applicable critical minerals.
(i) Facts.
(ii) Analysis.
(4) Example 4: Comprehensive example.
(i) Facts.
(ii) Analysis.
(i) Severability.
(j) 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. This section provides generally applicable rules that apply for purposes of determining the credit under section 30D and the section 30D regulations (section 30D credit). 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 minerals and battery components requirements of section 30D(e). Section 1.30D-4 provides guidance regarding the limitations and special rules in section 30D(f) as well as other special rules with respect to the section 30D credit. Section 1.30D-5 provides rules for the credit transfer election and advance payment program and for recapture. Section 1.30D-6 provides rules regarding the foreign entities of concern (FEOC) restriction of section 30D(d)(7).

(b) *Application with other credits*—(1) *Business credit treated as part of general business credit*. 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(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 paragraph (b)(2)(ii) or (b)(3) of this section.

(2) *Apportionment of section 30D credit.* Unless the taxpayer has elected to transfer the credit pursuant to section 30D(g) and §1.30D-5(d), 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) of the Code 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 taxable years ending after December 4, 2023.

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

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

(b) *Definitions*—(1) *Advance payment program*. *Advance payment program* means advance payment program as defined in §1.30D-5(b)(1).

(2) *Applicable critical mineral*—(i) *In general*. *Applicable critical mineral* means an applicable critical mineral as defined in section 45X(c)(6) of the Code. The requirements of §§1.30D-3(a) and 1.30D-6 with respect to an applicable critical mineral take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step of production. However, an applicable critical mineral is disregarded for purposes of the requirements of §§1.30D-3(a) and 1.30D-6 if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery.

(ii) *Example: Form of applicable critical mineral*. Mineral Y is extracted and is intended to be incorporated into the battery of an electric vehicle. Mineral Y is not in a form listed in section 45X(c)(6) at the time of such extraction, but subsequently it is refined into an applicable critical mineral form listed in section 45X(c)(6). Both the extraction and processing are taken into account for purposes of the requirements of §§1.30D-3(a) and 1.30D-6.

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

(4) *Associated constituent material*. Associated constituent material, with respect to an applicable critical mineral, means a constituent material that has been processed or recycled from such mineral into the constituent material with which it is associated, even if that processing or recycling transformed such mineral into a form not listed in section 45X(c)(6).

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

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

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

(8) *Battery component*. Battery component means a component that forms part of a clean vehicle battery and that is manufactured or assembled from one or more components or battery 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, coated separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module.

(9) *Battery materials*. Battery materials means direct and indirect inputs to battery components that are produced through processing rather than through manufacturing or assembly. Battery materials are not considered a type of battery component, although battery materials may be manufactured or assembled into battery components. The three categories of battery materials are applicable critical minerals, constituent materials, and battery materials without applicable critical minerals. Examples of battery materials that may or may not contain applicable critical minerals include a separator base film (if not manufactured or assembled) and separator coating. Examples of battery materials without applicable critical minerals include conductive additives, copper foils prior to graphite deposition, and electrolyte solvents.

(10) *Clean vehicle battery*. Clean vehicle battery, with respect to a new clean vehicle, means the battery from which the electric motor of the vehicle draws electricity to propel such vehicle.

(11) *Compliant-battery ledger*. *A compliant-battery ledger*, for a qualified manufacturer for a calendar year, is a ledger established under the rules of §1.30D-6(d) that tracks the number of available FEOC-compliant batteries for such calendar year.

(12) *Constituent materials*. Constituent materials means battery materials that contain applicable critical minerals. 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. Battery materials without applicable critical minerals are not constituent materials.

(13) *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 (b)(13)(ii) of this section or that the Secretary of the Treasury or her delegate (Secretary) may identify in the future. The criteria the Secretary will consider in determining whether to identify a country under this paragraph (b)(13) include whether an agreement between the United States and that country, as to the critical minerals contained in clean 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 free trade agreements 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 (b)(13)(ii) of this section may be revised and updated through guidance published in the *Federal Register* or in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

(14) *Credit transfer election*. Credit transfer election means credit transfer election as defined in §1.30D-5(b)(2).

(15) *Dealer*. Dealer means dealer as defined in §1.30D-5(b)(3).

(16) *Dealer tax compliance*. Dealer tax compliance means dealer tax compliance as defined in §1.30D-5(b)(4).

(17) *Depreciable vehicle*. Depreciable vehicle means a vehicle of a character subject to an allowance for depreciation.

(18) *Electing taxpayer*. Electing taxpayer means electing taxpayer as defined in §1.30D-5(b)(5).

(19) *Eligible entity*. Eligible entity means eligible entity as defined in §1.30D-5(b)(6).

(20) *Excessive payment.* Excessive payment means excessive payment as defined in §1.30D-5(g)(2)(iii).

(21) *Extraction*. Extraction means the activities performed to harvest minerals or natural resources from the ground or from a body of water. Extraction includes, but is not limited to, operating equipment to harvest minerals or natural resources from mines and wells and the physical processes involved in refining. Extraction also includes operating equipment to extract minerals or natural resources from the waste or residue of prior extraction, including crude oil extraction to the extent that processes applied to that crude oil yield an applicable critical mineral as a byproduct. 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 does not include activities that begin with a recyclable commodity (as such activities are recycling). Extraction does not include the chemical and thermal processes involved in refining.

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

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

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

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

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

(v) A clean vehicle battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells (as described in paragraph (b)(22)(iii) or (iv) of this section, as applicable).

(23) *Final assembly*. 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:

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

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

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

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

(ii) *Identified impracticable-to-trace battery materials*. Identified impracticable-to-trace battery materials means applicable critical minerals in the following circumstances: graphite contained in anode materials, and applicable critical minerals contained in electrolyte salts, electrode binders, or electrolyte additives.

(26) *Incentive*. Incentive means incentive as defined in §1.30D-5(b)(7).

(27) *Incremental value*. *Incremental value* means incremental value as defined in §1.30D-3(c)(2)(i).

(28) *Manufacturer*—(i) *In general*. *A manufacturer* means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.) and as defined in 42 U.S.C. 7550(1). Except as provided in paragraph (b)(28)(ii) of this section, if multiple manufacturers are involved in the production of a vehicle, the requirements of section 30D(d)(3) must be met by the manufacturer that satisfies the reporting requirements of the greenhouse gas emissions standards set by the EPA under the Clean Air Act (42 U.S.C. 7521 et seq.) for the subject vehicle.

(ii) *Modification of a new motor vehicle*—(A) If a manufacturer modifies a new motor vehicle (as defined in 42 U.S.C. 7550(3)) that does not satisfy the requirements of section 30D(d)(1)(F) or (d)(6) so that the new motor vehicle, after modification, does satisfy such requirements, then such manufacturer may satisfy the requirements of section 30D(d)(3) if the modification occurred prior to the new motor vehicle being placed in service.

(B) If a manufacturer modifies a new motor vehicle (as defined in 42 U.S.C. 7550(3)) that does not satisfy the requirements of 45W(c)(3) so that the new motor vehicle, after modification, does satisfy such requirements, then such manufacturer may satisfy the requirements of 30D(d)(3) if the modification occurred prior to the new motor vehicle being placed in service.

(29) *Manufacturer's suggested retail price*—(i) *In general*. Manufacturer's suggested retail price means the sum of the retail price and the retail delivered price (as defined in paragraphs (b)(29)(ii) and (iii) 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.

(ii) *Retail price*. Retail price, for purposes of paragraph (b)(29)(i) of this section, means the retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1).

(iii) *Retail delivered price*. Retail delivered price, for purposes of paragraph (b)(29)(i) of this section, means 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 that 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).

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

(31) *Modified adjusted gross income*—(i) *Individuals*. Modified adjusted gross income, in the case of an individual, 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.

(ii) *Estates and trusts*. Modified adjusted gross income, in the case of an estate or non-grantor trust, means adjusted gross income (as defined in section 67(e) of the Code).

(32) *New clean vehicle.* New clean vehicle means a vehicle that meets the requirements described in section 30D(d). Vehicles that may qualify as new clean vehicles include battery electric vehicles, plug-in hybrid electric vehicles, fuel cell motor vehicles, and plug-in hybrid fuel cell motor vehicles. A vehicle does not meet the requirements of section 30D(d) if—

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

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

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

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

(33) *New qualified fuel cell motor vehicle*. New qualified fuel cell motor vehicle means any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) that meets the requirements under section 30D(d)(1)(G) (that is, the final assembly in North America requirement) and (H) (that is, the seller report requirement), and that does not have a clean vehicle battery.

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

(35) *North American battery component*. North American battery component means North American battery component as defined in §1.30D-3(c)(2)(ii).

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

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

(38) *Procurement chain.* Procurement chain means procurement chain as defined in §1.30D-3(c)(1)(i).

(39) *Qualifying battery component content*. Qualifying battery component content means qualifying battery component content as defined in §1.30D-3(c)(2)(iii).

(40) *Qualifying critical mineral. Qualifying critical mineral* means qualifying critical mineral as defined in §1.30D-3(c)(1)(ii).

(41) *Qualifying critical mineral content*. Qualifying critical mineral content means qualifying critical mineral content as defined in §1.30D-3(c)(1)(iii).

(42) *Qualified manufacturer*. A qualified manufacturer means a manufacturer that meets the requirements described in section 30D(d)(3) at the time the manu-

facturer submits a periodic written report to the IRS under a written agreement described in section 30D(d)(3). The term qualified manufacturer does not include any manufacturer whose qualified manufacturer status has been terminated by the IRS. The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D, the section 30D regulations, or any guidance under section 30D, including with respect to the periodic written reports described in section 30D(d)(3) and paragraph (b)(32) of this section and any attestations, documentation, or certifications described in §§1.30D-3(d) and 1.30D-6(d), at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter). *See* §1.30D-6(f) for additional rules regarding inaccurate determinations and documentation. The IRS may also terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirement of section 25E or section 45W or any regulations thereunder.

(43) *Recycling*—(i) *In general*. 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 clean vehicle battery. All physical, chemical, and thermal treatments or modifications that convert recycled feedstocks to specification grade constituent materials are included in recycling. However, recycled applicable critical minerals and associated constituent materials are only subject to the requirements under §§1.30D-3(a) and 1.30D-6 if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The requirements under §§1.30D-3(a) and 1.30D-6 only take into account activities that occurred during the recycling process.

(ii) *Example: Recycling of applicable critical mineral*. Mineral Z, an applicable critical mineral in a form listed in section 45X(c)(6), was processed by A in a prior production process. Mineral Z subsequently was derived from recyclable material in a form not listed in section 45X(c)(6). Mineral Z was recycled by B. The requirements under §§1.30D-3 and 1.30D-6 only take into account the activities conducted by B.

(44) *Registered dealer*. Registered dealer means registered dealer as defined in §1.30D-5(b)(8).

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

(46) *Seller report*. Seller report means the report described in section 30D(d)(1)(H) that the seller of a new clean vehicle provides to the taxpayer and the IRS in the manner provided in, and containing the information described in, guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The seller report must be transmitted to the IRS electronically. The term seller report does not include a report rejected by the IRS due to the information contained therein not matching IRS records.

(47) *Time of sale*. Time of sale means time of sale as defined in §1.30D-5(b)(9).

(48) *Total incremental value of battery components*. Total incremental value of battery components means total incremental value of battery components as defined in §1.30D-3(c)(2)(iv).

(49) *Total incremental value of North American battery components.* Total incremental value of North American battery components means total incremental value of North American battery components as defined in §1.30D-3(c)(2)(v).

(50) *Total traced qualifying value*. Total traced qualifying value means total traced qualifying value as defined in §1.30D-3(c)(1)(iv).

(51) *Total value of critical minerals*. Total value of critical minerals means total value of critical minerals as defined in §1.30D-3(c)(1)(v).

(52) *Total value of qualifying critical minerals*. Total value of qualifying critical minerals means total value of qualifying critical minerals as defined in §1.30D-3(c)(1)(vi).

(53) *Traced qualifying value*. Traced qualifying value means traced qualifying value as defined in §1.30D-3(c)(1)(vii).

(54) *Value*. 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.

(55) *Value added*. Value added means value added as defined in §1.30D-3(c)(1)(viii).

(56) *Vehicle classification*—(i) *In general*. Vehicle classification means the vehicle classification of a new clean vehicle determined consistent with the rules and definitions provided in 40 CFR 600.315-08 and this paragraph (b)(56) for vans, sport utility vehicles, pickup trucks, and other vehicles.

(ii) *Van*. 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).

(iii) *Sport utility vehicle*. 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).

(iv) *Pickup truck*. 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).

(v) *Other vehicle*. 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).

(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 taxable years ending after December 4, 2023.

**§1.30D-3 Critical minerals and battery components 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 a clean vehicle battery, 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*—(i) *In general.* For purposes of paragraph (a)(1) of this section, the *applicable critical minerals percentage*, which is based on the year in which a vehicle is placed in service by the taxpayer, is set forth in paragraphs (a)(2)(ii) through (vi) of this section. *See* section 30D(e)(1)(B).

(ii) *Vehicles placed in service between April 18, 2023, and December 31, 2023.* 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.

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

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

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

(vi) *Vehicles placed in service during calendar year 2027 and later.* 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 clean vehicle battery is calculated as the percentage that results from dividing:

(A) The total traced qualifying value, by

(B) The total value of critical minerals.

(ii) *Separate determinations required for each procurement chain*. The traced qualifying value of an applicable critical mineral, including the percentage or percentages necessary to determine the traced qualifying value, 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 clean vehicle battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for clean vehicle batteries in a group of vehicles, a qualified manufacturer may average the qualifying critical mineral content under this paragraph (a)(3)(iv) over a period of time (for example, a year, a calendar quarter, or a month) with respect to vehicles from the same model line, plant, class, or some combination thereof, with final assembly (as defined in section 30D(d)(5) of the Code and §1.30D-2(b)(23)) within North America.

(4) *Temporary safe harbor for determining qualifying critical mineral content for vehicles for which a qualified manufacturer submits a periodic written report on or after May 6, 2024 and before January 1, 2027*—(i) *In general*. For vehicles for which a qualified manufacturer submits a periodic written report on or after May 6, 2024 and before January 1, 2027, qualifying critical mineral content with respect to a clean vehicle battery may be 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)(4)(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 clean vehicle battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for clean vehicle 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)(23)) within North America.

(v) *Consistent determination required for all procurement chains.* A qualified manufacturer that makes a determination under this paragraph (a)(4) must use the rules of this paragraph for all procurement chains of the clean vehicle battery. If a qualified manufacturer averages qualifying critical mineral content as described in paragraph (a)(4)(iv) of this section, the qualified manufacturer must use the rules of such paragraph for all procurement chains for all clean vehicle batteries in the group of vehicles. Therefore, the qualified manufacturer may not use the rules of paragraph (a)(3) for some procurement chains and the rules of paragraph (a)(4) for other procurement chains for the same clean vehicle battery or clean vehicle batteries in the group of vehicles, as applicable.

(5) *Rule for determining qualifying critical mineral content for vehicles for which a qualified manufacturer submitted a periodic written report before May 6, 2024*. For vehicles for which a qualified manufacturer submitted a periodic written report before May 6, 2024, qualifying critical mineral content with respect to a clean vehicle battery must be calculated using the method described in paragraph (a)(4) of this section.

(b) *Battery components requirement*—(1) *In general*. The battery components requirement described in section 30D(e)(2)(A), with respect to a clean vehicle battery, 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*—(i) *In general*. 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)(ii) through (vii) of this section.

(ii) *Vehicles placed in service between April 18, 2023, and December 31, 2023.* 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.

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

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

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

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

(vii) *Vehicles placed in service in calendar year 2029 and later.* 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 clean vehicle battery of the vehicle 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).

(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 clean vehicle battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for clean vehicle 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)(23)) within North America.

(iv) *End point for determination.* For a clean vehicle battery that contains a battery module or modules containing battery cells, the calculation under this paragraph (b) takes into account the value of the module and battery components contained in the module. In the case of a clean vehicle battery that contains battery cells but no battery modules, the calculation under this paragraph (b) takes into account the value of the battery cells and battery components contained in the battery cells.

(c) *Definitions*—(1) *Certain terms relevant to the critical minerals requirement.* The following definitions apply for purposes of the rules of section 30D(e)(1) and paragraph (a) of this section:

(i) *Procurement chain.* 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.

(ii) *Qualifying critical mineral*—(A) *In general*. 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 that is recycled in North America.

(B) *Extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect.* 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:

(*1*) Fifty 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*) Fifty 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.

(C) *Recycled in North America.* 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.

(iii) *Qualifying critical mineral content*. Qualifying critical mineral content means the percentage of the value of the applicable critical minerals contained in a clean vehicle battery 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 that is recycled in North America.

(iv) *Total traced qualifying value*. Total traced qualifying value means the sum of the traced qualifying values of all applicable critical minerals contained in a clean vehicle battery.

(v) *Total value of critical minerals*. Total value of critical minerals means the sum of the values of all applicable critical minerals contained in a clean vehicle battery.

(vi) *Total value of qualifying critical minerals*. Total value of qualifying critical minerals means the sum of the values of all the qualifying critical minerals contained in a clean vehicle battery.

(vii) *Traced qualifying value*—(A) *Extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect.* Traced qualifying value means, with respect to an applicable critical mineral that is extracted and processed into a constituent material, the value of the applicable critical mineral multiplied by the greater of:

(*1*) The value added to the applicable critical mineral by extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect, divided by the total value added by from extraction of the applicable critical mineral; or

(*2*) The value added to the applicable critical mineral by processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect, divided by the total value added by processing of the applicable critical mineral.

(B) *Recycled in North America.* Traced qualifying value means, with respect to an applicable critical mineral that is recycled into a constituent material, the value of the applicable critical mineral multiplied by the percentage obtained by dividing the value added to the applicable critical mineral by recycling that occurred in North America by the total value added by recycling of the applicable critical mineral.

(viii) *Value added*. 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. In the case of multiple applicable critical mineral procurement chains that are part of the same processing or recycling activity, value added should be allocated to each procurement chain based on relative mass.

(2) *Certain terms relevant to the battery components requirement.* The following definitions apply for purposes of the rules of section 30D(e)(2) and paragraph (b) of this section:

(i) *Incremental value*. 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.

(ii) *North American battery component*. 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.

(iii) *Qualifying battery component content*. Qualifying battery component content means the percentage of the value of the battery components contained in a clean vehicle battery that were manufactured or assembled in North America.

(iv) *Total incremental value of battery components*. Total incremental value of battery components means the sum of the incremental values of each battery component contained in a clean vehicle battery.

(v) *Total incremental value of North American battery components*. Total incremental value of North American battery components means the sum of the incremental values of each North American battery component contained in a clean vehicle battery.

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

(e) *New qualified fuel cell motor vehicles.* The requirements of section 30D(e) and this section are deemed to be satisfied with respect to new qualified fuel cell motor vehicles. The amount of the credit with respect to such vehicles, under section 30D(b), is $7,500.

(f) *Examples*. The following examples illustrate the rules of this section.

(1) *Example 1: Critical minerals requirement*—(i) *Facts*. In 2028, Company A uses a clean vehicle battery that contains three applicable critical minerals, which are used for the clean vehicle batteries of the same group of vehicles for the purposes of averaging qualifying critical mineral content under paragraph (a)(3)(iv) of this section.

(A) Applicable critical mineral 1 (ACM-1) has a value of $100. ACM-1 has one procurement chain; in this procurement chain, extraction accounts for 20% ($20) of the total value added of ACM-1 and processing accounts for 80% ($80) of the total value added of ACM-1. Of the value added by extraction, 100% ($20) is in the United States or in a country with which the United States has a free trade agreement in effect. Of the value added by processing, 100% ($80) is in the United States or in a country with which the United States has a free trade agreement in effect.

(B) Applicable critical mineral 2 (ACM-2) has a value of $200. ACM-2 has two procurement chains. The value of ACM-2 is $100 per procurement chain. In the first procurement chain for ACM-2, extraction accounts for 50% ($50) of the value added, while processing accounts for 50% ($50). Of the value added by extraction, 50% ($25) is in United States or in a country with which the United States has a free trade agreement in effect. Of the value added by processing, 25% ($12.50) is in the United States or in a country with which the United States has a free trade agreement in effect. In the second procurement chain for ACM-2, extraction accounts for 50% ($50) of the value added, and processing accounts for 50% ($50) of the value added. Of the value added by extraction, 75% ($37.50) is in the United States or in a country with which the United States has a free trade agreement in effect. Of the value added by processing, 100% ($50) is in the United States or in a country with which the United States has a free trade agreement in effect.

(C) Applicable critical mineral 3 (ACM-3) has a value of $100. ACM-3 has one procurement chain. Extraction accounts for 10% ($10) of the value added and processing accounts for 90% ($90) of the value added. Of the value added by extraction, 50% ($5) is in the United States or in a country with which the United States has a free trade agreement in effect. Of the value added by processing, 75% ($67.50) is in the United States or in a country with which the United States has a free trade agreement in effect.

(ii) *Analysis*—(A) First, Company A determines each procurement chain. ACM-1 has one procurement chain. ACM-2 has two procurement chains. ACM-3 has one procurement chain.

(B) Second, Company A determines, for each procurement chain, the traced qualifying value, and then determines the total traced qualifying value.

(*1*) With respect to ACM-1, Company A divides the value added by extraction that is in the United States or in any country with which the United States has a free trade agreement in effect by the total value added from extraction of the applicable critical mineral: $20/$20, which equals 100%. Company A divides the value added by processing that is in the United States or in any country with which the United States has a free trade agreement in effect by the total value added from processing of the applicable critical mineral: $80/$80, which equals 100%. Because the percentages for extraction and processing are equal, that percentage (100%) is used to determine traced qualifying value. Therefore, Company A multiplies 100% by the total value of the applicable critical mineral ($100) to obtain $100 as the traced qualifying value for the procurement chain of ACM-1.

(*2*) With respect to the first procurement chain of ACM-2, Company A divides the value added by extraction that is in the United States or a country with which the United States has a free trade agreement in effect by the total value added from extraction of the applicable critical mineral: $25/$50, which equals 50%. Company A divides the value added by processing that is in the United States or a country with which the United States has a free trade agreement in effect by the total value added from processing of the applicable critical mineral: $12.50/$50, which equals 25%. Of these percentages, the one for extraction is greater (50%). Therefore, Company A multiplies 50% by the total value of the applicable critical minerals ($100) to obtain $50 as the traced qualifying value for the first procurement chain of ACM-2.

(*3*) With respect to the second procurement chain of ACM-2, Company A divides the value added by extraction that is in the United States or a country with which the United States has a free trade agreement in effect by the total value added from extraction of the applicable critical mineral: $37.50/$50, which equals 75%. Company A divides the value added by processing that is in the United States or a country with which the United States has a free trade agreement in effect by the total value added from processing of the applicable critical mineral: $50/$50, which equals 100%. Of these percentages, the one for processing is greater (100%). Therefore, Company A multiplies 100% by the total value of the applicable critical mineral ($100) to obtain $100 as the traced qualifying value for the second procurement chain of ACM-2.

(*4*) With respect to ACM-3, Company A divides the value added by extraction that is in the United States or a country with which the United States has a free trade agreement in effect by the total value added from extraction of the applicable critical mineral: $5/$10, which equals 50%. Company A divides the value added by processing that is in the United States or a country with which the United States has a free trade agreement in effect by the total value added from processing of the applicable critical mineral: $67.50/$90, which equals 75%. Of these percentages, the one for processing is greater (75%). Company A therefore multiplies 75% by the total value of the applicable critical mineral ($100) to obtain $75 as the traced qualifying value for the procurement chain of ACM-3.

(*5*) The total traced qualifying value is the sum of the traced qualifying values of all applicable critical minerals contained in the clean vehicle battery of the vehicle, or $325 ($100 + $50 + $100 + $75).

(C) Third, Company A determines the qualifying critical mineral content by taking the total traced qualifying value ($325, determined in step 2) divided by the total value of the critical minerals in the battery ($400). The qualifying critical mineral content is therefore 81.25%. Company A uses this percentage to calculate the average qualifying critical mineral content for the clean vehicle batteries of a group of vehicles and compares that average percentage to the applicable critical minerals percentage of section 30D(e)(2) and §1.30D-3(a)(2).

(2) *Example 2: Critical minerals requirement temporary safe harbor*—(i) *Facts*. The facts are the same as in paragraph (f)(1)(i) of this section (facts of *Example 1*). However, Company A is eligible to apply the temporary safe harbor of §1.30D-3(a)(4) to determine its qualifying critical mineral content and chooses to do so. The applicable critical minerals are used for the clean vehicle batteries of the same group of vehicles for the purposes of averaging qualifying critical mineral content under paragraph (a)(4)(iv) of this section.

(ii) *Analysis*—(A) First, Company A determines each procurement chain, as in paragraph (f)(1) of this section (*Example 1*).

(B) Second, Company A determines whether ACM-1, ACM-2, and ACM-3 are qualifying critical minerals. ACM-1 is a qualifying critical mineral because, for both extraction and processing, 100% of the value added is derived from extraction and processing that occurs in the United States or in a country with which the United States has a free trade agreement in effect. With respect to its first procurement chain, ACM-2 is a qualifying critical mineral because 50% of the value added from extraction is derived from extraction that occurs in the United States or a country with which the United States has a free trade agreement in effect. With respect to its second procurement chain, ACM-2 is a qualifying critical mineral because 75% of the value added from extraction, and 100% of the value added from processing are derived from extraction and processing, respectively, that occur in the United States or in a country with which the United States has a free trade agreement in effect. ACM-3 is a qualifying critical mineral because 50% of the value added for extraction, and 75% of the value added for processing, are derived from extraction and processing, respectively, that occur in the United States or in a country with which the United States has a free trade agreement in effect. The total value of the qualifying critical minerals is the sum of the value of all of the qualifying critical minerals contained in the clean vehicle battery of the vehicle, or $400 ($100 + $100 + $100 + $100).

(C) Third, Company A determines qualifying critical mineral content by taking the total value of qualifying critical minerals ($400, determined in step 2) and dividing by the total value of critical minerals in the battery ($400). The qualifying critical mineral content of the battery is 100%. Company A uses this percentage to calculate average qualifying critical mineral content for the clean vehicle batteries of a group of vehicles and compares that average percentage to the applicable critical minerals percentage of section 30D(e)(2) and §1.30D-3(a)(2).

(3) *Example 3: Battery components requirement*—(i) *Facts*. Company B uses a battery cell comprised of a cathode electrode, anode electrode, separator, and electrolyte. The cathode electrode has a value of $4,000 and is manufactured in North America. The anode electrode has a value of $1,000 and is manufactured outside of North America. The separator has a value of $1,000 and is manufactured in North America. The electrolyte has a value of $800 and is manufactured in North America. The battery cell has a value of $7,500 and is manufactured in North America. The battery components are used for the clean vehicle batteries of the same group of vehicles for the purposes of averaging qualifying critical mineral content under paragraph (b)(3)(iii) of this section.

(ii) *Analysis*—(A) First, Company B determines whether each battery component in a battery is a North American battery component. The cathode electrode, separator, and battery cell are North American battery components.

(B) Second, Company B determines the total incremental value of North American battery components. The incremental value of the battery cell ($700) is determined by subtracting from the value of the battery cell ($7,500) the total value of its battery components ($6,800). The incremental value of the cathode electrode is $4,000. The incremental value of the separator is $1,000. The incremental value of the electrolyte is $800. The total incremental value of North American battery components is $6,500 ($700 + $4,000 + $1,000 + $800).

(C) Third, Company B determines the total incremental value of battery components. The anode electrode is not a North American battery component because it is manufactured outside of North America. The incremental value of the anode electrode is $1,000. The total incremental value of battery components is $6,500 plus $1,000 or $7,500.

(D) Fourth, Company B determines the qualifying battery component content by taking the total incremental value of North American battery components ($6,500, determined in Step 2) divided by the total incremental value of battery components ($7,500, determined in Step 3). The qualifying battery component content is therefore 86.7%. Company B uses this percentage to calculate the average battery component content for the clean vehicle batteries of a group of vehicles and compares that average percentage to the applicable battery components percentage of section 30D(e)(2) and §1.30D-3(b)(2).

(g) *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.

(h) *Applicability date*—(1) *In general*. Except as provided in paragraph (h)(2) of this section, this section applies to new clean vehicles placed in service after April 17, 2023, in taxable years ending after April 17, 2023.

(2) *Upfront review and traced qualifying value*. Paragraphs (a)(3) and (4) (relating to traced qualifying value test) and (d) (relating to upfront review of critical minerals and battery components requirements) of this section apply to taxable years ending after May 6, 2024.

**§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) *Interaction between section 30D and section 25E credits.* 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) *Interaction between section 30D and section 45W credits.* 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*. Under section 30D(f)(10)(A), 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 section 30D(f)(10)(A) and paragraph (b)(1) of this section, the threshold amount applies to taxpayers based on the return filing status for the taxable year, as set forth in paragraphs (b)(2)(i) through (iii) of this section. *See* section 30D(f)(10)(B).

(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)), 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) *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, then the taxpayer satisfies the limitation described in section 30D(f)(10) and paragraph (b)(1) of this section if the taxpayer's modified adjusted gross income does not exceed the threshold amount in either year based on the applicable filing status for that taxable year.

(4) *Application to estates and trusts*—(i) *Estates and non-grantor trusts.* In the case of a new clean vehicle placed in service by an estate or a non-grantor trust, the threshold amount of paragraph (b)(2)(iii) of this section applies for purposes of the modified adjusted gross income limitation of section 30D(f)(10) and this paragraph (b). For purposes of the modified adjusted gross income limitation, an estate or non-grantor trust is treated as having modified adjusted gross income above the threshold amount for any year in which the estate or non-grantor trust is not in existence.

(ii) *Grantor trusts*. In the case of a new clean vehicle placed in service by a grantor trust, the modified adjusted gross income limitation of section 30D(f)(10) and this paragraph (b) applies based on the modified adjusted gross income of the grantor or other deemed owner of the trust, and not the modified adjusted gross income of the trust or any beneficiary of the trust other than the grantor or other deemed owner.

(5) *Application to passthrough entities*. In the case of a new clean vehicle placed in service by a partnership or an S corporation, if the section 30D credit is claimed by individuals, non-grantor trusts, or estates who are direct or indirect partners of that partnership or shareholders of that S corporation, the modified gross income limitation of section 30D(f)(10) and this paragraph (b) applies at the partner or shareholder level in accordance with the rules of this paragraph (b).

(6) *Other taxpayers.* 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 by a taxpayer that is not an individual, estate, trust, or entity as provided in paragraph (b)(4) or (b)(5) of this section.

(c) *Credit may generally be claimed on only one tax return*—(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 Federal income tax return, including on a joint return in which one of the spouses is listed on the seller report. In the event a new clean vehicle is placed in service by multiple taxpayers who do not file a joint tax return (for example, in the case of married individuals filing separate returns), no allocation or proration of the section 30D credit is available.

(2) *Exception for passthrough entities*. In the case of a new clean vehicle placed in service by a partnership or an S corporation, the section 30D credit is allocated among the partners of the partnership under §1.704-1(b)(4)(ii), or among the shareholder(s) of the S corporation under sections 1366(a) and 1377(a) of the Code, and claimed on the Federal income tax returns of the individual partners or S corporation shareholder(s).

(3) *Seller reporting*—(i) *In general.* The name and taxpayer identification number of the taxpayer claiming the section 30D credit must be listed on the seller report pursuant to section 30D(d)(1)(H). The credit will be allowed only on the Federal income tax return of the taxpayer listed in the seller 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 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. The couple files separate Federal income tax returns by using the married filing separately filing status. Only one spouse may claim the section 30D credit with respect to the new clean vehicle on that spouse's respective 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.

(d) *Grantor trusts*. To the extent that the grantor or another person is treated as owning all or part of a trust under sections 671 through 679 of the Code, the section 30D credit is allocated to such grantor or other person in accordance with §1.671-3(a)(1).

(e) *Recapture rules*—(1) *In general*. This paragraph (e) provides rules under section 30D(f)(5) regarding the recapture of the section 30D credit.

(i) *Cancelled sale*. If the sale of a vehicle between the taxpayer and seller is cancelled before the taxpayer places the vehicle in service, then—

(A) The taxpayer may not claim the section 30D credit with respect to the vehicle;

(B) The sale will be treated as not having occurred and the vehicle will be considered available for original use by another taxpayer (regardless of the cancelled sale), and the vehicle will, therefore, still be eligible for the section 30D credit upon a subsequent sale that meets the requirements of section 30D and the section 30D regulations;

(C) The seller report must be rescinded by the seller in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter); and

(D) The taxpayer cannot make a credit transfer election under section 30D(g) and §1.30D-5(d) with respect to the cancelled sale.

(ii) *Vehicle return*. If a taxpayer returns to the seller a vehicle within 30 days of placing such vehicle in service, then—

(A) The taxpayer cannot claim the section 30D credit with respect to the vehicle;

(B) The vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit;

(C) The seller report must be updated by the seller in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter); and

(D) A credit transfer election under 30D(g) and §1.30D-5(d)**,** if applicable, will be treated as nullified and any advance payment made pursuant to section 30D(g) and §1.30D-5(f), if applicable, will be collected from the eligible entity as an excessive payment pursuant to §1.30D-5(g)(2).

(iii) *Resale*. If a taxpayer resells a vehicle within 30 days of placing the vehicle in service, then the taxpayer is treated as having purchased such vehicle with the intent to resell, and—

(A) The taxpayer cannot claim the section 30D credit with respect to the vehicle;

(B) The vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit;

(C) The seller report will not be updated;

(D) A credit transfer election under 30D(g) and §1.30D-5(d), if applicable, will remain in effect and any advance payment made pursuant to section 30D(g) and §1.30D-5(f) will not be collected from the eligible entity; and

(E) The value of any transferred credit will be collected from the taxpayer as an increase in tax imposed by chapter 1 of the Code for the taxable year in which the vehicle is placed in service.

(iv) *Other vehicle returns and resales*. In the case of a return of a new clean vehicle not described in paragraph (e)(1)(ii) of this section or a resale not described in paragraph (e)(1)(iii) of this section, the vehicle will no longer be considered available for original use by another taxpayer, and, therefore, will no longer be eligible for the section 30D credit upon a subsequent sale.

(2) *Recapture rules in the case of a credit transfer election*. For additional recapture rules that apply in the case of a credit transfer election, see §1.30D-5(g)(1). For excessive payment rules that apply in the case of an advance payment made to an eligible entity, see §1.30D-5(g)(2).

(3) *Example: Demonstrator vehicle.* A dealer purchases, registers, and titles a vehicle in its name and uses it as a demonstrator vehicle for customers. The dealer resells the vehicle more than 30 days after placing the vehicle in service. The dealer claimed the section 30D credit on its Federal tax return for the tax year the vehicle is placed in service. The credit recapture provision in §1.30D-4(e)(1)(iii) does not apply because the vehicle was resold more than 30 days after being placed in service.

(f) *Seller registration*. A seller must register with the IRS in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter) for purposes of filing seller reports (as defined in §1.30D-2(b)(46)).

(g) *Requirement to file return.* No section 30D credit is allowed unless the taxpayer claiming such credit files a Federal income tax return or information return, as appropriate, for the taxable year in which the new clean vehicle is placed in service. The taxpayer must attach to such return a completed Form 8936, *Clean Vehicle Credits*, or successor form that includes all information required by the form and instructions. The taxpayer must also attach a completed Schedule A (Form 8936), *Clean Vehicle Credit Amount*, or successor form or schedule that includes all information required by the schedule and instructions, such as the vehicle identification number of the previously-owned clean vehicle.

(h) *Taxpayer reliance on manufacturer certifications and periodic written reports to the IRS.* A taxpayer that acquires a new clean vehicle and places it in service may rely on the manufacturer's certification concerning the manufacturer's status as a qualified manufacturer. A taxpayer also may rely on the information and certifications contained in the qualified manufacturer's written reports to the IRS. The procedures for such periodic written reports are established in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). To the extent a taxpayer relies on certifications or attestations from the qualified manufacturer regarding certain section 30D requirements, the new clean vehicle the taxpayer acquires will be deemed to meet the requirements of section 30D(d)(1)(C) through (F), (d)(7), and (e). *See* §1.30D-5(g)(3)(ii) for an example that illustrates the interplay between the rule in this paragraph (h) and the excessive payment rule in §1.30D-3(g)(2).

(i) *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.

(j) *Applicability date*. This section applies to taxable years ending after December 4, 2023.

**§1.30D-5 Transfer of credit.**

(a) *In general.* This section provides rules related to the transfer and advance payment of the section 30D credit pursuant to section 30D(g) of the Internal Revenue Code (Code). Under the rules of section 30D(g) and this section, a taxpayer may elect to transfer a section 30D credit to an eligible entity, and the eligible entity may receive an advance payment for such credit, provided certain requirements are met. *See* paragraph (d) of this section for rules applicable to credit transfer elections. *See* paragraph (f) of this section for rules applicable to advance payments of transferred section 30D credits. Section 30D(g)(2) sets forth certain requirements that a dealer must satisfy to be an eligible entity for credit transfer and advance payment purposes. Section 30D(g)(2)(A) requires registration with the IRS. *See* paragraph (c) of this section for rules related to dealer registration. Section 30D(g)(2)(B) through (D) and paragraph (f)(2) of this section impose additional requirements that a registered dealer must satisfy in order to be an eligible entity for credit transfer and advance payment purposes.

(b) *Definitions*. This paragraph (b) provides definitions that apply for purposes of section 30D(g) and this section. *See* §1.30D-2(b) for definitions that are generally applicable to section 30D and the section 30D regulations.

(1) *Advance payment program*. Advance payment program means the program described in paragraph (f)(1) of this section.

(2) *Credit transfer election*. Credit transfer election has the meaning provided in section 30D(g) and paragraph (d) of this section.

(3) *Dealer*. Dealer has the meaning provided in section 30D(g)(8), except that, for purposes of this section, the term does not include persons licensed solely by a territory of the United States, and includes a dealer licensed by any jurisdiction (other than one licensed solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which it is licensed.

(4) *Dealer tax compliance*. Dealer tax compliance means the dealer has filed all required Federal information and tax returns, including for Federal income and employment tax purposes, and the dealer has paid all Federal tax, penalties, and interest due as of the time of sale. A dealer that has entered into an installment agreement with the IRS for which a dealer is current on its obligations (including filing obligations) is treated as in dealer tax compliance.

(5) *Electing taxpayer*. Electing taxpayer means an individual who purchases and places in service a new clean vehicle and elects to transfer the section 30D credit that would otherwise be allowable to such individual to an eligible entity pursuant to section 30D(g) and paragraph (d) of this section. A taxpayer is an electing taxpayer only if the taxpayer makes certain attestations to the registered dealer, pursuant to procedures provided in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter), including that the taxpayer does not anticipate exceeding the modified adjusted gross income limitation of section 30D(b)(1) and §1.30D-4(b) and that the taxpayer will use the vehicle predominantly for personal use.

(6) *Eligible entity*. Eligible entity has the meaning provided in section 30D(g)(2) and paragraph (f)(2) of this section.

(7) *Incentive.* For purposes of the eligible entity requirements of section 30D(g)(2)(B)(ii) and (D), incentive means any reduction in price available to the taxpayer from the dealer or manufacturer, including in combination with other incentives, other than a reduction in the form of a partial payment or down payment for the purchase of a new clean vehicle pursuant to section 30D(g)(2)(C).

(8) *Registered dealer*. Registered dealer means a dealer that has completed registration with the IRS as provided in paragraph (c) of this section.

(9) *Sale price*. The sale price of a new clean vehicle means the total price agreed upon by the taxpayer and dealer in a written contract at the time of sale, including any delivery charges and after the application of any incentives. The sale price of a new clean vehicle does not include separately stated taxes and fees required by State or local law. The sale price of a new clean vehicle is determined before the application of any trade-in value.

(10) *Time of sale*. Time of sale means the date the new clean vehicle is placed in service, as defined in §1.30D-2(b)(36).

(c) *Dealer registration*—(1) *In general*. A dealer must register with the IRS in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter) for the dealer to receive credits transferred by an electing taxpayer pursuant to section 30D(g) and paragraph (d) of this section.

(2) *Dealer tax compliance required*. A dealer must be in dealer tax compliance to complete and maintain its registration with the IRS and paragraph (d) of this section. If the dealer is not in dealer tax compliance for any of the taxable periods during the last five taxable years, then the dealer may complete its initial registration with the IRS, but the dealer will not be eligible for the advance payment program (and, therefore, the dealer will not be eligible to receive transferred section 30D credits) until the compliance issue is resolved. The IRS will notify the dealer in writing that the dealer is not in dealer tax compliance, and the dealer will have the opportunity to address any failure through regular procedures. If the failure is corrected, the IRS will complete the dealer's registration, and, provided all other requirements of section 30D(g) and this section are met, the dealer will then be allowed to receive transferred section 30D credits and participate in the advance payment program. Additional procedural guidance regarding this paragraph is set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

(3) *Suspension of registration*. A registered dealer's registration may be suspended pursuant to the procedures described in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). Any decision made by the IRS relating to the suspension of a registered dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(4) *Revocation of registration*. A registered dealer's registration may be revoked pursuant to the procedures described in guidance published in the *Internal Revenue Bulletin* (see §601.601). Any decision made by the IRS relating to the revocation of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(d) *Credit transfer election by electing taxpayer*. For a new clean vehicle placed in service after December 31, 2023, an electing taxpayer may elect to apply the rules of section 30D(g) and this section to make a credit transfer election with respect to the vehicle so that the section 30D credit with respect to the vehicle is allowed to the eligible entity specified in the credit transfer election (and not to the electing taxpayer) pursuant to the advance payment program described in paragraph (f) of this section. The electing taxpayer, as part of the credit transfer election, must transfer the entire amount of the credit that would otherwise be allowable to the electing taxpayer under section 30D with respect to the vehicle, and the eligible entity specified in the credit transfer election must pay the electing taxpayer an amount equal to the amount of the credit included in the credit transfer election. A credit transfer election must be made no later than the time of sale, and must be made in the manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). Once made, a credit transfer election is irrevocable. No credit transfer election may be made to transfer an amount of credit that would otherwise be allowed to the electing taxpayer under section 38.

(e) *Federal income tax consequences of the credit transfer election*—(1) *Tax consequences for electing taxpayer*. In the case of a credit transfer election, the Federal income tax consequences for the electing taxpayer are as follows—

(i) The credit amount under section 30D that the electing taxpayer elects to transfer to the eligible entity under section 30D(g) and paragraph (d) of this section may exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess, if any, is not subject to recapture on the basis that it exceeded the electing taxpayer's regular tax liability;

(ii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (d) of this section to an electing taxpayer pursuant to the credit transfer election is not includible in the gross income of the electing taxpayer; and

(iii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (d) of this section is treated as repaid by the electing taxpayer to the eligible entity as partial payment of the sale price of the new clean vehicle. Thus, the repayment by the electing taxpayer is included in the electing taxpayer's basis in the new clean vehicle prior to the application of the basis reduction rule in section 30D(f)(1).

(2) *Tax consequences for eligible entity*. In the case of a credit transfer election, the Federal income tax consequences for the eligible entity are as follows—

(i) The eligible entity is allowed the section 30D credit with respect to the new clean vehicle and may receive an advance payment pursuant to section 30D(g)(7) and paragraph (f) of this section;

(ii) Advance payments received by the eligible entity are not treated as a tax credit in the hands of the eligible entity and may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for the taxable year in which the sale occurs;

(iii) An advance payment received by the eligible entity is not included in the gross income of the eligible entity;

(iv) The payment made by an eligible entity under section 30D(g)(2)(C) and paragraph (d) of this section to an electing taxpayer is not deductible by the eligible entity;

(v) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (d) of this section is treated as repaid by the electing taxpayer to the eligible entity as partial payment of the sale price of the new clean vehicle. Thus, the repayment by the electing taxpayer is treated as an amount realized by the eligible entity under section 1001 of the Code and the regulations under section 1001; and

(vi) If the eligible entity is a partnership or an S corporation, then—

(A) The IRS will make the advance payment to such partnership or S corporation equal to the amount of the section 30D credit allowed that is transferred to the eligible entity;

(B) Such section 30D credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) The amount of the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code.

(3) *Form of payment from eligible entity to electing taxpayer*. The tax treatment of the payment made by the eligible entity to the electing taxpayer described in paragraphs (e)(1) and (2) of this section is the same regardless of whether the payment is made in cash, in the form of a partial payment or down payment for the purchase of the new clean vehicle, or as a reduction in sale price (without the payment of cash) of the new clean vehicle.

(4) *Additional requirements*. In the case of a credit transfer election, the following additional rules apply—

(i) The requirements of section 30D(f)(1) (regarding basis reduction) and 30D(f)(2) (regarding no double benefit) apply to the electing taxpayer as if the credit transfer election were not made (so, for example, the electing taxpayer must reduce the electing taxpayer's basis in the vehicle by the amount of the section 30D credit, regardless of the credit transfer election);

(ii) Section 30D(f)(6) (regarding the election not to take the credit) will not apply (in other words, by electing to transfer the credit, the electing taxpayer is electing to take the credit);

(iii) Section 30D(f)(9) (regarding the vehicle identification number requirement) will be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the IRS in the form and manner set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The electing taxpayer must also provide the vehicle identification number with their tax return for the taxable year in which the vehicle is placed in service. *See* section 6213(g)(2)(T) of the Code and §301.6213-2 of this chapter for rules relating to the omission of a correct vehicle identification number.

(5) *Examples*. The following examples illustrate the rules of paragraph (e) of this section.

(i) *Example 1: Electing taxpayer's regular tax liability less than amount of credit*—(A) *Facts*. T, an individual, purchases a new clean sport utility vehicle from a dealer, D, which is a C corporation. T satisfies the requirements to be an electing taxpayer and elects to transfer the section 30D credit to D. D is a registered dealer and satisfies the requirements to be an eligible entity. The sale price of the vehicle is $57,500. The section 30D credit otherwise allowable to T is $7,500. D makes the payment required to be made to T in the form of a cash payment of $7,500. T uses the $7,500 as a partial payment for the vehicle. T pays D an additional $50,000 from other funds. T's regular tax liability for the year is less than $7,500.

(B) *Analysis*. Under paragraph (e)(1)(i) of this section, T may transfer the credit to D, even though

T's regular tax liability is less than $7,500, and no amount of the credit will be recaptured from T on the basis that the allowable credit exceeds T's regular tax liability. D's $7,500 payment to T is not included in T's gross income, and the sale price of the vehicle is $57,500 (including both the $7,500 payment and the additional $50,000 paid by T from other funds), prior to the application of the basis reduction rule of section 30D(f)(1). After application of the basis reduction rule, T's basis in the vehicle is $50,000. D is eligible to receive an advance payment of $7,500 for the transferred section 30D credit as provided in section 30D(g)(7) and paragraph (f) of this section. Under paragraph (e)(2) of this section, D may receive the advance payment irrespective of the fact that D's regular tax liability is less than $7,500. The advance payment is not treated as a credit toward D's tax liability (if any), nor is it included in D's gross income. Further, D's $7,500 payment to T is not deductible, and D's amount realized is $57,500 upon the sale of the vehicle (including both the $7,500 payment from D to T that T uses as a partial payment, and the additional $50,000 paid by T from other funds).

(ii) *Example 2: Non-cash payment by eligible entity to electing taxpayer*—(A) *Facts*. The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that D makes the payment to T in the form of a reduction in the sale price of the vehicle (rather than as a cash payment).

(B) *Analysis*. Paragraph (e)(3) of this section provides that the application of paragraphs (e)(1) and (2) of this section is not dependent on the form of payment from an eligible entity to an electing taxpayer (for example, a payment in cash or a payment in the form of a reduction in sale price). Thus, the analysis is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*).

(iii) *Example 3: Eligible entity is a partnership*—(A) *Facts*. The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that D is a partnership.

(B) *Analysis*. The analysis as to T is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*). Because D is a partnership, paragraph (e)(2)(vi) of this section applies. Thus, the advance payment is made to the partnership, the credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to the partnership (and not allocated or otherwise allowed to its partners) for such taxable year. The amount of the advance payment is not treated as tax-exempt income to the partnership for purposes of the Code.

(f) *Advance payments received by eligible entities*—(1) *In general*. An eligible entity may receive advance payments from the IRS (corresponding to the amount of the section 30D credit for which a credit transfer election was made by an electing taxpayer to transfer the credit to the eligible entity pursuant to section 30D(g) and paragraph (d) of this section) before the eligible entity files its Federal income tax return or information return, as appropriate, for the taxable year with respect to which the credit transfer election corresponds. This advance payment program is the exclusive mechanism for an eligible entity to receive the section 30D credit transferred pursuant to section 30D(g) and paragraph (d) of this section. An eligible entity receiving a transferred section 30D credit may not claim the credit on a tax return.

(2) *Requirements for a registered dealer to become an eligible entity*. A registered dealer qualifies as an eligible entity, and may therefore receive an advance payment, in connection with a credit transfer election, if it meets the following requirements:

(i) The registered dealer submits required registration information and is in dealer tax compliance;

(ii) The registered dealer retains information regarding the credit transfer election for three calendar years beginning with the year immediately after the year in which the vehicle is placed in service, as described in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter);

(iii) The registered dealer meets any other requirements set forth in guidance published in the *Internal Revenue Bulletin* (see §601.601 of this chapter) or in forms and instructions; and

(iv) The registered dealer meets any other requirements of section 30D(g), including those in section 30D(g)(2)(B) through (E).

(g) *Increase in tax*—(1) *Recapture if electing taxpayer exceeds modified adjusted gross income limitation*. If an electing taxpayer has modified adjusted gross income that exceeds the limitation in section 30D(f)(10) and §1.30D-4(b), then the income tax imposed on such taxpayer under chapter 1 of the Code (chapter 1) for the taxable year in which such vehicle was placed in service is increased by the amount of the payment received by the taxpayer. The electing taxpayer must recapture such amounts on the return described in paragraph (h) of this section.

(2) *Excessive payments*—(i) *In general*. This paragraph provides rules under section 30D(g)(7)(B), which provides that rules similar to the rules of section 6417(d)(6) of the Code apply to the advance payment program. In the case of any advance payment to an eligible entity that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity under chapter 1, regardless of whether such entity would otherwise be subject to tax under chapter 1, for the taxable year in which such determination is made will be increased by the sum of the following amounts—

(A) The amount of the excessive payment; plus

(B) An amount equal to 20 percent of such excessive payment.

(ii) *Reasonable cause*. The amount described in paragraph (g)(2)(i)(B) of this section will not apply to an eligible entity if the eligible entity demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. In the case of a new clean vehicle (with respect to which a credit transfer election was made by the electing taxpayer) that is returned to the eligible entity within 30 days of being placed in service, the eligible entity will be treated as having demonstrated that the excessive payment resulted from reasonable cause.

(iii) *Excessive payment defined*. Excessive payment means an advance payment made–

(A) To a registered dealer that fails to meet the requirements to be an eligible entity provided in section 30D(g)(2) and paragraph (f)(2) of this section, or

(B) Except as provided in paragraph (g)(2)(iv) of this section, to an eligible entity with respect to a new clean vehicle to the extent the payment exceeds the amount of the credit that, without application of section 30D(g) and this section, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such tax year.

(iv) *Special rule for cases in which the electing taxpayer's modified adjusted gross income exceeds the limitation*. Any excess described in paragraph (g)(2)(iii)(B) of this section that arises due to the electing taxpayer exceeding the limitation based on modified adjusted gross income in section 30D(f)(10) and §1.30D-4(b) is not an excessive payment. Instead, the amount of the advance payment is recaptured from the electing taxpayer under section 30D(g)(10) and paragraph (g)(1) of this section.

(3) *Examples*. The following examples illustrate the excessive payment rules in paragraph (g)(2) of this section.

(i) *Example 1: Registered dealer is not an eligible entity*—(A) *Facts*. In 2024, D, a registered dealer, receives an advance payment of $7,500 with respect to a credit transferred under section 30D(g)(1) and paragraph (d) of this section for a new clean vehicle V. In 2025, the IRS determines that D was not an eligible entity with respect to new clean vehicle V at the time of the receipt of the advance payment in 2024, because D failed to satisfy one of the requirements of section 30D(g)(2) and paragraph (f)(2) of this section. D is unable to show reasonable cause for the failure.

(B) *Analysis*. Under paragraph (g)(2)(i) of this section, the tax imposed on D is increased by the amount of the excessive payment if the advance payment received by D constitutes an excessive payment. Under paragraph (g)(2)(iii) of this section, the entire amount of the $7,500 advance payment received by D is an excessive payment because D did not meet the requirements to be an eligible entity under section 30D(g)(2) and paragraph (f)(2) of this section. Additionally, because D cannot show reasonable cause for its failure to meet these requirements, the tax imposed under chapter 1 on D is increased by $9,000 in 2025 (the taxable year of the IRS determination). This is comprised of the $7,500 value of the credit plus the $1,500 penalty, calculated as a 20% penalty on such $7,500 (20% x $7,500 = $1,500). This treatment applies regardless of whether D is otherwise subject to tax under chapter 1 (for example, if D is a partnership).

(ii) *Example 2: Incorrect manufacturer certifications*—(A) *Facts*. In 2024, T, a taxpayer, makes an election to transfer a credit under section 30D(g)(1) and paragraph (d) of this section to E, a registered dealer, for a new clean vehicle V. M, the manufacturer of such vehicle, certified to the IRS that vehicle V was eligible for a $7,500 credit because it met both the critical minerals and the battery components requirements. T transfers the $7,500 credit to E. Subsequent to T's purchase and election to transfer the $7,500 credit to E, M reports to the IRS that vehicle V was only eligible for a $3,750 credit because it did not meet the critical minerals requirement.

(B) *Analysis*. Under §1.30D-4(h), T may rely on the information and certifications provided in M's written report to the IRS regarding vehicle V's eligibility for the section 30D credit. Under paragraph (g)(2)(iii)(B) of this section, an advance payment to an eligible entity with respect to a vehicle is an excessive payment to the extent the payment exceeds the amount of the credit that, without a credit transfer election, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such taxable year. Because the amount of the credit that would be allowable to T for 2024 is $7,500, and T transferred the $7,500 credit to E, there is no excessive payment with respect to E.

(h) *Return requirement*. An electing taxpayer that makes a credit transfer election must file a Federal income tax return or information return, as appropriate, for the taxable year in which the credit transfer election is made and indicate such election on the return in accordance with the instructions to the form on which the return is made. The electing taxpayer must attach a completed Form 8936, *Clean Vehicle Credits*, or successor form, and a completed Schedule A (Form 8936), *Clean Vehicle Credit Amount*, or successor form or schedule, including the vehicle identification number of the new clean vehicle and such other information as provided in forms and instructions.

(i) *Two credit transfer elections per year*. A taxpayer may make no more than two credit transfer elections per taxable year, consisting of either two elections to transfer section 30D credits, or one election to transfer a section 30D credit and one election to transfer a section 25E credit. In the case of taxpayers who file a joint return, each individual taxpayer may make no more than two credit transfer elections per taxable year.

(j) *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 will continue in effect.

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

**§1.30D-6 Foreign entity of concern restriction.**

(a) *In general*. This section provides rules related to the excluded entities provision of section 30D(d)(7) of the Internal Revenue Code (Code), which imposes certain restrictions on the extraction, processing, or recycling of applicable critical minerals, and the manufacturing or assembly of battery components contained in a clean vehicle battery by a foreign entity of concern (FEOC). Specifically, section 30D(d)(7) provides that the term *new clean vehicle* does not include any vehicle placed in service after December 31, 2023, with respect to which any of the battery components in the clean vehicle battery were manufactured or assembled by a FEOC, or any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the clean vehicle battery were extracted, processed, or recycled by a FEOC (FEOC restriction). *See* §1.30D-2(b) for definitions applicable to section 30D(d)(7) and this section.

(b) *Due diligence required*—(1) *In general*. The qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. Such due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enables the qualified manufacturer to know with reasonable certainty the provenance of applicable critical minerals, associated constituent materials, and battery components. Reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer, or any third-party manufacturer or supplier, does not know or have reason to know that such supplier attestation or certification is incorrect. *See* paragraph (c)(5) of this section for rules related to third-party manufacturers and suppliers. The qualified manufacturer must conduct due diligence prior to the qualified manufacturer determining the information necessary to establish any compliant-battery ledger under paragraph (d) of this section, and the qualified manufacturer must continue to conduct due diligence on an ongoing basis.

(2) *Transition rule for impracticable-to-trace battery materials*. For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement of paragraph (b)(1) of this section may be satisfied by excluding identified impracticable-to-trace battery materials. To use this transition rule, a qualified manufacturer must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the FEOC restriction of section 30D(d)(7) and this section, including information about efforts made to date to secure a FEOC-compliant supply of these battery materials once the transition rule is no longer in effect.

(c) *FEOC compliance*—(1) *In general*. In the case of any new clean vehicle placed in service after December 31, 2023, the clean vehicle battery or batteries of the vehicle must be FEOC-compliant.

A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles. The determination that a clean vehicle battery is FEOC-compliant is made as follows:

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

(ii) *Step 2*. The FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with paragraph (c)(3)(i) of this section. Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance with paragraph (c)(3)(ii) of this section. In addition, the determination of whether a battery cell is FEOC-compliant may be made by applying the transition rule for impracticable-to-trace battery materials, in accordance with paragraph (c)(3)(iii) of this section.

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

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

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

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

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

(C) *Separate allocation required for each type of associated constituent material*—(*1*) *In general*. Any allocation under this paragraph (c)(3)(ii) with respect to the mass of an applicable critical mineral must be made within the type of associated constituent material (such as powders of cathode active materials, powders of anode active materials, or foils) in which such applicable critical mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials with which such applicable critical mineral is not associated, and an allocation of a mass of an applicable critical mineral may not be made from one type of constituent material to another.

(*2*) *Example*. M, a qualified manufacturer, operates a battery cell production facility. M manufactures a line of battery cells that contains applicable critical mineral Z (ACM-Z) in constituent material 1 and in constituent material 2. With respect to constituent material 1, M procures 20,000,000 kilograms (kg) of ACM-Z for the battery cell production facility, of which 4,000,000 kg are FEOC-compliant and 16,000,000 kg are not FEOC-compliant. With respect to constituent material 2, M procures another 15,000,000 kg of ACM-Z for the battery cell production facility, of which 7,500,000 kg are FEOC-compliant and 7,500,000 kg are not FEOC-compliant. M determines which battery cells are FEOC-compliant through an allocation-based determination with respect to battery cells manufactured or assembled in the battery cell production facility. Under this paragraph (c)(3)(ii)(C), any allocation with respect to the mass of ACM-Z must be made within the type of constituent material in which ACM-Z is contained. Thus, M may not aggregate the 4,000,000 kg of FEOC-compliant ACM-Z contained in constituent material 1 with the 7,500,000 kg of FEOC-compliant ACM-Z contained in constituent material 2, and allocations may not be made from constituent material 1 to constituent material 2. As a result, overall FEOC compliance is constrained by the 20% of constituent material 1 that is FEOC-compliant due to having 4,000,000 kg of ACM-Z, even though 33% (4,000,000 + 7,500,000)/(20,000,000 + 15,000,000) of the total mass of ACM-Z is FEOC-compliant.

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

(E) *Limitation on number of FEOC-compliant battery cells*. If a qualified manufacturer uses an allocation-based determination described in this paragraph (c)(3)(ii), the number of FEOC-compliant battery cells that can be produced from such allocation may not exceed the total number of battery cells for which there is enough of every FEOC-compliant applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates applicable critical mineral A, which is 20 percent FEOC-compliant, and applicable critical mineral B, which is 60 percent FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line will be treated as FEOC-compliant.

(iii) *Transition rule for impracticable-to-trace battery materials*. For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the qualified manufacturer's determination of whether a battery cell is FEOC-compliant under this paragraph (c)(3) may be satisfied by excluding identified impracticable-to-trace battery materials (and associated constituent materials).

(4) *FEOC-compliant battery components and applicable critical minerals*—(i) *In general.* The determination of whether battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be

made prior to any determination under paragraphs (c)(2) and (3) of this section.

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

(iii) *Example: Timing of FEOC compliance determination*. Mineral X, an applicable critical mineral, was not extracted by a FEOC but was later processed by a FEOC. Mineral X is not FEOC-compliant because one step of the extraction and processing was performed by a FEOC. Therefore, any battery containing Mineral X is not FEOC-compliant.

(5) *Third-party manufacturers or suppliers.* The determinations under paragraphs (c)(2) through (4) of this section, which are generally made by the qualified manufacturer, may be made by a third-party manufacturer or supplier that operates a battery cell production facility, provided the third-party manufacturer satisfies the requirements of paragraph (c)(5)(i) through (iii) of this section, and paragraph (c)(5)(iv) of this section, if applicable.

(i) *Due diligence required*. The third-party manufacturer or supplier must perform the due diligence described in paragraph (b) of this section.

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

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

(iv) *Additional requirements in case of multiple third-party manufacturers or suppliers*. If there are multiple third-party manufacturers or suppliers (such as a case in which a qualified manufacturer contracts with a battery manufacturer, that, in turn, contracts with a battery cell manufacturer or supplier that operates a battery cell production facility), the due diligence and information requirements of this paragraph (c) must be satisfied by each third-party manufacturer or supplier, either by providing all required information directly to the qualified manufacturer or indirectly through contractual relationships.

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

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

(ii) *Upfront review.* The qualified manufacturer must attest to the number of FEOC-compliant clean vehicle batteries determined under paragraph (d)(2)(i) of this section and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with paragraphs (b) and (c) of this section, at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter). The IRS, with analytical assistance from the Department of Energy (DOE), will review the attestations, certifications, and documentation. Once the IRS determines that the qualified manufacturer provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number is the initial balance in the compliant-battery ledger.

(iii) *Decrease or increase to compliant-battery ledger*—(A) Once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis, in accordance with paragraph (d)(2)(ii) of this section and the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

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

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

(D) Any remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple negative compliant-battery accounts, any negative balance will first be included in the compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year, the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

(3) *Tracking FEOC-compliant batteries*. The compliant-battery ledger for a calendar year must be updated to track the qualified manufacturer's available FEOC-compliant batteries, by reducing the balance in the ledger as the qualified manufacturer submits periodic written reports reporting the vehicle identification numbers of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter). If the balance in the compliant-battery ledger of the qualified manufacturer for a calendar year is zero or less than zero, the qualified manufacturer may not submit additional periodic written reports with respect to section 30D until the number of available FEOC-compliant batteries is increased as described in paragraph (d)(2)(iii)(A) of this section.

(4) *Reconciliation of battery estimates*. After the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of the qualified manufacturer's FEOC-compliant batteries for such calendar year, including with respect to any changes described in paragraph (d)(2)(iii) of this section, at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

(e) *Rule for 2024*—(1) *In general*. For new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in the vehicles satisfy the requirements of section 30D(d)(7)(B), and whether batteries contained in the vehicles are FEOC-compliant under the rules of paragraphs (b) and (c) of this section. The qualified manufacturer must make an attestation with respect to such determinations at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter). However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before June 5, 2024, provided that the qualified manufacturer has determined that its supply chains for each battery component with respect such vehicles contain only FEOC-compliant battery components:

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

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

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

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

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

(2) *Inadvertence*—(i) *Inaccurate information may be cured by qualified manufacturer*. If the IRS determines that the qualified manufacturer's attestations, certifications, or documentation for a specific new clean vehicle contain inaccurate information due to inadvertence, the qualified manufacturer may, within a reasonable period of time after discovery of the inaccurate information, cure the errors, including by a decrease in the compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(ii) *Consequences if errors not cured.* If the qualified manufacturer does not cure the errors, the IRS may take any of the following actions:

(A) In the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirements of section 30D(d), the IRS may determine that such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit.

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

(C) In the case of a new clean vehicle that has been placed in service, the IRS may require a decrease in the qualified manufacturer's compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(3) *Intentional disregard or fraud*. If the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, or documentation requirements, or reported information fraudulently or with intentional disregard, the IRS may take any of the actions described in paragraph (f)(3)(i) or (ii) of this section.

(i) *All vehicles ineligible for credit.* The IRS may determine that all vehicles manufactured by the qualified manufacturer that have not been placed in service are no longer considered new clean vehicles eligible for the section 30D credit.

(ii) *Termination of written agreement.* The IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the manufacturer's status as a qualified manufacturer. In such instance, the manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the *Internal Revenue Bulletin* (see §601.601 of this chapter).

(g) *Rules inapplicable to new qualified fuel cell motor vehicles*. The requirements of section 30D(d)(7) and this section do not apply to new qualified fuel cell motor vehicles.

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

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

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

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

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

(D) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 600 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 600 FEOC-compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, approves the number, a compliant-battery ledger is established with a balance of 600 FEOC-compliant batteries.

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

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

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

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

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

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

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

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

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

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

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

(D) Under an allocation-based determination, M has procured 500 metric tons of lithium hydroxide incorporated into a constituent material for the battery cell production facility, of which 50% (250 / 500 metric tons) is FEOC-compliant. M has procured 1,600 metric tons of nickel sulfate incorporated into a constituent material for the battery cell production facility, of which 75% (1,200 / 1,600 metric tons) is FEOC-compliant. Because the lithium hydroxide is the least compliant applicable critical mineral or component, M allocates the FEOC-compliant lithium hydroxide mass to 50% or 500,000 (50% x 1,000,000) of the total battery cells, and to battery cells that contain FEOC-compliant cathode electrodes and have been allocated FEOC-compliant nickel sulfate. Under paragraph (c)(3)(ii)(E) of this section, the quantity of FEOC-compliant battery cells is limited by the applicable critical mineral (lithium hydroxide) that has the lowest percentage (50%) of FEOC-compliant supply.

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

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

(i) *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 will continue in effect.

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

**PART 301—PROCEDURE AND ADMINISTRATION**

**Par 4.** The authority citation for part 301 is amended by adding an entry in numerical order for §301.6213-2 to read, in part, as follows:

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

* * * * *

Section 301.6213-2 also issued under 26 U.S.C. 6213.

* * * * *

**Par 5.** Section 301.6213-2 is added to read as follows:

**§301.6213-2 Omission of correct vehicle identification number.**

(a) *In general*. The definition of the term *mathematical or clerical error* in section 6213(g)(2) of the Internal Revenue Code (Code) includes:

(1) Under section 6213(g)(2)(T), an omission of a correct vehicle identification number required under section 30D(f)(9) of the Code (relating to credit for new clean vehicles) to be included on a return;

(2) Under section 6213(g)(2)(U), an omission of a correct vehicle identification number required under section 25E(d) of the Code (relating to credit for previously-owned clean vehicles) to be included on a return; and

(3) Under section 6213(g)(2)(V), an omission of a correct vehicle identification number required under section 45W(e) of the Code (relating to credit for qualified commercial clean vehicles) to be included on a return.

(b) *Omission of a correct vehicle identification number*. For purposes of paragraph (a) of this section, a taxpayer is treated as having omitted a correct vehicle identification number if:

(1) The vehicle identification number required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is not included on the return of tax;

(2) The vehicle identification number included on the return of tax is not that of a vehicle eligible for a credit under section 30D, 25E, or 45W.

(3) The vehicle identification number included on the return of tax is not that of a vehicle eligible for a credit under section 30D, 25E, or 45W for the year in which it is claimed;

(4) The vehicle identification number included on the return of tax differs from the vehicle identification number reported to the IRS and the taxpayer under section 30D(d)(1)(H) for each new clean vehicle placed in service during the taxable year by the taxpayer who was issued the report; or

(5) The vehicle identification number included on the return of tax differs from the vehicle identification number reported to the IRS and the taxpayer under section 25E(c)(1)(D)(i) for each previously-owned clean vehicle placed in service during the taxable year by the taxpayer who was issued the report.

(c) *Applicability date*. This section applies to taxable years beginning after December 31, 2023.

**Douglas W. O'Donnell,**
*Deputy Commissioner*.

Approved: April 21, 2024.

**Aviva Aron-Dine,**
*Acting Assistant Secretary of the Treasury (Tax Policy)*.

(Filed by the Office of the Federal Register May 3, 2024, 8:45 a.m., and published in the issue of the Federal Register for July 5, 2024, 89 FR 37706)

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*26 CFR 26.2642-7: Relief under section 2642(g)(1)*

# T.D. 9996

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service
## 26 CFR Parts 26, 301, and 602

# Relief Provisions Respecting Timely Allocation of GST Exemption and Certain GST Elections

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

**ACTION**: Final rule.

**SUMMARY**: This document contains final regulations that provide guidance describing the circumstances and procedures under which an extension of time will be granted to make certain allocations and elections related to the generation-skipping transfer (GST) tax. The statutory provision underlying these rules was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The guidance affects individuals (or their estates) who failed to make a timely allocation of GST exemption, a timely election out of the GST automatic allocation rules, or certain other timely GST elections.

**DATES**: *Effective date*: These regulations are effective on May 6, 2024.

*Applicability date*: For dates of applicability, *see* §§26.2642-7(j), 301.9100-2(f)(2), and 301.9100-3(g)(2).

**FOR FURTHER INFORMATION CONTACT**: Mayer R. Samuels at (202) 317-6859 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains final regulations in 26 CFR parts 26, 301, and 602 that provide guidance on the application of section 2642(g)(1) of the Internal Revenue Code (Code), which describes the circumstances and procedures under which an extension of time will be granted to make certain allocations and elections related to the GST tax.

Congress added section 2642(g)(1) to the Code by enacting section 564 of the EGTRRA, Public Law 107-16, section 564, 115 Stat. 91 (2001). Section 2642(g)(1) directs the Secretary of the Treasury or her delegate (Secretary) to issue regulations prescribing the circumstances and procedures under which an extension of time will be granted to make an allocation of GST exemption, as described in section 2631 of the Code, to a transfer, and the following three elections under section 2632 of the Code: (1) an election under section 2632(b)(3) not to have the deemed (automatic) allocation of GST exemption apply to a direct skip (generally, a transfer subject to gift or estate tax made to a person more than one generation below the transferor); (2) an election under section 2632(c)(5)(A)(i) not to have the deemed (automatic) allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust; and (3) an election under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c). In determining whether to grant relief, section 2642(g)(1) directs that all relevant circumstances be considered, including evidence of intent contained in the trust instrument or the instrument of transfer.

The legislative history accompanying section 2642(g)(1) indicates that Congress believed that, in appropriate circumstances, an individual should be granted an extension of time to allocate GST exemption regardless of whether any period of limitations had expired. Those circumstances include situations in which the taxpayer intended to allocate GST exemption and the failure to allocate the exemption was inadvertent. H.R. Conf. Rep. No. 107-84, 202 (2001).

After the enactment of section 2642(g)(1), the IRS issued Notice 2001-50 (2001-2 CB 189), which provided guidance for transferors seeking an extension of time to make an allocation of GST exemption or an election described in sections 2632(b)(3) or (c)(5). Notice 2001-50 provides, generally, that relief will be granted under §301.9100-3 of the Procedure and Administration Regulations (regarding requests of extensions of time for certain regulatory elections) if the taxpayer satisfies the requirements of those regulations and establishes to the satisfaction of the Commissioner of Internal Revenue or his delegate (Commissioner) that the taxpayer acted reasonably and in good faith and that a grant of the requested relief will not prejudice the interests of the government. If relief is granted under §301.9100-3 and the allocation is made, the amount of GST exemption allocated to the transfer is the Federal gift or estate tax value of the property as of the date of the transfer and the allocation is effective as of the date of the transfer. Notice 2001-50 will be made obsolete upon the publication of this Treasury decision in the **Federal Register**.

On August 2, 2004, the IRS issued Rev. Proc. 2004-46 (2004-2 CB 142), which provides a simplified alternate method to obtain an extension of time to allocate GST exemption in certain situations. Generally, this method is available only with respect to an inter vivos transfer to a trust from which a GST may be made and only if each of the following requirements is met: (1) The transfer qualified for the gift tax annual exclusion under section 2503(b) of the Code; (2) the sum of the amount of the transfer and all other gifts by the transferor to the donee in the same year did not exceed the applicable annual exclusion amount for that year; (3) no GST exemption was allocated to the transfer; (4) the taxpayer has unused GST exemption to allocate to the transfer as of the filing of the request for relief; and (5) no taxable distributions or taxable terminations have occurred as of the filing of the request for relief.

On August 9, 2004, the IRS issued Rev. Proc. 2004-47 (2004 CB 169), which provides alternative relief for taxpayers who failed to make a reverse qualified terminable interest property (QTIP) election on an estate tax return.

On April 17, 2008, proposed regulations (REG-147775-06) were published in the **Federal Register** (73 FR 20870). The proposed regulations provided guidance on the application of section 2642(g)(1) by identifying the standards that the IRS will apply in determining whether to grant a transferor or a transferor's estate an extension of time to make an allocation of GST exemption, as described in section 2631, to property transferred by the transferor and the following three elections under section 2632: (1) an election under section 2632(b)(3) not to have the automatic allocation of GST exemption apply to a direct skip; (2) an election under section 2632(c)(5)(A)(i) not to have the automatic allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust; and (3) an election under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c). In addition to proposing these standards, the proposed regulations included procedural requirements for establishing eligibility for the requested relief, including identification of the various persons from whom affidavits would be required.

In order to evaluate the necessity for and determine the burden imposed by the requirement to produce affidavits under proposed §26.2642-7(h), the proposed regulations requested comments specifically as to (1) whether the affidavits are necessary for the proper performance of the functions of the IRS, including whether the information provided by the affidavits will have practical utility, (2) the accuracy of the estimated burden associated with preparing the affidavits, (3) how the quality, utility, and clarity of the information to be provided by the affidavits may be enhanced, (4) how the burden of providing the affidavits may be minimized, including through the application of automated collection techniques or other forms of information technology, and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the affidavits.

The proposed regulations also identified situations that do not satisfy the standards for granting relief, and thus when the IRS will not grant the requested relief.

The IRS received a total of five comments, three of which explicitly addressed the procedural requirements of proposed §26.2642-7(h), redesignated in the final regulations as §26.2642-7(i). After careful consideration of the comments received on the proposed regulations, this Treasury decision adopts the proposed regulations with clarifying changes and additional modifications in response to comments as described in the Summary of Comments and Explanation of Revisions. Relief provided under section 2642(g)(1) will be granted through the IRS private letter ruling program.

Section 301.9100-1 generally provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in §§301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I (section 9100 provisions). On and after the date of publication of these final regulations, relief under section 2642(g)(1) no longer will be granted under §301.9100-3. In addition, because these final regulations provide a replacement for the automatic six-month extension under §301.9100-2(b) without substantive difference, the extension under §301.9100-2(b) no longer will be available to transferors or transferor's estates qualifying for relief under proposed §26.2642-7(h)(1), redesignated in the final regulations as §26.2642-7(i)(1), on and after the date of publication of these final regulations. Accordingly, the final regulations amend §§301.9100-2(b) and 301.9100-3 to provide that relief under section 2642(g)(1) cannot be obtained through the provisions of §§301.9100-2(b) and 301.9100-3. However, requests that are pending with the IRS on the date of publication of these final regulations will continue to be processed under the section 9100 provisions unless the taxpayer requesting relief opts to withdraw the request and instead seek relief under these final regulations. In that case, the taxpayer's user fee will be refunded and a new user fee will be required with the new request. Furthermore, the procedures contained in Revenue Procedure 2004-46 and Revenue Procedure 2004-47 will remain effective for transferors within the scope of those revenue procedures.

The Department of the Treasury (Treasury Department) and the IRS are mindful that the proposed regulations were issued 16 years ago on April 17, 2008. Insofar as there have been no intervening legislative or regulatory changes regarding allocations of GST exemption or GST elections and because the issues addressed by the commenters on the proposed regulations continue to remain relevant, the Treasury Department and the IRS have determined that a new notice of proposed rulemaking or a further opportunity for public comment would be unlikely to generate different comments and, moreover, would unnecessarily delay further this rulemaking to the continued detriment of taxpayers seeking relief. In addition, the IRS has a ruling position that, because of the provisions of the 2008 proposed regulations, relief cannot be granted in certain otherwise appropriate situations until the 2008 proposed regulations have been superseded by the issuance of these final regulations. For such situations, the issuance of a new notice of proposed rulemaking or a reopening of the comment period would further delay, and in some cases prevent, the grant of needed relief to taxpayers.

The Treasury Department and the IRS currently are developing a new rulemaking that will complement these final regulations. In contrast to these final regulations, which address the standards for granting relief under section 2642(g)(1) for a failure to make a timely allocation or election, the forthcoming proposed regulations would address the practical effect of a grant of relief and would clarify the interplay between affirmative allocations and automatic allocations. Paragraphs in these final regulations have been reserved to accommodate the forthcoming proposed regulations.

**Summary of Comments and Explanation of Revisions**

I. *Scope of Authority to Issue Regulations*

Section 2642(g)(1) gives the Secretary the authority to issue regulations setting forth the "circumstances and procedures" under which extensions of time will be granted to make certain allocations of GST exemption and elections, taking into consideration all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1) makes the late allocations and elections referenced in that section eligible for consideration for relief. Because deadlines prescribed by statute are not eligible for relief under §301.9100-3, section 2642(g)(1)(B) concludes with the sentence, for purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. Some commenters maintained that this sentence, creating eligibility for a grant of relief, limits the authority of the Treasury Department and the IRS to issue regulations that provide standards for relief that are more restrictive than those under §301.9100-3. Neither the statute nor its legislative history suggests that the standards for relief under section 2642(g)(1) are required to be equivalent or limited to the standards set forth in §301.9100-3, nor is there any implication that the enactment of section 2642(g) prohibits or forecloses the possibility of any future change to the regulatory standards in §301.9100-3. Nevertheless, the final regulations adopt burden reducing provisions as explained later in this preamble.

II. *Proposed §26.2642-7(d)(2) – Reasonableness and Good Faith*

Proposed §26.2642-7(d)(2) provides a nonexclusive list of circumstances (the underlying facts of which may be either helpful or harmful to the taxpayer's request for relief) that the IRS will consider in determining whether the transferor or the transferor's executor acted reasonably and in good faith.

Commenters requested that the Treasury Department and the IRS modify proposed §26.2642-7(d)(2) to provide that the transferor or the executor of the transferor's estate will be deemed to have acted reasonably and in good faith if the taxpayer establishes the existence of any one of the various factors listed in §26.2642-7(d)(2). Alternatively, commenters requested that §26.2642-7(d)(2) be clarified to denote the sufficiency or relative importance of the factors listed.

Section 2642(g)(1) directs the Treasury Department and the IRS to issue regulations that "prescribe such circumstances and procedures" under which the IRS will grant relief. Since the enactment of section 2642(g) and through the IRS private letter ruling program, the IRS has applied a facts and circumstances methodology in considering requests for relief. Given the inherent complexity of the GST exemption rules, no single factor can be determinative. While §301.9100-3(b)(1) deems the reasonableness and good faith requirements to have been met if the taxpayer establishes any one of the factors therein, that rule is expressly made subject to the requirement of the absence of the use of hindsight and the other factors described in §301.9100-3(b)(3) and (c), and thus is not a one-factor test. Accordingly, proposed §26.2642-7(d)(2) seeks to delineate the many factors implicit in such a facts and circumstances inquiry, and the final regulations adopt the same methodology.

The IRS's experience with requests for relief under section 2642(g)(1) indicates that no one factor has more importance in all cases than any other factor. Further, the satisfaction of one factor alone may or may not be sufficient, in the context of the facts and circumstances of that particular taxpayer, to persuade the IRS that relief under section 2642(g)(1) is warranted. Therefore, the recommendation to allow one factor to be determinative has not been adopted in the final regulations. Nevertheless, the final regulations clarify that not all of these factors may be relevant in a particular situation (and those that are not relevant would not need to be addressed in the request for relief). In addition, based on all the facts and circumstances, a single factor listed in §26.2642-7(d)(2) may (or may not) be determinative.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. A commenter requested that this circumstance be added to the factors listed in this provision. Thus, a taxpayer would be considered to have acted reasonably and in good faith if the taxpayer's request for relief was filed before the failure to make the allocation or regulatory election is discovered by the IRS. For purposes of section 2642(g)(1), the Treasury Department and the IRS have determined that this circumstance is not material because, in the context of a request for relief under section 2642(g)(1), the Treasury Department and the IRS believe that the party that first discovers the failure to make the allocation or election (be it the IRS or the taxpayer) generally has no correlation with the taxpayer's good faith or reasonable action. Particularly because of the significant length of time that often elapses between the transfer and the discovery of a missed GST election or allocation, the discovery by the IRS does not necessarily signify a lack of good faith or reasonable action by the taxpayer. At the same time, the taxpayer's discovery generally does not guarantee the existence of good faith and reasonable action by the taxpayer. Therefore, this factor has not been added to the final regulations. However, a delay in requesting relief, after the need for relief is discovered, may have an adverse effect on the availability of relief. See, for example, the circumstances described in §26.2642-7(d)(3)(ii) and (e)(3).

III. *Proposed §26.2642-7(d)(2)(iv) -- Consistency*

Proposed §26.2642-7(d)(2)(iv) provides that one of the factors to be considered in determining whether the taxpayer has acted reasonably and in good faith is whether the transferor acted consistently with regard to the allocation of the transferor's GST exemption. Section 26.2642-7(d)(2)(iv) is designed to elicit information relevant to the intent of the transferor with regard to allocating exemption or making an election. For instance, a transferor's pattern of allocating GST exemption in an amount equal to the value of transfers to a trust in three or more years (whether or not consecutive) tends to support an assumption that the transferor intended to have that trust be exempt from GST tax and thus supports a presumed intent to allocate exemption to a transfer to that same trust taking place in a year in which an allocation in fact was not made.

A commenter requested that this provision be clarified to provide that the enactment of the statute itself be deemed to be a change in circumstance that could explain any post-enactment deviations from pre-enactment decisions regarding the allocation of GST exemption. In response to this comment, §26.2642-7(d)(2)(iv) has been modified in the final regulations to confirm that relief under this provision will not be denied merely because a pattern does not exist or because the existing pattern changed at some point, whether in response to the enactment of a statute or to some other factor unrelated to either a lack of reasonableness or good faith or prejudice to the interests of the government.

IV. *Proposed §26.2642-7(d)(3) -- Prejudice to the Interests of the Government*

One commenter queried the placement of two of the factors under §26.2642-7(d)(3) pertaining to whether a grant of relief would prejudice the interests of the government. These two factors are (i) the extent to which the requested relief is an attempt to benefit from hindsight, and (ii) the extent to which a delay in the filing of the request for relief was an attempt to deprive the IRS of sufficient time to challenge the claimed identity of the transferor of the transferred property that is the subject of the request for relief, the value of that transferred property for Federal gift or estate tax purposes, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. The commenter recommended that these two factors, to the extent they deal with the transferor's subjective intentions, be moved from proposed §26.2642-7(d)(3) to proposed §26.2642-7(d)(2), which relates to reasonableness and good faith.

While these two factors may reflect unreasonableness or bad faith on the part of the transferor or the transferor's executor, each of these factors also represents an instance in which granting relief would prejudice the interests of the government. Therefore, the Treasury Department and the IRS have not adopted this suggestion in the final regulations.

V. *Proposed §26.2642-7(d)(3)(i) – Hindsight*

Proposed §26.2642-7(d)(3)(i) provides, in part, that one of the relevant factors in determining whether the government's interests would be prejudiced is whether the grant of the requested relief would permit an economic advantage or other benefit that would not have been available if the allocation or election had been timely made. A commenter suggested that the definition of the term "economic advantage" is vague and may be overbroad, in that no request for relief is ever made unless the grant of relief will be advantageous to the taxpayer by producing an economic advantage in the form of a reduction of tax liability. This provision, however, is intended to limit the reference to economic advantage to an advantage that may not have been available through a timely allocation or election. One example of an economic advantage that would not have been available at the time of a timely allocation of GST exemption would be a request to allocate exemption to only one of two trusts (specifically, to the trust with the greater appreciation) if the two trusts were created on the same date with the same beneficiaries but with different assets. Therefore, the Treasury Department and the IRS have not adopted this suggestion in the final regulations.

VI. *Proposed §26.2642-7(d)(3)(ii) -- Timing of the Request for Relief*

Proposed §26.2642-7(d)(3)(ii) provides, in part, that the expiration of any period of limitations on the assessment or collection of transfer taxes prior to the filing of a request for relief will not by itself prohibit a grant of relief. The proposed regulation further states that the combination of the expiration of a period of limitations with the fact that the asset or interest was valued with the use of a valuation discount will not by itself prohibit a grant of relief. A commenter indicated that the relevance of the use of valuation discounts and the period of limitations in determining whether to grant section 2642(g)(1) relief is not clear. The commenter stated that the use of valuation discounts that are consistent with established valuation methods neither prejudices the government nor constitutes an act of bad faith and therefore should not be considered, even in combination with other factors, in determining whether relief should be granted. The commenter also stated that any consideration given to the expiration of the period of limitations is contrary to the legislative history of section 2642(g), which clearly directs that the IRS is to disregard the expiration of any period of limitations in considering requests for relief. The commenter maintains that the IRS should not use hindsight to deny relief simply because the IRS failed to challenge the valuation of transferred property or any other aspect of the transaction reported on a return prior to the expiration of a limitations period.

The sentences of proposed §26.2642-7(d)(3)(ii) that discuss the expiration of the period of limitations and the use of valuation discounts as factors that are considered for relief are removed from the final regulations. Section 26.2642-7(d)(3)(iv) is added to the final regulations to confirm that, subject to the considerations related to the timing of the request for relief described in §26.2642-7(d)(3)(ii), the expiration of the period of limitations on the assessment or collection of transfer taxes prior to the filing of a request for relief generally is not relevant to the determination of whether the requirements for a grant of relief under section 2642(g)(1) have been met. Section 26.2642-7(d)(3)(iv) provides, however, that if the IRS concludes that the value of the transferred asset or assets as reported by the transferor or the executor of the transferor's estate on the Federal gift or estate tax return was so understated that it is likely to have satisfied the definition of a "gross valuation misstatement" as defined in section 6662(h)(2)(C) of the Code, the IRS will consider the purported transfer tax undervaluation in determining whether a grant of relief would prejudice the interests of the government. This provision is tied to the definition of a gross valuation misstatement to confirm that the perceived understatement in value would have to be exceptional in degree to raise the possibility of prejudice to the interests of the government. This provision is relevant only if the period of limitations on assessment or collection for transfer tax purposes expired before the filing of the request for relief.

VII. *Proposed §26.2642-7(d)(3)(iii) -- Intervening Taxable Events*

Proposed §26.2642-7(d)(3)(iii) provides that the occurrence and effect of an intervening taxable termination or taxable distribution will be considered in determining whether the interests of the government would be prejudiced by granting relief. The proposed regulations further state that the interests of the government may be prejudiced if a taxable termination or taxable distribution occurred between the time for making a timely allocation of GST exemption or a timely election described in section 2632(b)(3) or (c)(5) and the time at which the request for relief under this section was filed. A commenter requested that this language be removed from the final regulations and replaced with a sentence or example indicating that the existence of a GST tax liability when relief is requested is not relevant in determining whether relief under section 2642(g)(1) will be granted. Alternatively, the commenter requested that the final regulations provide that these rules not apply if the period of limitations on the assessment of resulting GST tax has not expired when relief is requested. In addition, the commenter requested that the final regulations provide transferors with the option of paying the GST tax resulting from the taxable termination or taxable distribution occurring prior to submission of the request for relief, or of forfeiting any refund of GST tax to which the transferor otherwise would be entitled upon the grant of relief.

These recommendations have not been adopted in the final regulations. Although an intervening taxable distribution or taxable termination itself does not necessarily bar a grant of relief under section 2642(g)(1), it may be relevant in identifying the existence of hindsight or in ascertaining the intent of the transferor. In addition, the difficulty and complexity of making all of the related adjustments caused by a grant of relief (including, for example, the grantor's willingness to pay any GST tax liability and any transfer tax consequences of that payment), some of which might also impact other taxpayers, will be a factor to be considered in determining whether the government's interests would be prejudiced.

VIII. *Proposed §26.2642-7(e)(1) -- Timely Allocations and Elections*

Proposed §26.2642-7(e)(1) provides that relief will not be granted to decrease or revoke a timely allocation of GST exemption as described in §26.2632-1(b)(4)(ii)(A)(*1*), or to revoke an election under section 2632(b)(3) or (c)(5) made on a timely filed Federal gift or estate tax return. Section 2631(b) provides that an allocation of GST exemption under section 2631(a), once made, is irrevocable. No statute, however, provides that an election made under section 2632(b)(3) or (c)(5) is irrevocable.

Accordingly, proposed §26.2642-7(e)(1), redesignated in the final regulations as §26.2642-7(e)(2), does not include the statement that relief is not available to revoke an election under section 2632(b)(3) or (c)(5) made on a timely filed Federal gift or estate tax return. Such relief may be available provided that the requirements of §26.2642-7 of these final regulations are satisfied. Further, as described below, the final regulations, as they pertain to timely allocations, include three narrow exceptions that allow for relief from affirmative allocations of GST exemption.

Proposed §26.2642-7(e)(1), redesignated in the final regulations as §26.2642-7(e)(2), has been further modified to clarify that the allocation and election referred to is an affirmative (not an automatic) allocation or election. The Treasury Department and the IRS will address the effect of a grant of relief on automatic allocations in future guidance to be issued under section 2642(g).

A commenter indicated that it is not clear whether proposed §26.2642-7(e)(1) also applies to allocations of GST exemption with respect to transfers made at death. This rule has been clarified in the final regulations to encompass transfers made at death and confirms that relief will not be granted to decrease or revoke an affirmative allocation (as opposed to an automatic allocation) of GST exemption, regardless of whether the transfer or the allocation of exemption was made during a transferor's life or upon the transferor's death.

The commenter further requested that the provision be modified to provide that affirmative allocations (as opposed to automatic allocations) of exemption or elections made on a timely filed estate tax return of the estate of a decedent dying prior to 2001 be exempted from this provision because section 2642(g)(1) relief was not available before December 31, 2000. Although this recommendation has not been adopted in the final regulations for all such allocations of exemption, relief from the problem raised by this comment is provided by the third of the exceptions included in the final regulations, as described in the following paragraphs.

The final regulations have been modified to include three narrow exceptions that allow for relief from affirmative allocations and elections. The first exception is that an allocation of GST exemption to a transfer or a trust (other than a charitable lead annuity trust (CLAT) or a trust subject to an estate tax inclusion period (ETIP) before the termination of the lead interest or ETIP, respectively) is void to the extent that the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero. *See* §26.2632-1(b)(4)(i). (The allocation of exemption to a CLAT upon its creation may turn out to be insufficient or excessive for the purpose of making the CLAT fully GST exempt, but the allocation will not be voided. The allocation of exemption to a trust subject to an ETIP does not become irrevocable until the termination of the ETIP.)

The second exception is that an allocation is void if the allocation is made with respect to a trust that, at the time of the allocation, has no GST potential with respect to the transferor making the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. *See* §26.2632-1(b)(4)(i).

The third exception is that a late allocation (as defined in section 2642(b)(3)) will be deemed to be void as part of the relief granted under section 2642(g) if the late allocation was made in an effort to mitigate the tax consequences of the missed allocation that is the subject of the grant of relief and that was not eligible for relief prior to the enactment of section 2642(g)(1). Specifically, such a late allocation is deemed to be void if (1) prior to December 31, 2000, a transfer was made to a trust with GST potential with respect to the transferor; (2) a timely allocation of GST exemption to the trust was not made; (3) prior to December 31, 2000, a late allocation of GST exemption was made to the trust; (4) the late allocation is disclosed as part of the request for relief or during the IRS's consideration of that request; and (5) relief under section 2642(g)(1) is granted to make a timely allocation to the transfer made prior to December 31, 2000.

Finally, the commenter questioned what effect a grant of relief under section 2642(g)(1) has on a timely allocation (whether affirmative or automatic) of the same transferor's GST exemption to a transfer made subsequent to the transfer for which relief is requested. The commenter suggested that, if relief is granted under section 2642(g)(1) to timely allocate GST exemption to an earlier transfer, the GST exemption timely allocated (whether affirmatively or automatically) to a later transfer could be reduced or eliminated. The commenter suggested that the grant of relief for the earlier transfer could be conditioned on payment of the GST tax that may be due if the inclusion ratio with respect to the subsequent transfer is increased by the grant of relief. The Treasury Department and the IRS believe that, because the response to this comment may go beyond the scope of the proposed regulations, this issue is among those they intend to address in subsequent guidance.

IX. *Proposed §26.2642-7(f) -- Period of Limitations Under Section 6501*

Proposed §26.2642-7(f), redesignated in the final regulations as §26.2642-7(g), provides that a request for relief does not reopen, suspend, or extend the period of limitations on assessment or collection of any estate, gift, or GST tax under section 6501 of the Code. Thus, the IRS may request that the transferor or the transferor's executor consent under section 6501(c)(4) to an extension of the period of limitations on assessment or collection of any or all gift and GST taxes.

A commenter requested that the references to gift tax be removed from this provision, apparently in an effort to eliminate the possibility that the grant of relief might be conditioned on the taxpayer's agreement to extend the gift tax period of limitations. The commenter's rationale for this request is that the request for relief relates only to the GST tax. The references to gift tax in this provision, however, complement §26.2642-7(d)(3)(ii) of the final regulations, in effect, by allowing the taxpayer to avoid a finding of prejudice to the interests of the government by agreeing to an extension of the gift tax period of limitations. An agreement to extend the period of limitations is voluntary and declining to agree to an extension would not necessarily mean that relief would be denied, but it is a factor that may be taken into consideration. By retaining this reference to the gift tax, the government would be given adequate time to consider the reported identity of the transferor, the valuation of the transferred interest that will eventually determine the amount of GST exemption that may be allocated to the transfer, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. Therefore, this reference has not been deleted from the final regulations.

A taxpayer who seeks relief under section 2642(g)(1) will not be regarded as having filed a claim for refund or credit merely by requesting such relief.

X. *Proposed §26.2642-7(h)(2) and (3) -- Affidavits and Declarations*

Commenters recommended against requiring affidavits that provide more information than is required under §301.9100-3(e)(2) and (3). One commenter characterized the proposed procedural requirements as more burdensome than the corresponding procedural requirements under the section 9100 provisions and stated that these "more burdensome" requirements for relief are inconsistent with the statutory mandate in section 2642(g). Since the enactment of section 2642(g), the IRS has issued a significant number of private letter rulings granting relief under section 2642(g)(1). After considering the circumstances in the requests, the IRS has concluded that certain information in addition to that specified in §301.9100-3(e)(2) and (3) is necessary to determine whether relief should be granted. Accordingly, based on the IRS's experience in evaluating such requests for relief, the Treasury Department and the IRS have not adopted this recommendation in the final regulations.

Another commenter maintained that the affidavits required by proposed §26.2642-7(h) are not necessary for the proper performance of the functions of the IRS and, therefore, the quality, utility, and clarity of the information to be provided by the affidavits cannot be enhanced. In support, the commenter argued that the affidavits demand more substantiation from taxpayers than is contemplated by section 2642(g)(1)(B). In addition, the commenter asserted that the IRS can grant relief under section 2642(g)(1) without requiring these affidavits if the IRS focuses on the government's interest and the transferor's intent as evidenced in the transfer documents and other supporting documents. Finally, the commenter stated that the IRS could determine from the documents previously filed with the IRS that the period of limitations had expired or that a taxable termination or distribution had occurred, both factors that may be indicative of prejudice to the government.

In the course of issuing private letter rulings under §301.9100-3, the IRS has determined that, while transfer instruments and other relevant documents provided by the transferor or the transferor's executor provide useful information, these documents do not necessarily provide all of the information needed to evaluate properly a request for relief under section 2642(g)(1). Accordingly, the final regulations retain the requirement that requests for relief include detailed affidavits. However, after consideration of the comments and review of the proposed regulations, the Treasury Department and the IRS have modified the regulations by decreasing the amount of information required in affidavits in order to replicate more closely the requirements of §301.9100-3(e)(2) and (3). As a result, the final regulations reduce the burden the proposed regulations would have imposed.

Commenters also requested a narrowing of the categories of individuals from whom affidavits will be required. In addition to individuals involved in the preparation of the tax return, proposed §26.2642-7(h)(3) also includes in this group each tax professional who advised or was consulted on "any aspect of the transfer" or on the trust, and each agent or legal representative of the transferor who participated "in the transaction." Commenters noted that this group may include advisors, agents, or legal representatives of the transferor who had nothing to do with preparing the return or with the decision or failure to allocate exemption or to make an election on that return.

In response to these comments, the Treasury Department and the IRS have modified the regulations by narrowing the categories of individuals required to submit affidavits under proposed §26.2642-7(h)(3), redesignated in the final regulations as §26.2642-7(i)(4). Specifically, the final regulations do not include in this group of required affiants any tax professional unless that professional participated in or provided advice with regard to the GST tax exemption allocation or election, or with regard to the preparation of the return. As a result, the final regulations reduce the burden the proposed regulations would have imposed.

The final regulations, however, also have been modified to confirm that the IRS, consistent with current procedures in the IRS private letter ruling program, may require affidavits and copies of writings from persons not included in the more narrow group described in §26.2642-7(i)(4) in cases in which the IRS believes additional information is required or would be helpful in making the determination as to whether relief under section 2642(g)(1) will be granted.

XI. *Proposed §26.2642-7(h)(3)(iii) – Affidavits of Other Parties*

Proposed §26.2642-7(h)(3)(iii) provides that a party making an affidavit must attach to each affidavit copies of any writing (including, without limitation, notes and e-mails) and other contemporaneous documents within the possession of the affiant relevant to the transferor's intent with regard to the application of GST tax to the transaction. A commenter requested that this provision be modified to provide that a lawyer or accountant is not deemed to possess any documents that are in the possession of his or her law firm or accounting firm. In response to this comment, this provision of the final regulations, redesignated in the final regulations as §26.2642-7(i)(4)(iii), clarifies that the writings to be submitted under these regulations are those that the affiant discovers by conducting, in good faith, a reasonably diligent search of records in the possession of or accessible to the affiant, or subject to the affiant's control. A reasonably diligent search generally would include, without limitation, a review of the records in the possession or control of the affiant or the firm with which the affiant is employed or associated relating to the transaction or tax return at issue.

XII. *Proposed §26.2642-7(h)(3)(v) – Death or Incapacity*

Proposed §26.2642-7(h)(3)(v) provides that, if a person who would be required to provide an affidavit under proposed §26.2642-7(h)(3)(i) has died or is not competent, the transferor or the transferor's executor must include a statement to that effect in the affidavit of that transferor or executor.

A commenter suggested that this proposed provision would require the transferor or the transferor's executor to determine the competency of a person and that such a requirement would be inappropriate. Further, the commenter noted that, in addition to death and incompetence, serious physical illness or other physical impairment also could render a person unable to provide an affidavit. The commenter recommended that this provision be modified to provide that the transferor or the transferor's executor may satisfy the requirements of this provision with a statement that such transferor or executor, despite his or her best efforts in good faith, was unable to obtain the affidavit required under proposed §26.2642-7(h)(3)(i) and an explanation of the basis for the transferor's or executor's conclusion, based on his or her best knowledge and reasonable belief that such affidavit was not obtainable.

The corresponding provision in the final regulations (§26.2642-7(i)(4)(vi)) has been modified to apply to persons who have died or who are unwilling or unable to provide the required affidavit at the time relief is requested. For purposes of this provision, the term *unwilling* refers to a person who does not (other than one who is unable to) provide the required affidavit, despite the best efforts of the transferor or the transferor's executor, made in good faith, to obtain the required affidavit. The unwillingness of certain persons to provide an affidavit, however, may be considered by the IRS in determining whether or not to grant the requested relief. In addition, for purposes of this provision, the term *unable* refers to a permanent condition such as physical or mental incapacity that prevents a person from providing the required affidavit, but not a temporary condition such as a temporary physical or mental incapacity or a person's inability due to a leave of absence, travel, or a contractual requirement such as a confidentiality agreement.

XIII. *User Fee and Estimated Burden*

A commenter noted that taxpayers have to pay a user fee when seeking relief under section 2642(g)(1) through the IRS private letter ruling program. The commenter proposed that, given the complexity of the rules and the frequency of changes to the rules, relief under section 2642(g)(1) should be granted without charging a user fee. The commenter noted that, under other circumstances, the IRS has developed simplified procedures that do not necessitate a private letter ruling request and suggested that the compliance burden would be eased significantly if a simplified procedure to administer relief under section 2642(g)(1) were developed.

The Treasury Department and the IRS believe that the most efficient way to address these requests for relief continues to be through the IRS private letter ruling program. The user fee is imposed to recover the government's full cost for providing the service. The Treasury Department and the IRS agree that the compliance burden would be eased significantly if it was possible to develop a simplified procedure to administer relief under section 2642(g)(1). For instance, Rev. Proc. 2004-46 (2004-2 CB 142) and Rev. Proc. 2004-47 (2004-2 CB 169) identify situations in which the Treasury Department and the IRS believe that relief may be granted without adversely affecting the interests of the government. *See* §601.601(d)(2)(ii)(*b*). The Treasury Department and the IRS are prepared to issue additional revenue procedures or other guidance when they identify situations for which simplified or automatic relief under section 2642(g)(1) would be appropriate and administrable. Until such guidance is issued, however, the IRS private letter ruling program will continue to allow the IRS to obtain and evaluate the information necessary to identify such situations. The user fee would follow the same schedule and amount as rulings under §301.9100-1. See Appendix A of Rev. Proc. 2024-1, 2024-1 I.R.B. 1, 85.

The IRS had estimated in the proposed regulations that the annual burden to prepare the affidavits was two hours. Many commenters mentioned that the estimated burden was drastically underestimated due to the numerous requirements of the proposed regulations. In response to these comments, the IRS has reconsidered this estimate of the annual burden and has increased the estimated annual burden to 20 hours.

**Effect on Other Documents**

Notice 2001-50, 2001-2 CB 189, is obsolete as of May 6, 2024.

**Special Analyses**

I. *Regulatory Planning and Review*

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

II. *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. (PRA), information collection requirements contained in these final regulations are in §26.2642-7(i)(3) and (4). These provisions require transferors or the executors of transferors' estates to provide one or more affidavits when requesting relief under section 2642(g)(1) of the Internal Revenue Code. The IRS will use the information in the affidavits to determine whether to grant a transferor or a transferor's estate an extension of time to (1) allocate GST exemption as defined in section 2631, (2) elect under section 2632(b)(3) not to have the automatic allocation of GST exemption apply to a direct skip, (3) elect under section 2632(c)(5)(A)(i) not to have the automatic allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust, and (4) elect under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c).

The reporting burden associated with the information collection in the final regulations are included in the aggregate burden estimates for OMB control number 1545-2116. The estimated number of respondents, who are mainly attorneys representing the taxpayers, for each year is estimated to be 50. The estimated burden for each respondent to prepare the private letter ruling request and the accompanying affidavits is 20 hours per respondent. Thus, the total annual burden is estimated to be 1000 hours. It should be noted that the burden is not an annual burden for each taxpayer, as taxpayers do not need to request a private letter ruling each year.

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

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any Internal Revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

III. *Regulatory Flexibility Act*

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The applicability of these regulations is limited to individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although it is anticipated that there may be a beneficial economic impact for some small entities, including entities that provide tax and legal services that assist individuals in the IRS private letter ruling program, any benefit to those entities would be indirect. Further, this indirect benefit will not affect a substantial number of these small entities because only a limited number of individuals (or their estates) and trusts would submit a private letter ruling request under this rule. Therefore, only a small fraction of tax and legal services entities would generate business or benefit from this rule. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received in response.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. 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 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

**Drafting Information**

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

**List of Subjects**

**26 CFR Part 26**

Estate taxes, Reporting and recordkeeping requirements.

**26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 26, 301, and 602 as follows:

**PART 26--GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986**

**Paragraph 1.** The authority citation for part 26 is amended by adding an entry for §26.2642-7 in numerical order to read in part as follows:

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

* * * * *

Section 26.2642-7 also issued under 26 U.S.C. 2642(g).

* * * * *

**Par. 2.** Section 26.2642-7 is added to read as follows:

**§26.2642-7 Relief under section 2642(g)(1).**

(a) *In general*. Under section 2642(g)(1)(A) of the Internal Revenue Code (Code), the Secretary of the Treasury or her delegate (Secretary) has the authority to issue regulations describing the circumstances in which a transferor, as defined in section 2652(a) of the Code, or the executor of a transferor's estate, as defined in section 2203 of the Code, will be granted an extension of time to allocate generation-skipping transfer (GST) exemption as described in section 2642(b)(1) and (2). The Secretary also has the authority to issue regulations describing the circumstances under which a transferor or the executor of a transferor's estate will be granted an extension of time to make the elections described in section 2632(b)(3) and (c)(5) of the Code. Section 2632(b)(3) provides that an election may be made by or on behalf of a transferor not to have the transferor's GST exemption automatically allocated under section 2632(b)(1) to a direct skip, as defined in section 2612(c), made by the transferor during life. Section 2632(c)(5)(A)(i) provides that an election may be made by or on behalf of a transferor not to have the transferor's GST exemption automatically allocated under section 2632(c)(1) to an indirect skip, as defined in section 2632(c)(3)(A), or to any or all transfers made by such transferor to a particular trust. Section 2632(c)(5)(A)(ii) provides that an election may be made by or on behalf of a transferor to treat any trust as a GST trust, as defined in section 2632(c)(3)(B), for purposes of section 2632(c) with respect to any or all transfers made by that transferor to the trust. This section generally describes the factors that the Internal Revenue Service (IRS) will consider when an extension of time is sought by or on behalf of a transferor to timely allocate GST exemption or to make an election under section 2632(b)(3) or (c)(5). If the time period for an automatic six-month extension under paragraph (i)(1) of this section has passed, relief provided under this section can be requested through the IRS private letter ruling program. See paragraph (i) of this section.

(b) *Effect of relief*—(1) *In general*. If an extension of time to allocate GST exemption is granted under this section, the allocation of GST exemption, once made, will be considered effective as of the date of the transfer. Further, the amount of the transferor's GST exemption required to be allocated in order to produce a zero inclusion ratio solely with regard to that transfer will be the value of the property transferred for purposes of chapter 11 or chapter 12 of the Code as of the date of the transfer. If an extension of time to elect out of the automatic allocation of GST exemption under section 2632(b)(3) or (c)(5)(A)(i) is granted under this section, the election, once made, will be considered effective as of the date of and immediately prior to the transfer. If an extension of time to elect to treat any trust as a GST trust under section 2632(c)(5)(A)(ii) is granted under this section, the election, once made, will be considered effective as of the date of and immediately prior to the first (or each) transfer covered by that election. See paragraph (h) of this section with regard to preserving a taxpayer's eligibility for a refund generated by a grant of relief, if applicable.

(2) [Reserved]

(3) *Effect on other transfers*. Except as otherwise provided in paragraph (e)(2)(ii) of this section, an allocation of exemption or an election made pursuant to a grant of relief under this section does not reduce or eliminate any affirmative allocation or void any election made with respect to any other transfer occurring contemporaneously with or subsequent to the transfer or transfers for which relief has been granted.

(c) *Limitation on relief*. The amount of GST exemption that may be allocated to a transfer as the result of relief granted under this section in no event may exceed the amount of the transferor's unused GST exemption under section 2631(c) of the Code as of the date of the transfer. Thus, if, by the time of the making of the allocation or election pursuant to relief granted under this section, the GST exemption amount under section 2631(c) has increased to an amount in excess of the amount in effect for the date of the transfer, no portion of the increased amount may be applied to that earlier transfer by reason of the relief granted under this section.

(d) *Basis for determination*—(1) *In general*. Requests for relief under this section will be granted when and to the extent that the transferor or the executor of the transferor's estate provides evidence (including the affidavits described in paragraph (i) of this section) establishing to the satisfaction of the IRS that the transferor or the executor of the transferor's estate acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government. Paragraphs (d)(2) and (3) of this section set forth nonexclusive lists of factors the IRS will consider in determining whether this standard of reasonableness, good faith, and lack of prejudice to the interests of the government has been met so that such relief will be granted. In making this determination, the IRS will consider those factors set forth in paragraphs (d)(2) and (3) of this section, as well as all other facts and circumstances not specifically set forth herein that are relevant to the particular situation. Paragraph (e) of this section sets forth some situations in which this standard is not met and, as a result, in which relief under this section will not be granted.

(2) *Reasonableness and good faith*. The following is a nonexclusive list of factors that will be considered in determining whether the transferor or the executor of the transferor's estate acted reasonably and in good faith for purposes of this section. Not all of these factors may be relevant in a particular situation (and those that are not relevant are not required to be addressed in the request for relief made in accordance with paragraph (i) of this section). Further, it is possible that the evidence relating to any one of these factors, in the context of all of the facts and circumstances of the particular situation, may be sufficient to persuade the IRS that the grant of relief under section 2642(g)(1) would be appropriate. However, as a general rule, no single factor (whether listed or not) will be determinative in all cases. The factors are as follows:

(i) *Intent*. The intent of the transferor to timely allocate GST exemption to a transfer or to timely make an election under section 2632(b)(3) or (c)(5), as evidenced in the trust instrument, the instrument of transfer, or other relevant documents contemporaneous with the transfer, such as Federal gift and estate tax returns and correspondence. This may include evidence of the intended GST tax status of the transfer or the trust (for example, exempt, non-exempt, or partially exempt), or more explicit evidence of intent with regard to the allocation of GST exemption or the election under section 2632(b)(3) or (c)(5).

(ii) *Intervening events*. Intervening events beyond the control of the transferor or of the executor of the transferor's estate that caused the failure to allocate GST exemption to a transfer or the failure to make an election under section 2632(b)(3) or (c)(5).

(iii) *Lack of awareness*. Lack of awareness, despite the exercise of reasonable diligence, by the transferor or the executor of the transferor's estate of the need to allocate GST exemption to the transfer, taking into account the experience of the transferor or the executor of the transferor's estate and the complexity of the GST tax issue, as the cause of the failure to allocate GST exemption to a transfer or to make an election under section 2632(b)(3) or (c)(5).

(iv) *Consistency*. Consistency by the transferor with regard to the allocation of the transferor's GST exemption to one or more trusts or skip persons. For example, the transferor's consistent pattern of allocation of GST exemption to transfers (whether or not made in consecutive years) to skip persons or to a particular trust, or the transferor's consistent pattern of electing not to have the automatic allocation of GST exemption apply to transfers (whether or not made in consecutive years), will be taken into consideration. Evidence of consistency may be less relevant if there has been a change of circumstances or a change of trust beneficiaries that otherwise would explain a deviation from prior GST exemption allocation decisions. Relief under this section will not be denied merely because a pattern of allocation or election does not exist or because the existing pattern changed at some point, whether in response to the enactment of section 2642(g) or to some other factor unrelated to either a lack of reasonableness or good faith or prejudice to the interests of the government.

(v) *Qualified tax professional*. Reasonable reliance by the transferor or the executor of the transferor's estate on the advice of a qualified tax professional retained or employed by one or both of them and either the failure of the tax professional, or, in reliance on or consistent with (or in the absence of) that tax professional's advice, the failure of the transferor or the executor, to allocate GST exemption to the transfer or to make an election described in section 2632(b)(3) or (c)(5). Reliance on a qualified tax professional will not be considered to have been reasonable if the transferor or the executor of the transferor's estate knew or should have known that the professional either--

(A) Was not competent to render advice on the GST exemption; or

(B) Was not aware of all relevant facts.

(3) *Prejudice to the interests of the government*. The following is a nonexclusive list of factors that will be considered to determine whether the interests of the government would be prejudiced for purposes of this section:

(i) *Hindsight*. An attempt to benefit from hindsight will be deemed to prejudice the interests of the government. A factor relevant to this determination is whether the grant of the requested relief would permit an economic advantage or other benefit that would not have been available if the allocation or election had been timely made. For example, there may be prejudice if a grant of the requested relief would permit an economic advantage or other benefit that results from the selection of one out of a number of alternatives (other than whether or not to make an allocation or election) that were available at the time the allocation or election could have been timely made, if hindsight makes the selected alternative more beneficial than the other alternatives. Prejudice also would exist if the transferor failed to make the allocation or election in order to wait to see (thus, with the benefit of hindsight) whether making an allocation of exemption or election would be more beneficial than not making the allocation or election. For instance, assume that a transferor funds several trusts with different property interests on the same date, and does not allocate GST exemption to any trust. Several years later, the transferor seeks relief to allocate GST exemption to the trust that enjoyed the greatest asset appreciation and thus constitutes the most effective use of the transferor's GST exemption. Relief will not be granted because the transferor attempted to benefit from hindsight and thereby acquire an economic advantage.

(ii) *Timing of the request for relief*. The timing of the request for relief will be considered in determining whether the interests of the government would be prejudiced by granting relief under this section. The interests of the government would be prejudiced if delay by the transferor or the executor of the transferor's estate in the filing of the request for relief was intended to deprive the IRS of a sufficient period of time in which to challenge any element of the transfer that is the subject of the request for relief, such as the value of the transferred property for Federal gift or estate tax purposes, the claimed identity of the transferor of the transferred property, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. For this purpose, such intent will be presumed, but may be rebutted by evidence persuasive to the IRS of the existence of other reasons for or circumstances causing the delay.

(iii) *Intervening taxable events*. The occurrence and effect of an intervening taxable termination or taxable distribution will be considered in determining whether and to what extent the interests of the government would be prejudiced by a grant of relief under this section. The interests of the government may be prejudiced if a taxable termination or a taxable distribution occurred between the time for making a timely allocation of GST exemption or a timely election described in section 2632(b)(3) or (c)(5) and the time at which the request for relief under this section was filed. The impact of a grant of relief on (and the difficulty of adjusting) the GST tax consequences of that intervening termination or distribution will be considered in determining whether the occurrence of a taxable termination or taxable distribution constitutes prejudice.

(iv) *Closed years*. Subject to the considerations described in paragraph (d)(3)(ii) of this section, the expiration of any period of limitations on the assessment or collection of transfer taxes prior to the filing of a request for relief under this section generally is not relevant to the determination of whether the requirements for a grant of relief under this section have been met. If that period has expired, however, and if the IRS concludes that the value of the transferred asset or assets as reported on a Federal gift or estate tax return by the transferor or the executor of the transferor's estate is likely to have satisfied the definition of a gross valuation misstatement as defined in section 6662(h)(2)(C) of the Code, the IRS will consider the purported undervaluation in determining whether a grant of relief will prejudice the interests of the government.

(e) *Situations in which the standard of reasonableness, good faith, and lack of prejudice to the interests of the government has not been met*—(1) *In general*. Relief under this section will not be granted if the IRS determines that the transferor or the executor of the transferor's estate has not acted reasonably and in good faith, or that the grant of relief would prejudice the interests of the government. The following situations illustrate some circumstances in which the standard of reasonableness, good faith, and lack of prejudice to the interests of the government has not been met, and as a result, in which relief under this section will not be granted.

(2) *Affirmative allocations*—(i) In general, relief will not be granted under this section to the extent that it would decrease or revoke an affirmative (but not automatic) allocation of GST exemption under section 2632(a) or 2642(b) that was made on a Federal gift or estate tax return, regardless of whether the transfer or the allocation of exemption was made during the transferor's life or upon the transferor's death.

(ii) There are three exceptions to this general rule, as follows. No request for relief is required for either of the first two exceptions:

(A) An allocation of GST exemption is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the property transferred or to the trust. This provision does not apply to charitable lead annuity trusts, nor does it apply to an allocation made to a trust subject to an estate tax inclusion period before the termination of that period. *See* §26.2632-1(b)(4)(i).

(B) An allocation is void if the allocation is made with respect to a trust that, at the time of the allocation, has no GST potential with respect to the transferor making the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. *See* §26.2632-1(b)(4)(i).

(C) A late allocation of GST exemption, as described in section 2642(b)(3), to a transfer or to a trust will be deemed void upon the grant of relief under this section if--

(*1*) Prior to December 31, 2000, a transfer is made that is subject to GST tax or to a trust that has GST potential with respect to the transferor;

(*2*) A timely allocation of GST exemption was not made to the transfer or the trust, and this missed allocation was not eligible for relief prior to the enactment of section 2642(g)(1);

(*3*) Prior to December 31, 2000, a late allocation of GST exemption was made to the transfer or the trust;

(*4*) The late allocation is disclosed as part of the request for relief or during the IRS's consideration of that request; and

(*5*) Relief under this section is granted to make a timely allocation to the transfer or the trust described in paragraph (e)(2)(ii)(C)(*1*) of this section.

(3) *Timing*. Relief will not be granted with regard to a transfer reported on the transferor's gift tax return in the situation in which the transferor filed the request for relief shortly after the expiration of the period during which an assessment of gift tax could be made with respect to that transfer, the IRS reasonably concludes that the transferor intentionally delayed that filing for the purpose of preventing an IRS examination of the reported value of the property subject to that transfer or the claimed identity of the transferor or other fact relevant for transfer tax purposes, and the transferor is unable to produce evidence sufficient to convince the IRS that the filing delay was attributable to some other reason or purpose.

(4) *Failure after being accurately informed*. Relief will not be granted under this section if the decision made by the transferor or the executor of the transferor's estate (who had been accurately informed in all material respects by a qualified tax professional retained or employed by either (or both) of them with regard to the allocation of GST exemption or an election described in section 2632(b)(3) or (c)(5)) was reflected or implemented by the action or inaction that is the subject of the request for relief.

(5) *Hindsight*. Relief under this section will not be granted if the IRS determines that the requested relief is an attempt to benefit from hindsight by waiting to see which of multiple transfers, made at substantially the same time but consisting of different property interests, enjoyed the greatest appreciation and thus would constitute the most effective use of the transferor's GST exemption.

(f) [Reserved]

(g) *Period of limitations under section 6501*. A request for relief under this section does not reopen, suspend, or extend the period of limitations on assessment or collection of any estate, gift, or GST tax under section 6501 of the Code. The IRS may request that the transferor or the transferor's executor consent, under section 6501(c)(4) and prior to the expiration of that period of limitations, to an extension of the period of limitations on assessment or collection of any or all gift and GST taxes for the transfer or transfers that are the subject of the requested relief. The transferor or the transferor's executor has the right to refuse to extend the period of limitations, or to limit any such extension to particular issues or to a particular period of time. *See* section 6501(c)(4)(B). Because a consent to an extension (whether or not limited) may eliminate prejudice to the interests of the government described in paragraphs (d)(3)(ii) and (e)(3) of this section, a refusal to consent to an extension is a factor that may adversely impact the availability of the requested relief.

(h) *Refunds*. The filing of a request for relief under section 2642(g)(1) with the IRS does not constitute a claim for refund or credit of an overpayment and no implied right to refund will arise from the filing of such a request for relief. Similarly, the filing of such a request for relief does not extend the period of limitations under section 6511 of the Code for filing a claim for refund or credit of an overpayment. If the grant of relief under section 2642(g)(1) results in the decrease of a trust's inclusion ratio or a reduction in the amount of a direct skip, and thus in a potential claim for refund or credit of an overpayment of tax, no such refund or credit will be allowed to the taxpayer or to the taxpayer's estate if the period of limitations under section 6511 for filing a claim for a refund or credit of the Federal gift, estate, or GST tax that was reduced by the granted relief has expired, unless a claim for refund or credit was filed before the expiration of that period. The taxpayer or the taxpayer's estate is responsible for preserving any potential claim for refund or credit.

(i) *Procedural requirements*—(1) *Automatic 6-month extension*. An automatic extension of 6 months from the due date of the gift or estate tax return, or of the Form 8939, *Allocation of Increase in Basis for Property Acquired From a Decedent,* of a decedent dying in calendar year 2010, (in each case, excluding extensions) is granted to file a supplemental return or Form 8939 on which the transferor or the executor of the transferor's estate may allocate GST exemption or make an election under section 2632(b)(3) or (c)(5). This extension, however, is available only if the transferor (or the executor of a transferor's estate) both timely filed the gift or estate tax return or the Form 8939 on which the GST exemption should have been allocated or the election should have been made, and, within that 6-month extension period, files a supplemental return or other supplementary filing. On the supplemental return or other filing, the taxpayer must comply with all of the requirements for allocating GST exemption under section 2632 or for making the election under section 2632(b)(3) or (c)(5) for the year the allocation or election should have been made to make a valid allocation or election. Any supplemental return filed pursuant to this paragraph must say *FILED PURSUANT TO §26.2642-7(i)(1)* on the front page of the return or the Form 8939, and must be sent to the same address that a timely return or Form 8939 on which the allocation or election should have been made would have been sent, subject to address changes in future forms or instructions or guidance published in the Internal Revenue Bulletin. *See* §601.601(d)(2) of this chapter. No request for a private letter ruling is required and, as a result, no user fee is required to be paid.

(2) *Private letter ruling program*. Except for the automatic 6-month extension provided in paragraph (i)(1) of this section, the relief described in this section is provided through the IRS's private letter ruling program. Requests for relief may be submitted in accordance with the applicable procedures for requests for a private letter ruling.

(3) *Affidavit and declaration of transferor or the executor of the transferor's estate*. (i) The transferor or the executor of the transferor's estate must submit a detailed affidavit describing the events that led to the failure to timely allocate GST exemption to a transfer or the failure to timely elect under section 2632(b)(3) or (c)(5), and the events that led to the discovery of the failure. In situations described in paragraph (i)(4)(vi) of this section, this affidavit also must include the additional information and statements described in that paragraph. If the transferor or the executor of the transferor's estate relied on a tax professional for advice with respect to the allocation or election, the affidavit also must describe--

(A) The scope of the engagement;

(B) The responsibilities the transferor or the executor of the transferor's estate believed the professional had assumed; and

(C) The extent to which the transferor or the executor of the transferor's estate relied on the professional.

(ii) Attached to each affidavit must be copies of any writings (including, without limitation, notes and e-mails) and other contemporaneous documents within the possession or control of the affiant relevant to the determination of the transferor's intent with regard to the application of GST tax to the transaction for which relief under this section is requested.

(iii) The affidavit must be accompanied by a dated declaration, signed by the transferor or the executor of the transferor's estate, that states:

Under penalties of perjury, I declare that I have examined this affidavit, including any attachments thereto, and to the best of my knowledge and belief, this affidavit, including any attachments thereto, is true, correct, and complete. In addition, under penalties of perjury, I declare that I have examined all the documents included as part of this request for relief, and that, to the best of my knowledge and belief, these documents collectively contain all the relevant facts relating to the request for relief and such facts are true, correct, and complete.

(4) *Affidavits and declarations from other parties*. (i) The transferor or the executor of the transferor's estate must submit detailed affidavits from the individuals specified in paragraphs (i)(4)(i)(A) through (D) of this section and other individuals who have knowledge or information about the events that led to the failure to allocate GST exemption or to elect under section 2632(b)(3) or (c)(5), or to the discovery of the failure. These individuals may include individuals whose knowledge or information is not within the personal knowledge of the transferor or the executor of the transferor's estate. The individuals described in this paragraph must include--

(A) Each agent or legal representative of the transferor who participated in the consideration of, or the decision with regard to, the allocation of GST exemption or the election under section 2632(b)(3) or (c)(5), or the preparation of the return for which relief is being requested;

(B) The preparer of the relevant Federal estate or gift tax return or returns;

(C) Each individual (including an employee of the transferor or of the executor of the transferor's estate) who provided information or advice with regard to, or otherwise made a significant contribution to, the decision concerning the allocation of GST exemption, the election under section 2632(b)(3) or (c)(5), or the preparation of the relevant Federal estate and/or gift tax return or returns; and

(D) Each tax professional who advised or was consulted by the transferor or the executor of the transferor's estate with regard to the allocation of GST exemption, the election under section 2632(b)(3) or (c)(5), or the preparation of the relevant Federal estate or gift tax return or returns.

(ii) Each affidavit must describe the scope of the engagement and the responsibilities of the individual as well as the advice or service the individual provided to the transferor or the executor of the transferor's estate.

(iii) Attached to each affidavit must be a copy of each writing (including, without limitation, notes and e-mails) and other contemporaneous documents within the possession of the affiant relevant to the transferor's intent or the affiant's advice with regard to the application of GST tax to the transaction for which relief under this section is requested. The documents that the affiant discovers by conducting in good faith a reasonably diligent search of records in the possession of or accessible to the affiant, or subject to the affiant's control, will be sufficient to satisfy the requirements of this paragraph (i)(4)(iii). A reasonably diligent search generally would include, without limitation, a review of the records in the possession or control of the affiant or the firm at which the affiant is employed or associated relating to the transaction or tax return at issue.

(iv) The IRS may require additional affidavits from persons not set forth in paragraph (i)(4)(i) of this section as well as additional documents when additional information or documents with respect to a transfer is believed by the IRS to be required or helpful in making its determination as to whether relief under this section should be granted.

(v) Each affidavit also must include the name and current address of the affiant, and must be accompanied by a dated declaration signed by the affiant that states:

> Under penalties of perjury, I declare that I have personal knowledge of the information set forth in this affidavit, including any attachments thereto. In addition, under penalties of perjury, I declare that I have examined this affidavit, including any attachments thereto, and, to the best of my knowledge and belief, the affidavit contains all the relevant facts and the attachments include copies of all relevant writings or other documents resulting from a reasonably diligent search, conducted in good faith, of all records within my possession, accessible to me, or subject to my control, relating to the allocation of GST exemption, the election under section 2632(b)(3) or (c)(5), and the preparation of the tax return at issue in the request for relief filed by or on behalf of [*transferor or executor of transferor's estate*], and such facts and attached documents are true, correct, and complete.

(vi) If an individual who would be required to provide an affidavit under paragraph (i)(4)(i) of this section has died or is unwilling or otherwise unable to provide the required affidavit, the affidavit required under paragraph (i)(3) of this section must include a statement to that effect, as well as a statement describing the relationship between that individual and the transferor or the executor of the transferor's estate; the information or knowledge the transferor or the executor of the transferor's estate believes that individual had about the events that led to the failure to make the allocation or the election or to the discovery of that failure; and, in cases other than the death of the individual, a detailed description of the efforts made to obtain the affidavit from the individual. The unwillingness of certain affiants to provide an affidavit, however, may be considered by the IRS in determining whether to grant the requested relief. For purposes of this paragraph (i)(4)(vi), the term *unwilling* refers to a person who is apparently able but refuses or otherwise fails, despite the best efforts, made in good faith, of the transferor or the transferor's executor, to provide the required affidavit. In addition, for purposes of this paragraph, the term *unable* refers to a permanent or potentially long-term condition such as physical or mental incapacity that prevents the person from providing the required affidavit, but not a temporary condition such as a temporary physical or mental incapacity or a person's inability due to a leave of absence, travel, or a contractual requirement such as a confidentiality agreement.

(5) *Additional rules regarding relief*. For purposes of relief under paragraphs (i)(1) and (2) of this section, the grant of relief in the form of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. In addition, notwithstanding the provisions of this section, an extension of time will not be granted under this section if alternative relief is provided by a statute, a regulation published in the **Federal Register**, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(j) *Applicability date*. This section applies to requests for relief to which section 2642(g)(1) applies that are filed on or after May 6, 2024, regardless of the date of the transfer.

**PART 301--PROCEDURE AND ADMINISTRATION**

**Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

**Par. 4.** Section 301.9100-2 is amended by adding paragraph (f) to read as follows:

**§301.9100-2 Automatic extensions.**

* * * * *

(f) *Automatic 6-month extension for certain generation-skipping transfer tax allocations and elections*—(1) *Availability*. Paragraph (b) of this section is not available to obtain an automatic 6-month extension to allocate generation-skipping transfer (GST) exemption to a transfer pursuant to section 2632 or to make an election under section 2632(b)(3) or (c)(5). An automatic 6-month extension to allocate GST exemption under section 2632 or to make an election under section 2632(b)(3) or (c)(5) is available to transferors or the executors of transferors' estates pursuant to §26.2642-7(i)(1) of this chapter if the requirements of that provision are satisfied.

(2) *Applicability date*. Paragraph (f) of this section applies to any gift or estate tax return or Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*, for which the date prescribed for filing is on or after May 6, 2024 (excluding extensions), regardless of the date of the transfer.

**Par. 5.** Section 301.9100-3 is amended by adding paragraph (g) to read as follows:

**§301.9100-3 Other extensions.**

* * * * *

(g) *Relief under section 2642(g)(1)*—(1) *Procedures*. The procedures set forth in this section are not applicable for requests for relief under section 2642(g)(1). For requests for relief under section 2642(g)(1), *see* §26.2642-7 of this chapter.

(2) *Applicability date*. This paragraph (g) applies to requests for relief to which section 2642(g)(1) applies that are filed on or after May 6, 2024, regardless of the date of the transfer.

**PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**Par. 7.** In § 602.101, amend the table in paragraph (b) by adding an entry in numerical order for "§26.2642-7(i)(3) and (4)" to read as follows:

**§602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| ******* | |
| 26.2642-7(i)(3) and (4) | 1545-2116 |
| ******* | |

**Douglas W. O'Donnell**
*Deputy Commissioner.*

Approved: March 12, 2024

**Aviva R. Aron-Dine**
*Acting Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register May 3, 2024, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2024, 89 FR 37116)

## Part III

*26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

## Rev. Proc. 2024-22

### SECTION 1. PURPOSE

This revenue procedure obsoletes Rev. Proc. 82-2, 1982-1 C.B. 367, which identified the State laws and circumstances that the Internal Revenue Service (IRS) previously concluded would permit an organization to satisfy the requirements of § 1.501(c)(3)-1(b)(4) of the Income Tax Regulations.[1] Many of the State laws identified in Rev. Proc. 82-2 have materially changed, and a revenue procedure cannot be relied upon to the extent it is predicated on State law and that State law has materially changed. *See* Rev. Proc. 89-14, 1989-1 C.B. 814.

### SECTION 2. BACKGROUND

.01 To be organized exclusively for one or more exempt purposes described in § 501(c)(3), an organization's assets must be dedicated to an exempt purpose. *See* § 1.501(c)(3)-1(b)(4).

.02 Section 1.501(c)(3)-1(b)(4) provides, in part, that:

An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

.03 Section 1.501(c)(3)-1(b)(2) states that, for purposes of that section, the term "articles of organization" or "articles" (collectively, Articles) includes "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created."

.04 Accordingly, to be treated as described in § 501(c)(3), an organization must satisfy the requirements of § 1.501(c)(3)-1(b)(4) by including an adequate dissolution provision in its Articles or, in the absence of such a provision, by operation of State law. An organization created in a State the laws of which satisfy the distribution of assets on dissolution requirements of § 1.501(c)(3)-1(b)(4) does not need to include an express dissolution provision in its Articles.

.05 Rev. Proc. 82-2 identified the States and circumstances in which an organization could satisfy the distribution of assets upon dissolution requirements of § 1.501(c)(3)-1(b)(4) by operation of State law. The conclusions in Rev. Proc. 82-2 were based on State laws in effect at the time of its publication. Rev. Proc. 82-2 also provided a sample of an acceptable dissolution provision for organizations that are required to include in their Articles an express provision for the distribution of assets upon dissolution.

.06 Section 7.01(5) of Rev. Proc. 89-14 cautions taxpayers, IRS personnel, and others concerned to determine whether a revenue procedure on which they seek to rely has been revoked, modified, declared obsolete, distinguished, clarified, or otherwise affected by subsequent legislation, treaties, regulations, revenue rulings, revenue procedures, or court decisions. Section 7.01(6) of Rev. Proc. 89-14 provides that if the conclusion of a revenue procedure is predicated upon a certain provision or interpretation of law other than Federal tax law, taxpayers, IRS personnel, and others generally must determine whether such relevant non-Federal tax law has changed materially from that used in the revenue procedure on which they seek to rely. Therefore, under section 7.01(5) and (6) of Rev. Proc. 89-14, a revenue procedure cannot be relied upon to the extent that it is predicated on State law and that State law has materially changed.

.07 Many of the State laws considered in Rev. Proc. 82-2 have since been amended, repealed, or replaced. Rev. Proc. 82-2 therefore no longer provides an accurate list of the jurisdictions with laws that operate to ensure the distribution of assets for exempt purposes upon dissolution of an organization for purposes of satisfying § 1.501(c)(3)-1(b)(4). Accordingly, this revenue procedure is being published to obsolete Rev. Proc. 82-2.

.08 An organization is responsible for verifying whether the requirements of § 1.501(c)(3)-1(b)(4) are satisfied by applicable State law if its Articles do not provide for the distribution of its assets upon dissolution. An organization can ensure that it satisfies the requirements of § 1.501(c)(3)-1(b)(4) by including an acceptable dissolution provision in its Articles. Publication 557, *Tax-Exempt Status for Your Organization* (currently available at: https://www.irs.gov/pub/irs-pdf/p557.pdf), provides sample Articles with a dissolution provision that satisfies the requirements of § 1.501(c)(3)-1(b)(4). Sample dissolution provisions are also provided in the Instructions for Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* and the Instructions for Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. These sample dissolution provisions are substantively similar to the sample dissolution provision provided in Rev. Proc. 82-2.

### SECTION 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 82-2, 1982-1 C.B. 367, is obsoleted as of May 24, 2024.

### SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Christopher Hyde of

[1] *Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code or the Income Tax Regulations (26 CFR part 1).*

the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Mr. Hyde at (202) 317-5800 (not a toll-free number).

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*26 CFR 601.602: Tax forms and instructions.*
*(Also Part I, §§ 1, 223; Part III § 54.9831-1)*

## Rev. Proc. 2024-25

### SECTION 1. PURPOSE

This revenue procedure provides the 2025 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Pension Excise Tax Regulations.

### SECTION 2. 2025 INFLATION ADJUSTED ITEMS

.01 *HSA Inflation Adjusted Items*.

(1) *Annual contribution limitation*. For calendar year 2025, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $4,300. For calendar year 2025, the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $8,550.

(2) *High deductible health plan*. For calendar year 2025, a "high deductible health plan" is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,650 for self-only coverage or $3,300 for family coverage, and for which the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $8,300 for self-only coverage or $16,600 for family coverage.

.02 *HRA Inflation Adjusted Item*.

For plan years beginning in 2025, the maximum amount that may be made newly available for the plan year for an excepted benefit HRA under § 54.9831-1(c)(3)(viii) is $2,150. See § 54.9831-1(c)(3)(viii)(B)(1) for further explanation of this calculation.

### SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for HSAs for calendar year 2025 and for excepted benefit HRAs for plan years beginning in 2025.

### SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Kyle Walker of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding § 223, HSAs, and excepted benefit HRAs, contact Regan Rusher at (202) 317-5500 (not a toll-free number). For further information regarding the calculation of the inflation adjustments in this revenue procedure, contact Mr. Walker at (202) 317-4718 (not a toll-free number).

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

*A*—Individual.
*Acq.*—Acquiescence.
*B*—Individual.
*BE*—Beneficiary.
*BK*—Bank.
*B.T.A.*—Board of Tax Appeals.
*C*—Individual.
*C.B.*—Cumulative Bulletin.
*CFR*—Code of Federal Regulations.
*CI*—City.
*COOP*—Cooperative.
*Ct.D.*—Court Decision.
*CY*—County.
*D*—Decedent.
*DC*—Dummy Corporation.
*DE*—Donee.
*Del. Order*—Delegation Order.
*DISC*—Domestic International Sales Corporation.
*DR*—Donor.
*E*—Estate.
*EE*—Employee.
*E.O.*—Executive Order.
*ER*—Employer.
*ERISA*—Employee Retirement Income Security Act.
*EX*—Executor.
*F*—Fiduciary.
*FC*—Foreign Country.
*FICA*—Federal Insurance Contributions Act.
*FISC*—Foreign International Sales Company.
*FPH*—Foreign Personal Holding Company.
*F.R.*—Federal Register.
*FUTA*—Federal Unemployment Tax Act.
*FX*—Foreign corporation.
*G.C.M.*—Chief Counsel's Memorandum.
*GE*—Grantee.
*GP*—General Partner.
*GR*—Grantor.
*IC*—Insurance Company.
*I.R.B.*—Internal Revenue Bulletin.
*LE*—Lessee.
*LP*—Limited Partner.
*LR*—Lessor.
*M*—Minor.
*Nonacq.*—Nonacquiescence.
*O*—Organization.
*P*—Parent Corporation.
*PHC*—Personal Holding Company.
*PO*—Possession of the U.S.
*PR*—Partner.
*PRS*—Partnership.
*PTE*—Prohibited Transaction Exemption.
*Pub. L.*—Public Law.
*REIT*—Real Estate Investment Trust.
*Rev. Proc.*—Revenue Procedure.
*Rev. Rul.*—Revenue Ruling.
*S*—Subsidiary.
*S.P.R.*—Statement of Procedural Rules.
*Stat.*—Statutes at Large.
*T*—Target Corporation.
*T.C.*—Tax Court.
*T.D.*—Treasury Decision.
*TFE*—Transferee.
*TFR*—Transferor.
*T.I.R.*—Technical Information Release.
*TP*—Taxpayer.
*TR*—Trust.
*TT*—Trustee.
*U.S.C.*—United States Code.
*X*—Corporation.
*Y*—Corporation.
*Z*—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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