PUBLIC CITIZEN

Testimony by Chelsea Hodgkins of Public Citizen regarding Section 30D proposed Due Diligence under § 1.30D–6(b)(1), and proposed Compliant-Battery Ledger under § 1.30D–6(a)(7)

Good morning and thank you for the opportunity to testify. My name is Chelsea Hodgkins. I am a Senior EV Policy Advocate with Public Citizen, a national public interest advocacy organization based in Washington, DC with more than half a million members and supporters.

I am here to urge Treasury and IRS to strengthen the due diligence and battery passport provisions in the proposed rule and to share the recommendations on how to do so that we submitted to the official Federal Register in a joint comment with fellow EV advocacy groups, including colleagues from UCS, Earthworks, Plug In America and others that you've heard from today.

Electrifying vehicles is essential to addressing the climate crisis. Equally important is ensuring that the automotive companies driving the transition adopt practices that safeguard human rights and the environment across their EV battery supply chains. Achieving this level of responsible business conduct requires strong due diligence and material tracing by companies across their battery supply chain.

Public Citizen acknowledges and applauds the IRS and Treasury for taking the first step to require ongoing due diligence and battery tracing activities by manufacturers to qualify for the 30D tax credit.

Yet, the proposed rule does not provide clear definitions or associated guidance to make these requirements operational by manufacturers or effectively enforceable by Treasury as regulators. Given the wide range of social and environmental harms from company practices along battery supply chains, clear definitions and guidance are fundamental for effective compliance that eases the administration of the 30D credit while also offering the public assurance that Federal spending is promoting an ethical EV transition. This is in Treasury's authority and interest to do.

Treasury and the IRS should adopt simple, widely endorsed tools that can help identify materials and their sources in its 30D Tax Credit Rules. These tools include the due diligence mechanism developed by the Organization for Economic Co-operation and Development (OECD) and the battery materials tracing scheme required by the European Union.

Proposed Due Diligence Under § 1.30D–6(b)(1) (FR 88 84098)

The Inflation Reduction Act gives Treasury and the IRS broad powers for determining manufacturer compliance with "foreign entity of concern" (FEOC) requirements related to battery components and minerals under the 30D Clean Vehicle Tax Credit.

While § 1.30D–6(b)(1) of the proposed rule requires manufacturers to conduct due diligence for all battery components and minerals as a criteria for determining their FEOC compliance, the draft does not include a clear definition of qualified due diligence. We urge Treasury and the IRS to define due diligence according to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and adopt the corresponding OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas to support companies with minerals due diligence.

The OECD Guidelines are recommendations to companies on responsible business conduct. The OECD Guidelines endorse company supply chain due diligence and are a broadly supported, internationally agreed upon, comprehensive code of responsible business conduct that governments, including ours, have committed to promoting. The US Department of State oversees US progress on these commitments and their implementation.

The OECD Guidelines define due diligence as "the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems."

This definition can help Treasury accomplish the proposed rule's goal of excluding FEOC from EV battery mineral supply chains because proper risk management leads companies to inquire from whom and where they source materials. As the Lead the Charge Network has put it, "the problem isn't batteries: the problem is poor business-as-usual practices, from mining to manufacturing, that perpetuate . . . harmful impacts."[1]

Battery supply chains are rife with environmental degradation and human rights violations, notably harms to workers, women, children, and Indigenous communities. Minerals coming from high-risk and conflict-affected areas are often linked to gross human rights violations that require additional, context-specific due diligence activities.

For this reason, companies and governments around the world are using the OECD due diligence mechanism and associated guidance to promote due diligence across mineral supply chains. Treasury can and should do the same to administer FEOC compliance more easily.

Many industry actors, including US automakers, have taken voluntary steps to align their internal policies with the OECD guidelines. For example, the responsible sourcing policies of Tesla, GM, and Ford require their suppliers to undertake due diligence in accordance with the OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk areas.

---

[1] Lead the Charge. March 2023. "Briefing: Automotive Supply Chain Leaderboard." https://leadthecharge.org/wp-content/uploads/2023/03/Lead-the-Charge-_-Campaign-Leaderboard-Briefing-_-Mar-2023.pdf

But voluntary company actions are not a substitute for mandatory laws and regulations by governments. Notably, the EU Battery Law and the EU Corporate Sustainability Due Diligence Directive (CSDDD) will require companies operating in Europe, including US corporations, to undertake human rights due diligence across their mineral supply chains following the OECD's guidance. Aligning Treasury and the IRS's due diligence with these existing efforts will deliver more certain and durable 30D compliance. A lack of alignment between the EU and US specifically, two key markets for US auto manufacturers, creates an uneven playing field disadvantaging US companies and a less stable global regulatory environment.

Treasury is right to require automotive manufacturers and their suppliers to undertake due diligence to comply with the 30D credit. As a leading global buyer of the EV battery minerals produced by these mining companies, the automotive sector has the leverage to raise the bar of responsible business practices not just within their own industry, but within the numerous others supplying the materials to produce their EVs.

While the automotive sector is making progress, automakers' internal systems are still largely ill equipped to ensure their suppliers are undertaking full due diligence, fundamental to fulfilling their own responsible sourcing commitments.

An evaluation of 18 of the world's leading automakers on their efforts to eliminate emissions, environmental harms, and human rights violations from their supply chains found that industry practices regarding human rights and responsible sourcing practices remain below par: Ford led the industry with an overall score of a mere 51%.[2]

Adopting the OECD's due diligence guidelines will ensure that Treasury's rules require auto companies and their suppliers to fill these gaps and operate under the highest global standards for human rights due diligence.

This is also important because of the specific policy gaps that exist across battery supply chains with regards to at-risk populations, particularly Indigenous people. Globally, more than half of battery minerals are located underneath or near Indigenous territories.[3] In the US, 97% of nickel reserves, 89% of copper, 79% of lithium, and 68% of cobalt, are located within 35 miles of Tribal reservations.[4]

A recent analysis of mining companies producing key battery minerals found that the majority

[2] Lead the Charge. 2023. "Leaderboard Summary: Ford." https://leadthecharge.org/scorecards/ford/
[3] Owen, J.R., Kemp, D., Lechner, A.M. et al. Energy transition minerals and their intersection with land-connected peoples. Nat Sustain 6, 203–211 (2023). https://doi.org/10.1038/s41893-022-00994-6.
[4] Block, S. 3 June 2021. "Mining Energy-Transition Metals: National Aims, Local Conflicts." MSCI. https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947

did not have the necessary policies to respect the rights of impacted communities, with glaring gaps in upholding Indigenous peoples' rights. Auto companies are also falling short on Indigenous people's rights: the Leaderboard found two thirds of companies lack any kind of commitment to Indigenous rights.

Adopting OECD's due diligence standards would help reassure the public that 30D subsidies will benefit only battery materials produced by companies that respect Indigenous Peoples' rights while de-risking supply chains in high-conflict areas.

Recommendations for Treasury to adopt a "battery passport" as the compliant-battery ledger to create a streamlined system capable of FEOC compliance and aligned with international norms and newly passed laws of EU countries

We support Treasury's proposal to adopt a battery passport for FEOC compliance. It is an organized way to streamline data collection and reporting from manufacturers so it can be usable to Treasury in measuring compliance. It will also further support the US in adhering to international norms for battery mineral tracing and due diligence. Batteries sold in the European Union will be required to include a battery passport starting in 2026, per a regulation adopted in 2023.

Aligning 30D with international tracing and due diligence standards will enhance the competitiveness of American automakers and ensure their ability to compete on a global stage. Major US electric vehicle (EV) manufacturers participating in EU markets will have to comply with the EU's tracing and due diligence requirements. If Treasury and the IRS do not adopt the global approach, this rule will disadvantage domestic automakers already adapting their practices to comply with the EU's tracing and due diligence regulations. Instead, aligning the US and EU approaches will ease tax administration and create more regulatory certainty for automakers.

While some auto companies and their industry associations point to complexities and the global nature of their supply chains as reasons against requiring materials tracing, supply chain tracing is both possible and a good use of business resources. EU automaker Mercedes has industry-leading comprehensive mapping of its transition minerals supply chain. Other automakers, including Ford and GM, are implementing strategies including direct deals with mining companies and use technologies like blockchain[5] to overcome issues of traceability.[6] Industry players like these are showing that when there is the political will from the company to do so, they can.

---

[5] Nagar, T. 10 March 2023. "Benefits of Blockchain in the automotive industry." DevTechnosys. https://devtechnosys.com/insights/benefits-of-blockchain-in-automotive-industry/

[6] Lead the Charge. March 2023. "Briefing: Automotive Supply Chain Leaderboard." https://leadthecharge.org/wp-content/uploads/2023/03/Lead-the-Charge-_-Campaign-Leaderboard-Briefing-_-Mar-2023.pdf

Furthermore, there are initiatives, most notably the Global Battery Alliance, actively working with industry, to design and pilot new tracing systems to support the battery passport concept. We elevate the calls from our colleagues at Union of Concerned Scientists and Earthworks, amidst others, for Treasury to look to the GBA's recommendations for data collection and reporting.

Thank you again for the opportunity to testify today. Treasury and the IRS have an opportunity to advance a rapid and ethical transition to EVs. We look forward to working with you to take these recommendations forward.