



# TaxNewsFlash

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## Proposed regulations and Rev. Proc. 2023-38: Guidance on excluded entity provisions under section 30D clean vehicle credit

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-118492-23) providing guidance regarding the excluded entity provisions with respect to the clean vehicle credit under section 30D, as amended by H.R. 5376 (commonly called the “Inflation Reduction Act of 2022” (IRA)).

As described in a related IRS release—[IR-2023-228](#) (December 1, 2023)—the [proposed regulations](#) [PDF 372 KB] (19 pages as published in the Federal Register on December 4, 2023) provide 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 foreign entity of concern (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. The proposed regulations provide:

- Due diligence requirements for qualified manufacturers
- Specific rules for the determination of when applicable critical minerals (and associated constituent materials), battery components, battery cells, and batteries are compliant with the FEOC rules
- A regime for review of FEOC-compliance determinations
- Penalty rules

The proposed regulations supplement initial proposed regulations under section 30D as amended by the IRA published in the Federal Register on April 17, 2023 (read [TaxNewsFlash](#)), as well as proposed regulations containing initial and additional proposed regulations under sections 25E and 30D published in the Federal Register on October 10, 2023 (read [TaxNewsFlash](#)). Today’s proposed regulations modify proposed Treas. Reg. §§ 1.30D-2 and 1.30D-3 of the April 2023 proposed regulations.

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

(m) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for tax years ending after December 31, 2023.

- Consistent with the April 2023 proposed regulations, previously proposed Treas. Reg. § 1.30D-3(a) through (c) and (f) are proposed to apply to new clean vehicles placed in service after April 17, 2023, for tax years ending after April 17, 2023. Newly proposed Treas. Reg. § 1.30D-3(d) and (e) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for tax years ending after December 31, 2023.

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

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

Comments on the proposed regulations and requests for a public hearing are due by January 18, 2024.

### **Rev. Proc. 2023-38**

The Treasury and Department and IRS also released an advance version of [Rev. Proc. 2023-38](#) [PDF 210 KB] providing 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 Department of Energy (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 clean vehicle credit under section 30D, the previously-owned clean vehicle credit under section 25E, and the qualified commercial clean vehicle credit under section 45W. The revenue procedure supersedes section 4 of Rev. Proc. 2022-42, as well as sections 4.02(1), 7.01, and 7.02 of Rev. Proc. 2023-33.

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