1011 N Ankeny Blvd. #1123 | Ankeny, IA 50021

*June 16, 2023*

U.S. Department of the Treasury
Internal Revenue Service
Room 5203, Internal Revenue Service
P. O. Box 7604, Ben Franklin Station
Washington, DC 20044

**Re: Proposed Rule, "Section 30D New Clean Vehicle Credit," RIN 1545-BQ52**

Dear Secretary Yellen and Deputy Commissioner O'Donnell:

Commenters the American Free Enterprise Chamber of Commerce ("AmFree"), the AmFree Center for Legal Action, the Energy Equipment and Infrastructure Alliance, the Iowa Conservative Energy Forum, Clean Fuels Development Coalition, ICM Inc., the Illinois Corn Growers Association, the Indiana Corn Marketing Council, the Kansas Corn Growers Association, the Kentucky Corn Growers Association, the Michigan Corn Growers Association, the Missouri Corn Growers Association, and the Wisconsin Corn Growers Association appreciate the opportunity to comment on to the U.S. Department of the Treasury and the Internal Revenue Service's ("the agencies") notice of proposed rulemaking "Section 30D New Clean Vehicle Credit," 88 Fed. Reg. 23,370 (Apr. 16, 2023).

AmFree is a trade organization representing small- and medium-sized American businesses. It is dedicated to advancing the principles of free enterprise, free markets, limited government, and American leadership globally. AmFree is chaired by the Honorable Terry E. Branstad, who previously served as Ambassador to China and Governor of Iowa. The Honorable Sid Miller, Texas Secretary of Agriculture, serves Co-Chairman of AmFree's Agriculture Advisory Committee along with Gary Baise, the former U.S. Acting Deputy Attorney General and former Chief of Staff to the EPA Administrator.

The Center for Legal Action is a project of AmFree that focuses on combatting administrative overregulation both through agency proceedings and in litigation. The Center's Legal Action Advisory Board is chaired by two-time former U.S. Attorney General William P. Barr.

The Energy Equipment and Infrastructure Alliance ("EEIA") is a member of AmFree and is the trade association for suppliers of construction, equipment, materials, and services for energy production and infrastructure. EEIA's mission under its President and CEO Toby Mack is to mobilize and lead the supply chain's voices to achieve policies at all levels of government that encourage full development of America's energy resources and infrastructure, while protecting the environment, health, and safety.

The Iowa Conservative Energy Forum ("ICEF") is a nonprofit organization that advocates for clean, affordable, and reliable energy statewide. Under its Chairman, Ray Gaesser, ICEF promotes clean energy and energy waste reduction to stimulate economic growth, create jobs, protect and responsibly use our natural resources, while also improving energy reliability. ICEF is also a member of AmFree.

Clean Fuels Development Coalition ("CFDC") is a nonprofit organization based in Maryland. Established in 1988, CFDC supports policies and programs to advance clean-fuels that improve air quality, create domestic jobs, and increase energy independence. CFDC provides advocacy and consulting services to a wide variety of stakeholders in the biofuels industry, working with fuel producers, automobile manufacturers, and agricultural organizations.

ICM Inc. is a Kansas Corporation that is a global leader in developing biorefining capabilities, especially for the production of ethanol. Plants using ICM technology collectively produce 8.8 billion gallons annually. No other company serves more ethanol producers in the world. For over 25 years, it has been advancing the bio-fuel industry, protecting the environment, while helping American farmers and businesses enrich their communities and drive value back into U.S. agriculture.

The Illinois Corn Growers Association, the Indiana Corn Marketing Council, the Kansas Corn Growers Association, the Kentucky Corn Growers Association, the Michigan Corn Growers Association, the Missouri Corn Growers Association, and the Wisconsin Corn Growers Association are nonprofit trade associations based in their respective states with collective membership of more

than 10,000 corn farmers, as well as their supporters and members of corn farming-related industries like ethanol production. The ethanol industry supports over 400,000 jobs in more than 25 states and contributes more than $52 billion to the national GDP.

* * *

The Inflation Reduction Act of 2022 ("IRA") modified the electric vehicle tax credit in Section 30D of the tax code, expanding that up-to-$7,500 credit to all "clean" vehicles while placing strict sourcing requirements on the materials and components within clean vehicle batteries to promote domestic manufacturing and energy security, while stabilizing supply chains for the same. To that end, the IRA established threshold "applicable percentages" of domestically sourced critical minerals and components that must be met to qualify for the credit. Inflation Reduction Act of 2022, Pub. L. No. 117–169, § 13401, 136 Stat. 1956.[1] This "applicable percentage" ramps up over time, increasing from "40 percent" when the vehicle is placed in service "after the date of issuance of the proposed guidance … and before January 1, 2024," to "50 percent" in 2024, "60 percent" in 2025, "70 percent" in 2026, and "80 percent" after December 31, 2026. *Id*. Similarly, the "applicable percentage" for battery components increases from "50 percent" "before January 1, 2024," to "60 percent" in 2024 and 2025, "70 percent" in 2026, "80 percent" in 2027, "90 percent" in 2028, and "100 percent" after December 31, 2028. *Id.* at 1957. These are aggressive goals and represent Congress's intention to promote electric vehicles only while at the same time "promot[ing] resilient supply chains and domestic manufacturing, [and] strengthen[ing] supply chains with trusted trading partners." 88 Fed. Reg. 23,370.

But the Biden Administration's goal of driving vehicle electrification—apparently at any cost—seems to have led the agencies to stray from this goal. This is evidenced by the many liberties the agencies propose to take here. The proposal systematically removes almost every limitation on credit applicability

[1] *See also* 88 Fed. Reg. 23,371 ("New section 30D(e)(1)(A) provides that the Critical Minerals Requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America, is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).").

by impermissibly stretching the statute's text to lower the domestic sourcing requirements, redefine the meaning of words as simple as "battery," exclude relevant materials from the sourcing requirements, and empower the Secretary of Treasury to define free-trade agreements in a way that makes that statutory requirement meaningless. Worse still, the proposal scrupulously avoids discussion of the most important issues for which the agencies are statutorily obligated to provide guidance—namely, (1) what are the "foreign entities of concern" from which eligible batteries may not source materials; and (2) what vehicles qualify for the Section 45 clean commercial vehicle credits which do not contain domestic sourcing requirements.

These defects are explained in detail below. The agencies should take immediate action to fix these deficiencies by issuing a new guidance document clarifying the scope of 30D and 45W and then issuing a new proposed rule that would formalize those changes.

**The Proposal Impermissibly Stretches the Text of the Inflation Reduction Act to Lower the Domestic Sourcing Requirements.**

1. **The 50 percent value-added test allows critical minerals sourced mostly from non-FTA countries to qualify for the credit.** The proposed "50 percent value-added test" would substantially dilute the applicable percentage requirements for critical minerals. Section 30D(e)(1)(A) requires that the percentage of the value of critical minerals (as defined in § 45X(c)(6)) contained in a battery that were (i) extracted or processed in the U.S. or in any country with which the U.S. has a free trade agreement or (ii) recycled in North America to be equal to or greater than the applicable percentage for a given year.

The proposal interprets this language as establishing a "value-added" test:

> [A]n applicable critical mineral would be treated as extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if: (1) 50 percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or (2) 50 percent or more of the value added to the applicable critical mineral

> by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect.

88 Fed. Reg. 23,375.

This stretches the statutory language in two ways. First, the proposal would allow critical minerals whose value is primarily derived from outside of the U.S. and non-free trade agreement countries ("non-FTA countries") to qualify by allowing for qualification by either extraction or processing. For example, if Mineral X is extracted with a value of $8 in a non-FTA country, processed in another non-FTA country to raise its value to $9, and then finally processed domestically to raise its value to $10, it would qualify as being sourced domestically because 50 percent of Mineral X's $2 processing value was added domestically, even though that $1 value-added amounts to only 10 percent of the overall value. *See, e.g.,* Table 1.

*Table 1: Mineral X considered "made in U.S. or FTA country" by Proposal*

| **Mineral X** | **Value added by extraction** | **Value added by processing** | **Value added by processing in U.S. or FTA country** |
|---|---|---|---|
| Value (dollars) | $8 | $2 | $1 |
| Percentage | 80% | 20% | 10% |

Second, the test permits the *entirety* of a critical mineral to meet the threshold if only 50 percent of value is added domestically rather than looking at the total value added for all critical mineral cumulatively. If, for example, Battery A is composed of Minerals X, Y, and Z, which constitute 40 percent, 30 percent, and 30 percent of the total applicable critical minerals, respectively, and if 50 percent of the value added to Mineral X in the United States, while Minerals Y and Z are sourced from non-FTA countries, then Battery A's "applicable percentage" is 40 percent, even though only 20 percent of its total value was

added in the United States. In other words, because the agency interprets the value added separately for each mineral, it has effectively halved the statutory requirements of the IRA. *See, e.g.,* Table 2.

*Table 2: Battery A eligible for 30D Clean Car Credit under the Proposal*

| **Battery A** | **Percentage of total critical mineral in battery** | **Value added to mineral from U.S. extraction** | **Total value added to battery by U.S. extraction of mineral** |
|---|---|---|---|
| Mineral X | 40% | 50% | 20% |
| Mineral Y | 30% | 0% | 0% |
| Mineral Z | 30% | 0% | 0% |

These two loopholes can be joined to create a third larger loophole. For example, suppose that in Battery B is made up of the same three mineral as in Table 2 above: 40 percent of the battery is Mineral X, 30 percent Mineral Y, and 30 percent Mineral Z. Mineral X has the same extraction and processing values as in Table 1: 80 percent ($8) from extraction in a non-FTA country, 10 percent ($1) from processing in a non-FTA country, and 10 percent ($1) from processing in the United States. Thus, though only 10 percent of the total value added to Mineral X is from processing in the U.S., it qualifies as domestically produced. Mineral Y and Z are extracted and processed entirely in non-FTA countries. In a year where the statutory "applicable percentage" is 40 percent, Battery B would qualify under the proposal's interpretation, because Mineral X is 40 percent of the battery and Mineral X qualifies. But this means that somehow a battery where only 4 percent of the value was added domestically ($1 of $62.50) would qualify when the applicable percentage was 40 percent. *See, e.g.,* Table 3.

*Table 3: Battery B eligible for 30D Clean Car Credit under the Proposal*

| **Battery A** | **Percentage of total critical mineral in battery** | **Total value added to mineral by processing in U.S. or FTA country** | **Total value added to battery by processing in U.S. or FTA country** |
|---|---|---|---|
| Mineral X ($25) | 40% | 10% | 4% |
| Mineral Y ($18.75) | 30% | --- | --- |
| Mineral Z ($18.75) | 30% | --- | --- |

This is unreasonable. Under the IRA, the "applicable percentage" refers to "the percentage of the value of the applicable critical minerals"—not to 50 percent of the value added, not to value added from extraction *or* processing, and not to a gerrymandered accounting that dilutes the applicable percentages across the various critical minerals.

2. **The proposal's illogical averaging approach would allow batteries with no domestically sourced materials to qualify.** The proposal states that "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 … with respect to vehicles from the same model line, plant, class, or some combination of thereof." 88 Fed. Reg. 23,377. This is impermissible. The statute applies to "*a* vehicle," 136 Stat. 1956 (emphasis added), not to some average across vehicles. Under this approach, an automaker could receive a tax credit for a battery that would not independently meet the requirements outlined in § 30D simply because the non-qualifying battery was included in a qualifying batch of batteries.

At the same time, the proposal would also allow manufacturers to "determine qualifying critical mineral content based on the value of the applicable

critical minerals actually contained in the battery of a specific vehicle." 88 Fed. Reg. 23,377. While this latter method is a better approach, allowing manufacturers to choose between averaging and individual compliance establishes a one-way ratchet: manufacturers can average when it is convenient and treat vehicles individually when it is not.

The proposal should not use this averaging approach at all because *individual* vehicles are receiving credit for *individual* batteries. The individual batteries should thus be judged based on their own content.

3. **The proposal's definition of "constituent materials" allows for exclusion of some minerals from calculations.** Proposed regulation § 1.30D–3(c)(14) provides that only critical minerals that "conclud[e] in the production of constituent materials" are evaluated for location of extraction or recycling. 88 Fed. Reg. 23,375. Proposed regulation § 1.30D–3(c)(6) would define "'constituent materials' as materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components." *Id.* at 23,376. This ambiguity could preclude consideration of critical minerals that are not processed into something else from being included in the calculations, as they do not "contain" critical minerals, they *are* critical minerals. In this way, this definition could be exploited to exclude the usage of "pure" critical minerals from the calculations to comply with the 30D regulations more easily.

4. **The proposal's narrow definition of "battery" dilutes domestic sourcing requirements.** The proposal also would define "[t]he term 'battery' [such that it] would not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches." 88 Fed. Reg. 23,377. The proposal asserts that, "[t]his definition of battery is consistent with the statute because battery modules and cells are the sources 'from which the electric motor of such vehicle draws electricity.'" *Id.* at 23,377–78.

This fundamentally misreads the statute. The IRA does not limit the critical minerals and components requirements to the portion of the battery responsible for energy storage, but to the battery which is responsible for driving the electric motor. Indeed, for a battery to function such that "the electric motor of [that] vehicle [can] draw[] electricity" from it, it must accomplish far more than just the "electrochemical storage of energy." *See* Brandon S. Tracy, Congressional

Research Service, R47227, *Critical Minerals in Electric Vehicle Batteries*, (Aug. 29, 2022), https://sgp.fas.org/crs/misc/R47227.pdf ("An EV battery, commonly called a battery pack, is an assembled component generally consisting of packaging and mounting structures, an electronic and electrical control system, and battery cells. Each cell contains two electrodes (a cathode and an anode), an electrolyte (a chemical solution that allows electricity to flow between the electrodes), and a separator (a physical barrier between the cathode and anode).")

Ignoring any of these physical components would render the rule arbitrary and capricious.

5**. The proposal impermissibly expands the Secretary's authority to define free trade agreements.** The IRA limits material sourcing to "the United States" or "any country with which the United States has a free trade agreement in effect." Pub. L. No. 117–169, § 13401, 136 Stat. 1956. This means what it says. The World Trade Organization defines a free trade agreement as covering "substantially all trade" between countries, including a broad range of goods and services. Congressional Research Service, RS21554, *Free Trade Agreements and the WTO Exceptions* (July 2, 2008), https://www.everycrsreport.com/files/20080702_RS21554_79458f5c4fb11a879a916b4b60cd2ba87b525df9.pdf. In the United States, these agreements require the approval of Congress. *Id.*

The proposal completely ignores these limitations. In addition to extending the label "free trade agreement" to the twenty countries with whom the U.S. has general, "comprehensive" free trade agreement, the proposal would also extend the label to countries where there is an agreement "as to the critical minerals contained in electric vehicle batteries or more generally," and that agreement complies with a flexible, multi-part balancing test: "[the agreement] (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." 88 Fed. Reg. 23,376.

This is unacceptable. Free trade agreement means free trade agreement. And "Congress has sole constitutional authority to regulate international trade." *See* Keigh E. Hammond, Congressional Research Service, R45846, *Major Votes on Free Trade Agreements and Trade Promotion Authority,* (Dec. 28, 2021),

https://sgp.fas.org/crs/row/R45846.pdf. While "Congress has periodically delegated certain trade agreement negotiating authorities to the President" even those agreements have generally "required congressional approval." *Id.* The most recent Congressional delegation of such power to the Trade Promotion Authority lapsed in July 2021, and, even if renewed, any agreements negotiated by the Executive Branch would still require a vote from Congress for ratification. *See* Doug Palmer, *Say Goodbye to Trade Promotion Authority*, Politico (June 28, 2021), https://www.politico.com/newsletters/weekly-trade/2021/06/28/say-goodbye-to-trade-promotion-authority-796173 ("The White House's Trade Promotion Authority expires on Thursday, with no sign the Biden administration is interested in seeking its renewal.").

The proposal's new definition allows the agencies to—at their unilateral discretion—exempt any country from the IRA's requirements if they find it expedient. One example already presents itself. The proposal lists Japan as a "country with which the United States currently has a free trade agreement in effect," 88 Fed. Reg. 23,384, because of a one-off, critical-minerals-only trade agreement, which was never Congressionally approved. House Ways and Means Committee Ranking Member Richard E. Neal and Senate Finance Committee Chair Ron Wyden described the Japan critical minerals agreement as "unacceptable" because it "open[s] the door for another environmental catastrophe." Press Release, Neal Wyden, Ranking Member, Ways and Means Committee, Biden Administration's Go-It-Alone Trade Action (Mar. 28, 2023), https://neal.house.gov/news/documentsingle.aspx?DocumentID=3708. More countries are already seeking to follow suit. Steven Overly, *More Countries Line Up for U.S.'s EV Tax Credits*, Politico (June 2, 2023), https://www.politico.com/news/2023/06/02/southeast-asian-trade-partners-push-for-ev-tax-perks-00099800 ("The Philippines, Malaysia and Indonesia are among the countries calling on U.S. trade officials to broker a critical minerals pact" in an attempt "to get in on U.S. tax perks for electric vehicles.")

The proposal cannot skirt the plain text of the statute by pretending any country that implements an environmental or labor protection has entered a free trade agreement.

6. **These various evasions of domestic sourcing requirements all defy plain congressional intention.** The proposal rightly identifies that a central purpose of the IRA's 30D amendments is to "promote resilient supply chains and domestic manufacturing," 88 Fed. Reg. 23,370, by subsidizing American supply

chains rather than Chinese supply chains. Senator Marco Rubio explained: "It is crazy to subsidize critical mineral and battery production in China. … [I]t makes no sense to those of us trying to bring good jobs back to America." Press Release, Marco Rubio, Rubio Says No Tax Credits for Electric Vehicles with Chinese Parts (Aug. 2, 2022), https://www.rubio.senate.gov/public/index.cfm/2022/8/rubio-says-no-tax-credits-for-electric-vehicles-with-chinese-parts. Senator Joe Manchin likewise described the agencies' flaunting of these requirements as "horrific." Press Release, Joe Manchin, Chairman of the Senate Energy and Natural Resources Committee, Manchin Statement on Treasury EV Tax Credit Guidance (Mar. 31, 2023), https://www.energy.senate.gov/2023/3/manchin-statement-on-treasury-ev-tax-credit-guidance. "[T]he Administration continues to ignore the purpose of the [IRA] which is to bring manufacturing back to America and ensure we have reliable and secure supply chains. American tax dollars should not be used to support manufacturing jobs overseas. It is a pathetic excuse to spend more taxpayer dollars as quickly as possible and further cedes control to the Chinese Communist Party in the process. … My comment is simple: stop this now – just follow the law." *Id.*

**The Proposal Fails to Provide Necessary Guidance on "Foreign Entities of Concern" including China.**

Under the IRA, the term "new clean vehicle" does not apply to any vehicle where "any of the applicable critical minerals contained in the battery" or "any of the components contained in the battery of the vehicle" were "extracted, processed, or recycled" or "manufactured or assembled" "by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)))" for any vehicles placed into service after December 31, 2024 or 2023, respectively. 136 Stat. 1957.

Most relevant is clause (C) of that definition, by which a "foreign entity of concern" is defined to include any foreign entity that is "owned by, controlled by, or subject to the jurisdiction or direction of a government of a covered nation (as defined in section 2533c(d) of title 10)"—currently China, Russia, North Korea, and Iran. Instead of providing clarity on this matter, the proposal kicks the can down the road, stating that these entities will be addressed in future guidance. 88 Fed. Reg. 23,371.

Removing the influence of foreign entities of concern from electric vehicle supply chains was a but-for cause for the passage of the bill. As Sen. Manchin

explained: "[t]he IRA is first-and-foremost an energy security bill, and the EV tax credits were designed to grow domestic manufacturing and reduce our reliance on foreign supply chains for the critical minerals needed to produce EV batteries." Press Release, Senate Committee on Energy & Natural Resources, Manchin Legislation Halts EV Tax Credits Until Treasury Issues Guidance in Line with IRA (Jan. 25, 2023), https://www.energy.senate.gov/2023/1/manchin-legislation-halts-ev-tax-credits-until-treasury-issues-guidance-in-line-with-ira.

Failing to address this matter now will have significant negative consequences. China is a key supplier of 85% of the global stock of critical minerals (including rare earths, copper, cobalt, etc.). Robert Bryce, *The Electric-Vehicle Push Empowers China*, Wall Street Journal (Dec. 23, 2021). By failing to affirmatively declare that China is a foreign entity of concern, the IRS permits automakers to continue to source components from China while receiving the credits in direct defiance of the text of the IRA.

**The Proposal Fails to Solicit Comment on the Agencies' Unreasonable Interpretation of the IRA's 45W Commercial EV Tax Credit.**

Finally, the proposal fails to request comment on the IRS's published interpretation of the 45W credit which stretches the term "commercial use" to include any electric vehicles that are leased. *See* Internal Revenue Service, Fact Sheet, FS-2022-42, Frequently asked questions related to new, previously-owned and qualified commercial clean vehicle credits, Topic G (Dec. 29, 2022), https://www.irs.gov/pub/taxpros/fs-2022-42.pdf. This is significant because the 45W credits—unlike the 30D credits—do not contain any domestic sourcing requirements. As a result, the previous guidance creates a massive loophole by which auto manufacturers could entirely avoid the domestic sourcing requirements for passenger vehicles so long as the vehicles are distributed through leases, rather than conventional sales. The current guidance may even allow holding companies that lease vehicles to obtain the tax credits for leases with non-commercial businesses, including any individual, whether or not they are a taxpayer.

This is unreasonable. A leased vehicle is not being used for a "business use" in any conventional sense of the term. A lease is just one more way that an automaker can obtain revenue for a vehicle that it has produced. This is why, when asked, nearly every automaker agreed that they would pass these lease

credits onto the consumer. Jameson Dow, *How to bypass nearly every restriction of the EV tax credit by leasing*, Electrek (Apr. 5, 2023), https://electrek.co/2023/04/05/how-to-bypass-nearly-every-restriction-of-the-ev-tax-credit-by-leasing/. Allowing all of the 30D credits without any restrictions as long as the sales a logged differently is "one simple trick" that "undermines the whole point of the law." *Id.*

Further, the IRA definition of a "qualified commercial clean vehicle" is limited to vehicles that are "placed in service by the [commercial] taxpayer during the taxable year." Pub. L. No. 117–169, § 13403, 136 Stat. 1964. The important limitation here is "placed in service." Congress has used this term to limit the claiming tax credits hundreds (possibly thousands) of times over many decades, including dozens of times in the IRA itself. *See, e.g.*, *Id.* at § 13303, 136 Stat. 1950 (using the term for 'energy efficiency' credits). In every instance, that term has been interpreted to mean that only the entity in possession of and using the equipment has been eligible to claim the credit. A holding company that leases vehicles cannot be eligible for the tax credits because a holding company is not a "taxpayer that places vehicles into service." Only the commercial end-user of the vehicle can place the vehicle into service, and so only they can take advantage of the credit. The agencies must make clear that the same longstanding principles and interpretations apply to the commercial clean vehicle credits.

In a letter to Secretary Yellen, Sen. Manchin said that "it is so disappointing to hear that many domestic automakers are looking to try to use 45W as a way around the requirements found in 30D." Letter to Janet Yellen, Secretary of the Treasury, from Senator Joe Manchin (Dec. 12, 2022), https://www.energy.senate.gov/services/files/AE85B668-ECC2-40B9-90DF-27977F85202C. "[I]t is vital that we do not allow companies to cheat the system by using the 45W credit for non-commercial uses," lest "companies [ ] focus their attention away from trying to invest in North America to meet the requirements of 30D and will instead continue with business as usual, putting our transportation sector further at risk." *Id.*

The December 2022 issuance of the fact sheet with no effort over six months to follow up and seek public comment to correct the errors in the fact sheet is unacceptable. The agencies cannot persist in this unlawful interpretation and must take prompt and long overdue action to correct it.

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The agencies should take immediate action to fix these deficiencies by issuing a new guidance document clarifying the scope of 30D and 45W and issuing a new proposed rule that would formalize these changes.

Respectfully submitted,

Gentry Collins
Chief Executive Officer
The American Free Enterprise
Chamber of Commerce