

Comments of Alliance for Automotive Innovation

U.S. Department of the Treasury's Request for Comments on Section 45X Advanced Manufacturing Production Credit [RIN 1545-BQ85](#)

February 13, 2024

The Alliance for Automotive Innovation (Auto Innovators)¹ hereby submits these comments in response to the U.S. Department of the Treasury Internal Revenue Service's Notice of Proposed Rulemaking on Section 45X Advanced Manufacturing Production Credit ("proposed rule"),² as included in the Inflation Reduction Act (IRA).

Members of Auto Innovators produce nearly all of the cars and light trucks sold in the United States. Members include original equipment manufacturers, suppliers, battery producers, technology companies, and others within the automotive industry. The automotive industry is the nation's largest manufacturing sector and represents approximately 5 percent of the country's GDP that supports 10 million jobs.

As a major force in our nation's economy and a leader when it comes to significant investments in auto production and expanding the number of electrified vehicles available to consumers, our comments reiterate the shared interest regarding a variety of key provisions included in the Inflation Reduction Act (Public Law 116-169) that President Biden signed into law in August 2022.

Auto Innovators appreciates the Department of the Treasury's release of its proposed rule on 45X Advanced Manufacturing Production Credit. We look forward to continuing to work with the Department of the Treasury and Department of Energy on the implementation of the 45X and

¹ From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.
www.autosinnovate.org.

² <https://www.regulations.gov/document/IRS-2023-0063-0001>

other tax credits. As such, we provide comments below in addition to comments previously filed to the Departments.³

Battery Module Definition

Auto Innovators agrees with the Department of the Treasury’s clarification of the definition of a battery module for electric vehicles. Section 45X(b)(1)(L) of the IRA provides that the 45X tax credit for a battery module is \$10 multiplied by the capacity (kWh) of such module. Proposed section 1.45X-3(e)(4)(i) defines a battery module as:

“a module, in the case of a module using battery cells, with two or more battery cells that are configured electrically, in series or parallel, to create voltage or current, as appropriate, to a specified end use... with an aggregate capacity of not less than 7 kilowatt-hours...”

As stated in previously submitted comments,⁴ it is common in electric vehicles that a complete battery pack would be comprised of one or more battery module; however, those battery modules by themselves do not constitute a “specified end use” as the statute requires. Therefore, unless a particular battery module was by itself considered to constitute the battery used to propel an automobile, the battery module by itself would not be what is installed to propel a vehicle.

By further defining a “module using cells,” the Department of the Treasury has successfully clarified the confusion over a “battery pack” and “battery module” used in electric vehicles. Proposed section 1.45X-3(e)(4)(i)(A) defines a “module using cells” as:

³ U.S. Dept. of Treasury 30D Excluded Entities, Jan. 18, 2024 (<https://www.regulations.gov/comment/IRS-2023-0059-0056>)

U.S. Dept. of Energy Interpretation of FEOC, Jan. 3, 2024. (<https://www.regulations.gov/comment/DOE-HQ-2023-0067-0013>)

U.S. Dept. of Treasury 30D Proposed Regulations, June 16, 2023 (<https://www.regulations.gov/comment/IRS-2023-0019-0069>)

U.S. Dept of Treasury 48C & 45X Proposed Guidance, Nov. 3, 2022 (<https://www.regulations.gov/comment/IRS-2022-0021-0022>)

U.S. Dept. of Treasury 30D Proposed Guidance, Nov. 3, 2022 (<https://www.regulations.gov/comment/IRS-2022-0020-0671>)

⁴ U.S. Dept of Treasury 48C & 45X Proposed Guidance, Nov. 3, 2022 (<https://www.regulations.gov/comment/IRS-2022-0021-0022>)

“a module with two or more battery cells that are configured electrically, in series or parallel, to create voltage or current (as appropriate), to a specified end use, meaning an end-use configuration of battery technologies.”

It is the last part of the definition that provides the clarity necessary for the electric vehicle industry, to ensure that the 45X tax credit is claimed accordingly and there is no confusion about multiple entities seeking to claim the tax credit for battery modules. As Treasury confirms, the end use is ultimately what the “battery module” is providing the energy and power required:

“An end-use configuration is the product that ultimately serves a specified end use. It is the collection of interconnected cells configured to that specific end-use and interconnected with the necessary hardware and software required to deliver the required energy and power (voltage and current) for that use.”

When it comes to batteries used in electric vehicles, the power and energy used to propel the vehicle is the “specified end use,” and that battery installed in a vehicle is commonly referred to as a “battery pack.” The Department of the Treasury clearly states in the preamble that proposed Section 1.45X-3(e)(4)(i)(A) “would permit a credit for the production and sale of the battery pack in the electric vehicle, but it would not permit a credit for the production of a module that is not the end-use configuration.”

This clarification is extremely important, as today’s battery supply chains are complex and may have a number of entities involved. Some supply chains involve battery cell manufacturers, module manufacturers, pack manufacturers, and vehicle manufacturers. In some instances, specific entities manufacture more than one product, i.e., the battery module or pack manufacturer may be the same as the vehicle manufacturer. Regardless of the complexity of the supply chain, it makes sense that the manufacturer of the battery cell in the U.S. would be eligible for a \$35/kWh credit as provided under Section 45X(b)(1)(K) of the IRA, and the entity building or assembling the completed battery installed on a vehicle, whether a battery pack or module, would be eligible for the \$10/kWh credit.

Auto Innovators recognizes that there may be instances when a single large module or cells are incorporated into a battery pack or vehicle frame as battery technology evolves. In any instance, the proposed definitions provided by the Department of the Treasury clarifies the eligibility for taxpayers to claim the \$10/kWh tax credit. The clarification assists in protecting eligibility for future innovations in battery technology that may not fall into one of the sample use cases above. As such, the preamble language noted on the previous page should be included in the final regulatory text to ensure the statutory inclusion of “to a specified end use” is applied in 2023 and thereafter.

Electrode Active Material Production Costs

When it comes to the production costs incurred in the manufacturing of electrode active materials, Section 45X of the Inflation Reduction Act provides a credit of 10 percent of the production costs. Proposed Sections 1.45X-4(c)(1) and 1.45X-3(e)(2)(ii), respectively, would provide that for a critical mineral or an electrode active material, “the credit amount is equal to 10 percent the costs incurred by the taxpayer with respect to production of such materials.” Due to concerns over potential double counting, the Department of the Treasury further states that “production costs incurred” is inclusive of “all costs as defined in § 1.263A-1(e) that are paid or incurred within the meaning of section 461 of the Code by the taxpayer for the production of an electrode active material only, except direct materials costs as defined in § 1.263A-1(e)(2)(i)(A), or indirect materials costs as defined in § 1.263A-1(e)(3)(ii)(E), and any costs related to the extraction of raw materials.” Auto Innovators is concerned that this interpretation may have the unintended consequences of eliminating an incentive for the domestic manufacturing of critical minerals and electrode active materials. To eliminate the concern over double counting, we recommend that a critical mineral or an electrode active material manufacturer be allowed to include the direct and indirect material costs in the 10 percent of production cost calculation, should that manufacturer be able to prove that the mineral or material had not otherwise received a 45X credit. We urge the Department of the Treasury to work with other agencies and industry to identify methods that manufacturers could use to prove eligibility to reduce or otherwise eliminate concerns regarding the potential of double counting tax credits.

Conclusion

Auto Innovators commends the Department of the Treasury for proposing rules for the 45X production tax credit that provides clarity that 1) the battery cell manufacturer is eligible to receive the \$35/kWh credit and 2) the entity responsible for manufacturing and/or assembling the completed battery ultimately installed on the vehicle, whether that be a battery pack or module that in and of itself serves a specified end use (to deliver the required energy and power for such vehicle with an aggregate capacity over 7 kilowatt-hours), is eligible for the \$10/kWh credit.

Auto Innovators thanks the Department of the Treasury for the development of the proposed rule, and we stand ready to continue to work with the Administration, Department of Energy, and Department of the Treasury to ensure that the 45X tax credit and related tax incentives are widely accessible to American manufacturers, and thereby benefitting consumers as the industry works to develop alternative supply chains.

Respectfully submitted,



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