

## Comments of Alliance for Automotive Innovation

### U.S. Department of Energy’s Request for Comments on Interpretation of Foreign Entity of Concern RIN 1901-ZA02

January 3, 2024

The Alliance for Automotive Innovation (Auto Innovators)<sup>1</sup> hereby submits these comments in response on the U.S. Department of Energy’s Notice of Proposed Interpretive Rule for the interpretation of Foreign Entity of Concern (“proposed rule”),<sup>2</sup> 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 engine for 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 Energy’s release of the interpretive rule as it relates to the interpretation of Foreign Entity of Concern (FEOC). We provide comments below directly related to the interpretation of FEOC and will provide separate comments to the Department of the Treasury’s Notice of Proposed Rulemaking on 30D Excluded Entities.<sup>3</sup>

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<sup>1</sup> 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](http://www.autosinnovate.org).

<sup>2</sup> <https://www.regulations.gov/document/DOE-HQ-2023-0067-0001>

<sup>3</sup> <https://www.regulations.gov/document/IRS-2023-0059-0001>

### Definition of a Senior Foreign Political Figure

The proposed rule includes provisions that would require vehicle manufacturers and their supply chains to have knowledge if the family members of its board seats, voting rights, or equity interests have any affiliation to a “government of a foreign country.” This type of analysis of the complete electric vehicle (EV) battery supply chain is not only incredibly burdensome, but it may also not be feasible.

The proposed rule defines a “foreign entity” as:

- “(i) A government of a foreign country;
- (ii) A natural person who is not a lawful permanent reside of the United States, citizen of the United States, or any other protected individual (as such term is defined in 8 U.S.C. 1324b(a)(3));
- (iii) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or
- (iv) An entity organized under the laws of the United States that is owned by, controlled by, or subject to the direction (as interpreted in Section IV) of an entity that qualifies as a foreign entity in paragraphs (i)-(iii).”<sup>4</sup>

The proposed rule further defines a “government of a foreign country” as:

- “(i) A national or subnational government of a foreign country;
- (ii) An agency or instrumentality of a national or subnational government of a foreign country;
- (iii) A dominant or ruling political party (e.g., Chinese Communist Party (CCP)) or a foreign country; or
- (iv) A current or former senior political figure.”<sup>5</sup>

The definition of a “senior foreign political figure” encapsulates “an immediate family member (spouse, parent, sibling, child, or spouse’s parent and sibling)” of an individual that is a “senior

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<sup>4</sup> <https://www.regulations.gov/document/DOE-HQ-2023-0067-0001>

<sup>5</sup> *Id.*

official, either in the executive, legislative, administrative, military, or judicial branches of a foreign government, or of a dominant or ruling foreign political party.” Companies do not have regular access to information concerning whether a family member of a board member was ever a “senior foreign political figure.” It would require companies to look into every board member’s family and their spouse’s family to be able to validate if they have any ties to a foreign government. It would then require qualified manufacturers to confirm the reports from their supply chain, but there is no readily available database for automakers to certify compliance with this requirement. This type of analysis would have to be conducted for *every* level of the EV battery supply chain for a qualified manufacturer to attest to the Department of the Treasury under the penalty of perjury.

While we appreciate the Department of Energy providing a thorough interpretation of FEOC, the practicality of looking into the family trees of suppliers’ board members is not something that qualified manufacturers are equipped to handle. We recommend that the Department of Energy reevaluate the definition of a “senior foreign political figure” or provide guidance as to how qualified manufacturers should determine if their supply chains comply with the FEOC provisions. Similarly, we recommend that the Department clarify the definition of “national and subnational government” of the People’s Republic of China (PRC) as it relates to local or municipal governments and that, with respect to PRC, “a dominant or ruling political party” refers only to the central party for the purposes of the “senior foreign political figure”. The Department could also provide sample language that OEMs and battery manufacturers could use in attestations signed by foreign entity suppliers.<sup>6</sup>

### Clarification of Battery Ledger Process

Per IRS Revenue Procedure 2023-38, the Department of Energy will evaluate OEM supply chains yearly through a ‘Compliant Battery Ledger’ process, including whether critical mineral extractors and processors and battery component manufacturers are considered FEOC by the

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<sup>6</sup> Guidance was provided in IRS [Fact Sheet 2023-29](#), updated December 26, 2023, for how a qualified manufacturer should attest compliance with FEOC, and similar guidance as to “senior foreign political figure”.

Department. However, battery supply chains are extremely long, and OEMs are currently signing mineral supply agreements that begin in 2026 or 2027. Further, the detailed information required under the Compliant Battery Ledger process is only available to OEMs after a supplier has effectively entered, or will soon enter, the battery supply chain. The process outlined in IRS Revenue Procedure 2023-38 would only grant a two- or three-month advance notice that a supplier is in fact classified as being an FEOC despite the best due diligence efforts of the OEM. This could lead to significant quantities of otherwise eligible vehicles being ineligible for the 30D tax credit, significant disruptions in the supply chain, additional costs for auto manufacturers, and higher than necessary utilization of FEOC suppliers in the EV supply chain. Therefore, Auto Innovators requests a mechanism for OEMs to pre-evaluate with the Department of Energy potential new critical mineral suppliers or battery component manufacturers well before the next calendar year. This will help hasten efforts to build a more robust and secure supply chain by removing FEOC or potentially high-risk suppliers several years ahead of the current process.

Auto Innovators thanks the Department of Energy for the development of the proposed rule, and we stand ready to work with the Administration, Department of Energy, and Treasury Department to ensure that the 30D tax credit and related tax incentives are widely accessible to American consumers.

Respectfully submitted,



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