

United States Senate

WASHINGTON, DC 20510

February 14, 2024

The Honorable Janet Yellen
Secretary
US Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Yellen,

We are writing in response to the notice of proposed rulemaking for the Section 45X Advanced Manufacturing Production Tax Credit. We request that the U.S. Department of the Treasury (Treasury) make revisions to the proposed rule to align the rule with the intent of Congress and to ensure the credit properly incentivizes the entirety of the domestic supply chain for applicable critical minerals and eligible components, including mineral extraction and electric vehicle battery production.

As you know, Congress passed the Inflation Reduction Act (IRA) in part to support the domestic extraction and production of critical minerals and materials, as well as the manufacturing of batteries and their components. Recognizing our increasing foreign dependence on these materials, often from hostile nations, the section 45X credit provides a credit for taxpayers who produce certain critical minerals as well as various energy related products.

We are concerned that Treasury's proposed rule for the 45X tax credit explicitly excludes direct and indirect material costs for taxpayers seeking to claim the credit. Treasury writes in the proposed rule that "Direct material costs as defined in §1.263A-1(e)(2)(i)(A), or indirect material costs §1.263A-1(e)(3)(ii)(E), and any costs related to the extraction or acquisition of raw materials" are not be included in production costs. The proposed rule goes on to say "...the cost of acquiring the raw material used to produce the electrode active material, the cost of materials used for conversion, purification, or recycling of the raw material, and other material costs related to the production of the electrode active material would not be taken into account."

The clear purpose of section 45X was to encourage investment in the United States and to build a reliable and resilient domestic supply chain for critical minerals right here at home. The section 45X credit was designed to support responsible domestic mining and processing of these minerals. As members of the U.S. Senate we want to clarify that the blanket exclusion of materials costs is not consistent with the intent of Congress and should be expeditiously revised. Section 45X provides for a 10 percent credit for the production costs of applicable critical minerals, and raw materials costs were never intended to be excluded from this calculation. This exclusion is not aligned with the intent of Congress and significantly weakens the tax credit as

the cost of extracting raw materials essential for renewable energy, battery technologies, and other critical materials are a significant portion of overall costs.

Additionally, this exclusion weakens the credit's intended goal to strengthen the New Clean Vehicle Credit, established under Section 30D of the tax code. The 30D credit is designed to counter influence by any "Foreign Entity of Concern" (FEOC) over clean vehicle supply chains. Key to the success of the 30D credit are the 45X credit's incentives for domestic mineral extraction and processing. A final rule that excludes materials costs will substantially impact critical minerals supply, increasing the challenges for vehicle producers looking to manufacture clean vehicles in the United States.

Private companies are ready and willing to invest in extraction and production of raw materials right here in the United States, and do so in a safe and responsible manner through developed environmental protection and labor standards. However, by excluding the majority of the production costs from the 45X credit, Treasury would *disincentivize* investment in the United States, and also increase our reliance on countries that do not share our democratic or geopolitical values. This result would be contrary to the intent of the legislation and detrimental to our national and energy security.

We appreciate Treasury's caution and intent, noted in the proposed rule, to mitigate the risk of double counting and fraud. However, as proposed, the credit eliminates the ability to even single count direct and indirect materials costs and extraction costs, which significantly weakens the credit's primary purpose of developing a domestic critical mineral supply chain. The risk of double counting production costs can be mitigated using similar basis reduction mechanics and documentation requirements Treasury and IRS require to calculate the value of investment tax credits under sections 48 and 48C. Similarly, IRS is well equipped with the experience and tools necessary to understand and administer the deduction of expenses related to extraction and can apply these to the 45X credit. Additionally, we believe the statute, which directs the credit to be claimed for components "produced by the taxpayer," provides flexibility for Treasury to establish other safeguards, such as audit and claw back measures, to prevent any type of fraudulent behavior.

We appreciate your attention to these matters and look forward to working with you as you implement the Inflation Reduction Act.

Sincerely,



Catherine Cortez Masto
United States Senator



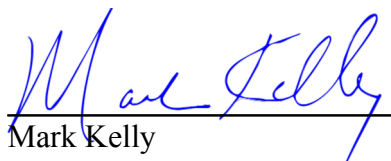
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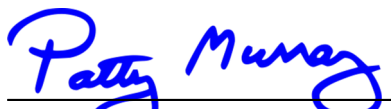
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