



# U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS  
1139 LONGWORTH HOUSE OFFICE BUILDING  
Washington, DC 20515

April 17, 2023

Mr. James D. Farley, Jr.  
President & CEO  
Ford Motor Company  
1 American Road  
Dearborn, MI 48126

Dear Mr. Farley,

I write to seek information on whether the Biden Administration is implementing the clean vehicle credit provisions of the Inflation Reduction Act (IRA) in a way that will cause taxpayer dollars to flow to foreign entities of concern, such as China. When President Joe Biden signed the IRA into law, his Administration touted changes to tax credits for electric vehicles (EVs) made in North America that it claimed would “strengthen America’s supply chains”<sup>1</sup> and serve as “the largest investment in American manufacturing.”<sup>2</sup> Recently, U.S. Department of Energy Secretary Jennifer Granholm indicated that her department’s “number one” priority is to avoid having taxpayer dollars flow to China.<sup>3</sup> Recent reporting, however, suggests that automakers may be exploiting loopholes in the IRA to claim tax credits while still relying on foreign technology and labor in the design and development of EVs.<sup>4</sup> Moreover, new estimates show the implementation of the credits may lead to an explosion in the estimated cost to American taxpayers.<sup>5</sup>

For example, on February 13, 2023, Ford Motor Company announced it would invest \$3.5 billion to build an EV battery plant in Marshall, Michigan, with the help of China’s

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<sup>1</sup> U.S. Department of the Treasury, *Treasury Releases Initial Information on Electric Vehicle Tax Credit Under Newly Enacted Inflation Reduction Act* (Aug. 16, 2022), <https://home.treasury.gov/news/press-releases/jy0923>.

<sup>2</sup> The White House, *Remarks by President Biden in Roundtable with Business and Labor Leaders on the Inflation Reduction Act* (Aug. 4, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/04/remarks-by-president-biden-in-roundtable-with-business-and-labor-leaders-on-the-inflation-reduction-act/>.

<sup>3</sup> James Bikales, *Winds of Change at the World Bank* (April 6, 2023), <https://subscriber.politicopro.com/newsletter/2023/04/winds-of-change-at-the-world-bank-00090702>.

<sup>4</sup> Connor Watts, *Ford and China’s CATL Bypass The Intent of the IRA Act*, RETHINK TECHNOLOGY RESEARCH (Feb. 15, 2023), <https://rethinkresearch.biz/articles/ford-and-chinas-catl-bypass-the-intent-of-the-ira-act/> (“This current version of the [Ford] deal gets around IRA rules.”).

<sup>5</sup> Josh Saul, *Goldman Sees Biden’s Clean-Energy Law Costing US \$1.2 Trillion*, BLOOMBERG (March 23, 2023), <https://www.bloomberg.com/news/articles/2023-03-23/goldman-sees-biden-s-clean-energy-law-costing-us-1-2-trillion#xj4y7vzkg>.

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Contemporary Amperex Technology Co. Ltd. (CATL)—a major battery manufacturer.<sup>6</sup> A Ford official claimed that the IRA “was incredibly important for us and frankly it did what it intended to do.”<sup>7</sup> But this announcement came after the governor of Virginia halted efforts to have the plant located in his state due to concerns that the project was a “front” for the Chinese Communist Party and could raise national security concerns.<sup>8</sup> Virginia’s governor also expressed “concerns about whether the structure of the project would have run afoul of federal Inflation Reduction Act incentives.”<sup>9</sup>

Ford’s announcement that it will build the plant in Michigan with the help of CATL has not alleviated those concerns. Public reporting finds that Ford has licensed technology from CATL and that “CATL employees will be stationed at the factory and that some materials for construction will be shipped from China.”<sup>10</sup> This arrangement appears to leverage a loophole in the IRA rules regarding battery components manufactured or assembled by a “foreign entity of concern.”

I am alarmed about how Ford has structured this project in the context of the IRA’s clean vehicle credits and am concerned that other automakers may seek to use loopholes in the IRA to avoid guardrails meant to protect American enterprise and workers. Therefore, I write today to seek information about your company’s investments and planned investments connected to the IRA’s clean vehicle credits to better understand how those credits are being used and whether they are working as the Biden Administration and congressional Democrats claimed they would.

### **Background**

Under the IRA, the \$7,500 clean vehicle credit under Section 30D has two separate and distinct qualifying criteria. Meeting requirements that battery critical mineral inputs be sourced from either the United States or countries with which the United States has a Free Trade Agreement qualifies a vehicle for a \$3,750 credit. Meeting requirements that battery components were manufactured in North America qualifies a vehicle for a separate \$3,750 credit.

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<sup>6</sup> Ryan Felton and Nora Eckert, *Ford Invests \$3.5 Billion in Michigan Battery Plant With Chinese Partner’s Technology*, THE WALL STREET JOURNAL (Feb. 13, 2023), <https://www.wsj.com/articles/ford-invests-3-5-billion-in-michigan-battery-plant-with-chinese-partners-technology-1aed174c>.

<sup>7</sup> *Id.*

<sup>8</sup> *Here’s why Virginia’s governor nixed efforts to land large electric vehicle battery plant for the Commonwealth*, ASSOCIATED PRESS (Jan. 20, 2023), <https://www.wusa9.com/article/news/local/virginia/glenn-youngkin-why-he-killed-ford-motor-plant-for-electric-vehicle-batteries-virginia/65-a9087ba6-a9da-4426-b414-b27a2a0c047e>; *Ford Taps Michigan For New LFP Battery Plant; New Battery Chemistry Offers Customers Value, Durability, Fast Charging, Creates 2,500 More New American Jobs*, FORD (Feb. 13, 2023), <https://media.ford.com/content/fordmedia/fna/us/en/news/2023/02/13/ford-taps-michigan-for-new-lfp-battery-plant-new-battery-chemis.html>.

<sup>9</sup> *Here’s why Virginia’s governor nixed efforts to land large electric vehicle battery plant for the Commonwealth*, ASSOCIATED PRESS (Jan. 20, 2023), <https://www.wusa9.com/article/news/local/virginia/glenn-youngkin-why-he-killed-ford-motor-plant-for-electric-vehicle-batteries-virginia/65-a9087ba6-a9da-4426-b414-b27a2a0c047e>.

<sup>10</sup> <https://www.wsj.com/articles/ford-invests-3-5-billion-in-michigan-battery-plant-with-chinese-partners-technology-1aed174c>

The IRA amended the clean vehicle credit to add a new requirement for final assembly in North America.<sup>11</sup> Some of the IRA's requirements took effect on August 17, 2022, and some took effect starting January 1, 2023. In addition, the clean vehicle credit provisions are subject to guidance from the Internal Revenue Service (IRS) and the U.S. Department of the Treasury for vehicles that are placed in service on or after January 1, 2023.<sup>12</sup>

Rather than issuing guidance before the statutory deadline for the proposed rules on the critical mineral and battery component of Section 30D of the IRA, Treasury and IRS released a white paper that previewed the Biden Administration's plans for the proposed guidance.<sup>13</sup> Specifically, the white paper proposed a multi-step transition rule to determine compliance with the critical mineral requirements for 2023 and 2024.<sup>14</sup> These steps outline various requirements a manufacturer must meet to determine (1) "whether each battery component was manufactured or assembled in North America;" (2) "the incremental value for each battery component;" (3) "the total value of the battery components;" and (4) "the percentage of the value of the components manufactured or assembled in North America."<sup>15</sup>

This calculation is important because, according to Treasury's white paper, to qualify for the maximum tax credit available under the IRA, an EV must not have any battery components made or assembled "by a foreign entity of concern."<sup>16</sup> These rules, however, have not yet been addressed by the IRS or Treasury.

The most common chemical makeups for EV batteries are lithium-ion, nickel manganese cobalt, nickel metal hydride, lithium sulphur, and lead-acid.<sup>17</sup> As such, the chemical components used most commonly in EV batteries include lithium, manganese, cobalt, graphite, steel, and nickel.<sup>18</sup> In addition, "[l]ithium-ion batteries internally move lithium ions from one layer, known as the anode, to another, known as the cathode, to generate power. Lithium-ion batteries are more convenient to use in electric vehicles because compared to lead-acid or nickel-metal hydride batteries, lithium-ion batteries offer higher energy densities, which make it possible to reduce battery size while maintaining storage capacity."<sup>19</sup>

<sup>11</sup> The Inflation Reduction Act of 2022, Pub. L. 117-169.

<sup>12</sup> U.S. Department of Energy, Alternative Fuels Data Center, Electric Vehicle (EV) and Fuel Cell Electric Vehicle (FCEV) Tax Credit, <https://afdc.energy.gov/laws/409>.

<sup>13</sup> Marie Sapirie, *A Closer Look At Forthcoming Tax Guidance On Electric Vehicle Credits*, FORBES (Jan. 23, 2023), <https://www.forbes.com/sites/taxnotes/2023/01/23/a-closer-look-at-forthcoming-tax-guidance-on-electric-vehicle-credits/?sh=6a7879547612>; U.S. Department of the Treasury, Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit, <https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf>.

<sup>14</sup> U.S. Department of the Treasury, Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit, <https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> Claire Bushey and Aime Williams, *Carmakers try to frustrate US push to cut China from EV supply chain*, FINANCIAL TIMES (Nov. 22, 2022), <https://www.ft.com/content/2bcb1c6b-61aa-4ec7-80ac-2c455fbc8099>. A "foreign entity of concern" is defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act, 42 U.S.C. 18741(a)(5).

<sup>17</sup> Blaise Manga Enuh, *What Materials are Used to Make Electric Vehicle Batteries?* AZO MATERIALS (Nov. 2, 2022), <https://www.azom.com/article.aspx?ArticleID=22142>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

The future procurement of these materials appears to pose several challenges to automakers who wish to qualify for the clean vehicle credit. First, there are concerns about the continuous supply of the raw materials used to manufacture EV batteries.<sup>20</sup> Second, China is the dominant player when it comes to mining and controlling the processing of the critical minerals and components needed for EV batteries. Specifically, “China has invested in mining critical minerals around the world for the past decade,” and “[w]hile mineral deposits are mined where they are discovered, the International Energy Agency [(IEA)] reports that China controls the processing of 35 percent of the world’s nickel, [50 percent] of the lithium, 60 percent of cobalt, and 90 percent of rare-earth elements.”<sup>21</sup> Meanwhile, Russia supplies 20 percent of global high-purity nickel.<sup>22</sup>

Moreover, EV battery supply chain production is currently “concentrated in a handful of companies, with the manufacturing of cathodes and anodes, both crucial components for batteries, dominated by Chinese companies.”<sup>23</sup> An IEA analysis shows “that seven companies were responsible for more than half of global cathode production, with two of the top three being Chinese.”<sup>24</sup> In addition, according to the IEA analysis, “[t]he six largest manufacturers of anodes, another critical battery component, are Chinese and account for two-thirds of global production capacity.”<sup>25</sup>

The IRS and Treasury issued proposed regulations addressing some of the IRA’s clean vehicle credit provisions on March 31, 2023.<sup>26</sup> Specifically, the proposed regulations address Section 30D of the Internal Revenue Code (IRC), which “is treated as a personal credit or a general business credit depending on the character of the vehicle.”<sup>27</sup> The proposed regulations includes critical mineral and battery component requirements, including critical mineral extraction, processing, and recycling and battery component manufacturing and assembly.<sup>28</sup> These critical mineral and battery component provisions apply to vehicles placed in service after April 18, 2023, the date the proposed guidance will be published in the Federal Register.<sup>29</sup>

### Request

The current EV battery supply chain landscape appears to pose very real challenges for automakers to meet the critical mineral and battery requirements for the amended clean vehicle

<sup>20</sup> *Id.*

<sup>21</sup> Claire Bushey and Aime Williams, *Carmakers try to frustrate US push to cut China from EV supply chain*, FINANCIAL TIMES (Nov. 22, 2022), <https://www.ft.com/content/2bcb1c6b-61aa-4ec7-80ac-2c455fbc8099>.

<sup>22</sup> International Energy Agency, *Global Supply Chains of EV Batteries*, <https://iea.blob.core.windows.net/assets/4eb8c252-76b1-4710-8f5e-867e751c8dda/GlobalSupplyChainsofEVBatteries.pdf>.

<sup>23</sup> Claire Bushey and Aime Williams, *Carmakers try to frustrate US push to cut China from EV supply chain*, FINANCIAL TIMES (Nov. 22, 2022), <https://www.ft.com/content/2bcb1c6b-61aa-4ec7-80ac-2c455fbc8099>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Section 30D New Clean Vehicle Credit, Reg. 120080-22 (proposed Mar. 31, 2023) (to be codified at 26 C.F.R. pt. 1).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

credits under the IRA. But that does not justify drafting regulations that are contrary to congressional intent and could permit loopholes that benefit foreign entities of concern. Given the partnership Ford has entered into with CATL, I have concerns regarding whether EV batteries and EVs produced via Ford and CATL's project would run afoul of the intent of the IRA's requirements. Moreover, the circumstances of the current EV battery supply chain call into question whether EV batteries and EVs produced at this plant and others will qualify for the amended clean vehicle credits.

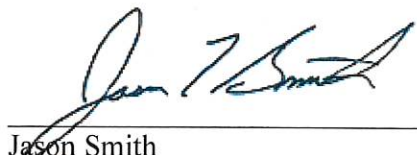
Given these concerns, I request that you respond to the following requests for information:

1. Please describe the nature of the relationship between Ford and CATL regarding the battery facility planned for Marshall, Michigan?
2. What will CATL's roles and responsibilities be under this arrangement with Ford?
3. Why did Ford enter into this type of licensing arrangement with CATL instead of a joint venture or some other arrangement?
4. With respect to this project, did Ford enter into any partnership agreement with CATL prior to the licensing arrangement? If so, in what ways do the terms of the licensing arrangement differ from the terms of the partnership agreement?
5. How many CATL employees are expected to be seconded or otherwise employed at the Michigan facility? How many CATL employees will provide technical services to the Michigan facility?
6. If Ford entered into a 50/50 joint venture with CATL for this project, how would such a legal structure impact eligibility for the relevant IRA green energy tax credits?
7. Does Ford anticipate that EVs manufactured using the batteries produced at the Michigan facility will meet the requirement for claiming a credit under Section 30D? Please explain.
8. Does Ford anticipate claiming the Section 45X advanced manufacturing tax credit with respect to operations at the Michigan facility? Please explain.

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Thank you for your attention to this request, which is made pursuant to Rule X of the U.S. House of Representatives. Please provide a response to this request by May 1, 2023. To ask any follow-up questions, please contact Sean Clerget of the Ways and Means Committee staff at 202.225.3625.

Sincerely,



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Jason Smith  
Chairman  
House Committee on Ways and Means