Testimony for the Record
offered by the National Mining Association

Internal Revenue Service and Department of the Treasury
Public Hearing on Proposed Regulations

Section 45X Advanced Manufacturing Production Credit

February 22, 2024

Good morning. I am Rich Nolan, president and CEO of the National Mining Association, and I appreciate the opportunity to testify today.

When Congress came together to pass the Inflation Reduction Act, legislators carefully and <u>intentionally</u> provided tax credits to strengthen our domestic mineral supply chains – including domestic mining.

We believe the proposed guidance strays from congressional intent, omitting the credit for minerals extraction.

The electric vehicle supply chain starts at the very beginning – at the mine site – when minerals are removed from the earth.

Congress recognized that we are currently beholden to China, Russia, the Democratic Republic of the Congo and other countries for huge percentages of the minerals needed by U.S. manufacturing and automakers -- a reality that inspired the creation of this tax credit by Congress itself.

U.S. mineral import reliance is a glaring and persistent geopolitical and economic problem. The U.S. is 50 percent or more reliant on imports for 49 nonfuel minerals and 100 percent import dependent for 15 of them.

We have watched with alarm as domestic mineral supply chains have withered and economic and geopolitical rivals have come to dominate the supply of minerals we simply cannot do without.

Our minerals vulnerability – often referred to as the nation's Achilles' heel – is now a source of alarming strength and geopolitical leverage for our rivals.

Of the 50 critical mineral commodities the U.S. Geological Survey lists as essential for U.S. economic and national security, China is the top producer or top supplier for 30.

101 Constitution Ave. NW / Suite 500 East / Washington, D.C. 20001 / Phone: 202. 463. 2600

The risks inherent with that growing vulnerability are masked when trade agreements are secure and global supply chains are working. But lockdowns, closed borders and escalating trade tensions that have plagued the past several years highlight just how untenable this situation has become.

In just the past 12 months, China has on three different occasions threatened critical mineral supply chains with export controls as well as flooding the marketplace at times -- intentionally forcing domestic suppliers to pause mine development or shutter.

President Biden's national security advisor, Jake Sullivan, has warned that mineral supply chains are "at risk of being weaponized in the same way as oil in the 1970s, or natural gas in Europe in 2022."

And John Podesta, the White House's lead energy and climate advisor, bluntly said, "China has too much of a chokehold on critical minerals."

The danger is obvious. And Congress, for its part, has worked to address it. Key provisions in the IRA – such as 45X – were designed to tackle this mining and minerals challenge head on.

But under the proposed IRS guidance for this essential tax credit, the only critical mineral production costs eligible to be counted are those for chemical conversion and purification.

Direct or indirect material costs or costs related to the extraction or acquisition of raw materials are not eligible as proposed.

This limitation clearly fails to implement congressional intent. It's also nonsensical since the cost to mine a mineral is often 50 percent or more of the total cost of producing the mineral.

To make this credit work in the real world – and accomplish what Congress intended – it must permit each party in the U.S. supply chain, from extraction through refining, to claim a tax credit on the value-added costs the party incurs.

The IRS and Treasury have promulgated similar rules with respect to section 30D and the bonus credits for domestic content.

And, since the section 45X tax credit is intended to stimulate domestic production and mining of critical minerals, final regulations that permit extraction costs to be credited, should count only the costs of extraction that occurred in the territorial United States and not overseas.

To conclude, we believe the critical minerals production rules in the proposed regulations must be significantly modified. The section 45X tax credit should count all the costs of domestic production and processing of critical minerals—with no piece more essential to developing domestic supply chains than U.S. domestic mining.

The NMA is a ready and willing partner to help develop appropriate rules to take mining extraction and related costs into account under section 45X and ensure this credit reflects congressional intent to incentivize domestic mining.

Thank you.

Rich Nolan
President and CEO
National Mining Association