



February 28, 2023

*By e-mail to [pra.comments@irs.gov](mailto:pra.comments@irs.gov)*

Mr. Andres Garcia  
Internal Revenue Service (IRS)  
1111 Constitution Avenue NW, Room 6526  
Washington, DC 20224

Re: Proposed Collection; Requesting Comments on Form  
8936, Qualified Plug-in Electric Drive Motor Vehicle Credit  
and Rev. Proc. 2022-42; OMB Control No. 1545-2137.

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Dear Mr. Garcia:

The National Automobile Dealers Association (NADA) represents over 16,000 franchised automobile and truck dealerships that sell new and used motor vehicles and engage in service, repair, and parts sales. Together they employ more than 1,100,000 people nationwide, yet most are small businesses as defined by the Small Business Administration.

Last year, the IRS requested comment on a request to the Office of Management and Budget (OMB) for an extension of an existing information collection request (ICR) expiration date regarding the Qualified Plug-in Electric Vehicle (EV) Credit and Revenue Procedure (Rev. Proc.) 2022-42.<sup>1</sup> The ICR involves OMB Control No. 1545-2137, which focuses in particular on Form 8936, on Form 8936-A and related Schedule 1, on Notice 2009-89, and on the reporting requirements set forth in Rev. Proc. 2022-42.<sup>2</sup> The IRS requests comments on the following: (a) whether the collection of information is necessary for the proper performance of the agency's function, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of collecting the information; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the information collection on respondents, including via automated collection techniques or other forms of information technology; and (e) estimates of costs to provide information.<sup>3</sup>

The December 2022 notice and request for comments was required by OMB's December 12, 2022 emergency approval of revisions to Control No. 1545-2137. The IRS requested an emergency approval based on the need to accommodate the EV tax credit provisions in the Inflation Reduction Act of 2022 (IRA)<sup>4</sup> that took effect in part upon enactment (August 16, 2022) and on January 1, 2023, and to facilitate the publication of Rev. Proc. 2022-42 prior to December 16, 2022.

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<sup>1</sup> 87 Fed. Reg. 80578, *et seq.* (Dec. 30, 2022).

<sup>2</sup> *Id.* at 80578-79.

<sup>3</sup> *Id.* at 80579.

<sup>4</sup> 26 U.S.C. §§ 25E, 30D, and 45W; Pub. L. No. 117-169, §§ 13401, 13402, and 13403, 136 Stat. 1818, 1954-1966 (2022).

Timely publication of Rev. Proc. 2022-42 was necessary to enable vehicle manufacturers to become “qualified” and for sellers of new and used EVs to become aware of the forms that must be provided to qualified taxpayer-purchasers of such vehicles to enable potential claims for Section 30D and Section 25E tax credits. Since December 12, 2022, Rev. Proc. 2022-42 was published, many vehicle manufacturers have become “qualified” for purposes of the IRA EV tax credits, and the sellers and prospective purchasers of new and used EVs have become aware of what is required for inclusion in the Section 30D and Section 25E point-of-sale report forms.

NADA offers the following comments and suggestions in response to the proposed collection.

### **I. Tax Year 2022 Form 8936 and Instructions**

Section 30D of the Internal Revenue Code (IRC) originally derives from the Energy Improvement and Extension Act of 2008, which authorized a credit for new Qualified Plug-in Electric Drive Motor Vehicles.<sup>5</sup> Form 8936 has been used since then by taxpayer-purchasers seeking to claim a Section 30D credit. On August 1, 2022, some 15 days prior to enactment of the IRA, OMB extended without change the prior-approved collection request for Form 8936 (Rev. 1-2022).<sup>6</sup>

The IRA imposed a new North American final assembly requirement on Section 30D credit-eligible vehicles.<sup>7</sup> As set forth in the IRA and noted in Rev. Proc. 2022-42, that requirement took effect on August 17, 2022.<sup>8</sup> NADA urges the IRS to modify its Specific Instructions for Line 3 on Form 8936 for tax year 2022 to specify that, unless covered by the Transition Rule, qualified plug-in electric drive motor vehicles placed in service between August 17, 2022 and December 31, 2022 must meet a North American final assembly requirement to be credit eligible.

Form 8936 does not expressly require taxpayer-purchasers of qualified plug-in electric drive motor vehicles purchased and placed into service between August 17, 2022 and December 31, 2022, to verify North American final assembly. But taxpayers must identify each vehicle’s year, make, model, vehicle identification number (VIN), and placed in service date. The IRS can cross-check this information against the VIN-specific information provided by vehicle manufacturers<sup>9</sup> to verify North American final assembly. By not requiring taxpayer-purchasers to provide information related to North American final assembly in Form 8936 for tax years 2022 and later, the IRS is appropriately serving to help minimize information collection burdens.

With respect to calculating the information collection burden associated with post-IRA enactment credit-eligible vehicle purchases, the North American final assembly requirement resulted in a significant decline in such purchases between August 17, 2022 and December 31, 2022. Consequently, the IRS should expect a commensurate decline in Form 8936 filings.

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<sup>5</sup> Pub. L. 110-343, div. B, title II, § 205(a), 122 Stat. 3835 (Oct. 3, 2008).

<sup>6</sup> ICR Reference Number 202204-1545-003.

<sup>7</sup> See Pub. L. 117-169, § 13401(b)(1)(C) and (2), 136 Stat. at 1955.

<sup>8</sup> See Pub. L. 117-169, § 13401(k)(2), 136 Stat. at 1961; see also Rev. Proc. 2022-42, § 2.01, ¶ 2.

<sup>9</sup> [www.irs.gov/credits-deductions/manufacturers-and-models-for-new-qualified-clean-vehicles-purchased-in-2022-and-before](https://www.irs.gov/credits-deductions/manufacturers-and-models-for-new-qualified-clean-vehicles-purchased-in-2022-and-before),

## **II. Tax Year 2023 and Later Form 8936 (dated 2/16/23) and Instructions and Form 8936-B**

NADA urges the IRS to revise Form 8936 to improve the information collection for tax years 2023 and later. As noted above, Section 13401 of the IRA amended Section 30D replacing the Qualified Plug-in Electric Drive Motor Vehicle Credit with a New Clean Vehicle Credit.<sup>10</sup> But, the IRS did not caption the Rev. 1-2023 version of Form 8936 as “New Clean Vehicle Credit.” This is especially appropriate given that certain Fuel Cell Electric Vehicle (FCEV) purchases after August 16, 2022 will be potentially eligible for a Section 30D credit.<sup>11</sup>

NADA also urges the IRS to eliminate Line 4a in the tax year 2023 and later Form 8936 and the corresponding information in the tax year 2023 and later Form 8936 Instructions pertaining to two-wheeled vehicles because the credit for such vehicles expired in 2022.<sup>12</sup> NADA also urges the IRS to eliminate Line 4b given that manufacturer credit phaseouts/caps were eliminated by the IRA for New Clean Vehicles purchased and placed into service after 2022.<sup>13</sup> And the IRS should commensurately adjust its information collection burden estimates to reflect both a decline in Form 8936 filings associated with elimination of the two-wheeled vehicle credit, and an increase in Section 30D claims resulting from elimination of the credit phaseouts/caps.

As drafted, the Rev. 1-2023 version of Form 8936 applies exclusively to the Section 30D New Clean Vehicle Credit. However, as noted above, the ICR references the Section 25E Previously-Owned Clean Vehicle Credit, that took effect on January 1, 2023.<sup>14</sup> Consequently, NADA strongly urges the IRS to amend its information collection package to include a new Form 8936-B entitled “Previously-Owned Clean Vehicle Credits” to enable taxpayer-purchasers to file claims for Section 25E credits. Like Form 8936 for tax years 2023 and later, Form 8936-B should require taxpayer-purchasers to provide a vehicle’s year, make, model, VIN, and date placed in service. In addition, appropriate credit calculation lines and Instructions are necessary given that the IRA specifies that a Section 25E credit:

- only applies to a previously-owned clean vehicle sold for less than \$25,000, by a licensed dealer, in a “qualified sale,” to an individual who is not Section 151 deduction allowable, who has not taken a Section 25E credit for a sale occurring in the last 3 years, who purchased the vehicle for use in the U.S. and not for resale, and who did not purchase the vehicle new; and
- is the lesser of 30% of the “sales price” or \$4,000.

Like the revised Instructions for the tax year 2023 and later Form 8936, questions pertaining to the taxpayer-purchaser’s modified adjusted gross income (MAGI) will be necessary along with a MAGI Limitation Worksheet designed around Section 25E’s unique MAGI caps.

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<sup>10</sup> Pub. L. 117-169, § 13401, 136 Stat. 1954 (Aug. 16, 2022).

<sup>11</sup> FCEVs are not plug-in electric drive motor vehicles. Taxpayer-purchasers previously could claim Alternative Motor Vehicle Credits for FCEVs using Form 8910.

<sup>12</sup> See Pub. L. 116-260, div. EE, title I, § 144, 134 Stat. 1182, 3054 (Dec. 27, 2020).

<sup>13</sup> See Pub. L. 117-169, § 13401(k)(5), 136 Stat. at 1962.

<sup>14</sup> See Pub. L. 117-169, § 13402(e), 136 Stat. at 1964.

NADA strongly urges the IRS not to amend its draft Form 8936 and instructions for tax years 2023 and later to accommodate both the Section 30D *and* Section 25E credits. Any attempt to do so would make the form overly complex and unnecessarily burdensome. Importantly, the justification for separate credit forms will increase significantly later this year when form and instruction amendments will be necessary to accommodate newly established IRS processes designed to implement IRA provisions that enable taxpayer-purchasers to “transfer” the value of expected Section 30D or Section 25E credits to the point of sale starting on January 1, 2024.<sup>15</sup>

To the greatest extent possible, the IRS has and should avoid revisions to Forms 8936 and 8936-B that seek to collect information pertaining to the vehicle-related information that vehicle manufacturers must submit pursuant to Rev. Proc. 2022-42 and to the yet-to-be-issued critical minerals and battery components guidance.<sup>16</sup> Again, the IRS will be able to verify vehicle eligibility by cross-checking the year, make, model, and VIN information provided on Forms 8936 and 8936-B against the VIN-specific information, including maximum applicable credit, provided by vehicle manufacturers. In addition, as required by the IRA and discussed below herein, the IRS must establish processes for sellers to submit Section 30D and Section 25E point-of-sale report form information. Once collected, such report form information will further assist the IRS with verifying credit eligibility. By not requiring taxpayer-purchasers to provide duplicative information in Forms 8936 and 8936-B for tax years 2023 and later, the IRS will help to minimize information collection burdens.

NADA does not take issue with the burden estimates set out on the draft Instructions for Form 8936 and recognizes that similar estimates will be necessary for a Form 8936-B. Moreover, it is incumbent upon the IRS to calculate the annual burdens associated with the filing of Forms 8936 and 8936-B based on the expected number of annual Section 30D and Section 25E claims.

### **III. Tax Year 2023 and Later Form 8936-A, Schedule 1, and Instructions:**

The IRS has appropriately issued a draft Form 8936-A, Schedule 1, and Instructions for tax years 2023 and later to accommodate the new Section 45W Qualified Commercial Clean Vehicle Credit established by the IRA.<sup>17</sup> Unlike for vehicles potentially eligible for Section 30D or Section 25E credits, no point-of-sale report forms are required for Section 45W creditable sales. Consequently, Schedule 1 for draft Form 8936-A, supported by the draft Instructions for Form 8936-A, appropriately requires taxpayer-purchasers to provide certain vehicle- and customer-related information to assist the IRS with verifying credit eligibility, including the vehicle year, make, model, VIN, and date placed in service, that the vehicle was of a character subject to an allowance for depreciation, and that it was acquired for use in the U.S. In addition, draft Schedule 1 enables taxpayer-purchasers to calculate appropriate credits based on gross vehicle weight ratings and the statutory percent of basis and incremental cost tests.

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<sup>15</sup> See Pub. L. 117-169, § 13401 § 30D(g), 136 Stat. 1958-61.

<sup>16</sup> See Pub. L. 117-169, § 30D(e), 136 Stat. 1956-58.

<sup>17</sup> See Pub. L. 117-169, § 45W, 136 Stat. 1964-66.

Of course, the IRS will know from cross checking with required manufacturer reporting information whether vehicles listed by taxpayer-purchasers on Forms 8936-A were built by Qualified Manufacturers and were equipped with minimum capacity drive batteries.

NADA has several suggestions regarding draft Form 8936-A, the Instructions for Form 8936-A and Schedule 1 for Form 8936-A which, if adopted, will reduce information collection burdens and improve the quality of information collected. First, NADA urges the IRS to redesign Schedule 1 to allow for the reporting of at least two vehicle purchases in a manner akin to Form 8936. Of course, as with Form 8936, additional Schedules will be necessary to claim Section 45W credits for additional vehicles placed in service in a tax year. Importantly, commercial fleet and lessor purchasers are more likely to place multiple vehicles in service in a tax year than individuals or households will be with respect to the Section 30D or Section 25E credits.

Second, the Instructions for Line 9 of the Form 8936-A Schedule 1 should be amended to incorporate the “safe harbor” guidance issued by the IRS on incremental cost. That guidance is set out in [Notice 2023-9](#).

Third, to provide clarity that will reduce the burden for purchaser-taxpayers and improve the quality of the information collected, the IRS should add the words “for tax-exempt entities” between the words “exception” and “discussed” in the second sentence of Question 4c on Schedule 1. Similarly, the words “for tax-exempt entities” should be inserted between the words “exception” and “applies” in the third sentence of the last line of Question 4c of Schedule 1.

Lastly, while NADA does not take issue with the burden estimates laid out on the draft Instructions for Form 8936-A, the IRS should calculate an annual information collection burden associated for Form 8936-A by estimating the number of annual Section 45W credit claims.

#### **IV. Rev. Proc 2022-42**

Pursuant to the IRA and Rev. Proc. 2022-42, sellers of new and used clean vehicles must provide taxpayer-purchasers with a point-of sale report form for each potentially creditable Section 30D and Section 25E sale.<sup>18</sup> This reporting obligation took effect on January 1, 2023. In addition, for tax years 2023 and later, sellers must submit to the IRS information related to these report forms by no later than January 15th of the year following the tax year in question. For example, for tax year 2023, sellers must submit report form related information to the IRS by January 15, 2024.<sup>19</sup> Rev. Proc. 2022-42 Section 6.03 also states that the point-of sale seller report forms and related reports to the IRS must be submitted in a format and method prescribed by the Secretary. Rev. Proc. 2022-42 specifies the information that point-of-sale report forms must contain,<sup>20</sup> but to date the IRS has yet to specify the specific format for the Section 30D and 25E

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<sup>18</sup> See Rev. Proc. 2022-42, § 5.01. NADA is not discussing the separate monthly reporting obligations established for vehicle manufacturers in Rev. Proc. 2022-42, §§ 4 and 6.02.

<sup>19</sup> See Rev. Proc. 2022-42, § 6.03.

<sup>20</sup> See Rev. Proc. 2022-42, § 5.01.

point-of-sale report forms, or the format and method of submission for the annual seller reports to the IRS.

The IRS appears to estimate that it expects to receive 52,165 total annual Section 30D and Section 25E seller reports, and that each report will take 15 minutes to prepare.<sup>21</sup> NADA suggests that this burden estimate is at least 15 minutes too low given the need to collect, transcribe, and provide the information that must be set out on a Section 30D or Section 25E seller report form. Moreover, the method by which the IRS calculated its estimates are unclear, leaving NADA to view them as questionable, at best.

In 2022, more than 800,000 new EVs were sold in the U.S.<sup>22</sup> In addition, more than 91,000 used EVs were sold in the U.S. in 2022.<sup>23</sup> Based on this information alone, it would seem that the IRS may have significantly underestimated the annual number of creditable new and used clean vehicle sales for tax years 2023 and beyond and, in turn, the number of Section 30D and Section 25E point-of-sale report forms that must be provided to taxpayer-purchasers, and the annual seller reports that will need to be submitted to the IRS. NADA recognizes that it may be somewhat premature to assess the burden it will take for sellers to prepare and submit to the IRS the annual Section 30D and Section 25E reports given that the IRS has not yet specified the format and method of submission for those reports. Consequently, NADA urges the IRS to conduct an additional ICR once the reporting format, method of submission, and related burden estimates have been appropriately identified.

On behalf of NADA, I thank the IRS and OMB for the opportunity to comment on this matter.

Respectfully submitted,



Douglas I. Greenhaus  
V.P., Regulatory Affairs,  
Environment, Health and Safety

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<sup>21</sup> See 87 Fed. Reg. at 80579.

<sup>22</sup> See Nedelea, A., [US Car Market Shrunk In 2022 But EV Sales Went Up By Two Thirds](#) InsideEVs (Jan. 18, 2023). The information provided in this article is consistent with the information available to NADA from Wards Intelligence, a subscription-based data service provider.

<sup>23</sup> See Zabritsky, M., [Auto Finance Year-in-Review Electric Vehicles & Affordability](#), p. 8, Experian (Jan. 2023).