



# Key Provisions – Prohibited Foreign Entities



***\*Determination:*** The determination as to whether an entity is a prohibited foreign entity is made as of the last day of such tax year. However, for the first tax year after July 4, 2025, the determination related to specified foreign entity (other than foreign controlled entity) status is made as of the first day of the tax year.

# Impact of the Restrictions for Prohibited Foreign Entities

IRC	Restriction to Prohibited Foreign Entities			Restrictions for Material Assistance
	No credit to a taxpayer that is a <b>specified foreign entity</b>	No credit to a taxpayer that is a <b>foreign influenced entity</b>		No credit for any facility, energy storage or eligible component that includes <b>material assistance from a prohibited foreign entity</b>
		Ownership/debt control	Effective Control	
	Applies to tax years beginning after July 4, 2025			Applies to any facility or energy storage that begins construction after 2025, and eligible components sold in tax years beginning after July 4, 2025
Section 45X	✓	✓	✓	✓
Section 45Y	✓	✓	✓	✓
Section 48E	✓	✓	✓ <sup>1</sup>	✓
Section 45Q	✓	✓	X	X
Section 45U	✓	✓ <sup>2</sup>	X	X
Section 45Z	✓	✓ <sup>2</sup>	X	X

## Notes:

1. Section 48E credit is recaptured under section 50 if taxpayer makes payments to PFE during any tax year within a 10-year period after the place in service date.

Applies to any taxpayer that is allowed a credit for any tax year beginning after July 4, 2027.

2. Applies to any tax years beginning after July 4, 2027.

## Overview- Definition of Prohibited Foreign Entity

**Prohibited Foreign Entity means (1) specified foreign entity or (2) foreign-influenced entity.**

### **Specified Foreign Entity (SFE) means:**

- William M. (Mac) Thornberry National Defense Authorization Act;
- Chinese military companies;
- Entities engaged in certain forced labor practice;
- National Defense Authorization Act;
- Foreign-controlled entity:
  - (i) Govt of covered nation
  - (ii) agency/instrumentality of covered nation
  - (iii) person, individual subject to covered nation
  - (iv) business entities subject to covered nation
  - (v) *Entities (including subsidiaries) with more than 50% controlled by (i)-(iv).\**

### **Foreign-Influenced Entity means:**

- *Ownership/debt control\**: during taxable year,
  - SFE has direct authority to appoint a covered officer
  - one SFE owns 25%+, or multiple SFEs own 40%+ interest
  - 15%+ debt owned by SFE, or
- Effective control: during previous taxable year,
  - made a payment to SFE under an arrangement which entitles SFE (or any entity related to such SFE) to exercise effective control over the qualified facility, EST, or production of eligible component

\* Subject to Publicly Traded Entities exception

## Overview – Material Assistance

Material assistance from PFE means **material assistance cost ratio** is **less** than the **applicable threshold percentage**

Sections 45Y/48E: total direct cost to taxpayer; Section 45X: total direct materials cost to taxpayer

### **Treasury shall issue guidance:**

- Not later than 12/31/2027, providing threshold percentage for critical minerals that equal to or exceed those provided in section 7701(a)(52), and
- Not later than 12/31/2026, providing safe harbor tables for direct cost and direct materials cost of MPs and eligible components, respectively, attributable to PFEs.
- Until the guidance is issued and for facilities/EST that begin construction on or before 60 days of such guidance, taxpayers may rely on Notice 2025-08 and the supplier certification.

**Exception** – *if taxpayer knows (or has reason to know) that (i) the MP or eligible component is attributable to PFE, the taxpayer must treat the costs of such items as attributable to a PFE, or (ii) the supplier certification is inaccurate, the taxpayer may not rely on such certification.*

### **Existing contract election:**

- may elect to not include the cost if:
  - acquired pursuant to a binding written contract entered into prior to 6/15/2025, and
  - placed into service before 2030 (or for solar and wind facilities, before 2028) in a facility with BOC before 8/1/2025, or used in a product sold before 2030.

## Specified Foreign Entity (any of the following)

Foreign entity of concern under **section 9901(8)(A), (B), (D), or (E)\*** of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283):

(A) Foreign entity designated as a terrorist organization under 8 U.S. 1189,

(B) Included on the list of Specially Designated Nationals and Blocked Persons (“SDN List”) maintained by the Office of Foreign Assets Control of the Department of the Treasury,

(D) Alleged by the Attorney General to have been involved in activities for which a conviction was obtained under:

- Chapter 37 of title 18 (the “Espionage Act”);
- Section 951 or 1030 of title 18;
- Chapter 90 of title 18 (the “Economic Espionage Act of 1996”);
- The Arms Export Control Act (22 U.S.C. 2751 et seq.);
- Section 224, 225, 226, 227, or 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2276, 2277, and 2 2284);
- The Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or
- The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(E) Determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the U.S.

**\* Excludes clause (C), which includes foreign entity that is owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.**

## Specified Foreign Entity (cont.)

Chinese military company operating in the United States under section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.

[DOD Releases List of Chinese Military Companies in Accordance with Section 1260H of the National Defense Authorization Act for Fiscal Year 2021 > U.S. Department of Defense > Release](#)

An entity included on a list required by **clause (i), (ii), (iv) or (v)\*** of section 2(d)(2)(B) of [P.L. 117-78: https://www.dhs.gov/uflpa-entity-list](#):

- (i) A list of entities in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor;
- (ii) A list of entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region;
- (iv) A list of entities that exported products described in clause (iii) from the People's Republic of China into the United States; or
- (v) A list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of the Xinjiang Uyghur Autonomous Region or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government labor scheme that uses forced labor.

**\* Excludes clause (iii), which states a list of products mined, produced, or manufactured wholly or in part by entities on the list required by clause (i) or (ii).**

## Specified Foreign Entity (cont.)

An entity specified under section 154(b) of [National Defense Authorization Act for Fiscal Year 2024](#):

- Contemporary Amperex Technology Company, Limited (also known as “CATL”);
- BYD Company, Limited;
- Envision Energy, Limited;
- EVE Energy Company, Limited;
- Gotion High tech Company, Limited;
- Hithium Energy Storage Technology company, Limited; and
- Any successor to an entity specified in this paragraph.

A foreign **controlled** entity, which means:

- (i) The government (any level of govt below the national level) of a covered nation (10 USC 4872(f)(2)) – Russia, Iran, North Korea, China
- (ii) *An agency or instrumentality of a government described in (i)*
- (iii) A person who is a citizen or national of a covered nation, provided that such person is not an individual who is a citizen, national, or lawful permanent resident of the US.
- (iv) An entity or a qualified business unit incorporated or organized under the laws of , or having its principal place of business in, a covered nation, or
- (v) An entity (**including subsidiary entities**) controlled by an entity described in (i), (ii), (iii) or (iv) (more than 50% test).

### Determination of control:

- In the case of a corporation, ownership (by vote or value) of more than 50% of the stock in such corporation,
- In the case of a partnership, ownership of more than 50% of the profits interests or capital interests in such partnership, or
- In any other case, ownership of more than 50% of the beneficial interests in the entity.

### Determination of ownership:

- Section 318(a)(2) apply for determining ownership of stock in a corporation, and similar principles for other entities.



## Foreign-Influenced Entity

With respect to which, **during taxable year**:

- (a) A specified foreign entity has the direct authority to appoint a **covered officer** of such entity,
- (b) A single specified foreign entity **owns** at least **25%** of such entity,
- (c) One or more specified foreign entities **own** in the aggregate at least **40%** of such entity, or
- (d) At least **15%** of the debt of such entity has been issued, in the aggregate, to one or more specified foreign entities

**OR**

*Which, during the **previous taxable year**, made a payment to a specified foreign entity pursuant to a contract, agreement or other arrangement which entitles such specified foreign entity (or an entity related to such specified foreign entity) to exercise **effective control** over:*

- (a) Any qualified facility or energy storage technology of the taxpayer (or any person related to the taxpayer), or*
- (b) With respect to any eligible component produced by the taxpayer (or any person related to the taxpayer);*
  - the extraction, processing, or recycling of any applicable critical mineral, or*
  - the production of an eligible component which is not an applicable critical mineral.*

### **Covered Officer:**

- A member of the board of directors, board of supervisors, or equivalent governing body,
- An executive-level officer, including the president, CEO, COO, CFO, general counsel, or senior vice president, or
- An individual having powers or responsibilities similar to those of officers or members described above.

### **Determination of ownership:**

- Section 318(a)(2) applies for determining ownership of stock in a corporation, and similar principles for other entities.

## Foreign-Influenced Entity- Effective Control

### **Effective Control:**

Any agreements or arrangements that entitles contractual counterparties of a taxpayer with specific authority over the key aspects of the production of eligible components, energy generation in a qualified facility, or energy storage. Directs Treasury to issue guidance related to the foreign controlled entity and effective control rule.

Until such guidance is issued by Treasury, the term “effective control” means the unrestricted contractual right of a counterparty to:

- Determine the quantity or timing of production of an eligible component produced by the taxpayer.
- Determine the amount or timing of activities related to the production of electricity undertaken at a qualified facility of the taxpayer or the storage of electrical energy in energy storage technology of the taxpayer,
- Determine which entity may purchase or use the output of a production unit of the taxpayer that produces eligible components,
- Determine which entity may purchase or use the output of a qualified facility of the taxpayer,
- Restricts access to data critical to production or storage of energy undertaken at a qualified facility of the taxpayer, or to the site of production or any part of a qualified facility or energy storage technology of the taxpayer, to personnel or agents of such contractual counterparty, or
- On an exclusive basis, maintain, repair, or operate any plant or equipment which is necessary to the production by the taxpayer of eligible components or electricity.

For purposes of the effective control rule, the term “taxpayer” and “contractual counterparty” include any person related to the taxpayer and the contractual counterparty.

## Foreign-Influenced Entity - Effective Control (Cont.)

### Licensing and other arrangements:

The term 'effective control' also means, with respect to a licensing agreement for the provision of intellectual property (or any other contract, agreement, or other arrangement entered into with contractual counterparty which is related to such licensing agreement) with respect to a qualified facility, energy storage technology, or the production of an eligible component, any of the following:

- A contractual right retained by the contractual counterparty to specify or otherwise direct 1 or more sources of components, subcomponents, or applicable critical minerals utilized in a qualified facility, energy storage technology, or in the production of an eligible component.
- A contractual right retained by the contractual counterparty to direct the operation of any qualified facility, any energy storage technology, or any production unit that produces an eligible component.
- A contractual right retained by the contractual counterparty to limit the taxpayer's utilization of intellectual property related to the operation of a qualified facility or energy storage technology, or in the production of an eligible component.
- A contractual right retained by the contractual counterparty to receive royalties under the licensing agreement or any similar agreement (or payments under any related agreement) beyond the 10th year of the agreement (including modifications or extensions thereof)
- A contractual right retained by the contractual counterparty to direct or otherwise require the taxpayer to enter into an agreement for the provision of services for a duration longer than 2 years (including any modification or extensions thereof)
- Such contract, agreement, or other arrangement does not provide the licensee with all the technical data, information, and know-how necessary to enable the licensee to produce the eligible component or components subject to the contract, agreement, or other arrangement without further involvement from the contractual counterparty or a specified foreign entity.
- Such contract, agreement, or other arrangement was entered into (or modified) on or after the date of enactment.

Exception: This rule does not apply in the case of a bona fide purchase or sale of intellectual property. An agreement that allows the ownership of the intellectual property to revert to the contractual counterparty after a period of time is not considered a bona-fide purchase or sale.

Directs Treasury to issue guidance not later than December 31, 2026, related to the effective control rule.

## Foreign-Influenced Entity - Exception for publicly traded entities

### **More than 50% ownership rule of “foreign controlled entity”:**

- Does not apply to any entity the securities of which are regularly traded in the following approved manner:
  - (a) A national securities exchange which is registered with the SEC,
  - (b) the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or
  - (c) Any other exchange or other market which the Secretary has determined in guidance issued under section 1296(e)(1)(A)(ii) has rules adequate to carry out the purposes of part VI of subchapter P of chapter 1 of subtitle A. (Does not include any exchange or market that is incorporated or organized under the laws of a covered nation, or has its principal place of business in a covered nation.)

### **However, the exception does not apply and the entity is deemed to be foreign controlled entity if:**

- Such entity is controlled (more than 50% interest) by (one or more (i) SFEs (determined without the foreign controlled entity rule) or (ii) foreign controlled entities (determined without the more than 50% ownership rule) that are:
  - each required to report their beneficial ownership under Rule 13d-3 of the Securities and Exchange Act of 1934 (or, an equivalent rule if (c) above).

## Foreign-Influenced Entity - Exception for Publicly Traded Entities

### **Ownership/debt control rule of “foreign-influenced entity”**

- Does not apply to any entity:
  - The securities are regularly traded in the approved manner (as described in slide 12), or
  - Not less than 80% of the equity securities of such entity are owned directly or indirectly by an entity whose securities are regularly traded in the approved manner (as described in slide 12).

### **The exception does not apply and the entity is deemed to be a foreign-influenced entity if it meets one of the following:**

- During the taxable year:
  - (i) a SFE has the authority to appoint a covered officer of such entity, or
  - (ii) a single SFE required to report its beneficial ownership under Rule 13d-3 of the Securities and Exchange Act of 1934 (or for an equivalent rule for other market or exchange) owns not less than 25% of such entity, or if more than one SFE, not less than 40% in the aggregate, or
- Such entity has issued debt, as part of an original issuance, in excess of 15% of its publicly traded debt to 1 or more SFEs.

## Begin Construction Rules

- For purposes of section 7701(a)(51) and (52),  
  
the beginning of construction with respect to any property shall be determined pursuant to rules similar to the rules under IRS Notice 2013-29 and IRS Notice 2018-59 (as well as any subsequently issued guidance clarifying, modifying, or updating either such Notice), as in effect on January 1, 2025.
- Treasury may prescribe such regulations and guidance as may be necessary or appropriate to carry out the provisions of this paragraph, including rules to prevent the circumvention of any rules or restrictions with respect to prohibited foreign entities.

## Material Assistance from a Prohibited Foreign Entity (Section 7701(a)(52))

*With respect to any qualified facility or energy storage technology, a **material assistance cost ratio** which is **less** than the **applicable threshold percentage***

**OR**

*With respect to any facility which produces eligible components, a **material assistance cost ratio** which is **less** than the **applicable threshold percentage***

## Section 7701(a)(52): Material Assistance from a Prohibited Foreign Entity Means:

Material assistance cost ratio =

$$\frac{(\text{Total direct cost of all MPs}^1 - \text{Total direct cost of all MPs produced by PFE}^2)}{\text{Total direct cost of all MPs}}$$

Begin construction in	Threshold percentage (qualified facility)	Threshold percentage (EST)
2026	40%	55%
2027	45%	60%
2028	50%	65%
2029	55%	70%
After 2029	60%	75%

- A “qualified facility” includes any qualified interconnection property (as defined in section 48E(b)(4)).
1. *Total direct cost to the taxpayer attributable to all manufactured products (including components) which are incorporated into the qualified facility or EST upon completion of construction.*
  2. *Total direct cost to the taxpayer attributable to all manufactured products (including components) which are mined, produced, or manufactured by a PFE.*



## Section 7701(a)(52): Material Assistance from a Prohibited Foreign Entity Means:

Material assistance cost ratio =

$$\frac{(\text{Total direct materials cost}^1 - \text{Total direct materials cost produced by PFE}^2)}{(\text{Total direct materials cost})}$$

Threshold Percentage by Sale Date and Technology					
Sale Date	Solar	Wind	Inverter	Battery	Critical Mineral
During 2026	50%	85%	50%	60%	0%
During 2027	60%	90%	55%	65%	0%
During 2028	70%		60%	70%	0%
During 2029	80%		65%	80%	0%
During 2030	85%		70%	85%	25%
During 2031	85%		70%	85%	30%
During 2032	85%		70%	85%	40%
After 2032	85%		70%	85%	50%

1. *The total direct material cost that are paid or incurred (within the meaning of section 461 and regulations under section 263A) by the taxpayer for production of such eligible component.*
2. *The total direct material costs that are paid or incurred (within the meaning of section 461 and its regulations) by the taxpayer for production of such eligible component that are mined, produced, or manufactured by a PFE.*

## Material Assistance from a Prohibited Foreign Entity (Section 7701(a)(52))

### **Safe harbors:**

*No later than December 31, 2027, Treasury shall issue threshold percentages for each of the applicable critical minerals, which will:*

- *Apply in lieu of the provided threshold percentage, and*
- *Equal or exceed the provided threshold percentage , taking into account—*
  - *Domestic geographic availability,*
  - *Supply chain constraints,*
  - *Domestic processing capacity needs, and*
  - *National security concerns.*

*No later than December 31, 2026, Treasury shall issue safe harbor tables (and such other guidance as deemed necessary) to—*

- *Identify the percentage of total direct costs of any MP which is attributable to a PFE,*
- *Identify the percentage of total direct material costs of any eligible component which is attributable tot a PFE, and*
- *Provide all rules necessary to determine the amount of a tp's material assistance from a PFE*

## Material Assistance from a Prohibited Foreign Entity (Section 7701(a)(52))

### **Safe harbors:**

*Prior to the issuance of the Safe Harbors tables, and for construction of a qualified facility and EST which begins on or before the date which is 60 days after the date of issuance of such tables, a taxpayer may*

- (i) use tables included in Notice 2025-08 to establish the percentage of the total direct cost of any listed eligible component and any manufactured product, and*
- (ii) rely on a certification by the supplier of the manufactured product, eligible component, or constituent element, material or subcomponent of an eligible component*
  - of the total direct costs or the total direct material costs, as applicable, of such product or component that was not produced or manufactured by a PFE, or*
  - That such product or component was not produced or manufactured by a PFE.*

### **Exception:**

- If a taxpayer knows (or has reason to know) that a manufactured product or eligible component was produced by a PFE, the taxpayer must treat all direct costs of such MP, or all direct material costs of such eligible component, as attributable to a PFE.*
- If a taxpayer knows (or has reason to know) that the certification by the supplier is inaccurate, the taxpayer may not rely on such certification.*

## Material Assistance from a Prohibited Foreign Entity (Section 7701(a)(52))

### **Supplier certification requirement**

*Consistent with Treas. Reg. § 1.45X-4(c)(4)(i), the certification must include:*

- *Supplier's EIN, or any such similar number issued by a foreign government,*
- *Signed under penalties of perjury*
- *Retained by the supplier and the TP for not less than 6 years and provided to the IRS upon request, and*
- *Be from the supplier from which the TP purchased any MP, eligible component, or constituent elements, materials, or subcomponents of an eligible component, stating---*
  - *That such property was not produced or manufactured by a PFE and that the supplier does not know (or have reason to know) that any prior supplier in the chain of production of that property is a PFE*
  - *For section 45X, the total direct material costs for each component, constituent element, material or subcomponent that were not produced or manufactured by a PFE, or*
  - *For sections 45Y or 48E, the total direct costs attributable to all MPs that were not produced or manufactured by a PFE.*

# Material Assistance from a Prohibited Foreign Entity (Section 7701(a)(52))

## **Existing Contract Election**

For purposes of determining the material assistance cost ratio, taxpayer may elect to not include the cost to the taxpayer with respect to any manufactured product, eligible component, or constituent element, material or subcomponent of an eligible component which is:

(i) acquired by the taxpayer, or manufactured or assembled by or for the taxpayer, pursuant to a binding written contract which was entered into prior to June 16, 2025, and

(ii) (a) placed into service before January 1, 2030 (or for solar and wind facilities, before January 1, 2028) in a facility the construction of which began before Aug. 1, 2025, or

(b) in the case of a constituent element, material, or subcomponent, used in a product sold before Jan. 1, 2030.

## **Treasury guidance related to material assistance cost ratio rules:**

- Treasury shall prescribe such regulations and guidance as may be necessary or appropriate to prevent circumvention of the material assistance cost ratio rules, including prevention of:
  - Any abuse of the existing contract election through the stockpiling of any MP, eligible component, or constituent element, material, or subcomponent of an eligible component during any period prior to the application of section 7701(a)(52), or
  - Any evasion with respect to the requirements of material assistance cost ratio where the facts and circumstances demonstrate that the BOC of a qualified facility or EST has not in fact occurred.

# Material Assistance from a Prohibited Foreign Entity (Section 7701(a)(52))

## Definitions:

Eligible component = any property described in section 45X(c)(1) or any component identified by the Secretary under regulations or guidance.

Manufactured Product = a MP which is a component of a qualified facility, as described in section 45Y(g)(11)(B) and any guidance issued thereunder, or any product identified by the Secretary under regulations or guidance.

Qualified facility = as defined in section 45Y(b)(1), 48E(b)(3), and any qualified interconnection property (as defined in section 48E(b)(4)) which is part of the qualified investment with respect to a qualified facility (as described in section 48E(b)(1)).

## Regulation and guidance:

- Treasury may prescribe such regulations and guidance as may be necessary or appropriate to carry out the provisions of this paragraph (section 7701(a)(52)), including:
  - Any abuse of the existing contract election through the stockpiling of any MP, eligible component, or constituent element, material, or subcomponent of an eligible component during any period prior to the application of section 7701(a)(52), or
  - Any evasion with respect to the requirements of material assistance cost ratio where the facts and circumstances demonstrate that the BOC of a qualified facility or EST has not in fact occurred.



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