# NAVIGATING THE ONE BIG BEAUTIFUL BILL ACT: CRITICAL UPDATES TO CLEAN ENERGY CREDITS

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**US Policy and Regulatory Alert**

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President Donald J. Trump signed H.R. 1, the One Big Beautiful Bill Act (OBBBA), into law on 4 July 2025 in an afternoon signing ceremony at the White House (Pub. L. No. 119-21). Senate Majority Leader John Thune (R-SD) declared it to be a "generational—once in a generation kind of piece of legislation."[1] The legislation makes significant changes to many clean energy tax incentives that were created by the Inflation Reduction Act (IRA). These include accelerating the beginning of construction (BOC) date for hydrogen and certain wind and solar facilities and revising the terms of eligibility for the advanced manufacturing production tax and clean transportation fuels.[2] The OBBBA also adds new "prohibited foreign entity" (PFE) rules that will restrict certain foreign entities and their affiliates from claiming tax credits and—perhaps more significantly for US developers—will prohibit energy projects and eligible components that incur too high a percentage of their costs from prohibited foreign entities from eligibility for tax credits.

This alert includes an overview of key changes to clean energy tax policy in the bill, followed by a matrix providing more details about the full array of clean energy credits affected by the OBBBA.

## A QUICK OVERVIEW OF KEY CHANGES

### Wind and Solar

Wind and solar facilities are particularly impacted by aggressive credit phaseouts in the OBBBA. If construction of a wind or solar facility begins after 4 July 2026, such facility must be placed in service no later than 31 December 2027 to be eligible for production tax credits (the PTC under Section 45Y) or investment tax credits (the ITC under Section 48E). This requirement is expected to cause developers to race to begin construction by the applicable deadline. As discussed below, this BOC deadline is complicated by President Trump's 7 July 2025 Executive Order (EO) and what appears to be two sets of BOC rules that taxpayers will need to comply with to qualify for wind and solar tax credits.

Wind and solar facilities are also subject to rigorous foreign entity restrictions. PFEs, discussed in more detail below, are prevented from claiming tax credits outright. Further, taxpayers must be able to demonstrate that a certain percentage of direct labor and material costs come from nonprohibited foreign sources for facilities to be credit eligible. Further discussion on this material assistance cost ratio (MACR) computation is included below.

Wind and solar facilities beginning construction before 5 July 2026 generally will be subject to the rules as prescribed in the IRA, subject to applicable foreign entity of concern restrictions.

### Hydrogen

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Hydrogen production facilities must begin construction no later than 31 December 2027 to be credit eligible, accelerating the termination of the Section 45V credit from the IRA's original requirement to begin construction before 1 January 2033. Unlike wind and solar, the hydrogen PTC is not subject to enhanced foreign entity rules; like wind and solar, the President's EO could impact the ability of planned facilities to meet BOC thresholds.

## Advanced Manufacturing of Eligible Components

Wind components sold after 31 December 2027 will not qualify for the advanced manufacturing PTC under Section 45X. The bill imposes a phase-out schedule for critical minerals, beginning in 2031, except for metallurgical coal (added to the list of eligible critical minerals), which terminates on 31 December 2029. Critical minerals and the direct material costs of all eligible components are subject to MACR thresholds, with the percentages of non-PFE materials varying depending on the components.

## Clean Transportation Fuel

The clean transportation fuels PTC is extended from 31 December 2027 to 31 December 2029. PFEs are ineligible for the credit. The special credit rate for sustainable aviation fuel was eliminated. Feedstocks must be produced in the United States, Mexico, or Canada. Negative emissions rates are generally not allowed to be used to compute the credit, and indirect land use changes are disregarded when determining emissions rates.

## Prohibited Foreign Entity Restrictions

Federal policy has increasingly sought to restrict reliance on entities from certain countries, with restrictions included in, for instance, recent defense authorization acts (e.g., Pub. L. No. 116-283), the CHIPS Act (Pub. L. No. 117-167), and the IRA (Pub. L. No. 117-169). The OBBBA expands these evolving rules to prevent most of the available energy tax credits from being claimed by PFEs.

PFEs are defined as one of two primary categories, “specified foreign entities, or SFEs,” and “foreign-influenced entities, or FIEs.” These categories generally target “countries of concern” such as China, Iran, Russia, and North Korea. SFEs are entities specifically noted in the legislative text, such as certain Chinese military companies, companies found to be relying on forced labor from the Xinjiang Uyghur Autonomous Region, or entities controlled by such entities. FIEs are entities subject to a certain level of control by one or more SFEs, or that cede “effective control” over certain aspects of the relevant creditable activity. Publicly traded entities, which may have a more difficult time tracking specific ownership of shares, face different applications of these rules. The rules are written so that certain affiliates and related parties of a PFE may fall within the scope of the restriction. In the legislative text, Congress provided specific direction to the Treasury Secretary for guidance “as may be necessary or appropriate” for these terms, with particular reference to “effective control” and “foreign-influenced entities.”

The bill also imposes a MACR test for wind, solar, and other clean electricity credits, and the advanced manufacturing PTC. The MACR requires a certain percentage of direct labor and materials costs (in the case of facilities) and the direct materials costs (in the case of eligible components) to be from a non-PFE source. If the MACR falls below the prescribed percentages for facilities, battery storage, and the various eligible components, the facility, storage, or component is not eligible for the relevant credit. Taxpayers may use Internal Revenue Service (IRS) Notice 2025-08 (originally released to provide a safe harbor for taxpayers claiming the domestic content bonus credit) and a certification from suppliers attesting to non-PFE costs as safe harbors to determine percentages of costs until the Secretary of the Treasury releases his own safe harbor table and related guidance

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no later than 31 December 2026. The domestic content bonus criteria and the MACR criteria are not the same, so use of the notice may be a bit like fitting a square peg into a round hole.

Applicability of the MACR is applicable for facilities beginning construction after 31 December 2025. The OBBBA codifies IRS Notices 2013-29 and 2018-59 to define BOC for this purpose. As discussed in the following section, codifying these notices for purposes of the MACR and not for other purposes is expected to create additional complexities and challenges for taxpayers trying to comply with already complicated rules.

## Beginning of Construction

The BOC concept has been important to the development of renewable energy facilities for many years, integrated into the Section 1603 grant program (part of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5), which allowed projects to qualify for the grants for an extensive period so long as the project was under construction in 2009 or 2010 (and other relevant grant requirements had been met). The extension of the PTC and ITC under the American Taxpayer Relief Act of 2012 (Pub. L. No. 112-240) extended the commence construction language to the PTC and, subsequently, the Protecting Americans from Tax Hikes of 2015 (included in the Consolidated Appropriations Act, 2016, Pub. L. No 114-113) extended the commence construction rules to the ITC in the context of short-term extensions of the credits.

BOC dates are critical to determine eligibility for several of the tax credits. During the development of the OBBBA, Congressional Republicans were at odds over the use of BOC and whether a placed-in-service date was more appropriate (which would generally have the effect of a shorter timeline to qualify for the tax credits). While a BOC date approach ultimately prevailed, and taxpayers expected they could rely on the long-established notices to substantiate BOC, on 7 July 2025—only three days after signing the legislation—President Trump issued EO 14315, "Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources," directing the Secretary of the Treasury to take action no later than 18 August 2025 to:

> "Strictly enforce the termination of the clean electricity production and investment tax credits under sections 45Y and 48E of the Internal Revenue Code for wind and solar facilities. This includes issuing new and revised guidance as the Secretary of the Treasury deems appropriate and consistent with applicable law to ensure that policies concerning the "beginning of construction" are not circumvented, including by preventing the artificial acceleration or manipulation of eligibility and by restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built."

EO 14315 has introduced considerable concern for investors and facilities who thought they could rely on the IRS BOC notices but are now concerned that the rules, including several safe harbors, could change, rendering their projects ineligible for the tax credits. Guidance pursuant to the EO is expected to be issued in sub-regulatory form, meaning there will not be a public notice and comment period to allow stakeholders the opportunity to provide meaningful input or to receive much (if any) advance notice of relevant changes.

The EO appears to apply only to non-PFE BOC criteria because the codification of the IRS notices is included in the PFE section of the OBBBA. This could have the practical effect that taxpayers claiming wind and solar credits will need to take two separate BOC tests into account: one for the MACR and another for determining whether

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BOC occurs prior to 5 July 2026. Due to these complexities, taxpayers may have questions if and when any additional BOC guidance is released, including as it relates to the enforceability of such guidance.

## A QUICK REFERENCE GUIDE

The following matrix is intended to be a handy guide to quickly identify many of the changes to the clean energy tax credits in the OBBBA. Note that this alert does not address every revision to IRA tax credits in the bill and is meant only as a general reference.

### What's Next?

The EO is likely only the beginning of guidance that will be developed to implement the OBBBA changes to clean energy tax credits. New and reopened regulatory projects, notices, and other sub-regulatory guidance, as well as IRS forms and procedures, are expected. Please contact any of the authors of this alert with questions about the bill and to discuss how to engage in the forthcoming guidance process.

| Category of Change | New Provisions |
|---|---|
| **45Y – Clean Electricity Production Tax Credit** | |
| **Duration** | For wind and solar facilities that begin construction *after* 4 July 2026: the credit is prohibited for projects that are placed in service after 31 December 2027.<br><br>For all other qualified facilities that begin construction *after* 4 July 2026: beginning in 2034, the credit is phased down for qualifying facilities that begin construction through 2035. The phase-out percentages are[3]:<br>▪ 75% for qualifying facilities that begin construction in 2034.<br>▪ 50% for qualifying facilities that begin construction in 2035.<br>▪ 0% for qualifying facilities that begin construction in 2036 or later.<br><br>For all qualified facilities that begin construction on or before 4 July 2026: the credit begins to phase down for facilities beginning construction after the later of 2032 or the first calendar year when the United States achieves a 25% reduction in greenhouse gas (GHG) emissions compared to 2022 (applicable year). The phase-out percentages are:<br>▪ 75% for qualifying facilities that begin construction in the second year following the applicable year.<br>▪ 50% for qualifying facilities that begin construction in the third year following the applicable year. |

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| | ▪ 0% for qualifying facilities that begin construction thereafter. |
| **PFE Restrictions** | For a facility that begins construction after 31 December 2025, no credit is allowed for a project that includes any material assistance from a prohibited foreign entity. The bill introduces MACRs, safe harbors, and other thresholds to determine whether this provision is violated.[i] New supplier and penalty rules related to material assistance are also established. See Appendix A for applicable MACRs.<br><br>No credit is allowed for taxable years beginning after 4 July 2025 if the taxpayer is an SFE[ii] or an FIE.[iii] An entity is treated as an SFE if it falls into any of the following categories:<br>Certain foreign entities of concern under Section 9901(8) of the 2021 NDAA.<br>Chinese military companies operating in the United States.<br>Entities listed on US restricted party lists (e.g., the Specially Designated Nationals List (SDN List) and the Uyghur Forced Labor Prevention Act Entity List (UFLPA Entity List)).<br>Battery manufacturers ineligible for Department of Defense contracts.<br>Entities organized in, owned, or controlled by persons or governmental institutions of China, Russia, Iran, or North Korea.<br>An entity is an FIE if an SFE exercises influence through any of the following:<br>Owns at least 25% of the taxpayer directly or 40% collectively with other SFEs.<br>Holds debt equal to 15% or more of the taxpayer's financing.<br>Has the right to appoint a covered officer.<br>Exercises effective control through contractual or licensing arrangements. This includes influence over decisions related to component sourcing, facility operations, intellectual property utilization, or receiving output-based royalties.<br>For the purpose of determining whether the PFE rules apply to a project based on the date it begins construction, the OBBBA codifies IRS notices defining the BOC.[4] |
| **Transferability** | Prohibits the transfer of any portion of the credit to an SFE, effective for taxable years beginning after 4 July 2025. |
| **Other Provisions** | Creates a new subsection prohibiting a taxpayer from claiming the credit for investments with respect to qualifying property[5] that is rented or leased to a third party.<br>For the purposes of qualifying advanced nuclear facilities, a new category of “energy community” is added to include areas with high rates of employment related to the |

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| | advancement of nuclear power. |
| **48E – Clean Electricity Investment Tax Credit** | |
| **Duration** | For wind and solar facilities that begin construction *after* 4 July 2026, the credit is prohibited for projects that are placed in service after 31 December 2027.<br>For all other qualified facilities and energy-storage technologies that begin construction *after* 4 July 2026: beginning in 2034, the credit is phased down for qualifying facilities that begin construction through 2035. The phase-out percentages are:<br>▪ 75% for qualifying facilities that begin construction in 2034.<br>▪ 50% for qualifying facilities that begin construction in 2035.<br>▪ 0% for qualifying facilities that begin construction in 2036 or later.<br>For all qualified facilities and energy-storage technologies that begin construction on or *before* 4 July 2026, the credit begins to phase down for facilities beginning construction after the later of 2032 or the first calendar year when the United States achieves a 25% reduction in GHG emissions compared to 2022. The phase-out percentages are:<br>▪ 75% for qualifying facilities that begin construction in the second year following the applicable year.<br>▪ 50% for qualifying facilities that begin construction in the third year following the applicable year.<br>▪ 0% for qualifying facilities that begin construction thereafter. |
| **PFE Restrictions** | For a facility or energy-storage technology that begins construction after 31 December 2025, no credit is allowed for a project that includes any material assistance from a prohibited foreign entity.[6] The bill introduces MACRs, safe harbors, and other thresholds to determine whether this provision is violated. New supplier and penalty rules related to material assistance are also established. See Appendix A for applicable MACRs.<br>No credit is allowed for taxable years beginning after 4 July 2025 if the taxpayer is an SFE or an FIE.<br>If, within 10 years of placing in service property eligible for the section 48E credit, a taxpayer makes an "applicable payment"[iv] to a PFE, then 100% of the section 48E credit for that property is recaptured during the taxable year in which the applicable payment occurs. |
| **Transferability** | Prohibits the transfer of any portion of the credit to an SFE, effective for taxable years |

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| | beginning[7] after 4 July 2025. |
| **Other Provisions** | Creates a new subsection prohibiting a taxpayer from claiming the credit for investments with respect to qualifying property[8] that is rented or leased to a third party.<br>Removes the 2% Section 48 ITC for other energy property effective for property beginning construction on or after 16 June 2025.<br>Allows fuel cell projects that begin construction after 2025 to qualify for a 30% credit under section 48E.<br>Revises Section 48E(a)(3)(B) to align domestic content bonus credit percentages to 45Y, effective on or after 16 June 2025.[9] The language applies to new facilities and energy-storage technology. |
| **45X – Advanced Manufacturing Production Credit** | |
| **Duration** | Beginning in 2031, the credit begins phasing out for the production of critical minerals as follows:<br>▪ 75% of the credit is allowed for critical minerals produced during 2031.<br>▪ 50% of the credit is allowed for critical minerals produced during 2032.<br>▪ 25% of the credit is allowed for critical minerals produced during 2033.<br>▪ No credit allowed beginning in 2034.<br>Eliminates the credit for wind energy components produced and sold after 31 December 2027.<br>Integrated components can continue to qualify for the credit if they are produced in the same facility. The bill also adds a requirement that the secondary component sold to an unrelated person must have at least 65% US content based on total direct material costs. These restrictions are effective for components sold after 31 December 2026. |
| **PFE Restrictions** | In general, for taxable years beginning after the date of enactment, components including any material assistance from a PFE are ineligible for the credit, with an exception for certain property sold before 1 January 2027. The bill introduces MACRs, safe harbors, and other thresholds to determine whether this provision is violated. New supplier and penalty rules related to material assistance are also established. See Appendix A for applicable MACRs.<br>No credit is allowed for taxable years beginning after 4 July 2025 if the taxpayer is an SFE or an FIE.[10] |

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| **Transferability** | Prohibits the transfer of any portion of the credit to an SFE, effective for taxable years beginning after 4 July 2025. |
| **Other Provisions** | Metallurgical coal is added as an applicable critical mineral for purposes of 45X, effective for metallurgical coal produced before 1 January 2030.<br>The definition of a battery module is modified. |
| **45V – Clean Hydrogen Production Credit** | |
| **Duration** | Repealed for facilities that begin construction after 31 December 2027. |
| **45Z – Clean Fuel Production Credit** | |
| **Duration** | Extended for fuel sold through 31 December 2029 (from 2027). |
| **PFE Restrictions** | No credit is allowed for taxable years beginning after 4 July 2025 if the taxpayer is an SFE.<br>No credit is allowed for taxable years that begin two years after 4 July 2025 if the taxpayer is an FIE. |
| **Transferability** | Prohibits the transfer of any portion of the credit to an SFE, effective for taxable years beginning after 4 July 2025. |
| **Other Provisions** | Includes a prohibition on feedstocks produced or grown outside of the United States, Mexico, and Canada, effective for transportation fuel sold for taxable years beginning after 31 December 2025.<br>Multiple changes are made to how emission rates are calculated, including:<br>▪ Removing a previous exception so that the Secretary may round all emissions rates to the nearest multiple of five kilograms of CO2 per mmBTU.<br>▪ Creating a prohibition on negative emissions rates, effective for emissions rates published for taxable years beginning after 31 December 2025.<br>▪ Excluding indirect land use changes (iLUC) in GREET models.<br>▪ Requiring the Treasury Secretary to provide distinct and specific emissions rates for each feedstock (e.g., dairy manure, swine manure, and poultry manure) used to produce animal-manure-derived transportation fuel, effective for transportation fuel produced after 31 December 2025. These emissions rates *may* have a negative carbon intensity score.<br>Language is added authorizing the Treasury Secretary to provide rules addressing |

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| | certain related-party sales.<br>Language is added seeking to prevent a taxpayer from claiming the credit twice, requiring that a qualifying fuel "is not produced from a fuel for which a credit under this section is allowable."<br><br>Each gallon of SAF sold or used in a qualified mixture would be ineligible for claiming the 6426(k) credit if the gallon also qualifies under the 45Z credit, effective for fuel sold or used 1) after 4 July 2025; or 2) before 4 July 2025, but only to the extent that its section 6426(k) credit claim has not yet been paid.<br>The special rate for SAF is eliminated for fuel produced after 31 December 2025.<br>The Section 6426(k) SAF credit is terminated, effective for SAF sold or used after 30 September 2025.<br>Extends through 31 December 2026 the 40A Small Agri-Biodiesel Producer Credit. This credit is also increased from US$0.10/gallon to US$0.20/gallon and is allowed to be transferred, effective for fuel sold or used after 30 June 2025. |
| **45Q – Carbon Oxide Sequestration Credit** | |
| **Transferability** | Prohibits the transfer of any portion of the credit to an SFE, effective for taxable years beginning after 4 July 2025. |
| **PFE Restrictions** | No credit is allowed for taxable years beginning after 4 July 2025 if the taxpayer is an SFE or an FIE. |
| **Other Provisions** | Modifications are made to provide parity of credit values for captured carbon oxide that is secured and carbon oxide that is used first and then sequestered, effective for equipment or facilities placed in service after 4 July 2025. |
| **45U – Zero-Emission Nuclear Power Production Credit** | |
| **Transferability** | Prohibits the transfer of any portion of the credit to an SFE, effective for taxable years beginning after 4 July 2025. |
| **PFE Restrictions** | No credit is allowed for taxable years beginning after 4 July 2025 if the taxpayer is an SFE.<br>No credit is allowed for taxable years that begin two years after 4 July 2025 if the taxpayer is an FIE. |
| **45W – Qualified Commercial Clean Vehicles Credit** | |

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| **Duration** | Terminated for vehicles acquired after 30 September 2025. |
| **30D – Clean Vehicle Credit** | |
| **Duration** | Terminated for vehicles acquired after 30 September 2025. |
| **25E – Previously Owned Clean Vehicle Credit** | |
| **Duration** | Terminated for vehicles acquired after 30 September 2025. |
| **30C – Alternative Fuel Vehicle Refueling Property Credit** | |
| **Duration** | Repealed for property placed in service after 30 June 2026. |
| **25C – Energy Efficient Home Improvement Credit** | |
| **Duration** | Repealed for property placed in service after 31 December 2025. |
| **25D – Residential Clean Energy Credit** | |
| **Duration** | Repealed with respect to any expenditures made after 31 December 2025. |
| **45L – New Energy Efficient Home Credit** | |
| **Duration** | Repealed for any qualified new energy-efficient home acquired after 30 June 2026. |
| **179D – Energy Efficient Building Deduction** | |
| **Duration** | Terminated for property beginning construction after 30 June 2026. |
| **168(e) – Special Cost Recovery for Clean Energy Property** | |
| **Duration** | Repeals the accelerated five-year recovery period for certain clean-energy property. |
| **48C – Qualifying Advanced Energy Project Credit** | |
| **Duration** | Restricts funds returned to the Secretary from being reissued, effective on 4 July 2025. |

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## FOOTNOTES

[1] https://www.siouxlandproud.com/news/local-news/thune-passing-obbb-was-hardest-thing-ive-ever-done/

[2] 26 U.S. Code § 45V; 26 U.S. Code § 45Y; 26 U.S. Code § 48E; 26 U.S. Code § 45X; and 26 U.S. Code § 45Z

[3] To clarify, the phase-out percentage listed represents the percentage of the credit that is allowed that year.

[4] Specifically, the bill says that "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...), as in effect on January 1, 2025."

[5] Qualifying property includes qualifying solar water heating property, solar electric property, and small wind-energy property according to 25D.

[6] See discussion under 45Y.

[7] As explained under Section 45Y, the OBBBA codifies IRS notices defining the BOC to determine whether the PFE rules apply to a project based on its BOC date.

[8] Qualifying property includes qualifying solar water heating property, solar electric property, and small wind-energy property according to 25D.

[9] See Appendix B for more information.

[10] See discussion under 45Y.

## APPENDIX A

- The material assistance rules apply to 45Y, 48E, and 45X, as follows. These are the minimum non-PFE required percentages to qualify for the credit. If the MACR is less than these percentages, that means material assistance has been received from a PFE, which is a credit-disqualifying event.
  - Qualified facilities (BOC, total direct labor and materials costs of all manufactured products to construct)
    - 2026: 40%
    - 2027: 45%
    - 2028: 50%
    - 2029: 55%
    - > 2029: 60%
  - Energy storage (BOC, total direct labor and materials costs)
    - 2026: 55%
    - 2027: 60%

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  - 2028: 65%
  - 2029: 70%
  - >2029: 75%
- Solar components (sold dates, total direct materials costs)
  - 2026: 50%
  - 2027: 60%
  - 2028: 70%
  - 2029: 80%
  - > 2029: 85%
- Wind components (sold dates, total direct materials costs)
  - 2026: 85%
  - 2027: 90%
  - 2028: 0% (the 45X credit ends for wind after 2027)
- Inverters (sold dates, total direct materials costs)
  - 2026: 50%
  - 2027: 55%
  - 2028: 60%
  - 2029: 65%
  - > 2029: 70%
- Battery components (sold dates, total direct materials costs)
  - 2026: 60%
  - 2027: 65%
  - 2028: 70%
  - 2029: 80%
  - > 2029: 85%
- Critical minerals (sold dates, total direct materials costs)
  - >31/12/2025 and < 1/1/2030: 0%

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- 2030: 25%
- 2031: 30%
- 2032: 40%
- >2032: 50%

- The bill requires the Secretary of the Treasury to issue new percentages for critical minerals no later than 31 December 2027 that equal or exceed the stated thresholds in the bill, taking into account domestic availability, supply chain constraints, domestic processing capacity, and national security concerns.
- The bill allows an election to exclude certain costs from the MACR computation in the case of binding contracts entered into prior to June 16, 2025, for facilities beginning construction before 1 August 2025, and constituent elements, materials, or subcomponents used in a product sold before 1 January 2030.
- Treasury and the Department of Energy are directed to work to issue safe harbor tables that provide the percentage of total direct costs (in the case of a facility or energy storage) and direct material costs (in the case of an eligible component) attributed to a PFE no later than 31 December 2026.
  - Until such safe harbor tables are issued, taxpayers may use the tables in IRS Notice 2025-08 to establish the percentage of total direct costs of any listed eligible component and any manufactured product and rely on a certification from the supplier of the manufactured product, eligible component, or constituent element, material, or subcomponent of an eligible component, certifying the total direct costs and direct material costs, as applicable, not produced or manufactured by a PFE or that the product or component was not produced or manufactured by a PFE.

## APPENDIX B

- A new paragraph pertaining to domestic content parity was added: “Rules similar to the rules of section 48(a)(12) shall apply, except that, for purposes of subparagraph (B) of such section and the application of rules similar to the rules of section 45(b)(9)(B), the adjusted percentage (as determined under section 45(b)(9)(C)) shall be determined as follows:”
  - Qualified investment in qualified facilities and energy storage technology that begin construction before 16 June 2025 would receive 40%.
    - Qualified facilities that are offshore wind farms would receive 20%.
  - Qualified investment in qualified facilities and energy-storage technology that begin construction on or after 16 June 2025 and before 1 January 2026 would receive 45%.
    - Qualified facilities that are offshore wind farms would receive 27.5%.
  - Qualified investment in qualified facilities and energy-storage technology that begin construction during 2026 would receive 50%.

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- Qualified facilities that are offshore wind farms would receive 35%.

- Qualified investment in qualified facilities and energy-storage technology that begin construction after 31 December 2026 would receive 55%.

[i] The bill allows a tolerance for some PFE-tainted material assistance in a declining percentage as time goes by. The percentages given in the bill are the required minimum percentages of non-PFE content. The percentages get higher as time goes by, meaning that the allowable PFE share is reduced accordingly. The allowable PFE percentage is the inverse of the percentages stated. For example, if the percentage stated is 60%, that means that's the minimum non-PFE percentage (based on costs) that is required, so the PFE allowance would be 40%. The formula to determine the share of a facility's or component's materials that do not come from PREs, expressed as a percentage of total costs is: total cost - PFE cost/total cost. This measure is known as the MACR. The bill also includes additional changes aimed at deterring taxpayers from obscuring ties to PFEs, including: 1) extending the statute of limitations for enforcement actions related to errors when determining material assistance from a PFE to 10 years; 2) imposing stringent, enhanced, and new penalties for accuracy-related errors; 3) and levying civil penalties for broadly defined “material misstatements” on the certification suppliers submit to determine whether the product or component was manufactured by a PFE and the total direct material costs not manufactured by a PFE. The text authorizes the Treasury Secretary to “prescribe such regulations and guidance as may be necessary or appropriate” to implement these restrictions, as well as “regulations and guidance as may be necessary or appropriate to prevent circumvention of the rules” included in this section. A PFE is the umbrella term for an SFE or an FIE.

[ii] Specified Foreign Entity: The OBBBA defines an SFE as: (1) a foreign entity that is designated as a foreign terrorist organization by the Secretary of State; (2) a foreign entity that is included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (“SDN List”); (3) a foreign entity that is alleged by the attorney general to have been involved in activities for which a conviction was obtained under certain laws, including the Espionage Act, the Economic Espionage Act of 1996, and the Export Control Reform Act of 2018; (4) a foreign entity that is determined by the sScretary of Commerce, 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 United States; (5) an entity identified as a Chinese military company operating in the United States; (6) an entity that is on the Uyghur Forced Labor Prevention Act Entity List (UFLPA Entity List); (7) a certain battery-producing entity identified in the 2024 National Defense Authorization Act; or (8) a foreign-controlled entity. A foreign-controlled entity is further defined as: “A government of a covered nation (the Democratic People's Republic of North Korea; the People's Republic of China; the Russian Federation; and the Islamic Republic of Iran), a person who is a citizen or national of a covered nation provided the person is not a US citizen or lawful permanent resident of the US, an entity or qualified business unit incorporated or organized under the laws of or having its principal place of business in a covered nation, an entity controlled by any of the listed foreign controlled entities,” or “an agency or instrumentality of a government” of a covered nation. For these purposes, “control of an entity” means: in the case of a partnership, ownership of more than 50% of the stock; in the case of a partnership, ownership of more than 50% of the profits interests or capital interests; or in any other case, ownership of more than 50% of the beneficial interests in the entity. In general, publicly traded companies are not foreign-controlled entities or

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FIEs (exclusions apply).

[iii] Foreign-Influenced Entity: An FIE is defined as: An entity which, 1) during the taxable year i) a specified foreign entity has the direct authority to appoint a covered officer; ii) a single foreign entity owns at least 25% of such entity; iii) one or more specified foreign entities own in the aggregate at least 40% of such entity; or iv) at least 15% of the debt of such entity is held in the aggregate by one or more specified foreign entities; or, 2) during the previous taxable year, made a payment to a specified foreign entity which entitles the entity (or an entity related to the specified foreign entity) to exert effective control over i) any of the taxpayer's qualified facilities or energy storage technologies; or ii) with respect to any eligible component produced by the taxpayer, the extraction, processing, or recycling of applicable critical minerals or the production of an eligible component which is not an applicable critical mineral. For these purposes, the OBBBA defines a "covered officer" as: "(1) a member of the board of directors, board of supervisors, or equivalent governing body; (2) an executive-level officer, including the president, chief executive officer, chief operating officer, chief financial officer, general counsel, or senior vice president; or (3) an individual having powers or responsibilities similar to those described in (1) and (2)." For these purposes, and until the Treasury Secretary releases guidance further defining the term, "effective control" means: the unrestricted contractual right of a contractual counterparty to 1) "determine the quantity or timing of production of an eligible component produced by the taxpayer;" 2) determine the amount or timing of activities related to the production of electricity undertaken at the taxpayer's qualified facility or the storage of electrical energy in the taxpayer's energy-storage technology; 3) "determine which entity may purchase or use the output of a production unit of the taxpayer that produces eligible components; 4) determine which entity may purchase or use the output of a qualified facility of the taxpayer; 5) restrict 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 the personnel or agents of such contractual counterparty, or 6) 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." The text also defines effective control as it pertains to intellectual property for the purposes of licensing agreements. For the purposes of this section, a "contractual party," is an entity "with which the taxpayer has entered into a contract, agreement, or other arrangement." The text requires the Treasury Secretary to issue guidance no later than 31 December 2026 defining the FIE restrictions, "including the establishment of rules to prevent entities from evading, circumventing, or abusing the application of the restrictions through a contract, agreement, or other arrangement."

[iv] Applicable Payment: The Joint Committee on Taxation defines an applicable payment as: "(1) a payment of dividends, interest, compensation for services, rentals or royalties, guarantees or any other fixed, determinable, annual, or periodic amount related to the production of electricity or storage of energy to a prohibited foreign entity in an amount equal to or greater than five percent of such total payments made by the taxpayer during the taxable year; or (2) payments of dividends, interest, compensation for services, rentals or royalties, guarantees or any other fixed, determinable, annual, or periodic amount related to the production of electricity or storage of energy to more than one prohibited foreign entity in an amount that, in aggregate, is equal to or greater than 15 percent of such total payments made by the taxpayer during the taxable year."

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