

A LIST OF COMPLIANCE QUESTIONS AND A DECISION TREE TO UNDERSTAND PROHIBITED FOREIGN ENTITIES

Based on What We Know So Far

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Introduction

What? On July 4, 2025, Congress passed [Public Law 119-21](#) (OBBBA), which imposes restrictions on renewable energy asset owners that seek to take advantage of certain federal tax credits. Applying the full scope of OBBBA's rules to ensure that a project is eligible for tax credits requires understanding what a "prohibited foreign entity" (PFE) is. For example, applying the [material assistance rules](#) requires understanding the PFE status of suppliers, contractors, and other partners. The basic PFE rules set in the statute, however, are complex and confusing.

The Clean Energy States Alliance (CESA) has therefore produced two documents:

- A numbered list of compliance questions; and
- An excel spreadsheet to use as a "decision tree" to understand whether one is a PFE or one's counterparty, shareholder, or other partner is a PFE.

Why? The documents are meant to assist stakeholders in understanding the statutory rules, and perhaps to help prepare for more productive conversations with a tax attorney. These resources were created upon request from state agencies, based on queries they received from their stakeholders.

Scope. These documents, produced in the spring of 2026, focus exclusively on the **statutory** definitions of PFE for purposes of using Section 48E or Section 45Y tax credits. Note that there are unknowns and some uncertainty, and that Treasury is expected to release clarifying information about PFEs in the future.

The decision tree does not include information pertaining to Qualified Interconnection Property (QIP), to partial production, or to tax credit transfers.

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How to Use These Documents?

This document includes numbered questions. These compliance questions are cross-referenced in an excel worksheet, available on CESA's website here:

<https://www.cesa.org/resource-library/resource/prohibited-foreign-entities-compliance>.

The questions in this document and in the “decision tree” worksheet were created as a free tool for compliance; they aim to unpack the many cross-referenced layers in the source material.

The worksheet will help highlight where remediation may need to occur for compliance, what to discuss with an attorney, and will generally support PFE analysis.

The worksheet includes instructions on how to proceed when the answer to a question is “yes,” “no,” or “I don’t know.” Where relevant or useful, it also includes additional information about the statutory or regulatory sources used, some notes about uncertainty, and a few links to resources. Users should aim to answer all of the questions and sub-questions. Answering all sub-questions will help you find answers to the higher-level questions in the structure.

Who Will Find These Resources Useful?

The worksheet and list of questions can be used by renewable energy asset owners to support their learning about their own PFE status and better understand trickier areas, as well as highlight areas of uncertainty.

The compliance worksheet will likely also be useful for partners, suppliers, or contractors, which may need to determine their own PFE status to support Section 48E and Section 45Y tax credit eligibility for a project.

Numbered Questions to Determine PFE Status

Note: This list of questions is for ease of reference. **Please refer to the [accompanying excel worksheet](#) for information about how to answer these questions.**

1. Are you a **Prohibited Foreign Entity (PFE)**?

1.1. Are you a **Specified Foreign Entity (SFE)**?

1.1.1. Are you a **foreign entity of concern** described in subparagraph (A), (B), (D), or (E) of section 9901(8) of the William M. (Mac) Thornberry National Defense Authorization Act?

1.1.1.1. Are you a foreign entity designated as a foreign terrorist organization by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189)?

1.1.1.2. Are you a foreign entity 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?

1.1.1.3. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under chapter 37 of title 18, United States Code (commonly known as the “Espionage Act”) (18 U.S.C. 792 et seq.)?”

1.1.1.4. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under section 951 (agents of foreign government) or 1030 (fraud and related activities in relation with computers) of title 18 USC?

1.1.1.5. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under chapter 90 of title 18, United States Code (commonly known as the “Economic Espionage Act of 1996”)?”

1.1.1.6. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under the Arms Export Control Act (22 U.S.C. 2751 et seq.)?”

1.1.1.7. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under sections 224 (communication of restricted data), 225 (receipt of restricted data), 226 (tampering with restricted data), 227 (Disclosure of restricted data), or 236 (sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2274–2278; 2284)?

1.1.1.8. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.)?”

1.1.1.9. Are you a foreign entity alleged by the Attorney General to have been involved in activities for which a conviction was obtained under the International Economic Emergency Powers Act (50 U.S.C. 1701 et seq.)?”

1.1.1.10. Are you a foreign entity 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 United States under the William M. (Mac) Thornberry National Defense Authorization Act?
- 1.1.2. Are you an entity identified as a **Chinese military company** operating in the United States in accordance with section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021
- 1.1.3. Are you an entity included on a list required by clause (i), (ii), (iv), or (v) of section 2(d)(2)(B) of Public Law 117–78 (135 Stat. 1527), commonly known as **the Uyghur forced Labor Prevention Act**?
- 1.1.3.1. Are you an entity on the 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" under the Uyghur Forced Labor Prevention Act (UFLPA)?
- 1.1.3.2. Are you an entity on the 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" under the Uyghur Forced Labor Prevention Act (UFLPA)?
- 1.1.3.3. Are you an entity on the list of entities that exported products mined, produced, or manufactured wholly or in part by entities in the previous two questions (those listed on DHS's website) from China to the US?
- 1.1.3.4. Are you an entity on the list of "facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government of Xinjiang 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?
- 1.1.4. Are you one the following entities (listed by name under the **NDA** of 2024)?
- 1.1.4.1. Contemporary Amperex Technology Company, Limited (also known as "CATL")
- 1.1.4.2. BYD Company, Limited
- 1.1.4.3. Envision Energy, Limited
- 1.1.4.4. EVE Energy Company, Limited
- 1.1.4.5. Gotion High tech Company, Limited
- 1.1.4.6. Hithium Energy Storage Technology company, Limited
- 1.1.4.7. Any successor to an entity specified in (1) through (6)"
- 1.1.5. Are you a "**Foreign Controlled Entity**" (**FCE**)?
- 1.1.5.1. Are you the government (including any level of government below the national level) of **China, Russia, Iran, or North Korea**?
- 1.1.5.2. Are you an agency or instrumentality of a government of China, Russia, Iran, or North Korea?
- 1.1.5.3. Are you a person who is a citizen or national of China, Russia, Iran, or North Korea, AND NOT ALSO a citizen, national, or lawful permanent resident of the US?

- 1.1.5.4. Are you an entity or a qualified business unit (i.e., a "separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records") incorporated or organized under the laws of, or having its principal place of business in, China, Russia, Iran, or North Korea?
- 1.1.5.5. If you are a corporation, does any single entity described in questions 1.1.5.1 through 1.1.5.4 own more than 50% of your stock (by vote or by value) directly?
 - 1.1.5.5.1. Does any entity described in 1.1.5.1–1.1.5.4 own 50% or more (by value) of another (intermediate) corporation, and does that intermediate corporation own stock in your corporation — such that, if you multiply the stock owned by that intermediate corporation by the entity's percentage ownership of it, the total exceeds 50%?
 - 1.1.5.5.1.1. Is the intermediate corporation an S corporation?
 - 1.1.5.5.2. Does any entity described in 1.1.5.1–1.1.5.4 own an interest in a partnership, and does that partnership own stock in your corporation — such that, if you add up the stock owned by the partnership multiplied by that entity's percentage interest in the partnership, the total exceeds 50%?
 - 1.1.5.5.3. Does any entity described in 1.1.5.1–1.1.5.4 own a beneficial interest in an estate or trust, and does that estate or trust own stock in your corporation — such that, if you allocate the stock owned by the estate or trust to its beneficiaries in proportion to their interests, the total attributed to that entity exceeds 50%?
 - 1.1.5.5.4. Can you reach a "yes" answer to any of questions 1.1.5.5.1 through 1.1.5.5.3 by chaining together two or more of the above rules through multiple layers of intermediate entities — for example, a Chinese national owns a partnership, which owns a corporation, which owns stock in your corporation?
- 1.1.5.6. If you are a partnership, does any single entity described in questions 1.1.5.1 through 1.1.5.4 own more than 50% of your profits interests or capital interests directly?
 - 1.1.5.6.1. Does any entity described in 1.1.5.1–1.1.5.4 own 50% or more (by value) of a corporation, and does that corporation own an interest in your partnership — such that, if you multiply your partnership interest owned by the corporation by that entity's percentage ownership of the corporation, the total exceeds 50%?
 - 1.1.5.6.1.1. Is that intermediate corporation an S corporation?
 - 1.1.5.6.2. Does any entity described in 1.1.5.1–1.1.5.4 own an interest in another partnership, and does that other partnership own an interest in your partnership — such that, if you multiply your partnership interest owned by the upper-tier partnership by that entity's percentage interest in the upper-tier partnership, the total exceeds 50%?

- 1.1.5.6.3. Does any entity described in 1.1.5.1–1.1.5.4 own a beneficial interest in an estate or trust, and does that estate or trust own an interest in your partnership — such that, if you allocate the partnership interest owned by the estate or trust to its beneficiaries in proportion to their interests, the total attributed to that entity exceeds 50%?
- 1.1.5.6.4. Can you reach a "yes" answer to any of questions 1.1.5.6.1 through 1.1.5.6.3 by chaining together two or more of the above rules through multiple layers of intermediate entities?
- 1.1.5.7. If you are neither a corporation nor a partnership (for example, you are a limited liability company, trust, or other entity), does any single entity described in questions 1.1.5.1 through 1.1.5.4 own more than 50% of the beneficial interests in your entity directly?
 - 1.1.5.7.1. Does any entity described in 1.1.5.1–1.1.5.4 own 50% or more (by value) of an intermediate corporation, and does that intermediate corporation own a beneficial interest in your entity — such that, if you multiply the beneficial interest owned by the intermediate corporation by that entity's percentage ownership of the intermediate corporation, the total exceeds 50%?
 - 1.1.5.7.1.1. Is that intermediate corporation an S corporation?
 - 1.1.5.7.2. Does any entity described in 1.1.5.1–1.1.5.4 own an interest in a partnership, and does that partnership own a beneficial interest in your entity — such that, if you multiply the beneficial interest owned by the partnership by that entity's percentage interest in the partnership, the total exceeds 50%?
 - 1.1.5.7.3. Does any entity described in 1.1.5.1–1.1.5.4 own a beneficial interest in an estate or trust, and does that estate or trust own a beneficial interest in your entity — such that, if you allocate the beneficial interest owned by the estate or trust to its beneficiaries in proportion to their interests, the total attributed to that entity exceeds 50%?
 - 1.1.5.7.4. Can you reach a "yes" answer to any of questions 1.1.5.7.1 through 1.1.5.7.3 by chaining together two or more of the above rules through multiple layers of intermediate entities?
- 1.2. Are you a **foreign-influenced entity (FIE)**?
 - 1.2.1. As of the last day of the taxable year, has any single SFE — meaning any entity that would answer yes to any of questions 1.1.1 through 1.1.5 above — had the direct authority to appoint any of the following individuals in your organization: (i) a member of the board of directors, board of supervisors, or equivalent governing body; (ii) an executive-level officer, including the president, chief executive officer, chief operating officer, chief financial officer, general counsel, or senior vice president; or (iii) an individual having powers or responsibilities similar to those of officers or members described in (i) or (ii)?

- 1.2.2. As of the last day of the taxable year, does any single SFE own at least 25% of your entity?
 - 1.2.2.1. Does any single SFE directly own at least 25% of your entity as of the last day of the taxable year?
 - 1.2.2.2. Even if no single SFE directly owns 25% or more of your entity, does indirect ownership — traced through intermediate corporations, partnerships, S corporations, estates, or trusts — bring any single SFE's total ownership stake to 25% or more of your entity as of the last day of the taxable year?
- 1.2.3. As of the last day of the taxable year, do one or more SFEs together own at least 40% of your entity in the aggregate?
 - 1.2.3.1. First, identify every entity in your ownership structure that qualifies as an SFE under questions 1.1.1 through 1.1.5 above. For each such SFE, determine its total ownership stake in your entity as of the last day of the taxable year — counting both shares held directly by that SFE and shares attributed to it through intermediate entities using the tracing rules described in questions 1.1.5.5 through 1.1.5.7. Do the ownership stakes of all SFEs, when added together, equal at least 40%?
- 1.2.4. As of the last day of the taxable year, has at least 15% of your debt been issued in the aggregate to one or more SFEs,— meaning any entity that would answer yes to any of questions 1.1.1 through 1.1.5 above?
- 1.2.5. During your previous taxable year, did you make any payment to an SFE pursuant to a contract, agreement, or other arrangement — other than an intellectual property licensing agreement, which is addressed separately in question 1.2.6 below — where that contract, agreement, or arrangement entitles that SFE (or an entity related to it) to exercise effective control over any qualified facility or energy storage technology of yours (or of any person related to you)?
 - 1.2.5.1. Does the contract give the SFE the unrestricted right to determine the amount or timing of activities related to the production of electricity at your qualified facility, or the storage of electrical energy in your energy storage technology?
 - 1.2.5.2. Does the contract give the SFE the unrestricted right to determine which entity may purchase or use the output of your qualified facility?
 - 1.2.5.3. Does the contract give the SFE the unrestricted right to restrict access to data critical to the production or storage of energy at your qualified facility or energy storage technology, or to the site of production, or to any part of your qualified facility or energy storage technology, to the personnel or agents of that SFE?
 - 1.2.5.4. Does the contract give the SFE the unrestricted right to control maintenance, repair, or operations of your qualified facility or energy storage technology?
- 1.2.6. During your previous taxable year, did you make any payment to an SFE (meaning any entity that would answer yes to any of questions 1.1.1 through

1.1.5 above) pursuant to an intellectual property licensing agreement—or any related agreement—with respect to your qualified facility or energy storage technology?

- 1.2.6.1. Does the licensing agreement give the SFE the right to specify or otherwise direct the sources of components, subcomponents, or applicable critical minerals used in your qualified facility or energy storage technology?
- 1.2.6.2. Does the licensing agreement give the SFE the right to direct the operation of your qualified facility or any energy storage technology?
- 1.2.6.3. Does the licensing agreement give the SFE the right to limit your utilization of the intellectual property related to the operation of your qualified facility or energy storage technology?
- 1.2.6.4. Does the licensing agreement give the SFE the right 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 any modifications or extensions?
- 1.2.6.5. Does the licensing agreement give the SFE the right to direct or otherwise require you to enter into an agreement for the provision of services for a duration longer than two years, including any modifications or extensions?
- 1.2.6.6. Does the licensing agreement fail to provide you with all the technical data, information, and know-how necessary to enable you to produce the eligible component or components, or operate the qualified facility, subject to the agreement without further involvement of the SFE?