

# Treasury and IRS Issue Updated Domestic Content Guidance Under IRA and First Updated Elective Safe Harbor

## WRITTEN BY

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On January 16, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2025-08](#) (Notice), which provides an updated safe harbor (First Updated Elective Safe Harbor) that modifies and otherwise clarifies the safe harbor (New Elective Safe Harbor) provided in [Notice 2024-41](#) (which modified [Notice 2023-38](#)) that taxpayers may elect to use to calculate the domestic cost of Manufactured Products (defined below) and Manufactured Product Components (defined below) within a project. Under the [Inflation Reduction Act of 2022](#) (IRA), projects that satisfy applicable “Buy American” requirements (the domestic content requirement) qualify for enhanced credit amounts for several clean energy tax credits, including investment tax credits under Sections 48 and 48E (ITC) and production tax credits under Sections 45 and 45Y (PTC).

Treasury and the IRS intend to include the rules in Notice 2023-38, as modified by Notice 2024-41 and further modified by the Notice, in forthcoming proposed regulations concerning domestic content, which will apply to taxable years ending after May 12, 2023. Taxpayers may rely on the rules set forth in Notice 2023-38 (including Table 2 thereof, as modified by Notice 2024-41), as modified by the Notice, with respect to the domestic content requirements for any qualified facility, energy project, or energy storage technology (each, an Applicable Project) the construction of which begins before the date that is 90 days after the date of publication of the forthcoming proposed regulations in the *Federal Register*. Taxpayers may rely on the New Elective Safe Harbor (as modified by the Notice to clarify such safe harbor’s availability to Applicable Projects satisfying the 80/20 Rule (described below)) for any Applicable Project the construction of which begins before April 16, 2025 (the date that is 90 days after the effective date of the Notice). Taxpayers may rely on the First Updated Elective Safe Harbor for any Applicable Project the construction of which begins before the date that is 90 days after any future modification, update, or withdrawal of the First Updated Elective Safe Harbor. Where taxpayers may rely on either the New Elective Safe Harbor or the First Updated Elective Safe Harbor, a taxpayer may apply only one of the above-referenced safe harbors and its associated cost percentages and must use it exclusively.

## Overview

In general, the domestic content requirement applies to any steel, iron, or item produced as part of a manufacturing process (a Manufactured Product) that is a component of an Applicable Project (an Applicable Project Component).

The domestic content requirement with respect to Manufactured Products (Manufactured Products Requirement) is met if all Applicable Project Components that are Manufactured Products are produced in the U.S. or are deemed to be produced in the U.S. All Applicable Project Components that are Manufactured Products are deemed to be produced in the U.S. if the Adjusted Percentage Rule (described below) is satisfied.

The domestic content requirement with respect to steel or iron (Steel or Iron Requirement) is met if, consistent with 49 CFR § 661.5(b) and (c), all manufacturing processes with respect to any steel or iron items that are Applicable Project Components take place in the U.S., except metallurgical processes involving refinement of steel additives. Notice 2023-38 provided that the Steel or Iron Requirement applies to Applicable Project Components that are construction materials made primarily of steel or iron and are structural in function, but does not apply to steel or iron used in articles, materials, or supplies, whether manufactured or unmanufactured, that are directly incorporated into an Applicable Project Component that is a Manufactured Product (Manufactured Product Components) or subcomponents of Manufactured Product Components.

For purposes of classifying certain Applicable Project Components as steel or iron or as Manufactured Products, and for identifying certain Manufactured Product Components, Table 2 of Notice 2023-38, as modified by Notice 2024-41, provided a safe harbor that categorized certain items with respect to ground-mount and rooftop photovoltaic systems, land-based and offshore wind facilities, battery energy storage facilities, hydropower facilities, and pumped hydropower storage facilities as either subject to the Steel or Iron Requirement or Manufactured Product Requirement (Safe Harbor Classifications). However, Notice 2023-38 provides that the Safe Harbor Classifications may not be an exhaustive set of all components for a Project. Taxpayers that elect to use the New Elective Safe Harbor provided by Notice 2024-41 must use a list included in Table 1 of Notice 2024-41 (Table 1) as the exclusive and exhaustive set of all Applicable Project Components and Manufactured Product Components for an Applicable Project.

- By treating Table 1 as the exclusive set of Applicable Project Components, taxpayers can rule out the possibility that any items not included in Table 1 could be subject to the Steel or Iron Requirement, which is critical given that the Steel or Iron Requirement is absolute.

The First Updated Elective Safe Harbor, which applies to both the Steel or Iron Requirement and Manufactured Products Requirement, provides for the classification of identified Applicable Project Components (as steel or iron or Manufactured Products), and taxpayers that elect to use the First Updated Elective Safe Harbor must use the lists provided in the updated tables set forth in the Notice as the exclusive and exhaustive set of all Applicable Project Components and Manufactured Product Components. Taxpayers must affirmatively elect to rely on the First Updated Elective Safe Harbor by providing notice to the IRS on the Domestic Content Certification Statement required by Notice 2023-38.

### **Adjusted Percentage Rule**

The Domestic Cost Percentage for an Applicable Project is equal to the percentage produced by dividing the Domestic Manufactured Products and Components Cost by the Total Manufactured Products Cost. If the Domestic Cost Percentage for an Applicable Project equals or exceeds the adjusted percentage that applies to the Applicable Project, then the Applicable Project satisfies the Adjusted Percentage Rule. For most projects under

the rules now in effect, the adjusted percentage is either 40% or 45%.

Under Notice 2023-38, the Domestic Manufactured Products and Components Cost is based on the sum of (1) the direct materials and direct labor costs incurred by U.S. Manufactured Product manufacturers to produce each U.S. Manufactured Product (products that are manufactured in the U.S. using only U.S. Components) and (2) the direct materials and direct labor costs incurred by non-U.S. Manufactured Product manufacturers to produce or acquire U.S. Components. The relevant direct costs are determined by reference to Treasury Regulation Section 263A-1(e)(2)(i). The Total Manufactured Products Cost for an Applicable Project is the sum of the costs of each Applicable Project Component that is a Manufactured Product.

Notice 2024-41 established the New Elective Safe Harbor, which allows taxpayers to satisfy the Adjusted Percentage Rule without obtaining manufacturer direct cost data. Specifically, in Table 1, the New Elective Safe Harbor provided for the associated cost percentages for each of the identified Manufactured Products and Manufactured Product Components, consistent with those identified in the Safe Harbor Classifications. To apply the New Elective Safe Harbor, a taxpayer adds up the assigned cost percentages from Table 1 for each U.S. Component and U.S. Manufactured Product of the Applicable Project, which equals the Domestic Cost Percentage.

Like the New Elective Safe Harbor, the First Updated Elective Safe Harbor in the Notice provides for the associated cost percentages for each of the identified Manufactured Products and Manufactured Product Components. The Notice clarifies that the assigned cost percentages apply regardless of whether property listed in such updated tables is fully or fractionally owned or shared.

### **First Updated Elective Safe Harbor Modifications**

The First Updated Elective Safe Harbor modifies or otherwise clarifies the New Elective Safe Harbor in several ways, as further discussed below.

#### **1. Clarification of Application to Projects Satisfying the 80/20 Rule**

The so-called “80/20 Rule” applies to determine whether a retrofitted Applicable Project qualifies as originally placed in service even if it contains some used components. Under the 80/20 Rule, an Applicable Project may be considered originally placed in service only if the fair market value of the used components is not more than 20% of the total value of the Applicable Project, taking into account the cost of the new components and the value of the used components. The Notice clarifies that a taxpayer may elect to use the New Elective Safe Harbor or the First Updated Elective Safe Harbor, as applicable, to qualify for the domestic content bonus credit amount for Applicable Projects that are eligible for a credit by virtue of the 80/20 Rule.

The Notice further clarifies that only *new* U.S. Manufactured Products and U.S. Components of the Applicable Project that are listed in Table 1, as modified by the Notice, would be considered in the calculation of the Domestic Cost Percentage (with no changes to the percentages therein). All other Manufactured Products or Manufactured Product Components, including the *used* property in an Applicable Project that qualifies as originally placed in service by virtue of the 80/20 Rule, will be treated as foreign-sourced Manufactured Products or Manufactured Product Components (solely for purposes of calculating the Domestic Cost Percentage when applying the New

Elective Safe Harbor or the First Updated Elective Safe Harbor) and must be assigned a zero value. Retrofitted Applicable Projects must also satisfy the Steel or Iron Requirement only with respect to new Applicable Project Components that are specified in Table 1, as modified by the Notice, as subject to the Steel or Iron Requirement.

## **2. Modifications to Table 1 for Solar PV**

The First Updated Elective Safe Harbor modifies the Solar PV Table of Table 1 by expanding it into two distinct tables, one for photovoltaic (PV) ground-mount (tracking and fixed) Applicable Projects and one for PV rooftop (MLPE and string) Applicable Projects, and by providing updated associated cost percentages for each table (Updated Assigned Cost Percentages for PV Solar). Additionally, the Notice clarifies that in instances in which a U.S. Component meets the criteria of more than one listed Manufactured Product Component, the taxpayer may claim all relevant Updated Assigned Cost Percentages for purposes of calculating the Domestic Cost Percentage.

- The Notice indicates that the Department of Energy (DOE) calculated the Updated Assigned Cost Percentages for PV Solar using its new ground-mount and rooftop PV component costs for 2024, which the DOE derived from cost data from a variety of sources, including datasets of system characteristics, price indices, U.S. survey data from the government (for example, the U.S. Bureau of Labor Statistics and the Department of Labor) and private sector, public filings from corporations, and comprehensive interviews of manufacturers, installers, developers, and owners of the representative technologies. In addition, the DOE used data collected from three different national laboratories to generate the Updated Assigned Cost Percentages for PV Solar, rather than the single national laboratory survey that the DOE relied upon for the methodology used to generate the original assigned cost percentages in Notice 2024-41.

The First Updated Elective Safe Harbor also modifies the Table 1 for Solar PV by adding a new column with a second set of Updated Assigned Cost Percentages for each type of ground-mount PV system and each type of rooftop PV system. This alternative set of Updated Assigned Cost Percentages can be used if a PV system has PV modules that incorporate crystalline silicon photovoltaic (c-Si PV) cells and wafers manufactured within the U.S.

- These alternative Updated Assigned Cost Percentages for PV Solar were incorporated to reflect the significant cost premium this type of cell would carry relative to other types of domestic cells, such as those with foreign wafers or domestic thin-film cells. The Notice reflects that Treasury and the IRS, in consultation with the DOE, implemented these additional columns after review of comments received in response to Notice 2024-41, concluding that Table 1 as originally published therein could misrepresent the expected costs of domestically produced c-Si PV cells made with domestically produced silicon wafers. Because this inaccuracy could risk under-crediting a component whose value is, to a significant extent, created domestically, while over-crediting other components within the table, Treasury and the IRS, in consultation with the DOE, determined that it was appropriate to provide taxpayers the option of using a cost safe harbor that more specifically reflects the cost of c-Si PV cells produced with domestically produced wafers.
  - For Ground-mount (Tracking) Projects with domestically sourced c-Si PV Cells & domestic wafers, the cells contribute 51.6 Updated Assigned Cost Percentage points. Accordingly, a Project that includes such cells could satisfy the Adjusted Percentage Rule Requirement without incorporating any other U.S. Manufactured

## Product Components.

- The Notice clarifies that taxpayers with ground-mount (tracking or fixed) or rooftop (MLPE or string) solar PV systems may elect to use these alternative Updated Assigned Cost Percentages for PV Solar if all, *or a portion of*, the PV modules in the Applicable Project use domestically manufactured c-Si PV cells that exclusively use domestically manufactured wafers. However, the Notice further clarifies that taxpayers that elect to use these alternative associated cost percentages where only a portion of the Applicable Project's PV cells are domestic c-Si PV cells that exclusively use domestically manufactured wafers must treat any domestically manufactured PV cells that do not exclusively use domestic wafers as though such PV cells are foreign sourced for purposes of using the associated cost percentages in the Notice, and may not include the "Production" cost percentage for PV modules containing such cells that otherwise meet the definition of a U.S. Manufactured Product. Additionally, taxpayers that use these alternative associated cost percentages must use the corresponding Updated Assigned Cost Percentages for PV Solar for all the Manufactured Products and Manufactured Product Components in the Applicable Project for purposes of determining the Domestic Cost Percentage.
  - Treating domestically manufactured PV cells that do not exclusively use domestic wafers as foreign sourced seems harsh given that the Notice could have attributed a lesser Updated Assigned Cost Percentage value to the cells for purposes of the mixed source item calculation.

Additionally, the First Updated Elective Safe Harbor modifies Table 1 for Solar PV by renaming certain Applicable Project Components and Manufactured Product Components. Most notably, the First Updated Elective Safe Harbor renames "Steel or iron rebar in foundation" to "Steel or iron reinforcing products in foundation" to better reflect its function and to clarify that non-rebar steel or iron reinforcement is also covered.

- The change to reference "reinforcing products" rather than rebar adds some incremental risk that an item not identified by a taxpayer as a reinforcing product could be treated as subject to the Steel or Iron Requirement.

Further, the First Updated Elective Safe Harbor modifies Table 1 for Solar PV to redefine, recategorize, and reclassify certain components.

- First, the First Updated Elective Safe Harbor revises the definition of (i) "Ground-mounted PV (fixed-tilt)" to clarify that it includes canopy steel racking structures and structures floating on a body of water, (ii) "Ground-mounted PV (tracker)" to clarify that it includes structures floating on a body of water, and (iii) "Rooftop PV ((MLPE)" to clarify that it refers to a system where the microinverters or DC-optimizers regulate the DC electricity from each of its solar PV modules independently before the electricity is converted into alternating current electricity.
- Second, with respect to "Solar PV Ground-Mount," the First Updated Elective Safe Harbor clarifies that the Manufactured Product Component "Electrical Parts" includes the following components that are not on printed board assemblies: control transformers, capacitors, inductors, bus/cables, and circuit protection.
- Third, with respect to "Solar PV Rooftop," the First Updated Elective Safe Harbor categorizes DC to DC and

DC to AC “Printed Circuit Board Assemblies” as separate Manufactured Products Components and clarifies that domestic Printed Circuit Board Assemblies that perform both functions (that is, convert both DC to DC and DC to AC) can receive credit for each associated cost percentage. Additionally, the First Updated Elective Safe Harbor removes “Electrical Parts for rooftop PV systems” and adds their costs to “Printed Circuit Board Assemblies (DC-DC)” and “Printed Circuit Board Assemblies (DC-AC)”.

- Fourth, the First Updated Elective Safe Harbor removes “Adhesives” from the original list of Manufactured Product Components for Solar PV in Table 1 to avoid redundancy and confusion because “Pottants” and “Edge Seals,” which are listed as Manufactured Product Components within the First Updated Elective Safe Harbor, are also adhesives. To account for such removal, Treasury and the IRS increased the associated cost percentage for both “Pottants” and “Edge Seals.”

### **3. Modifications to Table 1 for Land-Based Wind.**

The First Updated Elective Safe Harbor modifies Table 1 for Land-based Wind by renaming “Steel or iron rebar in foundation,” the Applicable Project Component for wind turbine foundation steel, to “Steel or iron reinforcing products in foundation.”

- As with the same modification for Solar PV, this change adds some incremental risk that an item not identified by a taxpayer as a reinforcing product could be treated as subject to the Steel or Iron Requirement.

The First Updated Elective Safe Harbor also modifies Table 1 for Land-Based Wind by renaming “Material,” the Manufactured Product Component for wind tower flanges, to “Preform.” The Notice further clarifies that flanges are typically made from single pieces of steel bar or pre-formed steel ingot; therefore, the only component of a flange would be the preform.

- We note the First Updated Elective Safe Harbor’s values (Updated Assigned Cost Percentages for Land-Based Wind) are the same values as the original assigned cost percentages for land-based wind set forth in Notice 2024-41. The Notice indicates that the same values were used because the DOE found only minor changes in the component cost data underlying the original Assigned Cost Percentages for the Land-Based Wind Table, and thus did not independently publish updates to this data.

### **4. Modifications to Table 1 for Battery Energy Storage Systems (BESS).**

The First Updated Elective Safe Harbor modifies the BESS table of Table 1 by providing updated associated cost percentages (Updated Assigned Cost Percentages for BESS), which the DOE sourced from its new BESS component costs for 2024. The Notice indicates that the Updated Assigned Cost Percentages for BESS more closely reflect the direct cost methodology outlined in Notice 2023-38.

- The DOE derived the Updated Assigned Cost Percentages for BESS in a similar manner to that discussed above in relation to the Updated Assigned Cost Percentages for PV Solar.

Additionally, the First Updated Elective Safe Harbor modifies the BESS table of Table 1 by renaming certain Applicable Project Components and Manufactured Product Components, recategorizing certain Manufactured Product Components, and removing the cost values for the “Electrical Parts and Thermal Management System for Inverter” Manufactured Product Component (within the “Inverter/Converter” Applicable Project Component) from the Distributed BESS column and adding such cost values to the “Printed Circuit Board Assemblies” Manufactured Product Component within the same column. The Notice indicates that these modifications were made to better represent the variety of the Manufactured Product Components that are used for particular functions within Applicable Project Components.

- The First Updated Elective Safe Harbor renames certain Applicable Project Components and Manufactured Product Components. Like the modifications to Table 1 for Solar PV and Land Based Wind, the First Updated Elective Safe Harbor also renames the “Steel or iron rebar in foundation” Applicable Project Component to “Steel or iron reinforcing products in foundation”.
- The First Updated Safe Harbor additionally recategorizes the following Manufactured Product Components: (i) “Thermal Management System” and “Battery Management System” are recategorized from the Applicable Project Component row of “Battery Pack,” to the Applicable Project Component row of “Battery Container/Housing,” and (ii) “Battery Racks and Metal Enclosures” are recategorized as “Enclosures” within the Applicable Project Component row of “Battery Container/Housing.” With respect to “Thermal Management Systems” and “Battery Management Systems,” the DOE advised that most of these systems are located in the container outside of the battery pack/module. For this reason, the Notice indicates that the reclassification described above more accurately represents the Manufactured Product Components for “Battery Packs/Modules” and for “Battery Container/Housing.”

## Conclusion

Unlike Notice 2024-41, the Notice does not provide a novel alternative path to meeting the domestic content requirements. However, the Notice should be welcome to any taxpayers utilizing PV modules that incorporate crystalline silicon photovoltaic (c-Si PV) cells and wafers in Solar PV Projects and could eliminate the need to source other domestic Manufactured Products or Manufactured Product Components in order for certain Projects to satisfy the requirements.

We note that the Notice continues to leave some notable gaps, once again not addressing Safe Harbor Classifications for renewable natural gas projects or the application of the Adjusted Percentage Rule (and the calculation of assigned cost percentages) to integral parts used by more than one qualified facility for purposes of 45Y and 48E.

## RELATED INDUSTRIES + PRACTICES

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