



Adam M. Cohen

Partner
303.295.8372
Denver
acohen@hollandhart.com



Melissa Browder

Associate
303.295.8421
Denver
mbbrowder@hollandhart.com

New IRS Guidance: Foreign Entity Material Assistance for Clean Energy Tax Credits

Insight — February 16, 2026

On February 12, 2026, the IRS issued Notice 2026-15, providing interim guidance and safe harbors implementing the “material assistance” restrictions enacted by the One Big Beautiful Bill Act (OBBBA) for the clean electricity production credit (Section 45Y), clean electricity investment credit (Section 48E), and the advanced manufacturing production credit (Section 45X). The Notice also provides some guidance regarding “foreign-influenced entities,” but leaves open many questions regarding debt and equity ownership that may cause entities to be “prohibited foreign entities” (PFEs).

The Notice supplies methods to calculate a “material assistance cost ratio” (MACR) and establishes interim safe harbors. If the qualified facility, energy storage technology (EST) or eligible component includes “material assistance” from a PFE, then it is ineligible for tax credits under Sections 45Y, 48E or 45X. Given the immediate applicability to projects beginning construction after 2025 and components sold in tax years beginning after July 4, 2025, project contracts, especially supply contracts, should be re-assessed on the basis of this new guidance.

Key elements of Notice 2026-15 include:

- Clarification that the statute's safe harbor that permits reliance on Notice 2025-08 and on certifications is providing two separate safe harbors.
- Interim Safe Harbors to Simplify Compliance:
 - o Identification Safe Harbor: Allows use of the Notice 2024-41 and Notice 2025-08 (and with respect to Section 45X, the chart in the Notice) to identify manufactured products and manufactured product components for solar, wind and certain energy storage projects (and requires taxpayers to disregard items that are not listed and all steel and iron).
 - o Cost Percentage Safe Harbor: Allows use of Assigned Cost Percentages from Notice 2024-41 and Notice 2025-08 to determine the total direct costs and direct costs from a PFE to calculate the MACR for solar, wind and certain energy storage projects, but not for qualified interconnection property or for additions to existing projects, and contains

special rule for re-power projects satisfying the 80/20 rule.

- o Certification Safe Harbor: Clarifies how taxpayers may rely on supplier certifications to establish either (1) the quantum of direct (or direct material) costs not attributable to PFEs, or (2) that items were not PFE-produced/sourced.
- Step-by-Step Framework to Calculate MACR
 - o Identify the relevant items:
 - For Section 45Y and 48E: identify manufactured products (MPs) and manufactured product components (MPCs) incorporated into the qualified facility or EST.
 - For Section 45X: identify “Constituent Materials” incorporated into or consumed to produce the eligible component.
 - o Track the MPs and MPCs or the Constituent Materials and its characteristics to the qualified facility, EST or component into which the MP, MPC or Constituent Materials were incorporated (i.e., if not using the Cost Percentage Safe Harbor, the taxpayer must track the direct costs of each MP or MPC and whether such MP or MPC was mined, manufactured, or produced by a PFE) to the specific qualified facility, EST or component.
 - Whether a manufactured product or manufactured product component is produced by a PFE depends on the producer's status as of the taxable year during which the taxpayer paid or incurred the costs of such product or component.
 - Taxpayers may utilize a “*de minimis* assignment-based tracking” method if the aggregated assigned items are less than 10% of the total direct costs of the qualified facility or EST.
 - Taxpayers may utilize an averaging method for ESTs (i) of the same type, (ii) with a maximum net output of less than 1MWac, (iii) placed in service in the same taxable year and (iv) for which the *de minimis* assignment-based tracking method is not used.
 - For Section 45X purposes, costs and percentages may be averaged over specified periods within a tax year.

- o Determine direct costs for the qualified facility, EST or eligible component using either the direct costs, Cost Percentage Safe Harbor or Certification Safe Harbor.
 - o Determine direct costs of the PFE-produced manufactured products and manufactured product components.
 - o Calculate the MACR separately for each qualified facility or EST and for any qualified interconnection property.
- “Foreign-Influenced Entity” Clarifications (Effective Control) – The Notice confirms that “effective control” under each element of the statute is determined independently. As such, payment to a specified foreign entity under any intellectual property license that is entered into or modified on or after July 4, 2025 will result in the specified foreign entity having effective control over the taxpayer’s qualified facility or EST and the taxpayer would be considered a foreign-influenced entity.
- Substantiation – Taxpayers will be required to notify the IRS in tax returns claiming tax credits if they are relying on the safe harbors and any supplier certifications will have to be attached.

The Notice does not address various aspects of the definitions of “specified foreign entity” and “foreign-influenced entity.” For example, the Notice does not explain the extent to which a “qualified business unit” (QBU) with a principal place of business in a covered nation will cause the entity that owns that QBU to be a specified foreign entity. As another example, the Notice does not address whether the term “issued” in the statute, in regards to debt, is solely with respect to initial issuance or debt that may have been acquired after initial issuance. Additionally, the Notice does not define a “license agreement” or when a payment will be considered made with respect to a license agreement.

Conclusion

Notice 2026-15 is the IRS’s first released guidance with respect to the foreign entity of concern (FEOC) changes made by OBBBA. Renewable energy developers, manufacturers, and buyers should promptly evaluate their contracts (especially supply contracts) to utilize the interim safe harbors.

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