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Renewable Energy Alert

March 20, 2026

Foreign entities of concern, the material assistance rule, and IRS Notice 2026-15

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New IRS guidance under Notice 2026-15 provides rules for analyzing the new material assistance test for clean energy tax credits.

What's the impact?

- Notice 2026-15 provides several methods to calculate the Material Assistance Cost Ratio (MACR).
- New Identification, Cost Percentage, and Certification Safe Harbors simplify compliance for many renewable projects.
- The Notice leaves open many key questions on FEOC status and effective control, requiring continued caution.
- Public comments will be accepted through March 30, 2026.

The One Big Beautiful Bill Act (OBBB Act) imposed detailed and complex new limitations on the ability to claim and monetize tax credits under many Code sections, particularly investment tax credits (ITCs) under Section 48E and production tax credits (PTCs) under Section 45Y (together, "renewable energy tax credits" or "RETCs") where a "foreign entity of concern" (FEOC) is

involved. This alert primarily discusses one of the new limitations, the "material assistance" rule, and recent IRS guidance, Notice 2026-15 (the Notice). The Notice also applies to the manufacturing tax credit provided by Section 45X, and we'll discuss that briefly at the end.

But first, it makes sense to give an overview of the FEOC landscape. Those who are familiar with the general rules can skip ahead to the discussion of the new Notice.

Overview of the FEOC Rules

The new FEOC rules make it extremely important to determine whether a taxpayer, or a party that a taxpayer is dealing with, is a "prohibited foreign entity" (PFE), i.e., a person with improper connections to China, Russia, Iran, or North Korea (Covered Nations). PFEs consist of two kinds of entities: a "Specified Foreign Entity" (SFE) and a Foreign Influenced Entity (FIE).

The terminology is head-spinning. At a 50,000-foot level, SFEs are either (i) those listed in terrorist lists and other lists of undesirables or (ii) "Foreign Controlled Entities" (FCEs). FCEs generally include governments, agencies, and instrumentalities of Covered Nations, individuals who are citizens of Covered Nations, unless they are also citizens or lawful permanent residents of the United States, entities and businesses organized under the law of, or having their principal place of business in, a Covered Nation, and also entities that are more than 50 percent owned (by vote or value) by the foregoing. There is a limited exception from these definitions for publicly traded companies but with several exceptions to that exception that call for careful scrutiny.

Finally, FIEs include two kinds of entities:

- (A) entities for which an SFE can appoint certain officers, or (B) a single SFE owns at least 25 percent of such entity, or (C) one or more SFEs together own at least 40 percent of such entity, or (D) at least 15 percent of the debt of such entity has been issued, in the aggregate, to one or more SFEs, and
- entities which make payments under contracts or other arrangements giving SFEs rights that amount to "effective control" over a facility that the entity owns.

To restate the definitions more succinctly, entities become PFEs because:

- they are listed in terrorists lists and other specified lists of undesirables,
- they are owned by the government or agencies of one of the Covered Nations,
- they are owned by citizens or formed under the law of one of the Covered Nations,
- they issue more than 15 percent of their debt to one or more of the foregoing, or
- they make payments under one or more contracts with any of the preceding groups, and such contracts give the recipient inappropriate rights.

Once we recognize the kinds of entities that can impair the ability to claim RETCs, we next consider the three sets of limitations that apply:

- **Limitations for PFE investors**: A person cannot claim an ITC if the person is a PFE. As described above, the new rules are sufficiently broad that potential investors and credit purchasers who are commonly thought to be "American" (but may have foreign board members and/or investors) must carefully scrutinize their stockholdings, contractual relationships, and issuances of debt to assure that they are not a PFE.
- **Material Assistance Rule**: A facility is not eligible for RETCs if it uses too high a percentage of components or materials from a PFE. This is referred to as the "material assistance" rule. As discussed below, the new provisions provide a sliding scale of permitted components from the four FEOC countries. In other words, the prohibition on "material assistance" **does not mean** "**no** assistance." Instead, it means no assistance above a certain percentage.
- **Effective Control Rule**: A facility is not eligible for RETCs if it is "effectively controlled" by a PFE. Again, the term "effectively controlled" has a complex and not easily determined application.

It is important to remember that these rules do not apply to projects claiming section 45 production tax credits or section 48 investment tax credits. In general, this means that projects which began construction before 2025 are not subject to these rules. In addition, each of the rules has its own effective date or dates, and these are not always well defined. For example, only parts of the effective control rule have an explicitly stated effective date. It won't surprise you that this creates a lot of confusion in the marketplace.

RECENT NOTICE ABOUT MATERIAL ASSISTANCE

And now back to the primary focus of this alert. Notice 2026-15 provides much welcome guidance on the material assistance rule, and the guidance is detailed and useful. The material assistance rule has gotten the most attention from the renewable energy tax credit community, and its effective date and computation are the most straightforward of the three limitations described in the preceding section. However, the new Notice does not substantially address the other two tests. Most importantly, the Notice doesn't address the preliminary question of how to determine whether a product of component supplier is sufficiently connected to one of the Covered Nations to warrant analysis of the material assistance rule in the first place.

As noted in the introduction, if too much of the cost of a facility or storage technology is attributable to PFEs, then the facility or storage technology will be ineligible to claim RETCs. Note that the legislative writers of the OBBB Act described the material assistance rule as something of a double negative. Instead of making it a maximum amount of PFE components, the Tax Code

requires that in order for a facility to qualify for the tax credit, there must be not less than a minimum amount of non-PFE components.

Like many recent changes to the RETC rules, the amount of this minimum percentage is fixed by when the facility began construction. For facilities beginning construction in 2026, the required "material assistance cost ratio" (or MACR)[1] is not less than 40% for each qualified facility and not less than 55% for each energy storage technology (EST). This goes up by 5% each year (e.g., 45% and 60% for facilities and ESTs which begin construction in 2027), until the minimum require percentage reaches its maximums of 60% for qualified facilities and 75% for energy storage technology which begin construction after 2029.

The Notice continues the IRS' use of "safe harbors." New to the Notice are the "Identification Safe Harbor," the "Cost Percentage Safe Harbor," and the "Certification Safe Harbor." These are discussed below. Much of the Notice explains how the existing domestic content tables can be used to make MACR computations.

Computing MACR.

A taxpayer must individually compute MACR for each qualified facility or EST that can function independently from other facilities. A separate MACR is calculated for "qualified interconnection property" (or QIP), if applicable.

The MACR is computed using a decision tree.

First, a taxpayer must determine what manufactured products (MPs) and manufactured product components (MPCs) comprise the facility or EST. It can do this in two ways:

- It can do its own determination of MPs, and MPCs, which comprise the facility or EST, or
- The taxpayer can look to the IRS' domestic content safe harbor tables in Notices 2023-38, 2024-41, and 2025-08 (described as the "**2023-2025 Safe Harbor Tables**" in the Notice). The tables identify specific manufactured products and manufactured product components for solar, onshore wind, battery energy storage systems, hydroelectric, pumped hydropower storage facilities, and offshore wind facilities. The Notice refers to this method as the "**Identification Safe Harbor,**" and it allows a taxpayer to use the manufactured products and manufactured product components identified in the 2023–2025 Safe Harbor Tables when doing the computations.

[1] Tax professionals will note that the IRS has chosen an acronym, MACR, that is remarkably close to another well-known acronym, MACRS, which stands for "modified accelerated cost recovery system," a common depreciation method. The two terms have nothing to do with each other. The new term is pronounced "M-A-C-R." The depreciation method is usually pronounced "makers."

Of course, the Identification Safe Harbor is only available if the particular technology is addressed in one of the Tables. For example, there is no Identification Safe Harbor for geothermal, because that technology does not appear in the 2023–2025 Safe Harbor Tables. Similarly, interconnection costs do not appear in the 2023–2025 Safe Harbor Tables, so the Identification Safe Harbor cannot be used for those costs.

- Note that if the Identification Safe Harbor is used, then it provides the exclusive list of manufactured products and manufactured product components that may be considered in doing the MACR analysis. If a taxpayer's project does not have all of the components on the list, then the computation is done using only the components that are in the taxpayer's facility or EST. Similarly, if the taxpayer's project has components that are ***not*** on the list, they are ignored in doing the computation. Taxpayers who have used the tables for doing domestic content computations will recognize a similarity to how that computation is done, although there is a notable difference as described in the next section.

Once the manufactured products and manufactured product components in the particular project have been identified, either by using the taxpayer's own determinations or the Identification Safe Harbor, the taxpayer must then compute the MACR for the particular facility or EST. From here, we once again have a decision tree:

- The taxpayer can use its own determinations of MPs and MPCs, and their actual direct costs.
- The taxpayer can use the Identification Safe Harbor to identify the MPs or MPCs in its facility or EST and then apply the actual direct costs to those items.
- For each of these first two methods, direct costs include direct material costs and direct labor costs if the developer has produced the MP. If the taxpayer acquired the MP from someone else, the direct costs are the **taxpayer's** cost of purchasing the MP. This is notably different from (and easier than) the domestic content rule, where the taxpayer has to determine its **supplier's** costs. For this purpose, direct material and labor costs for incorporating an MP into the facility are **not** included in the computation of direct costs.
- Instead of using actual direct costs, the taxpayer can use the Identification Safe Harbor to identify the MPs or MPCs in its facility or EST, and then apply the percentages provided in the 2023–2025 Safe Harbor Tables to do the MACR computations. Using the percentages in the tables is referred to as the "**Cost Percentage Safe Harbor.**" Essentially, the Cost Percentage Safe Harbor involves using the numbers in the tables associated with a particular kind of facility or EST and then comparing the total of non-PFE percentages to the total of all percentages.

  For example, the Notice 2025-08 table for ground mount tracking solar provides percentages for each of the manufactured product components that comprise a facility—these are 38.0 for

cells, 6.0 for frame/backrail, 6.0 for front glass, and so on. As provided in the table, the **total** percentages for the **complete** list of MPCs (there are 24 items in the table for ground mount solar) add up to 100. So, if a facility or EST consists of all the components in the IRS table, it would be easy to determine the MACR for the facility or EST. The taxpayer would simply add up all of the non-PFE components and see if they total at least 40% or 55% (for a facility or an EST, respectively, which begins construction in 2026).

Of course, many projects do **not** have every one of the MPs and MPCs enumerated in the IRS' tables. With that in mind, the Notice provides an appropriate methodology. It simply instructs that any item which does not appear in the project should be removed from both the numerator and the denominator of the computation. For example, torque tubes count for 11 percentage points in the Notice 2025-08 table for ground mount tracking solar. If the taxpayer's ground mount solar facility does not have torque tubes, then the computation of the MACR would be based on a total of 89 instead of a total of 100. Accordingly, the non-PFE components would only have to be 40% of 89 (i.e., 36%) instead of 40% of 100.

A few notes:

- Taxpayers can endeavor to do their computations at the MP level, but if some or all of the MPCs included in a MP are PFE-produced, then the portion of the MP's acquisition costs that is attributable to the PFE-produced MPCs are included in the PFE Direct Costs. Similarly, a taxpayer can benefit by excluding the cost of MPCs that are non-PFE in an otherwise PFE-produced MP. Stated differently, the Notice acknowledges that some PFE manufactured products may have non-PFE components and vice versa, and it instructs taxpayers to adjust their computations accordingly.
- **Iron and steel** manufactured products and components are not included in the computation.
- If a taxpayer is developing **ESTs** that are the same type, placed in service in the same year, and are **each under one megawatt**, and the taxpayer is not using the Cost Percentage Safe Harbor, then it may allocate its direct costs using an averaging method.
- RETCs are also available for rebuilt, or retrofitted facilities, provided the ratio of the cost of new equipment to the value of old equipment is not less than 80/20. If the taxpayer is retrofitting an existing facility applying the **80/20 Test**, the PFE computation applies only to the newly added parts of the facility.
- If a taxpayer has multiple facilities, and less than all of a particular kind of product or component is non-PFE, then the taxpayer must allocate the item across its facilities. For example, if a taxpayer built three facilities which had cells, and some were Chinese while others were non-PFE, it would have to appropriately allocate the direct cost, or the percentage from the tables across its three facilities. If one facility had half PFE cells and half

non-PFE cells, then that facility would score 19 for non-PFE (i.e., 50% of the 38 associated with cells). A special rule permits taxpayers to assign PFE and non-PFE items as it wishes provided the particular collection of items' actual share of direct costs, or their total percentage score in the tables (if the Cost Percentage Safe Harbor is used) is **less than 10%**. An example in the Notice makes clear that the taxpayer can use this methodology to its benefit by allocating PFE and non-PFE items among its facilities, so as to enable some to qualify while others do not. For example, assume three same-sized facilities and a third of the PV modules (with a score of 6 and half of the encapsulant with a score of 3.8) were PFE. Instead of using the actual amount of each that was used in the three facilities, the taxpayer could allocate all of the PFE items to one facility (giving it a 9.8 for PFE) while allocating none of the PFEs to the other facilities (possibly making it easier for these two facilities to have the required MACR, depending on the presence of other PFE components).

- The Notice answers a frequently asked question by noting that "freight-in and tariffs paid or incurred by the taxpayer generally are direct material costs."

And then there's the final safe harbor. Drawing on a rule provided in the OBBB Act, the Notice permits taxpayers to rely on **certifications** from their suppliers as to two things: (i) the total direct costs of an MP or MPC acquired by the taxpayer, and, if applicable, (2) that the MP or MPC was not produced by a PFE. Certifications must include the supplier's employer ID number and be signed under penalties of perjury. This is referred to as the "**Certification Safe Harbor**." Importantly, taxpayers cannot rely on certifications that they know or have reason to know are inaccurate.

Additional observations.

A few things to remember as you consider the new Notice:

WHAT IS A PFE?

Remember: The Notice does not address how to determine whether a taxpayer, or a party that a taxpayer is dealing with, is a PFE. So, the first step in the material assistance analysis—whether any of the parties are improperly connected to China, Russia, Iran, or North Korea—continues to only be addressed in the statutory provisions. Getting comfortable with whether your interpretation is the same as the IRS' is not necessarily easy. As you will see from the abbreviated list at the beginning of this alert, many of these determinations may be difficult to make or require analysis of terms that are capable of multiple interpretations.

EFFECTIVE CONTROL

The Notice provides just a passing reference to "effective control," which may, in the end, play a significant role in destabilizing the monetization of RETCs. Under the effective control rules, a

project can lose RETC eligibility by making payments to an SFE if the contract gives the SFE "effective control" over the facility. While the statutory provision describes a dozen specific kinds of "effective control," it also includes an astonishingly broad reference to **any licensing agreement** that was entered into or modified on or after the date that the OBBB Act was enacted, July 4, 2025. The terminology is so broad that some speculated that it might have been a typographical error. However, the notice makes clear that every contract entered into or modified after July 4, 2025, will have to be closely scrutinized for effective control complications. And note that effective date. It is well before the January 1, 2026, date that we associate with the material assistance rule. Indeed, when the IRS gives us guidance, it is possible that projects claiming RETCs under 48E or 45Y in 2026 will be required to review application of the effective control rule for expenditures they incurred in 2025.

DOMESTIC CONTENT VS MATERIAL ASSISTANCE

Remember that qualifying for the domestic content adder does not provide an exemption from the material assistance rule. For example, imagine that the Chinese government established a manufacturing facility in America, and a project developer began construction of a project in 2026 and bought 65% of its project's content from that facility. On the one hand, because the facility is in America and the percentage requirement is met, the facility would likely qualify for the domestic content adder. Unfortunately, because the facility is owned by a PFE, and the MACR is likely failed, the project likely won't qualify for RETCs in the first place.

EASIER RULE FOR STORAGE FACILITIES UNDER 1 MW

With all the exceptions that apply to small facilities (for example, the exception from prevailing wage and apprenticeship for facilities under one megawatt, and the ability of small solar facilities to continue to use the 5% safe harbor for general tax credit qualification purposes) it's easy to forget that the FEOC limitations also apply to small facilities. Despite this general rule, note that an averaging rule is available for tracking the cost of products and components used in energy storage facilities that are of the same type, provided each is under 1MW and placed in service in the same year.

BEGINNING OF CONSTRUCTION

By statute (and confirmed in the Notice), determining when a facility began construction **for FEOC purposes** continues to be done under the pre-OBBB Act guidance. Notice 2025-42 (which largely eliminated the 5% safe harbor for **general** RETC qualification) only applies to the **general** rules for establishing eligibility for credits, and **not** to determining which MACR percentage applies. There, IRS guidance over the past several years continues to apply.

APPLICATION TO SECTION 45X

The Notice provides a limited ability to use the 2023–2025 Safe Harbor Tables for the purpose of analyzing whether the section 45X manufacturing tax credit is available. There is a brief list of kinds of equipment which can use the tables, largely inverters, solar modules, and battery modules. So, the Notice may be very useful to manufacturers of those components. On the other hand, taxpayers claiming the 45X credit for wind energy components, other than inverters, will have to do their computations based on actual direct costs without the benefit of the Identification or Cost Percentage Safe Harbors.

SUBMITTING COMMENTS

The Notice invites submission of written comments on many things related to FEOC by March 30, 2026.

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