

Treasury and IRS Issue FEOC Material Assistance Guidance

WRITTEN BY

Adam C. Kobos | Anne C. Loomis | West Ailsworth | Mitchell T. Emmert | Joel M. Post | McKenzie L. Bayliss
| Tsitsi M. Mangosho | Camille M. Mennen | Andrew P. Nelson | John C. Nelson, Jr.

On February 12, 2026, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2026-15](#) (the Notice). The Notice describes certain rules to be included in forthcoming proposed regulations addressing the prohibited foreign entity (PFE) material assistance requirements for purposes of Sections 48E (CEITC), 45Y (CEPTC), and 45X (advanced manufacturing credit), and safe harbor tables for determining the applicable material assistance cost ratio (MACR). The PFE regime (also known as FEOC, or foreign entity of concern) was enacted by the One Big Beautiful Bill Act (OBBBA).

Executive Summary

The Notice provides both general rules and safe harbors for determining the MACR, which must exceed the Applicable Threshold Percentage (defined below). Because compliance with the general rules could be difficult, and because the safe harbors are available for the most common projects (including solar, wind, and battery projects), we expect the safe harbors to be widely used.

The Notice outlines a five-step process for determining the MACR for the CEITC and CEPTC (*i.e.*, Clean Electricity MACR) for a qualified facility or energy storage technology (EST).

1. Identify the types of manufactured products (MPs) and manufactured product components (MPCs) included in the qualified facility or EST. Under the Identification Safe Harbor described below, tables from the existing domestic content notices provide an exclusive and exhaustive list of MPs and MPCs.
2. For each MP and MPC included in the qualified facility or EST, track whether the MP or MPC was produced by a prohibited foreign entity (PFE Produced). Under the Certification Safe Harbor described below, taxpayers may rely on certifications from suppliers to determine whether an MP or MPC was PFE Produced.
3. Determine the direct costs attributable to the identified MPs and MPCs. Under the Cost Percentage Safe Harbor described below, taxpayers may determine direct costs using the Assigned Cost Percentages of the MPs and MPCs set forth in the domestic content notices in lieu of actual direct costs.
4. Determine the direct costs attributable to the identified MPs and MPCs that are PFE Produced. For this purpose, the Assigned Cost Percentage listed for producing the MP (Production) is part of the PFE Produced amount if the applicable MP is PFE Produced.
5. Calculate the Clean Electricity MACR by subtracting the amount in step 4 from the amount in step 3 and dividing the result by the amount in step 3. If the Clean Electricity MACR is less than the Applicable Threshold Percentage, then the qualified facility or EST includes material assistance from a PFE.

A similar process applies for determining the MACR for the advanced manufacturing credit.

Unfortunately, the Notice does not address the other two FEOC rules — *i.e.*, the rules for determining whether a taxpayer is a PFE and whether contracts applicable to a qualified facility or EST confer effective control.

Definitions

The Notice and Section 7701 rely on several key definitions that are fundamental to understanding the material assistance restrictions.

- **2023-2025 Safe Harbor Tables:** The tables provided in [Notice 2025-08](#) (with respect to Solar PV facilities, land-based wind facilities, and ESTs), [Notice 2024-41](#) (with respect to hydropower facilities and pumped hydropower storage facilities), and [Notice 2023-38](#) (with respect to offshore wind facilities).
- **Applicable Threshold Percentage:** This is the minimum percentage of non-PFE Produced property that can be in a qualified facility or EST. For a qualified facility that begins construction in 2026, the threshold percentage is 40%. For an EST that begins construction in 2026, the threshold is 55%. The threshold percentage increases by 5% each year for both categories through 2029. For purposes of the advanced manufacturing credit, the threshold percentage for eligible components varies by the type of equipment. The threshold percentage is 50% for solar energy components sold in 2026 and increases by 10% each year through 2029, then to 85% after 2029. The threshold percentage for wind energy components sold in 2026 is 85%, increasing to 90% for components sold in 2027. The threshold percentage for battery components sold in 2026 is 60% and increases by 5% each year through 2029.
- **Clean Electricity MACR:** The percentage equal to (i) the total direct costs to the taxpayer attributable to all manufactured products (including components) incorporated into the qualified facility or EST other than the total direct costs attributable to all such products that are mined, produced, or manufactured by a PFE, divided by (ii) the total direct costs to the taxpayer attributable to all manufactured products (including components) incorporated into the qualified facility or EST.
- **Eligible Component MACR:** The percentage equal to (i) the total direct material costs paid or incurred by a taxpayer for the production of such component other than the total direct material costs attributable to all such products that are mined, produced, or manufactured by a PFE, divided by (ii) the total direct material costs paid or incurred by a taxpayer for the production of such component.
- **Manufactured Product (MP):** An item produced as a result of a manufacturing process, consistent with its usage in Section 45Y(g)(11)(B) and Notice 2023-38, which we discussed in [our client alert on Notice 2023-38](#).
- **Manufactured Product Component (MPC):** Any article, material, or supply, whether manufactured or unmanufactured, which is directly incorporated into an MP, consistent with its usage in Notice 2023-38, which we discussed in [our client alert on Notice 2023-38](#).
- **Material Assistance Cost Ratio (MACR):** The Clean Electricity MACR applicable to qualified facilities and EST and Eligible Component MACR applicable to eligible components.
- **Prohibited Foreign Entity (PFE):** A PFE includes a “specified foreign entity” (SFE), or a “foreign influenced entity” (FIE), in each case, as defined in Section 7701(a)(51). We discussed these terms in our prior [client alert on the OBBBA](#).

OBBBA Material Assistance Requirements

Under the OBBBA, a qualified facility or EST that begins construction after the end of 2025 (or, in the case of the advanced manufacturing credit, in taxable years beginning after July 4, 2025, if an eligible component is used in a product sold before January 1, 2027) is ineligible for the CEITC, CEPTC, and advanced manufacturing credit if it receives material assistance from a PFE, which means that the qualified facility, EST, or eligible component, as applicable, has a MACR that is less than the Applicable Threshold Percentage.

- The material assistance ratio is expected to impact nearly all major suppliers of battery storage systems, solar modules, and wind turbines.

The OBBBA required the Secretary of the Treasury to issue safe harbor tables to simplify this determination no later than December 31, 2026. The Notice provides two interim safe harbors that allow taxpayers to rely on tables in previously issued domestic content guidance: the Identification Safe Harbor and the Cost Percentage Safe Harbor. The Identification Safe Harbor allows taxpayers to rely on such tables to identify the manufactured products and manufactured product components in a qualified facility or EST (or constituent materials, for purposes of the Eligible Component MACR). The Cost Percentage Safe Harbor allows taxpayers to rely on such tables to determine its direct costs (or direct material costs, for purposes of the Eligible Component MACR) by applying specified cost percentages assigned to each manufactured product and manufactured product component.

The Certification Safe Harbor allows taxpayers to rely on a certification for purposes of determining which manufactured products and manufactured product components are produced by a PFE (for the Clean Electricity MACR) or constituent materials are sourced from a PFE (for the Eligible Component MACR) and the portion of a taxpayer's costs associated with each manufactured product component or constituent material.

Clean Electricity MACR

The calculation of the Clean Electricity MACR is done on a qualified facility-by-qualified facility and EST-by-EST basis as follows:

1. Identify the types of MPs and MPCs included in the qualified facility or EST.
2. For each MP and MPC included in the qualified facility or EST, track the relevant characteristics (including direct costs and whether the MP or MPC was PFE Produced). Under the Certification Safe Harbor described below, taxpayers may rely on certifications from suppliers to determine whether an MP or MPC was PFE Produced.
3. Determine the Direct Costs attributable to the identified MPs and MPCs (Direct Costs).
4. Determine the Direct Costs attributable to the identified MPs and MPCs that are PFE Produced (PFE Direct Costs).
5. Calculate the Clean Electricity MACR by subtracting the amount in step 4 from the amount in step 3 and dividing the result by the amount in step 3. If the Clean Electricity MACR is less than the Applicable Threshold Percentage, then the qualified facility or EST includes material assistance from a PFE.

Identify MPs and MPCs

Taxpayers may use the Identification Safe Harbor to identify MPs and MPCs of a qualified facility or EST. The Identification Safe Harbor allows taxpayers to treat the MPs and MPCs listed in the applicable 2023-2025 Safe Harbor Table for each qualified facility or EST as the exclusive and exhaustive list of MPs and MPCs that are incorporated into the qualified facility or EST. For purposes of the Identification Safe Harbor, each of the following is disregarded: (i) any MP or MPC contained in a qualified facility or EST that is not listed in the applicable 2023-2025 Safe Harbor Table, (ii) any MP or MPC that is listed in the applicable 2023-2025 Safe Harbor Table but is not contained in a qualified facility or EST, (iii) any items classified as "Steel/Iron" in the applicable 2023-2025 Safe Harbor Table, and (iv) when applying the 80/20 rule for a repower, any used property that is part of a qualified facility.

- For a solar PV ground-mount project, the applicable 2023-2025 Safe Harbor Table is section 5.05 of Notice 2025-08, which lists the following MPs: PV module (with cells, frame / backrail, front glass, encapsulant, backsheet / backglass, junction box, edge seals, pottants, bus ribbons, and bypass diodes as MPCs), inverter (with printed circuit board assemblies, electrical parts, thermal management system, and enclosure & skids as MPCs), and PV tracker (with torque tube, structural fasteners, drive system, dampers, actuator, controller, and rails as MPCs).
- For a land-based wind project, the applicable 2023-2025 Safe Harbor Table is section 6.02 of Notice 2025-08, which lists the following MPs: wind turbine (with blades, rotor hub, nacelle, and power converter as MPCs) and wind tower flanges.
- Notably, the 2023-2025 Safe Harbor Tables do not include substation equipment (including generator step-up transformers). Accordingly, the material assistance requirements do not apply to transformers under the safe harbors in the Notice.
- It is worth emphasizing that facilities of a type not listed in the current 2023-2025 Safe Harbor Tables cannot use the Identification Safe Harbor or Cost Percentage Safe Harbor.

Taxpayers that do not use the Identification Safe Harbor must identify each MP and MPC incorporated into the qualified facility or EST based on the actual items used in the construction or installation of the qualified facility or EST. The Notice states: “To identify MPs and MPCs, a taxpayer must identify the types of MPs and MPCs that are incorporated into the qualified facility or EST. A type of MP or MPC refers to a type of product or component that performs a unique, specified function within the qualified facility or EST.”

- Applying the “unique, specified function” test to complex machinery and equipment could be difficult. Similar difficulties affected domestic content before the IRS introduced the safe harbors in [Notice 2024-41](#) and [Notice 2025-08](#). Outside the domestic content safe harbors, the distinction between MPs, MPCs, subcomponents of MPCs, steel or iron components that are structural in function, and non-manufactured products is not always clear (e.g., custom components that require modifications to pre-manufactured subcomponents as part of the assembly process). The uncertainty related to those determinations has made it challenging for taxpayers (and financing parties) to be confident that each item would be correctly classified.

Track MPs and MPCs

Except as described below, each MP and MPC (and its characteristics) must be individually tracked to the specific qualified facility or EST into which it is incorporated. All taxpayers must track whether each MP or MPC was PFE Produced. Taxpayers not using the Cost Percentage Safe Harbor also must track the taxpayer’s direct costs of each MP and MPC.

Taxpayers may use the Certification Safe Harbor to determine which MPs and MPCs incorporated in a qualified facility or EST are PFE Produced. The Certification Safe Harbor permits a taxpayer to rely on written certifications from direct suppliers for purposes of determining whether MPs or MPCs are PFE Produced. Taxpayers that do not use the Certification Safe Harbor must determine whether each MP and MPC is PFE Produced, taking into account ownership, control, and status of the relevant producer under the specified foreign entity and foreign-influenced entity rules, which include complex attribution concepts.

The Notice provides a *de minimis* assignment rule that is an exception to the requirement to individually track MPs and MPCs of the same type. Under this rule, a taxpayer may choose how to assign MPs or MPCs of the same type to qualified facilities or ESTs if the aggregate direct costs of the MPs and MPCs assigned do not exceed 10% of the total direct costs of the qualified facility or EST.

The Notice also provides another exception from the tracking rule for certain ESTs that (i) are of the same type (based on a shared production line, method and capacity of energy storage, or any other reasonable method) (ii) have a maximum net output of less than 1MW (AC), and (iii) are placed in service during the same taxable year. A taxpayer may track the characteristics of each MP or MPC incorporated in such ESTs by calculating the average of direct costs of the MPs and MPCs of the same type incorporated in the ESTs (for taxpayers not relying on the Cost Percentage Safe Harbor) and calculating a percentage of MPs and MPCs that were mined, manufactured, or produced by a PFE and incorporated in the ESTs placed in service during a specified period. Detailed timing rules apply for this purpose.

Determine Direct Costs and PFE Direct Costs

A taxpayer that uses the Identification Safe Harbor may utilize the Cost Percentage Safe Harbor to determine direct costs and determine PFE Direct Costs, except with respect to qualified facilities that include a new unit or addition of capacity to an existing qualified facility that was placed in service before 2025. Under the Cost Percentage Safe Harbor described below, taxpayers may determine direct costs using the Assigned Cost Percentages of the MPs and MPCs set forth in the domestic content notices in lieu of actual direct costs. The total Direct Costs are equal to the sum of the Assigned Cost Percentages assigned to each MP and MPC in the applicable 2023-2025 Safe Harbor. The PFE Direct Costs are equal to the sum of the Assigned Cost Percentages for the MPCs that are PFE Produced and the Assigned Cost Percentage for Production for MPs that are PFE Produced.

Taxpayers that do not use the Cost Percentage Safe Harbor must determine the actual direct costs attributable to each MP and MPC incorporated in a qualified facility or EST. For MPs acquired by a taxpayer, the direct costs attributable to an MP include acquisition costs with respect to the MP. For MPs produced by a taxpayer, direct costs include the taxpayer's material costs and direct labor costs, as defined in the Section 263A regulations.

- Unlike the determination of direct costs for purposes of the domestic content enhancement described in Notice 2023-38, the relevant direct costs are the costs *to the taxpayer* rather than the direct costs *to the manufacturer*. Accordingly, demonstrating compliance does not require obtaining sensitive cost information from manufacturers directly (though allocations of cost to MPCs may be required), regardless of whether the taxpayer has privity with such party, which was extremely difficult for many developers prior to the issuance of the safe harbors described in [Notice 2024-41](#) and [Notice 2025-08](#).
- Determining direct costs will require either specifying the portion of costs for an MP attributable to each MPC in the relevant supply agreement or relying upon information provided in connection with the Certification Safe Harbor.
- Direct costs, including direct labor costs, of incorporating the MPs into a qualified facility or EST are not counted in the total direct costs attributable to an MP.

For these purposes, if the taxpayer acquires a PFE Produced MP, but some or all of the MPCs included in the MP are not PFE Produced, then the taxpayer excludes from PFE Direct Costs the portion of the MP's acquisition costs that are attributable to the MPCs that are not PFE Produced. If the taxpayer acquires an MP that is not PFE Produced, but some or all of the MPCs included in the MP are PFE Produced, then the taxpayer includes in PFE Direct Costs the portion of the MP's acquisition costs that is attributable to the PFE Produced MPCs. If the taxpayer produces an MP that includes any acquired PFE Produced MPCs, then the taxpayer's PFE Direct Costs include the acquisition costs of the PFE Produced MPCs.

The Notice provides that taxpayers that do not use the Cost Percentage Safe Harbor may use the Certification Safe Harbor to determine direct costs in whole or in part where a supplier has stated the total direct costs paid for the MP or MPC.

Eligible Component MACR

To calculate the Eligible Component MACR for an eligible component, a taxpayer must:

1. Identify the constituent elements, materials, or subcomponents (Constituent Materials) incorporated into the eligible component or consumed in production of the eligible component, the costs of which are considered direct material costs of the eligible component under the Section 263A regulations (e., the cost of those materials that become an integral part of the eligible component).
2. Track the relevant characteristics (direct costs, PFE status) of each Constituent Material used to produce the eligible component.
3. Determine the taxpayer's direct material costs for each Constituent Material used to produce the eligible component (Direct Material Costs).
4. Determine the Direct Material Costs attributable to each Constituent Material supplied by a PFE (PFE Direct Material Costs).

Identify Constituent Materials

Taxpayers may use the Identification Safe Harbor to identify types of Constituent Material only if the eligible component is specifically listed in the Notice. These listed components include inverters, solar modules, and battery packs/modules. The Identification Safe Harbor provides an exclusive and exhaustive list of Constituent Materials that is consistent with the MPCs listed in the applicable 2023-2025 Safe Harbor Tables. Accordingly, if a taxpayer manufactures one of these specified components and elects to use the Identification Safe Harbor, any materials not listed as an MPC can be disregarded.

Taxpayers that do not use the Identification Safe Harbor must identify each Constituent Material actually incorporated into the eligible component by reference to the component's production or purchase records.

- Tracking direct costs for all Constituent Materials could prove challenging. We expect manufacturers of inverters, solar modules, and battery packs / modules will rely on the Identification Safe Harbor.

Track Constituent Materials

Except as described below, each Constituent Material must be tracked (and its relevant characteristics) to the eligible component into which it is incorporated.

All taxpayers must track whether each Constituent Material was PFE Produced. Taxpayers not using the Cost Percentage Safe Harbor also must track the taxpayer's direct material costs attributable to each Constituent Material. Taxpayers may use the Certification Safe Harbor to determine whether Constituent Materials used to produce an eligible component are supplied by a PFE.

Unlike the Clean Electricity MACR, the Notice does not provide any *de minimis* assignment rule or aggregation

rule for tracking Constituent Materials for purposes of the Eligible Component MACR.

Determine Direct Material Costs and PFE Direct Material Costs

Taxpayers that use the Identification Safe Harbor may utilize the Cost Percentage Safe Harbor to determine direct material costs and PFE Direct Material Costs by summing the assigned cost percentages for each Constituent Material listed in the applicable 2023–2025 Safe Harbor Tables, and by summing the assigned cost percentages for only those Constituent Materials that are supplied by a PFE.

Taxpayers that do not use the Cost Percentage Safe Harbor must determine the actual direct material costs attributable to each Constituent Material incorporated into the eligible component. Direct material costs include amounts paid or incurred by the taxpayer for materials that are incorporated into the eligible component or consumed in the production of the eligible component.

Certification Safe Harbor Requirements

The Notice provides that, for a certification to be relied upon under the Certification Safe Harbor, it must be obtained from the direct supplier of the relevant MP, MPC, eligible component, or Constituent Material and must be signed under penalties of perjury. The certification must include the supplier's employer identification number (or comparable foreign tax identification number) and must state, as applicable, that the relevant MP, MPC, eligible component, or Constituent Material was not mined, produced, or manufactured by a PFE and that the supplier does not know (or have reason to know) that any prior supplier in the chain of production is a PFE, or must state the portion of direct costs or direct material costs attributable to MPs (for the CEITC and CEPTC) or Constituent Material (for the advanced manufacturing credit) that were not supplied by a PFE. The taxpayer must attach the certification to the return or forms for claiming the relevant credit (e.g., Form 3468 for the CEITC and Form 7211 for the CEPTC). A taxpayer may rely on a certification unless it knows or has reason to know that the certification is inaccurate.

- Some suppliers may be reluctant to provide certifications because they could be subject to penalties under Section 6695B of the Code for providing false certifications that result in violations of the material assistance requirements.
- The Notice does not explicitly define the entity that should be treated as the “direct supplier”, which could raise questions depending on the applicable contract structure for the procurement and construction of a project.
- It is not entirely clear what the “chain of production” means in this context. An example in the Notice suggests that, at least for taxpayers applying the Identification Safe Harbor, the chain of production includes only the applicable MP and MPCs.

Qualified Interconnection Property

For purposes of calculating the Clean Electricity MACR for a qualified facility that claims the CEITC, costs attributable to qualified interconnection property (QIP) are excluded from the Clean Electricity MACR. If a taxpayer calculates a separate Clean Electricity MACR for the QIP that does not satisfy the Applicable Threshold Percentage that applies to the qualified facility, or if a taxpayer is unable to calculate a Clean Electricity MACR for the QIP, then the taxpayer is not precluded from claiming the CEITC for the qualified facility. Costs attributable to QIP are eligible for the CEITC if both the Clean Electricity MACR for the QIP and the Clean Electricity MACR for

the applicable qualified facility satisfy the Applicable Threshold Percentage.

- The Notice clarifies that the Identification Safe Harbor and the Cost Percentage Safe Harbor are not available for QIP. As a result, it could be difficult to satisfy the material assistance requirements for QIP, particularly if the applicable utility constructs the interconnection facilities.

Reliance

Taxpayers may rely on the rules described in the Notice for (i) any qualified facility or EST the construction of which begins before the date that is 60 days after the date of publication of the forthcoming proposed regulations in the Federal Register and (ii) eligible components sold in taxable years beginning on or before the date that is 60 days after the date of publication of the forthcoming proposed regulations in the *Federal Register*.

- For this purpose, Notice 2022-61 applies principles from historic “beginning of construction” guidance issued pursuant to the Section 45 PTC and Section 48 ITC (including Notices 2013-29, 2013-60, 2014-46, 2015-25, 2016-31, 2017-04, [2018-59](#), 2019-43, 2020-41, and [2021-41](#)) to the CEITC and CEPTC.
- The Notice acknowledges that [Notice 2025-42](#) provides a beginning of construction standard that applies only for the limited purpose of the termination of the CEITC and CEPTC for solar and wind facilities that have not begun construction by July 4, 2026.

Taxpayers may rely on the safe harbors in the Notice to calculate the applicable MACR for (i) any qualified facility or EST the construction of which begins before the date that is 60 days after the date of publication of forthcoming safe harbor tables under Section 7701(a)(52)(D)(iii)(I) or (ii) eligible components sold in taxable years beginning on or before the date that is 60 days after date of publication of forthcoming safe harbor tables under Section 7701(a)(52)(D)(iii)(I).

Foreign-Influenced Entity: Licensing Agreements

The Notice describes rules that the Treasury Department and the IRS expect to include in the forthcoming proposed regulations for determining the application of certain PFE restrictions.

Notably, the Notice clarifies that, for purposes of the FIE definition in Section 7701, an SFE is determined to exercise effective control as a result of any contract, agreement, or other arrangement that fulfills one of the listed qualities in Section 7701(a)(51)(D)(ii)(III)(aa)(AA) through (GG), including a licensing agreement for the provision of intellectual property with respect to a qualified facility entered into or modified after July 4, 2025.

- Some advisors have expressed concerns that any grant of a right to use intellectual property belonging to an SFE confers effective control. We observe that the applicable language applies to a “licensing agreement for the provision of intellectual property”, which arguably does not include agreements (e.g., equipment supply contracts) the primary purpose of which is unrelated to the licensing of IP and any license embedded is ancillary in nature. Furthermore, because many project contracts (e.g., supply contracts, EPC contracts, etc.) include IP licenses, this reading of the statute would cause many routine project contracts to confer “effective control”, a result that seems absurd.

Request for Comments

The Notice includes a request for comments by March 30, 2026 with respect to whether further guidance is needed to clarify how to determine total direct costs of a qualified facility or EST, anti-circumvention rules, and what substantiation and documentation should be required to support compliance with anti-circumvention rules, such as to demonstrate the beginning of construction has occurred for purposes of the PFE and material assistance rules.

Conclusion

It is perhaps unfortunate for the CEITC and CEPTC that Treasury and the IRS prioritized the material assistance guidance. Given that many sponsors used beginning of construction strategies to ensure significant portions of their pipelines would not be subject to the material assistance requirements, the need for guidance on the PFE and effective control rules is even more pressing.

However, the Notice provides welcome relief. Many feared the material assistance requirements were a poison pill for the renewables industry. Fortunately, Notice 2026-15 sets forth rules, including safe harbors, that incorporate familiar principles from the domestic content guidance. The Notice will be very helpful for projects eligible for the safe harbors, including solar, wind, and battery projects and domestic manufacturers of inverters, solar modules, and battery packs/modules. On the other hand, supply chains must evolve to enable manufactured products to satisfy increasingly stringent requirements. In addition, the path to satisfying the material assistance requirements will be more difficult for projects and manufacturers that cannot take advantage of the safe harbors.

We have been working with sponsors on procurement strategies and manufacturers on their supply chain strategies, and we will be incorporating the guidance from Notice 2026-15 into these. Please feel free to reach out to us if you would like to discuss Notice 2026-15 or the PFE rules more generally. Please feel free to reach out to us if you would like to discuss Notice 2026-15 or the PFE rules more generally.

Gibson Oddderstol also contributed to this article. He is not licensed to practice law in any jurisdiction; bar admission pending.

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