

February 26, 2026

MEMORANDUM

TO: Carbon Capture Coalition

FROM: Hunter Johnston
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RE: Impact on Notice 2026-15: Foreign Entity of Concern Material Assistance
Guidance on Section 45Q

On February 12, 2026, the Department of the Treasury and the Internal Revenue Service (collectively “Treasury”) issued [Notice 2026-15](#) to provide interim guidance for determining if a project or component received “material assistance” from a Prohibited Foreign Entity (“PFE”) under the One Big Beautiful Bill Act’s (“OBBBA”) Foreign Entity of Concern (“FEOC”) provisions that would make the project or component ineligible for a tax credit. Notice 2026-15 also provides limited guidance for determining “effective control” under the FEOC provisions. This memorandum summarizes the guidance and its implications for the section 45Q tax credit.

I. Impact of Notice 2026-15 on Section 45Q Tax Credit

Section 45Q is not subject to the OBBBA’s material assistance restrictions, as these restrictions only apply to qualified facilities or energy storage technology (collectively “project”) under section 45Y or 48E or to credits for producing an eligible component under section 45X. These material assistance restrictions impose additional obligations on taxpayers to review and conduct due diligence on a component or a project’s supply chain. As a result, Notice 2026-15 does not directly impact section 45Q as the Notice focuses primarily on the cost calculations for determining material assistance for projects and components under sections 45X, 45Y, 48E and provides safe harbors for compliance.

Notice 2026-15 also provides limited guidance for determining “effective control” which may create PFE status for entities that make payments to a PFE under certain contracts or licensing agreements. However, these effective control provisions also do not apply to section 45Q – they only apply to sections 45X, 45Y, and 48E.

Although section 45Q is not subject to the material assistance or effective control restrictions, beginning in taxable years after enactment (2026 for calendar year taxpayers), the FEOC provisions under section 45Q apply at the taxpayer level and focus on ownership and control of the taxpayer. Specifically, the taxpayer is unable to claim the section 45Q credit if the taxpayer is a PFE — meaning the taxpayer is either a Specified Foreign Entity (“SFE”) or Foreign Influenced Entity (“FIE”). An SFE is an entity that is: (i) formed in China, Russia, North

Korea, or Iran; (ii) identified on the Section 1260H Chinese military companies list, required to report under the Uyghur Forced Labor Prevention Act, or a battery company (or successor to such company) listed in the FY 2024 NDAA; or (iii) is a foreign-controlled entity — meaning more than 50-percent controlled by an SFE.

The broader FIE restrictions also apply to section 45Q, which could limit a taxpayer's eligibility for the credit. This will require taxpayers to look beyond their controlling shareholders. Specifically, a taxpayer is an FIE if: (i) one SFE owns 25 percent or more of the entity, (ii) multiple SFEs own 40 percent or more of the entity in the aggregate; (iii) SFEs can appoint officers and directors; or (iv) SFEs are creditors and hold 15 percent or more of the entity's debt.

Notice 2026-15 does not provide guidance regarding these ownership and control restrictions within the OBBBA's FEOC provisions — including guidance for determining whether an entity is more than 50-percent controlled by an SFE or an FIE that creates PFE status. Thus, key questions about ownership and what types of indebtedness developers can enter into with companies with PFE ties remain unanswered.

II. Key Takeaways from Notice 2026-15

The OBBBA directs Treasury to issue material assistance safe harbor tables and other necessary guidance by December 31, 2026. Notice 2026-15 provides interim guidance and safe harbors for determining material assistance under sections 45X, 45Y, and 48E, though as discussed above, it does not directly impact section 45Q. The Notice provides that Treasury anticipates issuing comprehensive proposed regulations and safe harbor tables. However, taxpayers may rely on Notice 2026-15 for 60 days following the publication of that guidance.

The Notice's safe harbors will help project developers identify the key components and materials that are tested when determining material assistance and aid compliance by providing assigned costs rather requiring the taxpayer to track each cost. The safe harbors also simplify the tracing requirements and do not require the taxpayer to look further up the supply chain to consider the sourcing and costs for subcomponents or raw materials.

Some of the key takeaways from the Notice include:

- The material assistance cost ratio (“MACR”) computation takes into account the taxpayer's direct costs, and not the direct costs of upstream suppliers.
- A separate MACR computation is required for each project or eligible component.
- Regarding the use of the domestic content safe harbor tables:
 - Such tables may be used for identification of the relevant components *or* for both identification (Identification Safe Harbor) and determining the assigned cost percentage (Cost Percentage Safe Harbor).
 - Only projects listed in the domestic content safe harbor tables, and eligible components enumerated in the Notice may use the Identification and Cost Percentage Safe Harbors.

- The domestic content safe harbor tables are the “exclusive and exhaustive” list of relevant components. Items not listed, items listed but not used, and steel and iron projects are all disregarded.
- Taxpayers can use tracing, the Cost Percentage Safe Harbor, or the Supplier Certification Safe Harbor to determine their direct costs.
- The supplier certification is obtained from the taxpayer’s direct suppliers, and the supplier may certify *either*: (1) the total direct costs that was not PFE-produced or sourced; or (2) such item was not PFE-produced or sourced.

Notice 2026-15 requests comments on the guidance provided by the Notice by March 30, 2026.

III. Determining the MACR Calculation

A project or eligible component receives material assistance from a PFE—and is, therefore, ineligible for the applicable credits—if its MACR is less than the applicable statutory threshold that increases each year. The applicable statutory thresholds vary significantly depending on the credit and type of technology at issue. Similar to the statute, the Notice provides for a separate MACR calculation for projects, on the one hand, and eligible components, on the other.

The Notice provides that the MACR is calculated using the following formulas:

- **Clean Electricity MACR (Sections 45Y and 48E):** The MACR is calculated by: (i) identifying the types of Manufactured Products (“MPs”) and Manufactured Product Components (“MPCs”); (ii) determining the taxpayer’s direct costs attributable to the MPs and MPCs; and (iii) determining the direct costs that were mined, manufactured, or produced by a PFE.

The cost ratio is determined using the formula: $((Total\ Direct\ Costs - Direct\ Costs\ Attributed\ to\ a\ PFE) / Total\ Direct\ Costs)$

- **Eligible Component MACR (Section 45X):** The MACR is calculated by: (i) identifying the constituent elements, materials, or subcomponents (the “Constituent Materials”) that are incorporated or consumed in production of the eligible components; (ii) determining the taxpayer’s total direct material costs for each Constituent Material used to produce the eligible component; and (iii) determining the taxpayer’s direct material costs attributable to PFE sourced Constituent Materials. A similar formula as above is then used to calculate the MACR.

For the Clean Electricity MACR, the Notice provides that direct costs for an MP produced by the taxpayer include the taxpayer’s direct material costs and direct labor costs (as defined in the section 263A regulations), which will include the cost of any MPCs, whether produced or acquired by the taxpayer. If the taxpayer acquires an MP, the Notice provides that the taxpayer’s direct costs are its acquisition costs. Direct costs of incorporating MPs into the project are not included.

The Notice generally requires that each MP or MPC must be individually tracked to the specific project into which it is incorporated. However, the Notice provides a de-minimis exception for taxpayers that use MPs and MPCs of the same type in multiple facilities without individually tracking them to a facility if the total direct costs of the MPs and MPCs assigned to the project represent less than 10% of the total direct costs of the project. In addition, steel or iron components are not relevant in determining the Clean Electricity MACR.

For a retrofitted project that incorporates used property but that is newly placed in service under the 80/20 Rule, only the direct costs of the new MPs and MPCs are considered when calculating the Clean Electricity MACR. A separate MACR must also be determined for “qualified interconnection property.”

For the Eligible Component MACR, the Notice provides that total direct material costs for all the Constituent Materials are the costs paid or incurred by the taxpayer (within the meaning of section 461 and in Treasury’s section 263A regulations) for the production of the eligible component. For purposes of determining whether Constituent Materials are PFE-produced or sourced, the taxpayer tests the PFE status of the direct supplier. If the direct supplier is merely a reseller, then the taxpayer must test the PFE status of the entity that mined, produced, or manufactured the Constituent Materials.

The Notice generally requires that each Constituent Material must be individually tracked to the specific eligible component into which it is incorporated. However, the Notice allows taxpayers to determine the direct material costs of a given type of Constituent Material based on the average costs for each separate type of eligible component over a specified period of time. The specified period concept allows taxpayers to modify their supply chains and compute separate MACRs for the period covering the different supply chains.¹

The Notice addresses the determination of direct costs for components produced pursuant to a contract manufacturing agreement. In that case, the direct material costs include the costs paid or incurred by the party performing the production activity. If the party performing the production activity did not incur any direct material costs, then the direct material costs also include the direct material costs to the taxpayer claiming the section 45X credit in the contract manufacturing agreement.

With respect to both the Clean Electricity and the Eligible Component MACR, the Notice requires the taxpayer to calculate a separate MACR for each facility eligible for the section 45Y or 48E credit and each eligible component under section 45X.

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 costs that are attributable to the MPCs that are not PFE-produced. Similarly, 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

¹ The Notice applies a similar averaging rule to energy storage technologies with capacities under one megawatt.

costs that are attributable to the PFE-produced MPCs. Similar rules apply for Constituent Materials.

Whether an MP/MPC or Constituent Material is PFE-produced depends on the entity's PFE status as of the taxable year during which the taxpayer paid or incurred direct costs attributable to the MP/MPC or Constituent Material.

IV. Interim Safe Harbors

The OBBBA included certain interim safe harbors that apply until 60 days after additional guidance is issued by Treasury. These safe harbors generally allow taxpayers to use prior domestic content guidance to assist in calculating MACR and to rely on supplier certifications to determine whether their suppliers are PFEs. Notice 2026-15 confirms and modifies these interim statutory safe harbors. In particular, the Notice provides three safe harbors to help taxpayers identify MPs/MPCs and Constituent Materials and determine costs to simplify the MACR calculation. The Notice also includes a number of detailed examples illustrating the application of each safe harbor and how they work together for taxpayers relying on multiple safe harbors.

A. Identification Safe Harbor

The first safe harbor is the Identification Safe Harbor, which taxpayers may use to identify the relevant MPs and MPCs (for sections 45Y and 48E) and Constituent Materials (for section 45X) that are listed in the previous domestic content safe harbor tables. The Identification Safe Harbor is available only for projects listed as an "Applicable Project" in the domestic content safe harbor tables and only for eligible components listed in the Notice (which includes various inverters, solar modules, and battery modules using battery cells). It is not clear why the use of the safe harbor by eligible components is so limited.

The domestic content safe harbor tables identify "Applicable Project Components" ("APC") and MPCs, which do not correspond directly to the terms used for purposes of the FEOC provisions. The Notice provides guidance on this. Specifically, the Notice provides that, for projects listed in the domestic content safe harbor tables, the APC column corresponds to the MPs and the MPC column corresponds to the MPCs (for tables without cost percentages, the APC column corresponds to both MPs and MPCs). For eligible components, the APC column corresponds to the eligible components and the MPC column corresponds to the Constituent Materials (for tables without cost percentages, the APC column corresponds to the Constituent Materials).

The Notice provides that the MPs/MPCs and Constituent Materials listed in the domestic content safe harbor tables are the "exclusive and exhaustive list" of MPs, MPCs, and Constituent Materials that are considered, and any other items that are used but not listed are disregarded and not included in the MACR calculation. Further, any listed but unutilized MPs and MPCs as well as steel and iron products in the domestic content safe harbor tables are also disregarded.

B. Cost Percentage Safe Harbor

Under the Cost Percentage Safe Harbor, taxpayers that are using the Identification Safe Harbor and that meet certain other technical requirements may elect to use costs listed in the domestic content safe harbor tables to calculate the MACR, instead of tracking their actual direct costs. Taxpayers using the Cost Percentage Safe Harbor will apply a five-step test:

- **Step 1:** Identify MPs/MPCs or Constituent Materials using the Identification Safe Harbor
- **Step 2:** Track whether each MP/MPC or Constituent Material was produced by a PFE
- **Step 3:** Sum the assigned cost percentages for each MP/MPC or Constituent Material in the applicable project or component
- **Step 4:** Sum the assigned cost percentage for each MP/MPC or Constituent Material that was produced by a PFE
- **Step 5:** Determine the MACR by using the formula $((Total\ Percentage - PFE\ Cost\ Percentage) / Total\ Percentage)$

C. Supplier Certification Safe Harbor

The OBBBA provided taxpayers with an interim safe harbor to rely on supplier certifications to meet the requirements to determine whether an item was produced by a PFE or to allocate non-PFE costs. The Notice confirms and clarifies this interim statutory safe harbor.

In particular, the Notice confirms that the Supplier Certification Safe Harbor can be used independently of the Cost Percentage Safe Harbor in lieu of determining actual direct costs. Thus, the Supplier Certification Safe Harbor can be used regardless of whether the project or eligible component is listed in the domestic content safe harbor tables. But if the project or eligible component is listed, the taxpayer can use the Identification Safe Harbor in conjunction with the Supplier Certification Safe Harbor.

The Notice clarifies that the certification is obtained from the taxpayer's direct suppliers, and the supplier may certify *either*:

1. The total direct costs to the taxpayer of the MP, MPC, eligible component, or Constituent Material that was not PFE-produced or sourced, or
2. Such MP, MPC, eligible component, or Constituent Material was not PFE-produced or sourced.

As provided in the statutory safe harbor, the Notice provides that the taxpayer must satisfy the other requirements to be a valid certification:

1. It must be included with the taxpayer's annual return;
2. It must include the supplier's employer identification number (EIN) or similar foreign identification number;
3. It must be signed under penalties of perjury; and

4. It must be retained by the supplier and taxpayer for six years and must be provided to Treasury upon request.

Consistent with the statutory safe harbor, the taxpayer can rely on the certification unless the taxpayer “knows or has reason to know” that such certification is inaccurate.

V. Prohibited Foreign Entity Restrictions

In addition to the material assistance restrictions, the OBBBA’s FEOC restrictions include ownership and control restrictions and “effective control” restrictions. Under the ownership and control restrictions, the OBBBA prohibits claiming tax credits if the taxpayer is a PFE, which is defined to mean either an SFE or a FIE. Under the effective control restrictions, which apply only to the sections 45X, 45Y, and 48E credits, an entity will be considered an FIE if the entity made payments to an SFE pursuant to contract, agreement, or other arrangement that provides the SFE (or a related entity) with effective control over a project, production of components, or extraction, processing, or recycling of critical minerals.

The Notice provides limited guidance regarding these PFE restrictions, but states that more comprehensive proposed regulations will be forthcoming.

A. Effective Control

Effective control is defined in the statute to include (i) unrestricted contractual rights to: determine the quantity or timing of production, who may purchase or use output, restrict access to critical data, or control the operation or maintenance of equipment; or (ii) a licensing or related agreement that specifies the right to control sources of components, subcomponents, or critical minerals, limits the use of intellectual property, or if the agreement does not provide the licensee with sufficient technical information or know-how to produce the components without involvement of the counterparty or specified foreign entity.

The Notice provides that effective control is determined independently under each provision. The Notice calls out, for example, that if a taxpayer makes a payment to an SFE under any intellectual property licensing agreement that was entered into or modified on or after July 4, 2025, the SFE would be treated as exercising effective control over the taxpayer’s facility and the taxpayer would be an FIE—regardless of whether the licensing agreement includes any other element of control.

B. Anti-Abuse Rules

The Notice states that Treasury intends to issue proposed regulations to prevent entities from evading, circumventing, or abusing the application of the PFE and material assistance rules, including rules to prevent abuse through transfers or alterations of rights or property or temporary lapses in restricted foreign ownership related to the testing date of PFE status.