

BCSE Comments on Interim Guidance Regarding Prohibited Foreign Entity Restrictions and Material Assistance Cost Ratio

March 30, 2026

The Business Council for Sustainable Energy (BCSE) is pleased to submit comments to the U.S. Department of the Treasury Department (Treasury Department) and Internal Revenue Service (IRS) in response to Notice 2026-15 (the “Notice”).¹

The Council supports the national security and supply chain resilience objectives enacted by the One Big Beautiful Bill Act and seeks clear, objective guidance that maintains the market signals to invest in the U.S. power sector.

Projects with construction timelines that extend beyond 2026 are being developed and financed now. Providing clear and durable tax policy and technical guidance is critical for continued investment in domestic manufacturing, job creation and electricity supply coming online.

BCSE appreciates the release of interim guidance and suggests areas for additional clarification and the establishment of tools and processes to reduce risk and ease administration for the taxpayer and the IRS.

Provide Clear, Durable Safe Harbors as Early as Possible

Energy projects that are required to meet PFE requirements need price certainty for the eligibility period. BCSE urges the Treasury Department to issue the final safe harbor tables as soon as practicable and to issue multi-year tables to ensure clarity and predictability. Further, the Treasury Department should clarify that projects that are using the interim safe harbor tables at the time that construction begins can rely on these tables for the full tax credit eligibility period. Without this clarity, project and financing risks will increase, imposing new costs at a time when electricity prices are rising and electricity demand is growing exponentially.

Tracking and Direct Cost Determination

Section 3.01 of the Notice prescribes detailed steps for calculating the Clean Electricity MACR, including identification of manufactured products (MP) and manufactured product components (MPC) and determination of Direct Costs and PFE Direct Costs.

To ensure compliance with the cost allocation and tracking process, BCSE recommends that additional examples be provided and that Treasury confirm that the Identification Safe Harbor (Notice § 4.01) conclusively satisfies the MP/MPC identification requirements.

Interconnection Property Cost Data and Safe Harbor

Notice 2026-15 confirms that qualified interconnection property (QIP) is included within the definition of “qualified facility” for purposes of the material assistance analysis. However, project developers may not have direct access to interconnection property data. BCSE requests that the Treasury Department establish a separate

¹ Notice 2026-15, 2026-__ I.R.B. __.

safe harbor, reduced threshold, or simplified tracking methodology for interconnection property. Further, the Treasury Department might also consider establishing a distinct certification regime for utility-owned equipment for which the taxpayer bears the cost. BCSE notes the risk of any PFE influence with respect to tax credits related to interconnection property is low or nonexistent as utilities often use approved supplier lists for equipment, including QIP, that prohibit the use of PFE suppliers.

Clarify the “Knows, or Has Reason to Know” Standard

Supplier certifications are not allowed if the taxpayer knows or has reason to know they are inaccurate. This is an important safeguard, but the guidance does not provide an objective standard to assess this prohibition. BCSE recommends that the Treasury Department issue an objective standard that:

- Defines what is inaccurate, taking into account complex and multi-layered supply chains; and
- Affirms that meeting the requirements and rules as outlined in the interim guidance and subsequent guidance creates a rebuttable presumption of reasonable reliability.

Create a Single Compliance Tool for PFE and Domestic Content Component Definitions

Because many projects seek both domestic content bonus eligibility and compliance with PFE, BCSE recommends that the Treasury Department create a single integrated compliance tool. If this is not possible in the near-term, at a minimum, the Treasury Department should confirm that component classification frameworks that use of component classifications under Notice 2023-38 and the 2023–2025 Safe Harbor Tables satisfies the MP/MPC identification requirement under Notice § 3.01(2).

Provide Model Certification Templates and Documentation Guidance

Given the certification requirements and potential penalties under the statute, BCSE recommends that the IRS issue:

- Standardized supplier certification templates,
- Required representation language,
- Documentation checklists, and
- Record retention guidance tailored to common project structures.

Release Forthcoming Proposed Regulations

BCSE urges the Treasury Department and the IRS to release proposed regulations for the areas that are outlined in the Notice:

- The definition of a prohibited foreign entity (PFE)
- Additional anti-circumvention rules
- Additional components or products subject to MACR analysis
- Clarification of ownership and effective control standards, including issues affecting publicly traded entities

Projects are being developed and financed today that will begin construction in 2027. Lack of clarity will increase costs and delay investment.

Create a Process to Cure PFE Noncompliance

The Treasury Department and the IRS should create a clear process for taxpayers who follow the required diligence steps but later find out that a mistake was due to reasonable cause and not willful neglect. The definition of a PFE covers many different types of entities, including SFEs, FCEs, and FIEs. The IRS should provide a process to cure unintentional mistakes before losing their credits. Such a process would encourage good-faith compliance and reduce unnecessary disputes with the government.

Establish Government Identification and Listing of PFEs

The Treasury Department and the IRS should coordinate with the U.S. Department of Commerce to enhance the existing Consolidated Screening List to include all relevant government lists and criteria applicable to PFEs. Alternatively, the Treasury Department should publish an annual list of known PFEs. Reliance on a government issued public list would reduce uncertainty and ease administration, while increasing compliance with PFE rules.

Areas for Additional Clarifications

- Objective criteria for anti-abusive stockpiling
- Administrative processes and criteria related to the 6-year statute of limitations
- Ownership and debt thresholds applicable to publicly traded companies

Conclusion

BCSE supports the intent of the law regarding the PFE framework and appreciates the Treasury Department's issuance of detailed interim guidance in Sections 3 through 5 of the Notice. BCSE respectfully requests clarifications and administrative improvements that would provide more clarity to taxpayers, lower costs and reduced administrative burdens. In addition, BCSE requests the release of additional guidance in the areas outlined in the guidance as soon as practicable.

Thank you for the opportunity to share the BCSE's views and the Council looks forward to continuing to work with the Treasury Department to implement PFE requirements.