

Industry

Energy & Natural
Resources

Professionals

DOUG JONES
AUSTIN:
512.479.1178
DOUG.JONES@
HUSCHBLACKWELL.COM

JACOB STEPHENS
KANSAS CITY:
816.983.8232
JACOB.STEPHENS@
HUSCHBLACKWELL.COM

OBBBA Renewable Energy Provisions: Frequently Asked Questions

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On July 4, 2025, the One Big Beautiful Bill Act (OBBBA) was enacted. Several provisions of the OBBBA will impact renewable energy projects and the tax credits generated by such projects. Such provisions include the accelerated termination for wind and solar credits, as well as restrictions with respect to foreign entities of concern. Most of the energy provisions of the OBBBA will take effect beginning with the taxable year beginning after that date of enactment (i.e., the taxable year beginning January 1, 2026 for most taxpayers), although there are some deviations, as described below.

Accelerated termination for wind and solar credits. For wind and solar projects, the OBBBA provides for an accelerated termination of the production tax credit and investment tax credit under sections 45Y and 48E. Once the OBBBA's energy provisions take effect, wind and solar projects will generally be required to be placed in service by the end of 2027 in order to claim such credits. However, the accelerated termination of the credits for wind and solar projects will only apply to projects that begin construction after the date, which is 12 months after enactment (that is, July 4, 2026).

Foreign entities of concern restrictions. In addition to the accelerated termination for wind and solar projects, the OBBBA provides for several restrictions with respect to foreign entities of concern (FEOCs). There are two primary FEOC provisions. First, there is a credit disallowance provision for taxpayers who are specified foreign entities or foreign-influenced entities (the Foreign Taxpayer Provision). As discussed above, the Foreign Taxpayer Provision will apply to taxable years beginning after the date of enactment (i.e., the taxable year beginning January 1, 2026 for most taxpayers). Second, there is a credit disallowance provision for projects that receive

material assistance from prohibited foreign entities, which are defined to include specified foreign entities or foreign-influenced entities (the Material Assistance Provision). The Material Assistance Provision will take effect for projects that begin construction after 2025. For a more detailed discussion of the FEOC provisions, see this blog post.

Beginning of construction guidance. On July 7, 2025 the Trump administration issued an executive order directing the Department of the Treasury to take action to strictly enforce the termination of the wind and solar credits under sections 45Y and 48E, including issuing new and revised guidance to ensure that policies concerning “beginning of construction” are not circumvented, “including by preventing the artificial acceleration or manipulation of eligibility and by restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built.”

On August 15, 2025 Notice 2025-42 was released, providing interim guidance on the implementation of the OBBBA’s accelerated termination of wind and solar credits. Notice 2025-42 modifies previously existing beginning of construction rules. Generally, prior to Notice 2025-42, a project was deemed to begin construction on (i) the date physical work of a significant nature begins (the Physical Work Test) or (ii) the date that five percent of the cost of a project was paid or incurred (the Five Percent Safe Harbor). Notice 2025-42 provides that only the Physical Work Test can be used to establish the date a project begins construction (and not the Five Percent Safe Harbor). Notice 2025-42 applies to wind and solar projects that did not begin construction prior to September 2, 2025.

So, wind and solar projects that did not begin construction prior to September 2, 2025 that are looking to begin construction prior to July 4, 2026 (in order to avoid the accelerated termination for wind and solar credits) may only use the Physical Work Test to establish the date construction begins. Certain low-output solar projects (net output not greater than 1.5 MW AC) may continue to use the Five Percent Safe Harbor.

The OBBBA codified beginning of construction guidance currently found in Notices 2013-29 and 2018-59 (discussed in this legal update). However, such rules were codified only with respect to the new FEOC provisions and not with respect to the beginning of construction rules for other purposes (such as for determining which projects are eligible to avoid the 2027 placed in service deadline).

Frequently asked questions

If a wind or solar project has already begun construction prior to the enactment of the OBBBA on July 4, 2025, will the project be subject to the requirement to be placed in service by the end of 2027 in order to claim tax credits?

No. For a wind or solar project which has begun construction prior to July 4, 2026, the requirement

to be placed in service by the end of 2027 will not apply. However, if a project has already begun construction, the taxpayer must make continuous progress towards completion (discussed below).

If a wind or solar project begins construction within one year of enactment of the OBBBA, will it be subject to the requirement to be placed in service by the end of 2027 in order to claim tax credits?

No. The accelerated termination of the tax credits for solar and wind projects will not apply to projects which begin construction within one year of enactment of the OBBBA (on or before July 4, 2026). For a discussion of the common methods projects can use to begin construction via onsite physical work, see this blog post. Once a project begins construction, the taxpayer must make continuous progress towards completion (discussed below).

If a wind or solar project does not begin construction within one year of enactment of the OBBBA, will it be subject to the requirement to be placed in service by the end of 2027 in order to claim tax credits?

Yes. The accelerated termination of the tax credits for solar and wind projects will apply to projects that begin construction after one year of enactment of the OBBBA. Thus, in order to claim the tax credits, such projects will be required to be placed in service by the end of 2027.

How can a taxpayer establish continuous progress towards completion?

The requirement to make continuous progress towards completion is described in Notice 2025-42 and previous Notices (e.g., Notice 2013-29, Notice 2018-59). This requirement is based on the relevant facts and circumstances. The Notices also provide a safe harbor for satisfying the continuous progress requirement. If a project is placed in service by the end of a calendar year that is no more than four calendar years after the calendar year during which construction began, the project will be considered to satisfy the continuous progress requirement. For example, if a project begins construction during 2025, then the project will be considered to satisfy the continuous progress requirement if it is placed in service by the end of 2029. A taxpayer can establish continuous progress even if the project does not satisfy the safe harbor. However, the taxpayer must establish facts and document its efforts to substantiate its continuous progress towards completion throughout the development of the project, which would likely require the implementation of a program designed to ensure such documentation takes place early in and throughout development.

Does the beginning of construction impact the application of the Foreign Taxpayer Provision?

No. The application of the Foreign Taxpayer Provision will not be based upon the beginning of construction. Instead, the Foreign Taxpayer Provision will apply to taxable years beginning after the date of enactment (i.e., the taxable year beginning January 1, 2026 for most taxpayers).

If a project begins construction by the end of 2025, will it be subject to the Material Assistance Provision?

No. The Material Assistance Provision would not apply to projects which begin construction by the end of 2025. For a discussion of the current common methods projects can use to begin construction via onsite physical work, see this blog post. Once a project begins construction, the taxpayer must make continuous progress towards completion (discussed above).

If a project begins construction after 2025, will it be subject to the Material Assistance Provision?

Yes. The Material Assistance Provision will generally take effect for projects that begin construction after 2025.

What does it mean to receive material assistance from a prohibited foreign entity?

Under the OBBBA, material assistance is determined according to a material assistance cost ratio. The material assistance cost ratio is calculated as the total cost of manufactured products minus the cost of manufactured products from a specified foreign entity or foreign-influenced entity, divided by the total cost of manufactured products. If a project's material assistance cost ratio exceeds the required threshold amount for a particular year, then the project will be treated as complying with the Material Assistance Provision. There are different required threshold amounts for different types of projects for each year. Please find a more detailed description of the Material Assistance Provision in this post.

Under the OBBBA, the Treasury Department is required to issue safe harbor tables for determining the material cost assistance ratio by December 31, 2026. Such tables will allow taxpayers to more easily determine whether particular manufactured products or eligible components are attributable to a prohibited foreign entity. For projects that begin construction within 60 days after the issuance of such tables, the OBBBA provides for two interim safe harbor approaches to determining a project's material assistance cost ratio. First, taxpayers will be permitted to use the tables provided in the domestic content safe harbor guidance (Notice 2025-08) to determine the percentage of the total direct costs of any listed eligible component and any manufactured product. Second, taxpayers will be permitted to rely on a certification from the supplier attesting that the manufactured product, eligible component, constituent element, material, or subcomponent was not produced or manufactured by a prohibited foreign entity.

The supplier certification must include the supplier's EIN, be signed under penalty of perjury, be retained by the supplier for at least six years, and be provided to the IRS upon request. The certification must either (i) state that the property was not produced or manufactured by a prohibited foreign entity and that the supplier does not know or have reason to know that any prior supplier in

the production chain is a prohibited foreign entity, or (ii) specify the total direct material cost for each product or component that was not produced or manufactured by a prohibited foreign entity. However, if a taxpayer knows or has reason to know that a manufactured product or eligible component was produced or manufactured by a prohibited foreign entity, the taxpayer is required to treat all direct material costs related to that product or component as sourced from a prohibited foreign entity and may not rely on a supplier certification.

What if a taxpayer has already signed a master supply agreement?

The application of the Material Assistance Provision is contingent upon the date a project begins construction. If a project begins construction in 2025, the Material Assistance Provision does not apply to the project, and components can be purchased through the master supply agreement without causing related compliance issues. If a project begins construction after 2025, then the project would be subject to the Material Assistance Provision. In that instance, the taxpayer would likely need to work with the supplier to ensure compliance. If a taxpayer has already signed a master supply agreement but does not expect construction to begin on a project until after 2025, the taxpayer may want to begin negotiations with the supplier now to ensure compliance. Notice 2025-42, as discussed above, does not apply to the beginning of construction analysis for purposes of the Material Assistance Provision. Further guidance is expected with respect to the beginning of construction analysis for purposes of the Material Assistance Provision.

Summary of application of the OBBBA based on beginning of construction date

| Beginning of construction | Placed in service by 2017 (for wind and solar) | Material Assistance Provision? |
|--|---|---------------------------------------|
| Previously occurred | Not required | Not applicable |
| By end of 2025 | Not required | Not applicable |
| After 2025 and within one year of enactment | Not required | Applicable |
| After one year of enactment | Required | Applicable |

Note that the Foreign Taxpayer Provision will apply to taxable years beginning after the date of enactment.

Contact us

If you have any questions about these tax credits, please contact Doug Jones, Jacob Stephens, or your Husch Blackwell attorney.