

U.S. Department of the Treasury
Office of the Secretary
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

August 6, 2025

Re: Request for Revision of IRS Notices related to the One Big Beautiful Bill Act

Dear Secretary Bessent,

We respectfully request that the Internal Revenue Service revise IRS Notices 2013-29, 2013-60, 2014-46, 2015-25, 2016-31, 2017-4, and 2021-41 to align with the statutory provisions enacted under the One Big Beautiful Bill Act (H.R. 1, "OBBBA").

Background and Statutory Context

The One Big Beautiful Bill Act (OBBBA) sunsets the generous subsidies for wind and solar generation in the Clean Electricity Production Credit and the Clean Electricity Investment Credit of the Inflation Reduction Act of 2022 (IRA). The law, however, does not define some key provisions. President Trump signed the OBBBA into law on July 4, 2025. Subsequently, on July 7, 2025, the president signed Executive Order 14315 ("Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources"), which directs the Secretary of the Treasury to "take all action as the Secretary of the Treasury deems necessary and appropriate to strictly enforce the termination of the clean electricity production and investment tax credits under sections 45Y and 48E of the Internal Revenue Code for wind and solar facilities."

The Executive Order specifically requires issuing "new and revised guidance as the Secretary of the Treasury deems appropriate and consistent with applicable law to ensure that policies concerning the '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."

Critically, the OBBBA explicitly codifies only IRS Notice 2013-29 and Notice 2018-59 for purposes of the prohibited foreign entity rules under new section 7701(a)(51), but this incorporation is limited in scope, and these notices were not codified for purposes of the Clean Electricity Production Credit and the Clean Electricity Investment Credit.

Specific Issues Requiring Clarification

1. Limited Scope of Notice Incorporation

The text of OBBBA at section 7512(c) states that "the beginning of construction with respect to any property shall be determined pursuant to rules similar to the rules under Internal Revenue Service Notice 2013-29 and Internal Revenue Service Notice 2018-59 (as well as any subsequently issued guidance clarifying, modifying, or updating either such Notice), as in effect

on January 1, 2025". However, this codification applies solely to the prohibited foreign entity provisions and does not extend to:

- The Clean Electricity Production Credit under Section 45Y
- The Clean Electricity Investment Credit under Section 48E

2. "Beginning of Construction" Standard for Clean Energy Credits

For the Clean Electricity Production Credit (Section 45Y) and Clean Electricity Investment Credit (Section 48E), the OBBBA does not incorporate the existing IRS notice framework. This creates regulatory uncertainty regarding the "beginning of construction" requirements for these technology-neutral credits.

The statute requires clarification that for these credits, **"beginning of construction" means the commencement of physical construction of the electricity-producing equipment itself**, not merely preparatory activities or financial commitments.

3. Elimination of the "Five Percent Safe Harbor"

The Obama administration, starting in 2013, created a non-statutory "safe harbor" whereby construction is deemed to begin when a taxpayer has paid or incurred at least 5% of the total project cost. Under that framework, "construction begins when 5% or more of the facility's total cost has been paid or incurred" under the Five Percent Safe Harbor test.

However, the OBBBA's statutory framework, particularly for wind and solar facilities subject to accelerated phase-outs, suggests legislative intent to eliminate this financial safe harbor in favor of requiring actual physical construction activities.

4. "Continuous Program of Construction" Standard

The revised IRS notices should specify that a "continuous program of construction" must involve **continuing physical work of a significant nature on the electrical-generating equipment** itself. This represents a more stringent standard than the current IRS guidance, which may allow for construction activities on supporting infrastructure or other project components to satisfy continuity requirements.

5. Repudiation of the Continuity Safe Harbor from Prior IRS Notices

The revised IRS notices should also specify that the two key provisions from the OBBBA are that the project needs to start construction within one year of the passage of the OBBBA¹ and that the project needs to be placed in service before December 31, 2027.² Any continuity "safe harbor" beyond December 31, 2027, is not consistent with the law.

¹ See OBBBA, Sec. 70512(l)(4).

² See OBBBA, Sec. 70512(a)(4).

Requested Administrative Action

In light of both the OBBBA's statutory requirements and Executive Order 14315's directive to prevent circumvention of "beginning of construction" policies and restrict broad safe harbors, we respectfully request that the IRS issue revised guidance that:

1. **Clarifies the limited scope** of IRS Notices 2013-29 and 2018-59 incorporation under OBBBA, specifically that these notices apply only to prohibited foreign entity determinations under section 7701(a)(51) and not to the Clean Electricity Production Credit or Clean Electricity Investment Credit eligibility determinations.
2. **Establishes a physical work standard** for "beginning of construction" under Sections 45Y and 48E that requires actual commencement of physical construction of electricity-producing equipment.
3. **Eliminates the Five Percent Safe Harbor** for projects claiming Clean Electricity Production Credits or Clean Electricity Investment Credits, consistent with Executive Order 14315's directive to restrict "broad safe harbors unless a substantial portion of a subject facility has been built," requiring demonstration of physical construction activities rather than financial commitments.
4. **Defines "continuous program of construction"** to require ongoing physical work of a significant nature, specifically on electrical-generating equipment, not merely on ancillary project infrastructure.
5. **Clarify that ALL projects must be placed in service by December 31, 2027**, to qualify for the PTC and the ITC.
6. **Provides transitional guidance** for projects that may have relied on the Five Percent Safe Harbor under pre-OBBBA guidance but are now subject to the physical work standard.

Conclusion

The OBBBA represents a significant shift in federal energy tax policy, particularly regarding the standards for "beginning of construction." Executive Order 14315 further emphasizes the Administration's commitment to strict enforcement of these new standards and the elimination of broad safe harbors that could enable circumvention of the statutory termination dates for wind and solar tax credits. Clear administrative guidance is essential to provide certainty to taxpayers and ensure consistent application of these new statutory requirements in accordance with both the OBBBA and Executive Order 14315.

We appreciate your consideration of this request and look forward to your guidance on these critical implementation issues.

Respectfully submitted,

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