Holland & Hart



Adam M. Cohen

Partner
303.295.8372
Denver
acohen@hollandhart.com



Melissa Browder

Associate
303.295.8421
Denver
mbbrowder@hollandhart.com

Termination Effectiveness Beginning (Of Construction): Notice 2025-42

Insight — August 21, 2025

In response to Executive Order 14315 (July 7, 2025) (the "July 7 EO"), the IRS released Notice 2025-42 on August 15, 2025. Notice 2025-42 provides rules on how to begin construction for purposes of the effective dates of the provisions terminating the investment tax credit (ITC) and production tax credit (PTC) under the tech-neutral provisions of Sections 45Y and 48E of the Internal Revenue Code. The new Notice is effective if a project has not begun construction under the pre-existing rules by September 2, 2025.

Under Public Law No. 119-21, commonly known as the One Big Beautiful Bill Act ("O3BA"), the ITC and PTC under Section 45Y and 48E terminate for wind and solar projects that begin construction after July 4, 2026 and are placed in service after December 31, 2027. Projects that begin construction before July 5, 2026 must still satisfy a continuity requirement, but can be placed in service after December 31, 2027.

While prior IRS Notices, taxpayers could begin construction by satisfying either the "physical work test" (i.e., when physical work of a significant nature begins) ("PWSN") or the "five percent safe harbor" (the "Five Percent Safe Harbor"), the new Notice only permits the Five Percent Safe Harbor to be used by certain "low output solar facilities" (generally having a maximum net output of not greater than 1.5MW) and all other wind and solar projects that seek to begin construction on or after September 2, 2025 must satisfy PWSN.

The continuity requirements after satisfying PWSN and the Five Percent Safe Harbor are also different than the prior Notices. Specifically, while there were longer continuity safe harbors for national security-related projects, offshore projects and "federal lands" projects under the prior Notices, all projects that begin construction on or after September 2, 2025 will have to be placed in service within 4 years after the year of beginning construction if they intend to use the continuity safe harbor.

Notice 2025-42 clarifies that, while PWSN cannot be accomplished by work to produce inventory, the determination of what is inventory is specific to the one selling the component/part to the taxpayer. Prior Notices specified that the item could not be held in inventory of "a vendor."

Notice 2025-42 also clarifies the timing of whether there was an excusable disruption or whether multiple facilities are part of a single project. In each case, the tests are to be applied in the calendar year during which the last

of the multiple facilities were placed in service. This may create difficulties for determining whether to claim ITCs or PTCs on facilities placed in service in earlier years.

The new Notice explicitly states that it is not providing guidance as to beginning of construction for purposes of the "foreign entity of concern" provisions of the O3BA.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.