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President Trump Signs "One Big Beautiful Bill Act" Into Law—Consequences for Renewable Energy Credits

President Trump signed the "One Big Beautiful Bill Act" ("OBBBA") into law over the July Fourth holiday. The OBBBA is a massive budget reconciliation bill that contains a number of tax and spending reforms, including many changes directed at the renewable energy space – particularly with respect to solar and wind projects.

Among the major changes, OBBBA includes sunsets for a number of renewable energy incentives, in particular, phasing out the Code Section 45Y clean electricity production credit and the Code Section 48E clean electricity investment credit for solar and wind projects that fail to place in service by the end of 2027. While prior bill drafts provided for gradual phase downs, the final bill eliminates the credits entirely after 2027. The phase out, however, is subject to an exception for solar and wind projects that begin construction within one year of the date of enactment of OBBBA (i.e., July 4, 2026).

Under current guidance, a project is deemed to have begun construction either by incurring 5% or more of the costs of credit-eligible property, or by starting physical work of a significant nature, as outlined in IRS Notice 2018-59. However, on July 7, 2025, President Trump issued an executive order directing the Treasury Department to issue "new and revised guidance" within 45 days aimed to restrict the current begun construction safe harbors unless a substantial portion of the project facility has actually been built, adding additional uncertainty to existing guidance.

Another interesting nuance in the OBBBA text concerns its treatment of energy storage technologies. As enacted, the Code Section 48E credit for standalone storage projects will continue to qualify for the Code Section 48E credit at the enhanced rate (i.e., 6% base rate, multiplied by 5 if the Project either satisfies the prevailing wage and apprenticeship requirements or has a maximum output of less than 1 megawatt (AC)) to the extent such projects begin construction on or before December 31, 2033, until being phased down to a base rate of 22.5% in 2034 and a base rate of 15% in 2035, before phasing out to 0% in 2036.

In addition to forthcoming guidance surrounding begun construction, OBBBA also includes several other key changes affecting the renewable energy industry, generally, which are summarized and outlined below.

Depreciation

One of the key changes included in the OBBBA is reinstatement of 100% bonus depreciation for properties acquired and placed in service after January 19, 2025. While OBBBA eliminates the 5-year property designations for energy property claiming the Code Section 48 energy credit, the 5-year property designations remain for "qualified property" and "energy storage technology" that qualifies for the Code Section 48E clean energy investment tax credit. As the Code Section 48 energy credit was set to phase out for solar and wind facilities that do not begin construction on or prior to December 31, 2024, these changes are not likely to have a big impact on future solar and wind projects. However, unlike solar and wind projects, the phase down under Code Section 48 for equipment used to produce, distribute or use energy derived from a geothermal deposit does not take effect until after 2032. Thus, the main effect of the designated elimination under Code Section 48 is to deny geothermal projects from being eligible for 5-year depreciation.

Foreign Entity of Concern

One of the key areas for concern within the energy credits sector is the implementation of the "foreign entity of concern" (FEOC) provisions, which become effective for tax years beginning after July 4, 2025. Thus, for calendar year taxpayers, a project that begins construction on or prior to December 31, 2025, will not be required to comply with the FEOC restrictions. In general, the FEOC restrictions would disallow the Code Section 45Y and Code Section 48E credits to the extent that the applicable taxpayer is determined to constitute:

1. A specified foreign entity – A specified foreign entity includes any entity owned by the governments of China, Russia, North Korea and Iran, owned by a citizen of such countries (unless such person is an individual who is a citizen, national or lawful resident of the United States), or organized or having a principal place of business in such countries;
2. A foreign-influenced entity – A foreign-influenced entity is an entity in which: (a) a specified foreign entity has direct authority to appoint a member of the board of directors (or equivalent governing body), an executive-level officer, or an individual having similar powers or responsibilities, (b) a single specified foreign entity owns at least 25% of such entity, (c) one or more specified foreign entities owns in the aggregate at least 40% of such entity, or (d) at least 15% of the debt of such entity has been issued, in the aggregate, to one or more specified foreign entities; or
3. Is deemed to be effectively controlled by such entities – An entity may also be deemed to be a foreign-influenced entity if, during the prior taxable year, such entity made certain payments to a specified foreign entity, if the arrangement allowed the specified foreign entity to exercise "effective control" over such entity's energy production or storage functions.

The FEOC restrictions also apply to the Code Section 45X advanced manufacturing production tax credit and prohibit taxpayers from making an election under Code Section 6418 to transfer credits to such entities.

In addition to disallowing Code Section 45Y and Code Section 48E tax credits, the OBBBA's FEOC restrictions incorporate a separate recapture rule, requiring 100% of a project's Code Section 48E tax credits to be recaptured if, at any time during the ten (10) year period following the project's placed in-service date, payments are deemed to allow a specified foreign entity to exercise "effective control". While the Treasury Department has been directed to release guidance establishing rules to prevent entities from evading, circumventing or abusing the application of the FEOC restrictions, a contract implicates the "effective control" standard if it includes any provisions which allow the counterparty to:

- Determine the quantity or timing of electricity produced or storage capacity available;
- Determine who can purchase electricity or storage capacity;
- Restrict access to data critical to energy production or storage of energy; or
- On an exclusive basis, maintain, repair or operate any plant or equipment which is necessary for the production by the taxpayer of eligible components or electricity.

Licensing agreements should avoid provisions which allow the counterparty to directly operate the project, that limit use of intellectual property related to operations, allow the counterparty to receive royalty payments for more than ten (10) years, or obligate the project to hire the counterparty to provide services for a period of more than two (2) years. The "effective control" prohibitions are effective for contracts that were entered into or amended on or after July 4, 2025. These prohibitions do not apply in the case of a "bona fide purchase or sale" of intellectual property.

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The FEOC restrictions also disallow Code Section 48E and Code Section 45Y tax credits to the extent that the project is deemed to have received "material assistance" from a specified foreign entity. Material assistance from a prohibited foreign entity is determined first by calculating the "material assistance cost ratio," which is equal to: (i) the total direct costs attributable to all manufactured products and components incorporated into the project upon completion of construction, minus the total direct costs attributable to all manufactured products and components which are incorporated into the project upon completion of construction and mined, produced or manufactured by a prohibited foreign entity, divided by (ii) the total direct costs attributable to all manufactured products and components incorporated into the project upon completion of construction. For example, if the total direct cost of all manufactured products and components for a project was $100 and $40 of such total direct costs was attributable manufactured products and components that were mined, produced or manufactured by a prohibited foreign entity, then the "material assistance cost ratio" would be ($100-$40)/$100 or 60%.

If the material assistance cost ratio is less than the threshold percentage, the project is deemed to have received material assistance from a prohibited foreign entity. The threshold percentage varies depending upon the year in which the project began construction and differs for energy storage technology and solar PV/wind projects. Such percentages are shown in the table below:

Begun Construction Year	Solar PV/Wind Threshold Percentage	Energy Storage Technology Threshold Percentage
During CY 2026	40%	55%
During CY 2027	45%	60%
During CY 2028	50%	65%
During CY 2029	55%	70%
After 12/31/2029	60%	75%

Domestic Content Rules

For projects that begin construction on or after June 16, 2025 and before January 1, 2026, the adjusted percentage for purposes of determining a project's eligibility for the domestic content adder is 45%. However, for projects which began construction before June 16, 2025, the adjusted percentage will remain at 40%. This change is to fix a drafting error under Code Section 48E, which allowed projects beginning construction in 2025 to use the lower 40% adjusted percentage, which was inconsistent with the requirements under the legacy Code Section 48 credit, which provide for a 45% adjusted percentage for 2025.

Allowance of 48E Credit for Qualified Fuel Cell Projects

OBBBA amends Code Section 48E to allow qualified fuel cell projects to qualify for the credit without regard to the greenhouse gas emissions rate requirements. Additionally, qualified fuel cell projects will not have to demonstrate compliance with the burdensome prevailing wage and apprenticeship requirements that apply to other technology types in order to qualify for the enhanced Code Section 48E credit percentage of 30%.

Phaseout of Legacy Section 48 Credit

Projects which began construction after December 31, 2024, had the ability to claim a 2% base credit in lieu of the Code Section 48E credits. Such 2% base credit could be increased to 10% if the project met the additional requirements set forth in Code Section 48(a)(9)(B) (e.g., compliance with prevailing wage and apprenticeship requirements, or less than 1 megawatt (AC)). OBBBA amends Code Section 48(a)(2)(A)(ii) by making the energy percentage 0%, effectively phasing out the Code Section 48 credit for most technologies after 2024.