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Federal district court vacates Notice 2025-42, which eliminated five percent safe harbor for establishing beginning of construction for wind and solar projects

The U.S. District Court for the District of Columbia on June 6, 2026, held that Notice 2025-42, which eliminated the “Five Percent Safe Harbor” for establishing the beginning of construction for wind and large-scale solar projects, was arbitrary and capricious. The court thus vacated the notice and remanded the matter to the IRS for further consideration.

The case is: *Oregon Environmental Council v. IRS,* Civil Action No. 25-4400 (CKK) (D.D.C. June 6, 2026). Read the court’s decision

Background

The clean electricity production tax credit under section 45Y and the clean electricity investment tax credit under section 48E were established by the Inflation Reduction Act (IRA) of 2022 as technology-neutral incentives for zero-emission electricity generation. To qualify for these credits, developers historically established the "beginning of construction" through either the "Physical Work Test" (starting physical work of a significant nature) or the "Five Percent Safe Harbor" (paying or incurring 5% or more of the total project cost), both of which were first defined in IRS Notice 2013-29.

However, the "One Big Beautiful Bill Act" shortened the qualification period for wind and solar projects, requiring them to begin construction on or before July 4, 2026, or be placed in service on or before December 31, 2027. Following Executive Order No. 14315, which directed the strict enforcement of these credit terminations, the IRS issued Notice 2025-42, which eliminated the Five Percent Safe Harbor for all wind projects and large-scale solar projects as defined under the notice (i.e., except those with a maximum net output of 1.5 megawatts or less), making the Physical Work Test the sole method for establishing the beginning of construction for such projects.

Summary

Seven governmental, tribal, and private organizations filed a complaint before the U.S. District Court for the District of Columbia, challenging Notice 2025-42. The plaintiffs argued that the notice was arbitrary and capricious and must therefore be vacated and set aside. Specifically, the plaintiffs alleged that the notice was

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harmful to them, by making electricity more expensive, by causing increased air pollution, and by interfering with or preventing the development of projects in which they have economic interests.

The court found that the IRS failed to articulate a reasoned basis for eliminating the safe harbor, did not adequately consider alternative remedies suggested by stakeholders in response to Executive Order No. 14315, ignored serious industry reliance interests built over more than a decade, and failed to justify treating wind and solar projects differently from other zero-emission technologies. The court thus ordered a universal vacatur of the notice in full under the Administrative Procedure Act and remanded the matter to the IRS.

While the court dismissed two of the plaintiffs from the action on procedural grounds under the Anti-Injunction Act and the *parens patriae* doctrine, respectively, it determined that the other plaintiffs had standing.

KPMG observation

The Treasury Department may pursue a stay of the District Court's holding pending further litigation of the underlying matter. In the event such a stay is granted, the July 4, 2026 beginning of construction deadline at issue is very likely to pass before the matter is substantively resolved, effectively limiting taxpayers' ability to reliably plan on the basis of the District Court's holding, even if it is ultimately sustained.

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