

US Treasury rules make solar, wind credits less certain

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by [Chuck Stanley](#).

US Treasury guidance eliminating the 5% capital investment threshold to safe harbor wind and solar projects from tax credit phase outs will create more uncertainty for some developers, experts told *Infralogic*.

The guidance issued on Friday 15 August by Treasury for establishing whether construction has begun on a wind or solar project, for the purposes of determining eligibility for clean electricity investment and production tax credits, eliminates a “bright line” test for developers to determine whether their projects will be eligible to claim the credits for their projects, industry experts said.

The revised guidance, issued in response to a July executive order by President Donald Trump, maintains existing provisions, stating that a project is considered to have started construction if “physical work of a significant nature,” either on site or off site, has begun.

But the new guidance, which goes into effect 2 September, eliminates a previous provision that allowed developers to demonstrate a project has started construction if it has incurred 5% or more of the total project cost, a more concrete determinant than the “physical work of a significant nature” test that is now the only measure for determining start of construction.

“It effectively eliminates one method for demonstrating you have begun construction,” Eli Hinckley a partner with Baker Botts who focuses on project finance and tax matters told *Infralogic*. “The only way to show you have begun construction going forward is to demonstrate that physical work of a significant nature has commenced.”

As Keith Martin co-head of projects for the US for Norton Rose Fulbright explained, projects that have engaged in minimal construction activity on site might have difficulty determining whether they’ve met the thresholds laid out in the guidance. That uncertainty could impact developers’ ability to finance such projects, Martin said.

“This leaves some uncertainty about how much work is required. The financiers will have to decide where they feel comfortable drawing lines,” Martin said.

Clarity still lacking

Ray Long, president of the American Council on Renewable Energy (ACORE), blasted the new guidance, in a statement warning that the change in rules will increase regulatory burdens and hinder investment in renewable energy projects.

“The American Council on Renewable Energy is deeply concerned that today’s Treasury guidance on the long-standing ‘beginning of construction’ safe harbor significantly undermines its proven effectiveness, is inconsistent with the law, and creates unnecessary uncertainty for renewable energy development in the United States,” he said.

The guidance maintains provisions allowing projects to demonstrate start of construction based on “off-site” physical work, such as construction of key components. But which components, and how much work must be done to qualify, is also somewhat fuzzy, David Burton a partner with Norton Rose who focuses on project finance, energy, and tax matters said.

Purchases of off-the-shelf project components like solar modules almost certainly won’t be sufficient to safe harbor a project he said. But procurement of transformers, a more specialized long lead time purchase is more likely to meet the test for off-site physical work, so long as work to build the transformer has begun by the 5 July 2026 deadline. A number of other components fall into a grey area regarding whether they qualify, Burton said.

But even for items like transformers, which fairly consistently qualify for the off-site physical work requirement, the guidelines leave some uncertainty, he said.

“It doesn’t answer the question, how much of a physical transformer has to be built to show that significant physical work has been done,” said Burton.

Trump ordered Treasury to revisit the guidance for determining when projects have started construction for the purposes of qualifying for clean energy credits the week after passage of a GOP budget and policy bill that nixed the credits for solar and wind projects that come online after the 2027 year’s end.

The legislation included safe harbor provisions to maintain pre-2025 tax credit treatment for projects that start construction by 4 July 2026.

Apparently fulfilling a commitment made to win votes on the bill from skeptical House Republicans, Trump directed Treasury to crack down on “artificial acceleration or manipulation of eligibility” for the safe harbor provisions with more stringent guidance.

Since the order was issued, wind and solar investors have held their breath, waiting for the new guidance.

Despite the question marks created for some projects by the elimination of the 5% expense threshold, Martin said the physical work threshold is a metric the industry has been able to make work for years.

“Many developers relied on physical work in the past, and the market was able to function,” he said.

Burton noted that the delay in implementation of the new guidance will provide some breathing room for developers to make the decisions they need to adjust, Burton said.

“I was very pleased that they gave us until September second. I thought that was a reasonable approach,” Burton said.



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