IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OREGON ENVIRONMENTAL COUNSEL, et al., Plaintiffs, v. INTERNAL REVENUE SERVICE OF THE UNITED STATES, et al., Defendants.	Case No. 1:25-cv-04400-CKK

AMICUS CURIAE BRIEF OF OREGON, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW MEXICO, NEW JERSEY, RHODE ISLAND, WASHINGTON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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The States of Oregon, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, New Jersey, Rhode Island, and Washington (Amici States) submit this *amicus curiae* brief in support of Plaintiffs' motion for summary judgment in accordance with Local Civil Rule 7(o).

Plaintiffs challenge Notice 2025-42[1] under the Administrative Procedure Act ("APA") seeking declaratory relief and vacatur. Amici States submit this brief in support of Plaintiffs' motion for summary judgment. Mot. for Summ. J., Dkt. No. 26.

INTRODUCTION

The Amici States have a substantial interest in this case. Notice 2025-42 will decrease the supply of clean energy while increasing the costs of electricity. This causes harm, not just to the Amici States, but to the entire nation. At a time when demand for electricity is increasing, the Internal Revenue Service (IRS) has decided to frustrate wind and solar development. Notice 2025-42 also disrupts the Amici States' energy planning and the energy markets many rely on and will ultimately increase costs to their ratepayers. This is a step backwards, precisely at a time when our nation needs more clean energy, not less.

Notice 2025-42 is not just bad tax policy, but also unlawful. There is no cogent justification that explains to Plaintiffs, Amici States, or the public, why the IRS wants to discourage wind and solar development. Nor is there any consideration of serious reliance interests. Indeed, there is hardly any rationale at all. The Amici States have spent considerable time and resources formulating energy policies and plans that rely on wind and solar development to meet their energy goals. And now, because of Notice 2025-42, many wind and

[1] I.R.S. Notice 2025-42, 2025-36 I.R.B. 351 (2025).

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solar projects will either be abandoned or will cost substantially more. Notice 2025-42 is particularly deficient in light of these planning efforts and the failure to consider Amici States' serious reliance interests.

The APA requires more than Notice 2025-42 provides. The Amici States urge the Court to grant Plaintiffs' motion for summary judgment.

BACKGROUND

Demand for electricity is increasing. Current projections expect that nationwide demand will grow 25% by 2030 and 78% by 2050 when compared with 2023 levels.[2] Peak electricity demand is expected to grow 14% by 2030 and 54% by 2050.[3] This significant rise in demand is attributable to the advent of new data centers, cloud-based services, artificial intelligence, and more.[4]

To meet increasing demand and incentivize development of clean electricity, Congress most recently passed the 2022 Inflation Reduction Act expanding the Clean Electricity Production Tax Credit (26 U.S.C. § 45Y) and the Clean Electricity Investment Tax Credit (26 U.S.C. § 48E).[5] These tax credits were designed to be "technology-neutral," meaning any clean electricity facility with zero greenhouse gas emissions could claim the tax credits, including facilities that produce hydropower, nuclear energy, and the like. Section 45Y and 48E tax credits were projected to bring 650 Gigawatts (GW) online by 2035 while saving consumers

[2] ICF, *Rising Current: America's Growing Electricity Demand* (2025), p. 3, https://www.icf.com/insights/energy/demand-growth-challenges-opportunities-utilities.

[3] *Id.*

[4] *Id.*

[5] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13701, 136 Stat. 1818, 1982, 1990 (2022).

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$16 to $34 billion in annual electric costs by 2035.[6] By 2035, the tax credits were also projected to reduce air pollutants by 20% and deliver 300 to 400 million tons in greenhouse gas reductions compared to a world without the tax credits—representing a 29 to 46% reduction in emissions.[7]

In July 2025, the One Big Beautiful Bill Act (OBBBA) phased out the Section 45Y and 48E tax credits for wind and solar facilities placed into service after December 31, 2027, with an exception for facilities that "begin construction" on or before July 4, 2026.[8] In August 2025, the IRS issued Notice 2025-42, which revised and restricted the criteria for determining when certain wind and solar facilities began construction for purposes of claiming the tax credit.[9]

Prior to Notice 2025-42, there were two tests to establish a "beginning of construction" date: (1) the physical work test, under which a facility must begin physical work of a significant nature prior to July 4, 2026; or (2) the five percent safe harbor, which requires developers to incur five percent of the total project cost by July 4, 2026. Notice 2025-42 eliminated the five percent safe harbor test for all wind facilities and for solar facilities with a maximum net output exceeding 1.5 megawatts (MW).[10] This means that now, wind facilities and solar facilities (with a maximum net output exceeding 1.5 MW) will only qualify for tax credits if they begin physical work of a significant nature by July 4, 2026, or if they are placed in service by December 31, 2027. Put simply, incurring five percent of the total costs is no longer sufficient to qualify for the tax credits.

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[6] Ben King, John Larsen, Hannah Kolus, Anna van Brummen, Tech-Neutral Tax Credits: The Foundation of US Electric Power Decarbonization, RHODIUM GROUP (May 23, 2024), https://rhg.com/research/tech-neutral-tax-credits-electric-power/.

[7] *Id.*

[8] H.R. 1, 119th Cong. § 112008 (2025) (enacted).

[9] I.R.S. Notice 2025-42, 2025-36 I.R.B. 351 (2025).

[10] *Id.*

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Without the five percent safe harbor, some wind and solar projects will not be able to meet the OBBBA accelerated timeline. And without the tax credits, certain projects may no longer be economically viable, leading to cancellation or indefinite delay. Other projects may move forward without tax credits, but they will be more expensive to construct and operate, and these additional costs will be passed on to ratepayers who will pay more for electricity.[11] Yet other projects that previously planned to rely on five percent safe harbor will manage to qualify under the physical construction test, but they will incur higher costs because of accelerated timeframes for physical construction. In addition, some solar facilities that planned to generate more than 1.5 MW of energy may downsize their project so that they can still qualify for tax credits under the five percent safe harbor test. All these scenarios harm Amici States.

For example, Plaintiffs have identified several wind and large solar projects at risk of cancellation because of Notice 2025-42. Decl. of Tam Hunt (Hunt Decl.) ¶¶ 5–11, Dkt. No. 26-5. Many of these projects, and projects like those, are in Amici States. The project on the Hopi Reservation is located entirely within the State of Arizona. Mem. in Supp. of Pls.' Mot. for Summ. J. 25, Dkt. No. 26-1. Likewise, in California, the "City and County of San Francisco is suffering economic harm because of Notice 2025-42." *Id.* at 26. And in Maryland, "[m]any Marylanders are already struggling to pay the rising costs of utility bills. The Notice will make this problem worse." Decl. of Mark C. Szybist 4, Dkt. No. 26-15. These harms occur within the Amici States.

[11] Eric Christensen, Brook Detterman, Hilary Jacobs, & Astrika Adams, *A Race to Begin: IRS Guidance Sets the Clock for Solar and Wind Credits*, BEVERIDGE & DIAMOND (Sep. 8, 2025), https://www.bdlaw.com/publications/a-race-to-begin-irs-guidance-sets-the-clock-for-solar-and-wind-credits/.

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ARGUMENT

I. Notice 2025-42 Decreases the Supply of Clean Energy and Increases Electricity Costs.

Bloomberg NEF analyzed the consequences of the OBBBA's restrictions on these tax credits and projected a 23% decrease in new wind, solar, and energy storage additions through 2030—a drop from 512 GW to 395 GW of clean power.[12] Onshore wind suffers a 50% cut by 2030, whereas solar suffers a 23% cut.[13] Notice 2025-42 will only exacerbate these harms by making it even more difficult for wind and solar projects to qualify for tax credits.

Studies also indicate that Notice 2025-42 will raise electricity prices for ratepayers, affecting Amici States' residents and Amici States as ratepayers themselves. Princeton University's ZERO Lab examined OBBBA's impact on energy costs and capacity additions under the IRS's previous definition of "beginning of construction."[14] OBBBA alone – including the July 4, 2026 deadline – was predicted to increase household and business energy costs by $28 billion annually in 2030, and reduce cumulative solar and wind capacity additions by 300 GW through 2035. Notice 2025-42's elimination of the five percent safe harbor will further limit the projects eligible for Section 45Y and 48E credits and worsen the resulting supply and price impacts. If the technology-neutral tax credits were eliminated entirely, in 2026, electricity prices would increase by 6.7% in the residential sector, 9.7% in the commercial and industrial sector, and 8.4% when averaging all sectors.[15] By 2029, electricity prices would increase by

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[12] Atin Jain, *Trump Slams the Brakes on US Wind and Solar Growth*, BLOOMBERG NEF (Jul. 22, 2025), https://about.bnef.com/insights/clean-energy/trump-slams-the-brakes-on-us-wind-and-solar-growth/.

[13] *Id.*

[14] Jesse Jenkins, Jamil Farbes, and Ben Haley, *Impacts of the One Big Beautiful Bill On the US Energy Transition – Summary Report* (July 3, 2025), https://doi.org/10.5281/zenodo.15801701.

[15] NERA, *Electricity Price Impacts of Technology-Neutral Tax Incentives With Incremental Electricity Demand from Data Centers* (Feb. 10, 2025), at 4, https://cebuyers.org/wp-

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7.3% in the residential sector, and 10.6% in the commercial and industrial sector, and 9.2% when averaging all sectors.[16] Some Amici States are among those that with the highest price impacts, including Illinois, Washington, New Jersey, Maryland, Minnesota, District of Columbia, New Mexico, Delaware, and Arizona.[17] To be sure, this study examined the elimination of the tax credits entirely, but it is indicative of rate increases associated with Notice 2025-42 because the narrowed eligibility for wind and solar facilities will have similar effects.

II. Notice 2025-42 Harms Amici States.

Notice 2025-42 harms Amici States and their residents in at least three ways. First, the Notice undermines Amici States' ability to plan for and obtain reliable, affordable energy. Second, the Notice harms the economic investments in renewable energy development, as well as related revenue streams and employment markets. Third, the Notice jeopardizes Amici States' ability to protect their land and residents from severe environmental and public health harms caused by pollution from fossil fuel energy sources.

A. Notice 2025-42 Harms Amici States' Ability to Plan for and Procure Reliable and Affordable Energy.

Notice 2025-42 jeopardizes Amici States' long-standing energy policies and plans to deliver reliable, affordable energy to our residents and imposes a significant administrative burden as those plans will likely need to be restructured. Amici States are responsible for

content/uploads/2025/02/CEBA_Electricity-Price-Impacts-of-Technology-Neutral-Tax-Incentives-With-Incremental-Electricity-Demand-From-Data-Centers_February-2025.pdf.

[16] *Id.*

[17] *Id.*

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ensuring that their residents have access to reliable and affordable energy.[18] To meet this obligation, Amici States adopt policies and create plans to meet energy demand many years in advance.[19] However, Notice 2025-42 increases the expenses associated with developing new wind and solar facilities, as recently noted in the 2025 Oregon Energy Strategy:

> Policy decisions by the federal government in 2025 have made building new resources more difficult and more expensive. This includes reducing or eliminating investment and production tax credits for renewable resources, as well as hundreds of millions of dollars of support for energy reliability infrastructure in Oregon – and billions of dollars throughout the region. [20]

As a result, agencies within Amici States will likely need to restructure their energy strategies to account for the projected loss in renewable energy from wind and solar sources.

Several Amici States must restructure their plans while ensuring compliance with statutorily imposed Renewable Portfolio Standards, Clean Energy Standards, or other renewable energy mandates that require electricity suppliers to provide a minimum percentage of electricity from renewable energy sources or other zero-emission sources by certain dates.[21] For example, in Oregon, large utilities were required to obtain at least 5% of their electricity from renewable energy sources by 2011.[22] In 2025, that obligation increased to 27%, and by 2040, that

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[18] *See, e.g.*, Or. Rev. Stat. § 756.040(1) (Oregon Public Utilities Commission tasked with ensuring that the public has access to adequate public utility services at fair and reasonable rates and is authorized to protect the public from unjust and unreasonable exactions).

[19] *See, e.g.*, OREGON DEP'T OF ENERGY, OREGON ENERGY STRATEGY at 28, (Nov. 2025), https://www.oregon.gov/energy/Data-and-Reports/Documents/Oregon-Energy-Strategy.pdf.

[20] OREGON DEP'T OF ENERGY, OREGON ENERGY STRATEGY at 28, (Nov. 2025), https://www.oregon.gov/energy/Data-and-Reports/Documents/Oregon-Energy-Strategy.pdf.

[21] *See, e.g.*, Cal. Pub. Util. Code § 399.11 (100% by 2045); Or. Rev. Stat. § 469A.410(1)(c) (100% by 2040); Wash. Rev. Code § 19.405.010(2) (100% by 2045); Mass. Gen. Laws Ch. 25A, § 11F(a) (annually increasing percentage); Me. Stat. tit. 35-A,(1-A)(A) § 3210 (80% by 2030); 20 Ill. Comp. Stat. 3855 / 1-75(c)(1)(B) (40% by 2030, 50% by 2040); Md. Code. Ann., Pub. Util. § 7-703(b)(25) (50% by 2030); ; N.J. Rev. Stat. § 14:8-1 – 14:8-2 (50% by 2030); Conn. Gen. Stat. § 16-245a(a)(25) (33% by 2030).

[22] Or. Rev. Stat. § 469A.052(1)(a).

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obligation will increase to 50%.[23] Under Illinois' Renewable Portfolio Standard, state regulatory agencies are directed to procure renewable energy credits for increasing percentages of utilities' retail electricity sales. Illinois law set this standard at 25% for 2025, 40% by 2030, and 50% by 2040.[24] The District of Columbia Renewable Portfolio Standards law requires 59% of an energy supplier's total energy in 2026 (escalating annually) to be derived from *inter alia* wind or solar energy sources. D.C. Code § 34-1432 (c)(16). In New Jersey, N.J. Rev. Stat. 48:3-87 (2024) requires utilities to obtain at least 50% of their electricity from renewable sources by 2030, including at least 3.5 GW from offshore wind. And some Amici States have enacted statutes that set procurement targets for offshore wind energy specifically.[25] In light of the projected decrease in available renewable energy sources, Notice 2025-42 makes it more difficult for Amici States to comply with these statutory obligations.

Several Amici States will also have to navigate changes to their energy plans while complying with statutes that established statewide targets for reductions in greenhouse gas emissions.[26] In 2021, the State of Washington enacted the Climate Commitment Act (CCA). In combination with a market-based cap-and-invest program and other policies, the CCA sets Washington on the path to reducing greenhouse-gas emissions 95% by 2050.[27] Similarly, Connecticut Public Act 18-82 requires the state to achieve economy-wide greenhouse gas

[23] Or. Rev. Stat. § 469A.052(1)(e), (h).

[24] 20 Ill. Comp. Stat. 3855/1-75(c)(1)(B).

[25] *See, e.g.*, 2022 Mass. Acts c. 179 § 61(a)-(b) (5,600 MW by 2027); Md. Code Ann., Pub. Util. § 7-704.1(a)(1)(i) (8,500 MW by 2031); Me. Stat. tit. 35-A § 3404(2) (3,000 MW by 2040); N.J. Rev. Stat. § 48:3-87(d)(2) (3,500 MW by 2030).

[26] *See, e.g.*, Or. Rev. Stat. § 468A.205(1)(c) (expanded by Or. Exec. Order No. 20-04, p. 5 (Mar. 10, 2020)); 2018 Conn. Pub. Acts 18-82, 2018 Conn. Acts 565 (Spec. Sess.); Mass. Gen. Laws ch. 21N, §§ 1–10.

[27] Wash. Rev. Code § 70A.45.020 (2021).

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emission reductions of at least 45% below 2001's GHG emissions level by January 1, 2030, adding to the existing requirement of at least 80% below 2001's GHG emissions level by January 1, 2050.[28] The Act also incorporates greenhouse gas reductions into Connecticut's Integrated Resources Plan, Comprehensive Energy Strategy, and various other state planning documents and efforts.[29] Connecticut's Department of Energy and Environmental Protection issued an Integrated Resources Plan in October 2021 which found that, to achieve the state's target of a 100% greenhouse gas-free electricity supply by January 1, 2040, significant additions of new zero-carbon generation will be required.[30] This need includes potentially 352 MW to 557 MW of new onshore wind and 3,745 MW to 5,710 MW of new offshore wind by 2040 under a range of assumptions and scenarios, including availability of other generating resources.[31] Notice 2025-42 makes it more difficult and more costly to adhere to these plans.

Wind and solar generation play an essential role in helping Colorado meet its state greenhouse gas reduction goals at the lowest cost to consumers. In 2019, Colorado enacted legislation setting statewide greenhouse gas emission reduction targets against a 2005 baseline,[32] and increased those targets four years later to include interim reductions of 65% by 2035, 75% by 2040, 90% by 2045 and a final target of a 100% reduction in net statewide greenhouse gas emissions by 2050.[33] To meet these goals, utilities are statutorily required to reduce greenhouse

[28] 2018 Conn. Pub. Acts 18-82, 2018 Conn. Acts 565 (Spec. Sess.).

[29] *Id.*

[30] CONNECTICUT DEP'T OF ENERGY & ENVIRONMENTAL PROTECTION, INTEGRATED RESOURCES PLAN (Oct. 7, 2021), portal.ct.gov/-/media/DEEP/energy/IRP/2020-IRP/2020-Connecticut-Integrated-Resources-Plan-10-7-2021.pdf.

[31] *Id.* at 174; *see also* Me. Stat. tit. 35-A § 3404(2) (State of Maine's 3000 MW installed capacity goal for wind energy development in federal waters by December 31, 2040).

[32] Colo. Rev. Stat. § 25-7-102(2)(g).

[33] *See* Colo. Rev. Stat. § 25-7-102.

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gas emissions by at least 80% by 2030 from a 2005 baseline. The state's largest investor-owned utility must also seek to provide their customers with energy generated from 100% clean energy resources by 2050.[34] Colorado relies on wind and solar energy to decrease greenhouse gas emissions from the power sector to meet its legislated reduction goals. In 2024, utility-scale wind and solar contributed 38% of Colorado's net electricity generation.[35] Colorado now ranks seventh and fourteenth among all states in terms of installed generation capacity for wind and solar respectively.[36] To achieve its 100% reduction goal for net statewide greenhouse gas pollution by 2050, Colorado will increasingly rely on wind and solar energy.

As discussed above, Notice 2025-42 results in higher electricity costs for ratepayers, and in an effort to mitigate these harms, some Amici States have taken action. In Oregon, Governor Tina Kotek issued an executive order that directs state agencies to take all steps necessary to expedite the permitting and development of wind and solar projects that seek to qualify for federal clean energy tax credits and which require construction to commence by July 4, 2026.[37] In California, Governor Gavin Newsom issued executive order N-33-25, which directs California state agencies to track projects that may be credit-eligible, prioritize support for those projects so they can qualify, and develop new recommendations to further expedite

[34] Colo. Rev. Stat. § 40-2-125.5(3)(a)(II).

[35] *See* U.S. Energy Information Administration, Electricity Data Browser, Net generation for all sectors (thousand megawatt hours), Colorado, Annual, 2001-24 (accessed on February 15, 2026), available at https://www.eia.gov/electricity/data/browser/#/topic/0?agg=2,0,1&fuel=vtvv&geo=0000000000g&sec=g&freq=A&start=2001&end=2024&ctype=linechart&ltype=pin&rtype=s&maptype=0&rse=0&pin=.

[36] U.S. Energy Information Administration, *Colorado State Energy Profile* (last updated July 17, 2025), accessible at: https://www.eia.gov/state/print.php?sid=co#133.

[37] Or. Exec. Order No. 25-25 (Oct. 6, 2025).

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clean energy development.[38] In Washington, Governor Bob Ferguson recently issued an executive order that, among other actions, created a Joint Clean Energy Acceleration Team comprised of state agencies that are focused on identifying and removing barriers that could prevent projects from meeting federal clean energy tax credit timelines.[39] In New Jersey, Governor Mikie Sherrill recently declared a state of emergency regarding the electricity capacity shortage and directed state agencies to undertake several actions to catalyze the development of new generation, specifically citing the constraints on solar development imposed by OBBBA and Notice 2025-42 as factors exacerbating the shortage.[40] While these are helpful steps, many projects still face uncertainty and risks.

Notice 2025-42 frustrates all of these policies and plans to the detriment of the Amici States.

B. Notice 2025-42 Harms Revenue Streams and Job Growth in Amici States.

Notice 2025-42 also harms Amici States by jeopardizing potential tax revenue streams that would have been generated by now likely-to-be-shelved solar and wind projects. For many Amici States, these revenue streams are substantial.

[38] Cal. Exec. Order N-33-25, https://www.gov.ca.gov/2025/08/29/governor-newsom-signs-executive-order-to-bolster-californias-clean-energy-progress-in-face-of-trumps-wrecking-ball/; see also https://www.gov.ca.gov/wp-content/uploads/2025/08/Clean-Energy-EO_8.29.25_Formatted.FINAL_ATTESTED.pdf.

[39] Wash. Exec. Order No. 25-11 (Dec. 18, 2025).

[40] N.J. Exec. Order No. 2 (Jan. 20, 2026), 58 N.J.R. 1041(a) (Feb. 17, 2026).

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For instance, in Washington, renewable energy projects provided local counties with over $13.8 million dollars in tax revenues in 2024.[41] In 2023, Arizona's solar industry generated more than $155 million in tax revenue for the State and local jurisdictions, with more than half of that total ($83.6 million) accruing to the State.[42] With fewer facilities coming online, there is less tax revenue for Amici States to collect.

Jobs in Amici States are also at risk because of Notice 2025-42. Some jobs will be eliminated as some wind and solar projects are cancelled. Other jobs may be cut as wind and solar projects become more costly to complete and developers will need to reduce costs wherever possible. The number of jobs at stake are substantial. For instance, in 2024, 117,946 jobs in California pertained to solar electricity power generation, and 8,132 jobs pertained to wind electricity power generation.[43] In 2023, electric power generation accounted for 15,791 jobs in Washington. Of these, 3,521 were in wind electricity and 5,670 in solar electricity, accounting for 58 percent of electricity generation jobs in the state.[44]

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[41] RENEWABLE NORTHWEST, Economic Benefits of Renewable Energy in Washington (2025), https://renewablenw.org/sites/default/files/Reports-Fact%20Sheets/Washington%20Fact%20Sheet%20-%20Economic%20Development.pdf [https://perma.cc/2HX7-PPSE].

[42] ROUNDS CONSULTING GROUP, *The Economic Benefits of Renewable Energy in Arizona* (Aug. 2024) 15, https://static1.squarespace.com/static/5734cf71b6aa60fb98e91bf2/t/66b4f9a81dd3d03b9e379fb2/1723136442672/080824+The+Economic+Benefits+of+Renewable+Energy+in+AZ+-+FINAL_v2+Reduced+Size.pdf.

[43] *See* CALIFORNIA AIR RESOURCES BOARD, 2025 ANNUAL REPORT, CAP-AND-TRADE AUCTION PROCEEDS 8–16 (May 2025), https://ww2.arb.ca.gov/sites/default/files/auction-proceeds/cci_annual_report_2025.pdf, Table ES-1 (Self-Generation Incentive Program, Long Duration Energy Storage Program, Single-Family Solar Photovoltaics Program, and Multi-Family Energy Efficiency and Renewables Program).

[44] U.S. DEPARTMENT OF ENERGY, ENERGY EMPLOYMENT BY STATE 2024 335–336 (Aug. 2024),,https://www.energy.gov/sites/default/files/2024-09/USEER%202024%20States_0913.pdf

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A study that evaluated the impact of completely eliminating technology-neutral tax credits found that there would be adverse effects on state GDP and the job market and, though that study does not provide numbers specific to Notice 2025-42, a portion of those harms are attributable to the Notice because fewer projects will qualify for credits.[45] For example, the study found that, in California, the elimination of technology-neutral tax credits would result in 44,200 fewer jobs and a $4.78 billion decrease in state GDP.[46] In New Jersey, 22,180 jobs could be cut, and the state would suffer a $3.24 billion decrease in GDP.[47] In Arizona, 6,700 jobs could be lost alongside a $930 million drop in state GDP.[48] And in Oregon, 1,910 jobs would be eliminated while the state experienced a $250 million decrease in its GDP.[49] These effects are particularly harmful in light of the evidence which suggests that electricity prices will increase simultaneously.

C. The Notice Will Increase Reliance on Sources that Emit Greenhouse Gases, Which Leads to Environmental Harms.

Notice 2025-42 delays Amici States' ability to transition away from energy sources that emit high levels of greenhouse gases and other pollutants, which exacerbates the negative effects of climate change and creates adverse health effects. As a result of climate change, Amici States have experienced severe weather phenomena, including more frequent and intense storms,

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[45] CEBA, *CEBA Report: Repeal of Technology-Neutral Federal Energy Tax Credits Would Bring Adverse Economic Impacts*, (May 15, 2025), https://cebuyers.org/ceba-report-repeal-of-technology-neutral-federal-energy-tax-credits-would-bring-adverse-economic-impacts/ (summarizing findings of NERA Economic Impacts of Repealing Technology-Neutral Tax Credits study).

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

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flooding, heat waves, droughts, and wildfires. *See Massachusetts v. EPA*, 549 U.S. 497, 521–23 (2007); *Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 77 (D.C. Cir. 2020). In 2024, California experienced over 8,100 wildfires, which resulted in over 1 million burned acres.[50] And in January 2025, wildfires that afflicted the greater Los Angeles area burned over 40,000 acres.[51] In Massachusetts, coastal property damage is projected to reach over $1 billion per year by the 2070s, with 70% of the damage localized to the Boston Harbor region, where a large portion of the Commonwealth's commercial economic base is located.[52] Severe weather events can injure or kill our residents, damage and destroy state-owned property and infrastructure, and strain public resources and services.

Additionally, by impeding the development of emission-reducing wind and solar projects, Notice 2025-42 worsens public health in Amici States. These harms not only result in injuries or death related to extreme weather events, but also cause respiratory and cardiovascular illness caused by pollution. One report estimates that the health costs caused by fossil fuel pollution currently exceed $820 billion each year in the United States, and that such pollution causes around 107,000 premature deaths annually.[53] Amici States will be better equipped to ensure the health and safety of their residents if Notice 2025-42 is vacated.

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[50] *See* California Dep't of Forestry and Fire Protection, 2024 Incident Archive (last visited Feb. 20, 2026), https://www.fire.ca.gov/incidents/2024.

[51] *See* LOS ANGELES CNTY. ECON. DEV. CORP., IMPACT OF 2025 LOS ANGELS WILDFIRES AND COMPARATIVE STUDY 1 (Feb. 2025), https://laedc.org/wp-content/uploads/2025/02/LAEDC_2025-LA-Wildfires-Study_090525-UPDATE.pdf.

[52] RESILIENTMASS, MASSACHUSETTS CLIMATE CHANGE ASSESSMENT VOLUME II – STATEWIDE REPORT 72 (2022), https://www.mass.gov/doc/2022-massachusetts-climate-change-assessment-december-2022-volume-ii-statewide-report/download

[53] *See* THE MEDICAL SOCIETY CONSORTIUM ON CLIMATE & HEALTH ET AL., THE COSTS OF INACTION: THE ECONOMIC BURDEN OF FOSSIL FUELS AND CLIMATE CHANGE ON HEALTH IN THE UNITED STATES 5 (May 20, 2021), https://www.nrdc.org/sites/default/files/costs-inaction-burden-health-report.pdf.

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III. Notice 2025-42 is Arbitrary and Capricious.

Each Administration is entitled to pursue its own policy objectives, but it must do so in accordance with the law. In its rush to publish Notice 2025-42, the IRS joins a long list of other agencies that have recently attempted to circumvent the law in order to frustrate wind and solar development. *See e.g. State of New York v. Trump*, 2025 WL 3514301 (D. Mass. Dec. 8, 2025) (vacating the "wind energy authorization freeze"); *Revolution Wind v. Burgum*, 2026 WL 113568 (D. DC. Jan. 12, 2026) (granting preliminary injunction against BOEM stop-work order affecting Revolution Wind); *Empire Offshore Wind v. Burgum*, No. 1:26-cv-00004-CJN (D.D.C. Jan. 15, 2026) (preliminary injunction allowing Empire Wind construction to resume); *Dominion Energy, Inc. v. DOI*, No. 2:26-cv-00012-JRW (E.D. Va. Jan. 16, 2026) (preliminary injunction allowing Coastal Virginia Offshore Wind construction); *Vineyard Wind v. DOI*, No. 1:26-cv-10156-BEM (D. Mass. Jan. 27, 2026) (preliminary injunction against federal stop-work order for Vineyard Wind); *Sunrise Wind v. DOI*, No. 1:26-cv-00102-RCL (D.D.C. Feb. 2, 2026) (preliminary injunction allowing Sunrise Wind construction to resume); *State of Arizona v. Environmental Protection Agency*, No. 2:25-cv-02015-TMC (W.D. Wash. Oct. 16, 2025) (seeking to vacate EPA's termination of the roughly $7 billion Solar for All program). Notice 2025-42 continues this unlawful pattern.

Amici States agree with Plaintiffs that Notice 2025-42 is arbitrary and capricious. But we write to highlight one particular defect. As demonstrated above, Amici States invested significant time and resources planning for responsible energy development. Those plans, designed to meet long term goals, are significant undertakings. Many involve public outreach, balancing competing interests, and difficult policy choices. These take many years to develop and are lengthy processes. Almost all the Amici States' plans, not to mention many other States'

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plans, relied on wind and solar development and these tax credits. This reliance was, in every sense of the word, serious.

Under the APA, if the IRS wants to change its policy, as it entitled to do, it must "be cognizant that longstanding policies may have 'engendered serious reliance interests" and must rationally address those reliance interests in its decision. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 29 (2020). This includes the interests of third parties, like the Amici States. *Id.* And here, there can be no doubt that IRS has engendered serious reliance interests in these tax credits.

The grand total of IRS's reasoning in Notice 2025-42 provides: "This notice provides beginning of construction guidance to prevent taxpayers from circumventing the statutory credit termination date, prevent the artificial manipulation of eligibility for the § 45Y credit and § 48E credit for applicable wind and solar facilities, and ensure that a substantial portion of any applicable wind or solar facility not subject to the credit termination date is built by the beginning of construction deadline." That is all.

Plaintiffs have explained why these cursory justifications are deficient, and Amici States agree with those arguments. But more to the point – considering how important wind and solar development is to the nation and the role these tax credits play – the IRS's failure to even acknowledge the public or Amici States' serious reliance interests, and the disruption and harms that will ensue, is plainly insufficient. The APA demands more.

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CONCLUSION

The Court should grant Plaintiffs' motion for summary judgment and vacate Notice 2025-42.

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Respectfully submitted,

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