



Powering Forward: Renewable Energy Legal Strategies for 2026

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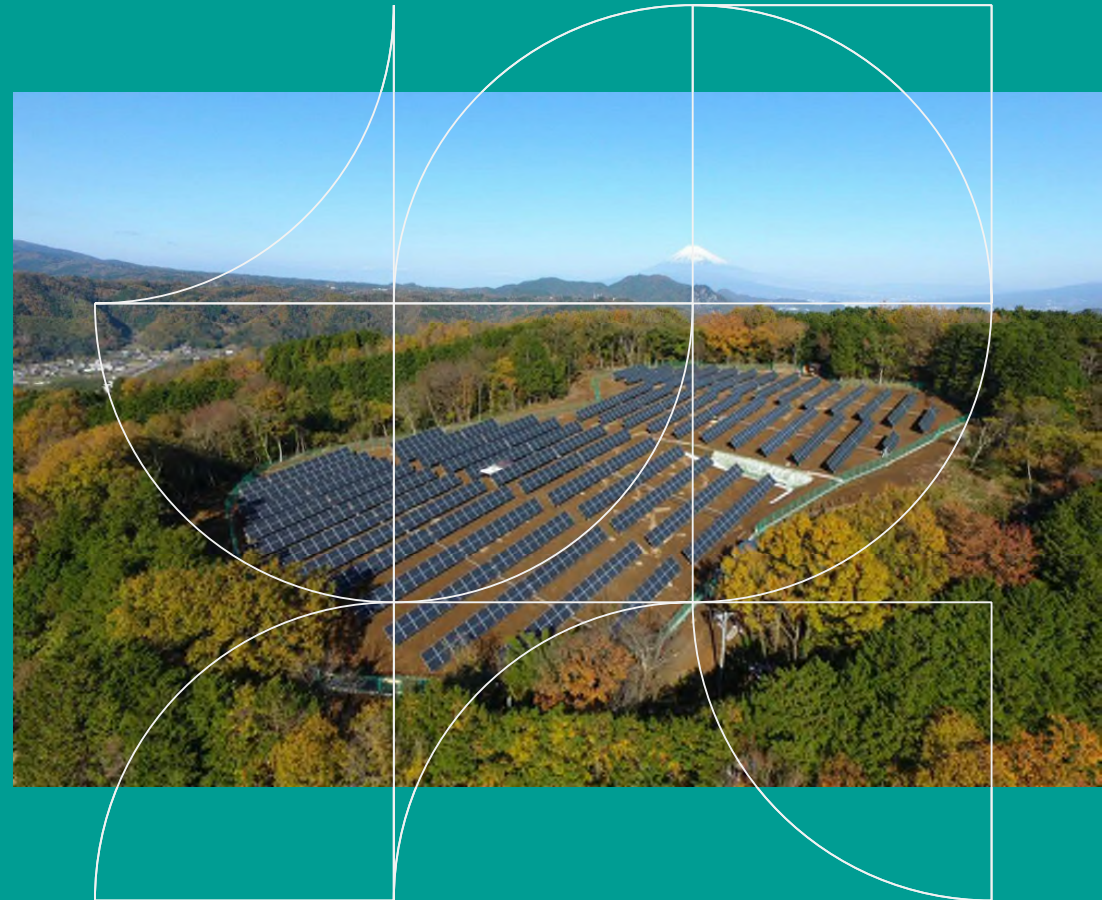
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Agenda

- 1 | Tax Equity & Credit Strategy
- 2 | Permitting & Environmental Review
- 3 | OSHA Compliance & Workplace Safety
- 4 | Workforce Reductions & WARN Compliance
- 5 | Discussion & Questions

How Market Participants are Navigating the Perfect Storm

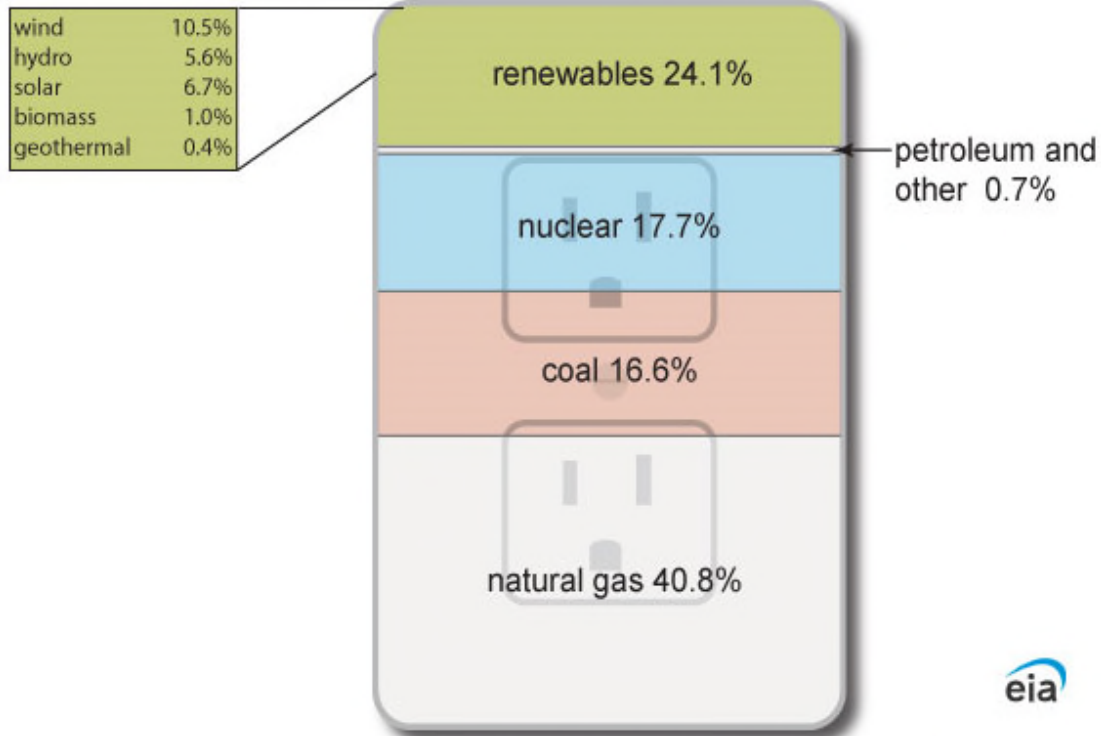
In response to OBBBA, U.S. renewable energy companies are **accelerating development timelines** by front-loading engineering, procurement, and construction activities. Many developers are prioritizing projects closest to meeting begin-construction thresholds while deferring or abandoning earlier-stage assets unlikely to qualify within the compressed timelines.

Companies are also **restructuring tax equity and transferability strategies** to reflect increased timing risk. This includes earlier engagement with tax credit purchasers, expanded use of credit transfers, and heightened diligence on construction-start evidence.

From a contracting perspective, developers are **renegotiating EPC agreements and supply-chain contracts** to secure earlier delivery dates and allocate delay risk more explicitly. Some sponsors are diversifying supplier relationships or domestic sourcing strategies to mitigate bottlenecks that could threaten deadline compliance.

Sources of U.S. electricity generation, 2025

total=4.43 trillion kilowatthours



Data source: U.S. Energy Information Administration, *Electric Power Monthly*, February 2026, preliminary data

Note: Includes electricity generation from power plants with at least 1,000 kilowatts of electric generation capacity (utility-scale). Hydro is conventional hydroelectric. Petroleum includes petroleum liquids, petroleum coke, other gases (blast furnace gas and other manufactured and waste gases derived from fossil fuels), hydroelectric pumped storage, and other sources (non-biogenic municipal solid waste, batteries, hydrogen, purchased steam, sulfur, tire-derived fuel, and other miscellaneous energy sources). Sum of percentages may not equal 100% because of independent rounding.

Forecasting a Perfect Storm

Demand for Electricity

- **Record-Setting Demand:** Consumption is hitting all-time highs due to AI/data center expansion and increased electric use in manufacturing and residential sectors.
- **Generation Shift:** The grid is relying heavily on new renewables; solar generation is projected to increase by 17% in the summer of 2026.
- **Grid Infrastructure Strain:** The physical grid is struggling to keep pace, creating a significant "reliability gap" that is pressuring regulators and utilities.

Source: US Energy Information Administration (2025)

Sources of Electricity

- Solar power supplies the largest increase power generation, increasing by a forecast 21% in both 2026 and 2027 following the addition of almost 70 gigawatts of new capacity; natural gas generation is forecast to remain flat in 2026 before increasing by 1% in 2027, while coal-fired power generation is expected to fall by 9% in 2026 and remain flat in 2027"

Source: US Energy Information Administration (2026)

War with Iran

- Over 40 percent of American electricity is generated by burning natural gas.
- When global gas prices rise, the cost of generating power at those plants rises too.
- Since the war started, the average price of gas in the U.S. has risen more than 47%.

Sources: US Energy Information Administration (2026); Steve Kopack, NBC News (May 1, 2026)

Federal Government Action Before the Perfect Storm

One Big Beautiful Bill Act, Pub. L. No. 119-21 (July 4, 2025). The Act accelerates termination of the clean electricity production credit under IRC §45Y and the clean electricity investment credit under IRC §48E for wind and solar facilities placed in service after December 31, 2027, unless construction begins on or before July 4, 2026.

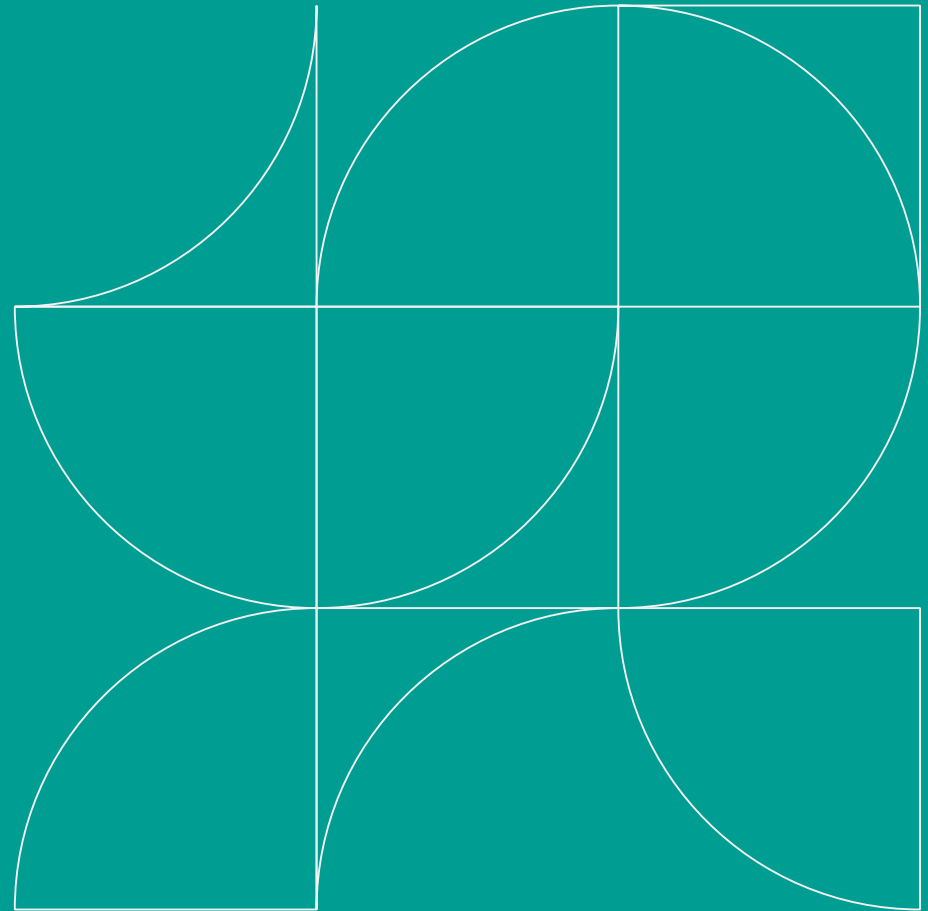
IRS Notice 2025-42, Beginning of Construction Requirements for Purposes of the Termination of Clean Electricity Production Credits and Clean Electricity Investment Credits for Applicable Wind and Solar Facilities (Aug. 15, 2025). Issued pursuant to Executive Order 14315, this Notice eliminates the five-percent safe harbor for most wind and solar projects, retains the Physical Work Test, and clarifies continuity requirements under IRC §§ 45Y and 48E.

Executive Order 14315 (July 7, 2025), Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, directing Treasury to issue restrictive guidance on beginning-of-construction standards for wind and solar projects.

Treasury Decision 9993 and related final regulations under IRC § 6418 (effective July 1, 2024). These regulations govern the transferability of eligible energy tax credits, establish mandatory IRS pre-filing registration, and impose recapture and excessive transfer rules relevant to financing projects subject to OBBBA deadlines.

Legacy beginning-of-construction guidance, including **IRS Notices 2013-29, 2018-59, and 2022-61**, continues to apply only to facilities that began construction prior to September 2, 2025, as clarified in Notice 2025-42.

NEPA and Renewable Energy Projects: Process, Updates, and Practical Impacts



NEPA – Scope, Triggers and Agencies

- NEPA is a procedural statute that assures Federal Agencies taking certain federal actions to identify and consider environmental impacts of a proposed action in its decision making.
- Triggers and Agencies:
 - Federal lands: BLM, USFS, Reclamation, BIA as leads
 - Waters/wetlands: USACE permits trigger NEPA
 - Offshore wind: BOEM leads - USACE, NOAA, USCG, FWS cooperate
 - Federal funding: DOE, USDA RD, HUD, FEMA often lead
- NEPA outcomes: Categorical Exclusions, Environmental Assessment/FONSI, or Environmental Impact Statement/ROD

NEPA Landscape: What has Changed

1

Drivers

- Executive direction to streamline permitting
- Courts undermine CEQ's rulemaking authority
- Narrow scope of judicial review
- Confirm deference to reviewing Agency

2

Shift in Process Authorities

From centralized CEQ regulations to agency-specific NEPA procedures and CEQ guidance

3

Implications

- Greater emphasis on statutory NEPA
- Fiscal Responsibility Act (FRA 2023) timelines
- Deference to agencies
- Reduced judicial review of Agency consideration of indirect effects

Trump Administration EOs Concerning NEPA

EO 14154 (1/20/25) “Unleashing American Energy”

- Rescinds EO 11991 (1977) that directed CEQ to issue binding NEPA regulations
- Directs CEQ to propose rescinding CEQ’s NEPA regulations and to issue implementation guidance
- Emphasizes expediting permitting and meeting FRA 2023 deadlines

EO 14173 (1/21/25) “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”

- Rescinds EO 12898 on environmental justice; EJ considerations no longer mandated by executive order for NEPA

Related Actions

- Rescission of multiple climate/EJ-focused EOs
- CEQ to convene working group and coordinate agency-level NEPA reforms

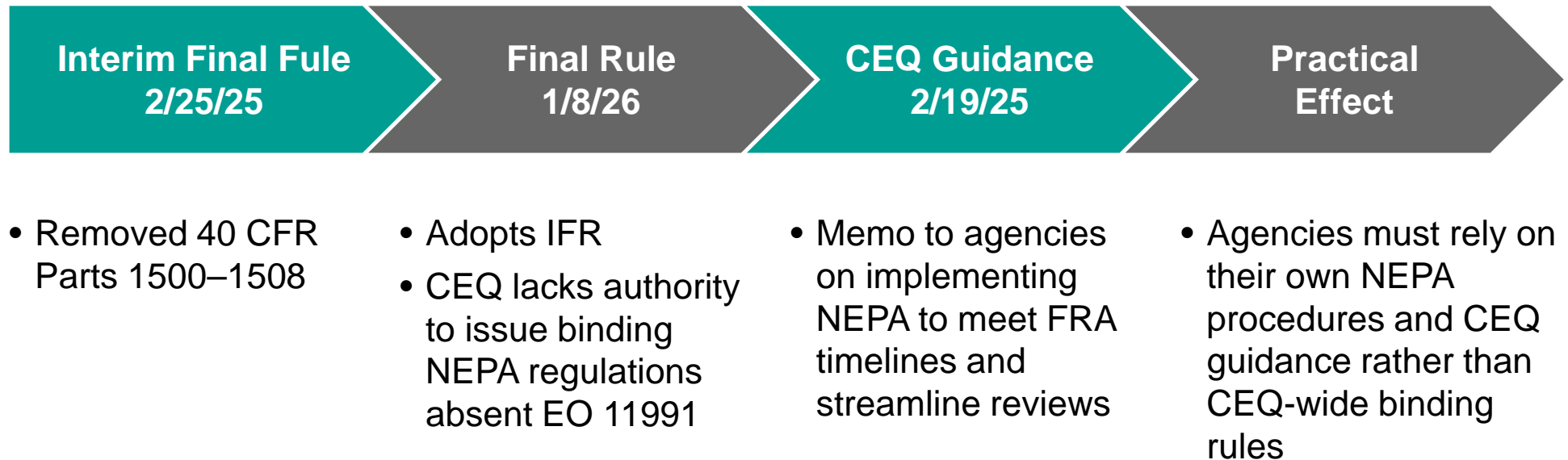
Cases - *Marin Audubon v. FAA & Iowa v. CEQ*

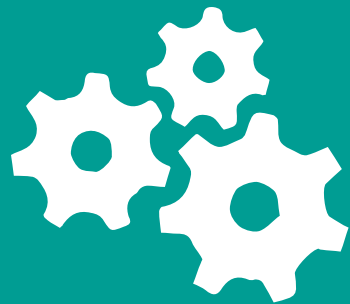
- ***Marin Audubon Society v. FAA* (D.C. Cir., Nov 2024)**
 - Panel concluded CEQ lacked statutory authority to issue binding NEPA regulations
 - Triggered heightened scrutiny of CEQ's regulatory foundation
- ***State of Iowa v. CEQ* (D.N.D., Feb 2025)**
 - Vacated CEQ's Phase 2 NEPA rule; held CEQ lacks authority for binding NEPA rules
- Net takeaway: Courts set the stage for rescission; agencies return to NEPA statute and their own procedures

SCOTUS: Seven County Infrastructure Coalition v. Eagle County (May 2025)

- **Holding (8–0; Kavanaugh, J.):** NEPA is procedural; agencies are not required to analyze upstream/downstream impacts that are separate in time/place and outside their regulatory authority
- **Deference:** Courts must afford substantial deference to agency expertise in NEPA reviews
- **Limits on “indirect effects”:** Foreseeability alone is insufficient; need a “reasonably close causal relationship” and nexus to agency control
- **Practical impact:** Tighter scoping; reduced risk of litigation-driven expansion of effects analysis

CEQ Rescission of NEPA Regulations: Timeline and Basis





Agency NEPA Process after CEQ Rescission

- DOE: 10 CFR Part 1021 - DOE's NEPA regulation
 - DOE NEPA Guidance (June 30, 2025)
- DOI and bureaus:
 - DOI: 43 CFR Part 46 and Departmental Manual 516 (Feb. 2026).
 - BLM: NEPA Handbook H-1790-1 and Instruction Memoranda.
 - BOEM: Operates under DOI framework (30 CFR Part 585 for offshore renewables); review BOEM guidance/templates
- USACE: 33 CFR Parts 325/333 (July 2025 IFR)
- USDOT: 23 CFR Part 771 / Order 5610.1C (July 2025)
- FERC: 18 CFR Part 380 and FERC NEPA Guidance Manual (June 2025)
- EPA: 40 CFR Part 6 (NEPA procedures for EPA actions) and program guidance

Fiscal Responsibility Act of 2023 and Process Expectations for Renewable Energy Projects

Time Limits

Statutory timelines for EAs/EISs; agency procedures calibrated to meet deadlines

Page Limits and Schedule Discipline

More concise documents and project schedules enforced by agencies

Coordination

Lead agency-centric reviews with cooperating agencies; emphasis on early scoping and issue resolution

Litigation Posture

Stronger deference to Agencies; limited scope of review after Seven County Infrastructure; record quality is critical

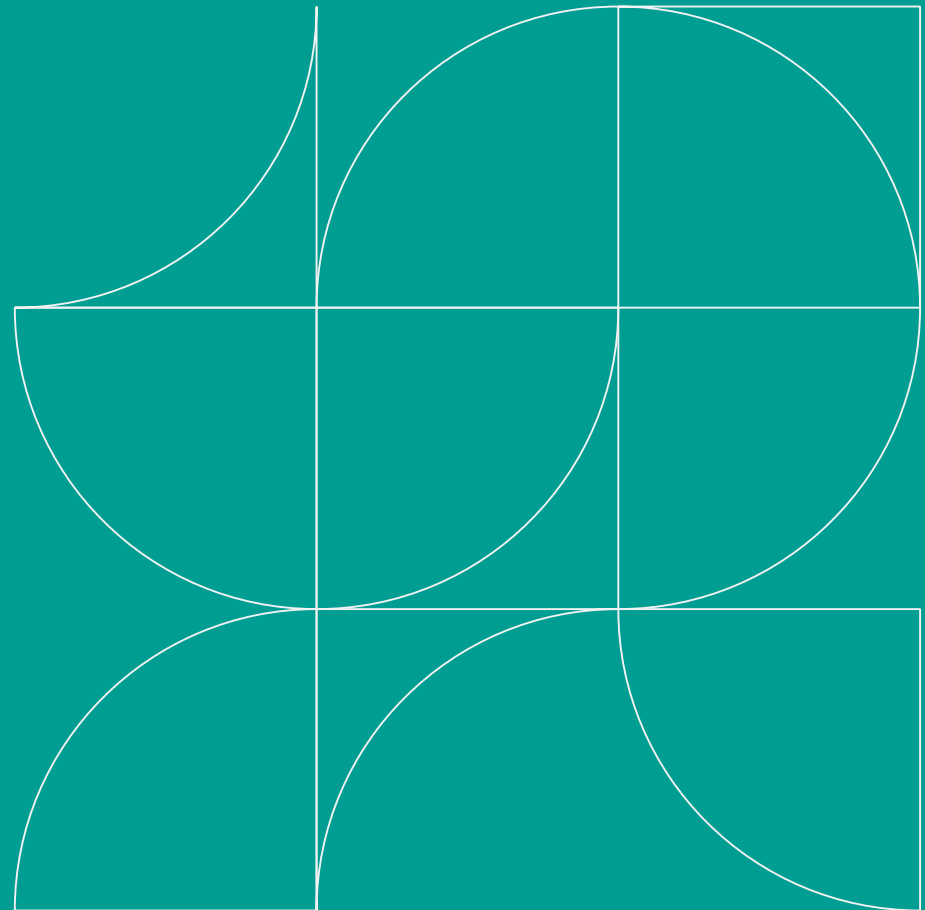
NEPA Action Plan - Renewable Energy Project Developers

1. **Map the lead agency's current NEPA procedures** and any guidance updates; confirm cooperating agencies
2. **Calibrate studies to agency expectations:** resource topics, alternatives framework, and mitigation within agency authority
3. **Engage early:** pre-scoping meetings, data standards, and schedule agreements
4. **Track agency NEPA updates:** Monitor agency rulemakings/guidance; adjust templates and checklists accordingly

Project Planning / Proposal Considerations

1. **Leverage Categorical Exclusions**
2. **Reference Applicable Programmatic Environmental Impact Statements (Wind, Solar)**
3. **If Applicable, Use Fast 41 Infrastructure Designation**
4. **Plan for ESA, WOTUS Impacts** (Avoidance, Minimization, Mitigation)

OSHA Compliance & Workplace Safety





2026 OSHA Enforcement: What's Changing (and What Isn't)

- Enforcement remains active and targeted (focus on strategic priorities)
 - Fewer inspectors = fewer random inspections
- Renewables drawing attention due to:
 - fast-paced work
 - complex jobsites
 - a changing workforce
- Core hazards drive citations across both construction and manufacturing (heat, falls, LOTO, HazCom, ladders, machine guarding, powered industrial trucks)
- Penalty exposure high - penalties can be assessed per-violation



Heat Enforcement (Federal): NEP is the Real-World Standard

- OSHA’s Heat National Emphasis Program (NEP) is the primary enforcement engine for heat (indoor & outdoor)
 - Extended by 5-years
 - Inspectors will expand inspections on heat priority days and during heat advisories/warnings
 - Targeting includes construction and manufacturing/warehouse environments
- In practice, OSHA evaluates heat controls using the General Duty Clause plus NEP factors



Heat Enforcement & State Plans: A Patchwork

- Federal heat rulemaking remains pending; the federal direction of travel is toward less formal, i.e., NEP framework
- State plans are moving faster and can be more prescriptive
 - Multi-state renewable portfolios need a “highest common denominator” approach
- Examples:
 - **California**: outdoor heat standard plus indoor heat standard (effective July 2024), commonly triggered around 82°F+ indoors
 - **New Mexico (pending)**: written heat plan for indoor/outdoor work, generally triggered at heat index > 80°F
 - **Oregon**: heat illness prevention applies starting at heat index $\geq 80^{\circ}\text{F}$, with additional measures above 90°F
 - **Washington**: outdoor heat protections with thresholds and mandatory cool-down break structure



Multi-Employer Worksite Doctrine: The 60-Second Explanation

- OSHA can cite **more than one employer** for the **same hazardous condition** on a multi-employer site
- Four roles OSHA applies (often overlapping):
 - Creating
 - Exposing
 - Correcting, and
 - Controlling employers
- Key takeaway: you can be cited even if the exposed worker is **not** your employee
- Liability turns on authority, reasonable diligence, and what you did when you knew (or should have known) of a hazard



Renewables Impacts: Construction + Manufacturing Use Cases

- **Construction (EPC/GC/CM model)**: controlling-employer exposure is driven by coordination failures (handoffs, scheduling pressure, overlapping trades)
- **Manufacturing (plants, BESS assembly, component fabrication)**: host employer & contractors & temps creates shared responsibility for LOTO, machine guarding, powered industrial trucks, electrical, and heat
- Risk reducers: contract language plus real enforcement mechanisms (stop work, correction)
- Risk reducers: documented oversight (audits, corrective actions, escalation)



After an Incident: Contain, Investigate, Decide What to Report

- **First 24 hours:** medical response, scene control, preserve evidence, and stabilize operations
- Reporting triggers (federal baseline):
 - fatality within 8 hours;
 - inpatient hospitalization/amputation/loss of eye within 24 hours.
- States may be different (CA, WA)
- **Quick decision issues:** what qualifies as inpatient admission vs. ER visit/observation
- **Multi-employer coordination:** who reports and how to avoid inconsistent narratives
- Assume reporting may trigger OSHA contact and prepare immediately for scope control



Preparing for the OSHA On-Site Inspection

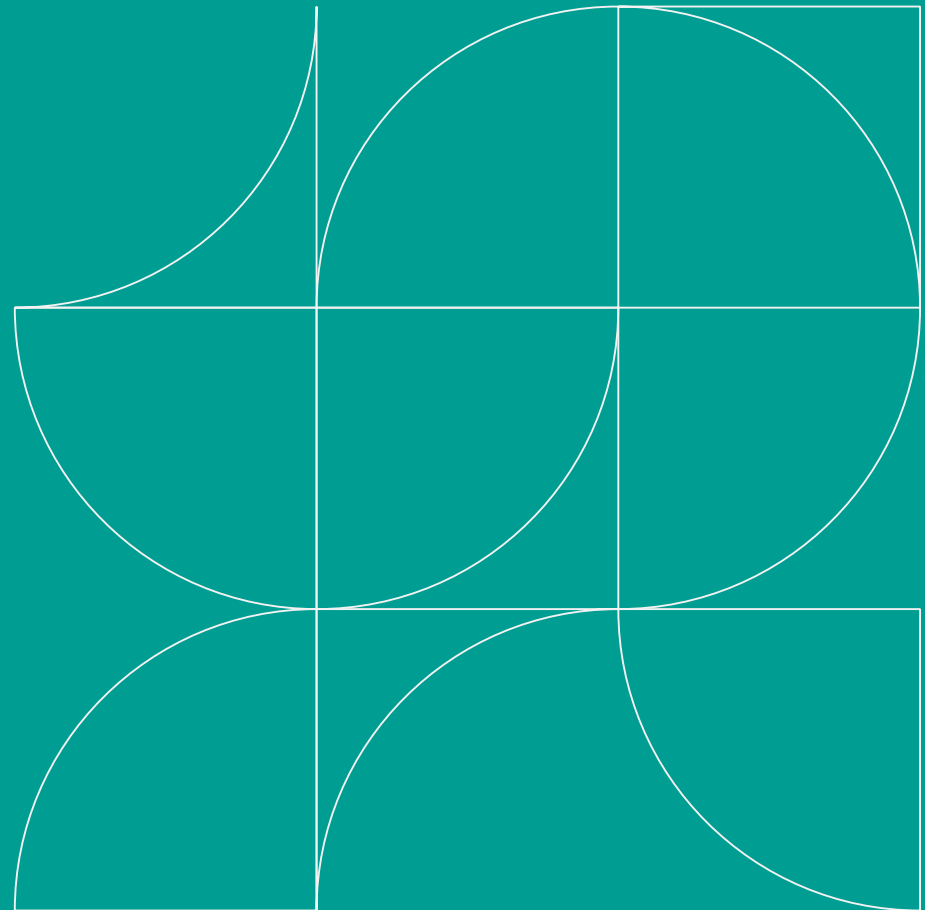
- **Maintain an inspection plan:** point person & backup, call tree, and a document readiness system
- **Two keys during the inspection:** determine the basis and control scope
- **Manage the walkaround:** shadow the CSHO, take parallel notes/photos, avoid volunteering information, and fix hazards without admissions
- **Interviews and document production:** avoid casual admissions; keep responses short; provide only what's required and within scope



Reducing Enforcement Escalation Before It Starts

- Escalation drivers: repeat citations, willful, egregious, and severe violator program placement
 - Severe violator designation can drive follow-up inspections and broader referrals, reduce business
- Multi-employer dynamics can compound escalation for controlling/creating employers
- Criminal risk: a willful OSHA standard violation causing a fatality can lead to criminal prosecution / lying to inspectors too.
- Defense themes: documentation, consistent enforcement, and standardization across projects and sites to avoid repeats

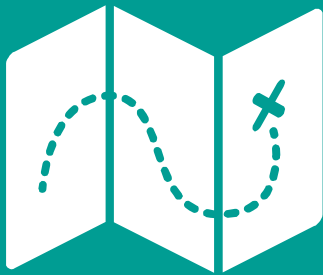
Workforce Reductions & WARN Compliance





Why This Matters in Renewable Energy

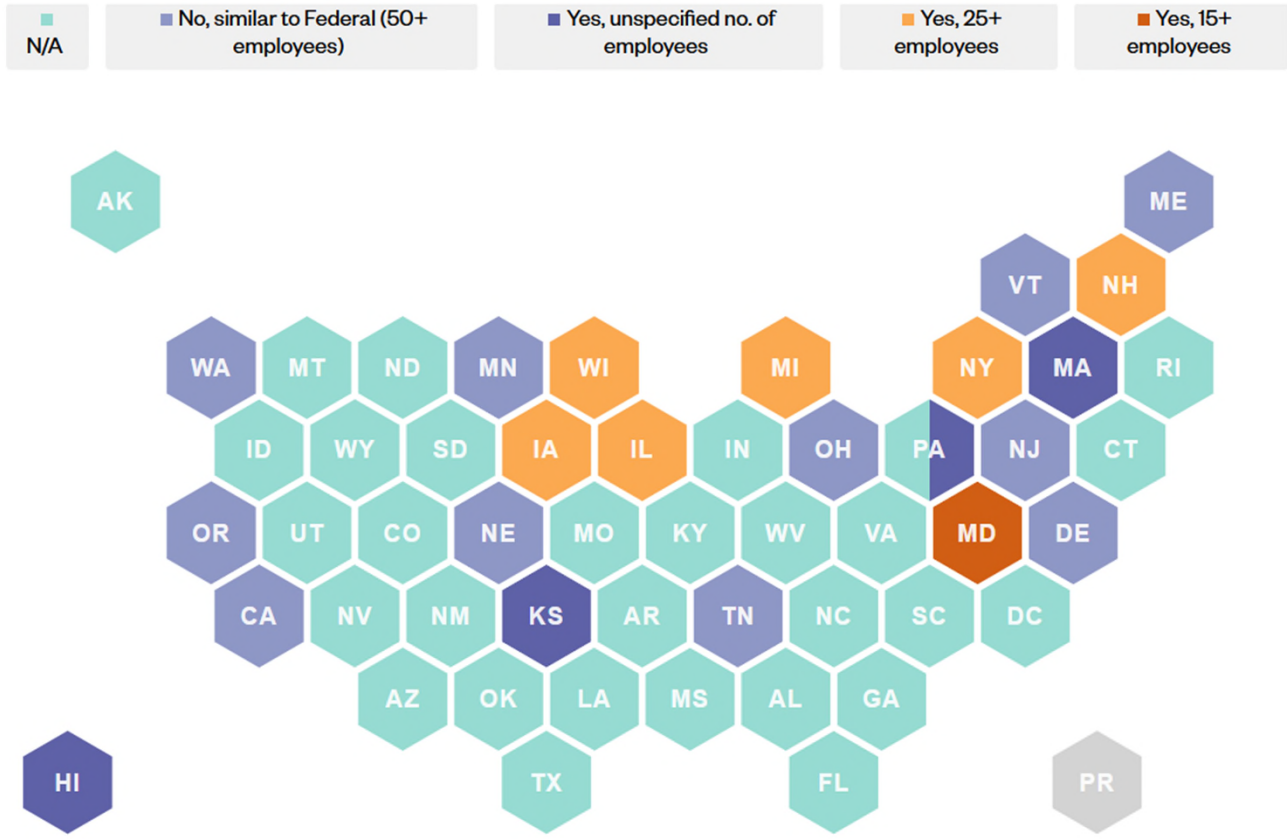
- Workforce changes are routine in the renewable energy business
- Employment laws don't move at project speed, e.g., 60-90 day advance notice requirements for certain site closures and layoffs
- Rolling reductions can unintentionally trigger compliance obligations even when no single layoff feels "large."



Federal Worker Adjustment and Retraining Notification (“WARN”) Act

- Applies to employers with 100+ employees
- Requires 60 days’ advance written notice to affected employees, unions, and government agencies
- Generally triggered by:
 - plant closing affecting 50+ employees at a single site of employment
 - mass layoff affecting 50+ employees and 33% of the workforce at a single site of employment
- 30 day aggregation period and alternative 90 day aggregation period
- Potential damages: back pay and benefits for affected workers and civil penalty of up to \$500 for each day of violation
- State “mini WARN” laws vary but some have lower employee thresholds, longer notice periods, broader definitions of covered events, and additional penalties for noncompliance.

State “Mini-WARN” Laws





Federal WARN Considerations for Project-Based Reductions

- “Part-time” employees are not countable (but still must receive WARN notice).
- “Employment loss” does not include:
 - Discharge for cause, voluntary departure, or retirement
 - Layoff lasting <6 months
 - Hours reduction of <50% during each month of any 6-month period
- Employees offered transfers within a “reasonable commuting distance” do not have an employment loss, regardless of whether they accept.
- Temporary facility/project exemption where:
 - The closing is of a temporary facility or the closing/layoff is the result of the completion of a particular project, AND
 - Affected employees were hired with the understanding that their employment was limited to the duration of the facility/project



Limited Circumstances Justify Reduction of Federal WARN Notification Period

– Faltering Company (plant closings only)

- Employer reasonably believed giving notice would have precluded financing or business rescue

– Unforeseeable Business Circumstances

- Sudden, unexpected events
- Does not cover long-known project uncertainty

– Natural Disaster

- Limited to true natural disasters “such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.”



Selection Decisions & Workforce Impact

- Selections decisions and criteria are often the focus of post-RIF employment discrimination claims
- Risky approaches:
 - Ad hoc manager discretion
 - Inconsistent application of selection criteria
 - Little or no documentation
- Defensible selection processes should be:
 - Job-related and neutral
 - Consistently applied
 - Clearly documented at the time decisions are made
- Conduct disparate impact analysis under privilege to determine potential risk



Severance, Releases & Best Practices for RIF Planning

- Consider whether to provide severance to affected employees in exchange for a release agreement
- In group terminations, must satisfy OWBPA disclosure requirements for a valid release of age discrimination claims:
 - Job titles and ages of those selected and not selected
 - “Decisional unit” considered for the RIF
 - Selection criteria used for selection decisions
 - 45-day consideration period plus 7 day revocation period
- Best practices:
 - Coordinate legal and HR early to allow adequate time to assess potential WARN obligations and RIF document preparation
 - Maintain data on employee work locations, whether they work remotely, where their supervisor is located, where they receive assignments from, etc.
 - Regularly update release agreement templates to comply with state law considerations

thank you

contact information

For more information, please contact Gordon Peery, Jonathan Bull, Patrick Joyce, or Erin Murray

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