

# Treasury and IRS Release Updated Guidance on Energy Communities

## WRITTEN BY

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On June 23, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2025-31](#). This notice includes lists of information that taxpayers may use to determine whether they meet certain requirements for energy communities under the Statistical Area Category or the Coal Closure Category, each as described in [Notice 2023-29](#), [Notice 2023-45](#), [Notice 2023-47](#), [Notice 2024-30](#), and [Notice 2024-48](#).

Notice 2023-29 provides rules for determining what constitutes an energy community, organized in three categories (the Brownfield Category, Statistical Area Category, and the Coal Closure Category). We described each of these in our previous alert on [Notice 2023-29](#). Treasury and the IRS intend to include these rules in forthcoming proposed regulations concerning energy communities. The regulations will apply to taxable years ending after April 4, 2023. Until the issuance of the proposed regulations, taxpayers may rely on Notice 2023-29, Notice 2023-45, Notice 2023-47, Notice 2024-30, Notice 2024-48, and Notice 2025-31.

## Notice 2025-31

Notice 2025-31 provides five new appendices that taxpayers may use to determine whether they meet certain requirements under the Statistical Area Category or the Coal Closure Category, each as described below.

- The appendices in Notice 2025-31, as well as the previous appendices published with Notices 2023-39, 2023-45, 2023-47, 2024-30, and Notice 2024-48 apply only to the energy community bonus applicable to the production tax credits and investment tax credits available under Sections 45, 45Y, 48, and 48E of the Code. They may not be used for purposes of the qualifying advanced manufacturing credit under Section 48C.

### *MSA and non-MSA Vintages*

The Statistical Area Category includes each Metropolitan Statistical Area (MSA) and non-Metropolitan Statistical Area (non-MSA) that (1) has (or had at any time after December 31, 2009), 0.17% or greater direct employment (Fossil Fuel Employment) or 25% or greater local tax revenues (Fossil Fuel Tax Revenue) related to the extraction, processing, transport, or storage of coal, oil, or natural gas and (2) has an unemployment rate at or above the national average unemployment rate for the previous year, in each case as determined by the Secretary of the Treasury.

Appendices 1, 2, and 3 contain two “vintages” of delineations of MSAs and non-MSAs used for determination of

Statistical Area Category eligibility. Vintage 1 reflects groupings of county and county-equivalents into MSAs and non-MSAs generally based on the 2010 Decennial Census, which were included in Appendix A to Notice 2023-29 and used for determination of Statistical Area Category eligibility in Notice 2023-29, Notice 2023-45, Notice 2023-47, Notice 2024-30, and Notice 2024-48. Vintage 2 reflects groupings of county and county-equivalents into MSAs and non-MSAs generally based on the 2020 Decennial Census.

- Counties may have changed MSA or non-MSA, as applicable, between the two vintages. Notice 2025-31 provides that a county may qualify as an energy community if it meets the criteria for both Fossil Fuel Employment and the unemployment rate under the same vintage.

### *Appendix 1*

[Appendix 1](#) to Notice 2025-31 lists each county or county-equivalent as well as its MSA or non-MSA, as applicable, for both Vintage 1 and Vintage 2.

### *Appendix 2*

Appendix B of Notice 2023-29 listed each Metropolitan Statistical Area (MSA) and non-Metropolitan Statistical Area (non-MSA) that meets the Fossil Fuel Employment requirement described in Notice 2023-29, based on calculations using the annual County Files of the County Business Patterns (CBP) published by the Census Bureau for years 2010 through 2020.

[Appendix 2](#) to Notice 2025-31 is a list of additional counties that have met the Fossil Fuel Employment threshold when using the 2022 CBP data as part of Vintage 1, Vintage 2, or both.

### *Appendix 3*

[Appendix 3](#) to Notice 2025-31 is a list of MSAs and non-MSAs that qualify as energy communities under the Statistical Area Category because they meet the Fossil Fuel Employment threshold and have an unemployment rate at or above the national average unemployment rate for calendar year 2024. The list in Appendix 3 uses 2024 calendar year county unemployment rates released on April 18, 2025, by the Local Area Unemployment Statistics (LAUS) program of the Bureau of Labor Statistics (BLS). The energy community status of the MSAs and non-MSAs listed in Appendix 3 is applicable as of June 23, 2025, and will continue until Treasury and the IRS issue an updated list based on unemployment rates for calendar year 2025.

- The June 23 applicability date is consistent with Notice 2024-48, which indicated that Appendix 1 to Notice 2024-48 would apply for the period beginning on June 7, 2024, and ending with the subsequent annual release (which in turn would apply for the period beginning with such annual release).
- Appendix 3 addresses eligibility under both Vintage 1 and Vintage 2.

### *Appendix 4*

The Coal Closure Category includes census tracts, and census tracts directly adjoining such census tracts, in which: (1) a coal mine has closed after December 31, 1999, or (2) a coal-fired electric generating unit has been retired after December 31, 2009. Appendix C to Notice 2023-29 provided a list of census tracts that satisfied the Coal Closure Category and was subsequently updated by Appendix 3 to Notice 2023-47 and Appendix 2 to Notice 2024-48.

[Appendix 4](#) to Notice 2025-31 lists the newly identified census tracts with either a coal mine closure or a coal-fired electric generating unit retirement, and census tracts that directly adjoin the census tracts with coal closures, using the Mine Safety and Health Administration's (MSHA) Mine Data Retrieval System data and the U.S. Energy Information Administration's EIA Form 860 and EIA Form 860M data as of April 1, 2025, and historical extracts from the MSHA's Mine Data Retrieval System that enumerate each status change for a mine. Appendix 4 to Notice 2025-31 should be combined with Appendix C to Notice 2023-29, Appendix 3 to Notice 2023-47, and Appendix 2 to Notice 2024-48 to provide the full list of census tracts satisfying the Coal Closure Category.

#### *Appendix 5*

[Appendix 5](#) to Notice 2025-31 lists those tracts contained in Appendix 4 that newly qualify for the Coal Closure Category because of location data corrections issued since the publication of Notice 2024-48. Notice 2025-31 provides that projects placed in service after 2022 that were outside an energy community and are located in a census tract listed in Appendix 5 are eligible to claim the energy community bonus for taxable years starting after 2022.

- Notice 2024-48 did not include a comparable list to Appendix 5 that distinguished newly identified census tracts according to whether the additions (in Appendix 2 to Notice 2024-48) were the result of mines closing or generating units retiring since December 31, 2022, or were the result of updates to location information since the publication of the previous appendices. In our alert on [Notice 2024-48](#), we made that observation and noted Question 10 of "Timing and Location" [Frequently Asked Questions for Energy Communities](#) (FAQs) published on June 7 can be read to suggest that if a mine in a census tract closes in 2024 (and is listed in Appendix 2 to Notice 2024-48), the census tract would be treated as an energy community beginning in 2023. The addition of Appendix 5 in Notice 2025-31 could be read to imply that if a mine in a census tract closes in 2025 (and is listed in Appendix 4 to Notice 2025-31 but not Appendix 5 to Notice 2025-31), the census tract would not be treated as an energy community in 2023 or 2024.

#### **Conclusion**

Taxpayers have been eagerly awaiting the updated Statistical Area Category Appendix following the release of the calendar year 2024 unemployment data in April. Notice 2025-31 should provide certainty for developers and financing parties regarding projects whose qualification depends on their locations being included in the appropriate IRS appendix on the placed-in-service date. In addition, because sponsors can secure future energy community status by beginning construction on a project during a period in which it is located in an energy community, the release of Notice 2025-31 should allow developers to begin physical work or satisfy the 5% safe harbor with respect to projects located in MSAs and non-MSAs currently included on Appendix 3 of Notice 2025-31.

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