

Treasury and IRS Release Updated Guidance on Energy Communities

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KEY POINTS

- IRS Notice 2026-39, issued June 10, 2026, updates the qualifying energy community lists under the Statistical Area Category and Coal Closure Category for the energy community bonus under Sections 45, 45Y, 48, and 48E of the Internal Revenue Code.
 - Notice 2026-39 should provide certainty for energy community developers and financing parties.
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On June 10, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2026-39](#). 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](#), [Notice 2024-48](#), and [Notice 2025-31](#).

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, Notice 2025-31, and Notice 2026-39.

NOTICE 2026-39

Notice 2026-39 provides three 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 2026-39, as well as the previous appendices published with Notices 2023-39, 2023-45, 2023-47, 2024-30, Notice 2024-48, and Notice 2025-31, 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.

Appendix 1

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. To date, Fossil Fuel Tax Revenue has not been used by the Treasury or the IRS to qualify any MSAs or non-MSAs under the Statistical Area Category.

[Appendix 1](#) to Notice 2026-39 lists counties or county-equivalents that are MSAs or non-MSAs and that qualify as energy communities in the Statistical Area Category under Vintage 1 or Vintage 2 because they meet the Fossil Fuel Employment threshold as of the Census Bureau's publication of the 2023 County Files of the County Business Patterns and have an unemployment rate at or above the national average unemployment rate for calendar year 2025. Vintage 1 and Vintage 2 are described in Notice 2025-31.

Appendix 1 uses 2025 calendar year county unemployment rates released on May 19, 2026, by the Local Area Unemployment Statistics program of the Bureau of Labor Statistics. The energy community status of the MSAs and non-MSAs listed in Appendix 1 is applicable as of June 10, 2026, and will continue until Treasury and the IRS issue an updated list based on unemployment rates for calendar year 2026.

- The June 10 applicability date is consistent with Notice 2025-31, which indicated that Appendix 3 to Notice 2025-31 would apply for the period beginning on June 23, 2025, and ending with the subsequent annual release (which in turn would apply for the period beginning with such annual release).

Appendix 2

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, Appendix 2 to Notice 2024-48, and Appendix 4 to Notice 2025-31.

[Appendix 2](#) to Notice 2026-39 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 May 4, 2026, and historical extracts from the MSHA's Mine Data Retrieval System that enumerate each status change for a mine. Appendix 2 to Notice 2026-39 should be combined with Appendix C to Notice 2023-29, Appendix 3 to Notice 2023-47, Appendix 2 to Notice 2024-48, and Appendix 4 to Notice 2025-31 to provide the full list of census tracts satisfying the Coal Closure Category.

Appendix 3

[Appendix 3](#) to Notice 2026-39 lists those tracts contained in Appendix 2 that newly qualify for the Coal Closure Category because of location data corrections issued since the publication of Notice 2025-31. Notice 2026-39 provides that projects placed in service after 2022 that were outside an energy community and are located in a

census tract listed in Appendix 3 are eligible to claim the energy community bonus for taxable years starting after 2022.

- Notice 2026-31 does not explicitly address whether census tracts that are listed in Appendix 2, which addresses newly identified tracts with coal closures, but not Appendix 3 may be treated as an energy community in 2023, 2024, or 2025. However, in our view, the inclusion of separate appendices for newly identified tracts with closures (Appendix 2) and location data corrections (Appendix 3) implies that if a coal closure occurs in a census tract in 2026 (and is listed in Appendix 2 but not Appendix 3), the census tract would be treated as an energy community in 2026 but not in years prior to the mine closure (i.e., 2023 through 2025).

CONCLUSION

Taxpayers have been eagerly awaiting the updated Statistical Area Category Appendix following the release of the calendar year 2025 unemployment data in May. Notice 2026-39 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 2026-39 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 in Appendix 1 of Notice 2026-39.

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