

1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The date of the enactment of this section, referred to in subsecs. (c)(1), (4) and (d)(1), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

#### PRIOR PROVISIONS

A prior section 44, added Pub. L. 94-12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; amended Pub. L. 94-45, title IV, §401(a), June 30, 1975, 89 Stat. 243; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to purchase of new principal residence, prior to repeal by Pub. L. 98-369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833, applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years.

Another prior section 44 was renumbered section 37 of this title.

#### EFFECTIVE DATE

Section applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L. 101-508, set out as an Effective Date of 1990 Amendment note under section 38 of this title.

#### [§ 44A. Renumbered § 21]

#### [§ 44B. Repealed. Pub. L. 98-369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833]

Section, added Pub. L. 95-30, title II, §202(a), May 23, 1977, 91 Stat. 141; amended Pub. L. 95-600, title III, §321(b)(1), Nov. 6, 1978, 92 Stat. 2834; Pub. L. 96-222, title I, §103(a)(6)(G)(i), (ii), Apr. 1, 1980, 94 Stat. 210, related to credit for employment of certain new employees.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

#### [§ 44C. Renumbered § 23]

#### [§ 44D. Renumbered § 29]

#### [§ 44E. Renumbered § 40]

#### [§ 44F. Renumbered § 30]

#### [§ 44G. Renumbered § 41]

#### [§ 44H. Renumbered § 45C]

### § 45. Electricity produced from certain renewable resources, etc.

#### (a) General rule

For purposes of section 38, the renewable electricity production credit for any taxable year is an amount equal to the product of—

- (1) 1.5 cents, multiplied by
- (2) the kilowatt hours of electricity—
  - (A) produced by the taxpayer—
    - (i) from qualified energy resources, and
    - (ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and
  - (B) sold by the taxpayer to an unrelated person during the taxable year.

#### (b) Limitations and adjustments

##### (1) Phaseout of credit

The amount of the credit determined under subsection (a) shall be reduced by an amount

which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

- (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to
- (B) 3 cents.

#### (2) Credit and phaseout adjustment based on inflation

The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the \$4.375 amount in subsection (e)(8)(A), the \$2 amount in subsection (e)(8)(D)(ii)(I), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

#### (3) Credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits

The amount of the credit determined under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and the lesser of  $\frac{1}{2}$  or a fraction—

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103,

(iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the project, and

(iv) the amount of any other credit allowable with respect to any property which is part of the project, and

(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year. This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).

#### (4) Credit rate and period for electricity produced and sold from certain facilities

##### (A) Credit rate

In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), (7), (9), or (11) of subsection (d), the

amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

**(B) Credit period**

**(i) In general**

Except as provided in clause (ii) or clause (iii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

**(ii) Certain open-loop biomass facilities**

In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

**(iii) Termination**

Clause (i) shall not apply to any facility placed in service after the date of the enactment of this clause.

**(5) Phaseout of credit for wind facilities**

In the case of any facility using wind to produce electricity, the amount of the credit determined under subsection (a) (determined after the application of paragraphs (1), (2), and (3) and without regard to this paragraph) shall be reduced by—

(A) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent,

(B) in the case of any facility the construction of which begins after December 31, 2017, and before January 1, 2019, 40 percent, and

(C) in the case of any facility the construction of which begins after December 31, 2018, and before January 1, 2020, 60 percent.

**(c) Resources**

For purposes of this section:

**(1) In general**

The term “qualified energy resources” means—

- (A) wind,
- (B) closed-loop biomass,
- (C) open-loop biomass,
- (D) geothermal energy,
- (E) solar energy,
- (F) small irrigation power,
- (G) municipal solid waste,
- (H) qualified hydropower production, and
- (I) marine and hydrokinetic renewable energy.

**(2) Closed-loop biomass**

The term “closed-loop biomass” means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

**(3) Open-loop biomass**

**(A) In general**

The term “open-loop biomass” means—

(i) any agricultural livestock waste nutrients, or

(ii) any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from—

(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

**(B) Agricultural livestock waste nutrients**

**(i) In general**

The term “agricultural livestock waste nutrients” means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

**(ii) Agricultural livestock**

The term “agricultural livestock” includes bovine, swine, poultry, and sheep.

**(4) Geothermal energy**

The term “geothermal energy” means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

**(5) Small irrigation power**

The term “small irrigation power” means power—

(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

**(6) Municipal solid waste**

The term “municipal solid waste” has the meaning given the term “solid waste” under section 2(27)<sup>1</sup> of the Solid Waste Disposal Act (42 U.S.C. 6903), except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined).

**(7) Refined coal**

**(A) In general**

The term “refined coal” means a fuel—

(i) which—

(I) is a liquid, gaseous, or solid fuel produced from coal (including lignite) or

<sup>1</sup> See References in Text note below.

high carbon fly ash, including such fuel used as a feedstock,

(II) is sold by the taxpayer with the reasonable expectation that it will be used for purpose<sup>2</sup> of producing steam, and

(III) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction.<sup>3</sup>

(ii) which is steel industry fuel.

**(B) Qualified emission reduction**

The term “qualified emission reduction” means a reduction of at least 20 percent of the emissions of nitrogen oxide and at least 40 percent of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

**(C) Steel industry fuel**

**(i) In general**

The term “steel industry fuel” means a fuel which—

(I) is produced through a process of liquifying coal waste sludge and distributing it on coal, and

(II) is used as a feedstock for the manufacture of coke.

**(ii) Coal waste sludge**

The term “coal waste sludge” means the tar decanter sludge and related byproducts of the coking process, including such materials that have been stored in ground, in tanks and in lagoons, that have been treated as hazardous wastes under applicable Federal environmental rules absent liquefaction and processing with coal into a feedstock for the manufacture of coke.

**(8) Qualified hydropower production**

**(A) In general**

The term “qualified hydropower production” means—

(i) in the case of any hydroelectric dam which was placed in service on or before the date of the enactment of this paragraph, the incremental hydropower production for the taxable year, and

(ii) in the case of any nonhydroelectric dam described in subparagraph (C), the hydropower production from the facility for the taxable year.

**(B) Determination of incremental hydropower production**

**(i) In general**

For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower produc-

tion at the facility attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.

**(ii) Operational changes disregarded**

For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

**(C) Nonhydroelectric dam**

For purposes of subparagraph (A), a facility is described in this subparagraph if—

(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on the date of the enactment of this paragraph, and

(iii) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets the criteria in clause (iii). Nothing in this section shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act.

**(9) Indian coal**

**(A) In general**

The term “Indian coal” means coal which is produced from coal reserves which, on June 14, 2005—

(i) were owned by an Indian tribe, or

(ii) were held in trust by the United States for the benefit of an Indian tribe or its members.

**(B) Indian tribe**

For purposes of this paragraph, the term “Indian tribe” has the meaning given such term by section 7871(c)(3)(E)(ii).

<sup>2</sup> So in original. Probably should be preceded by “the”.

<sup>3</sup> So in original. The period probably should be “, or”.

**(10) Marine and hydrokinetic renewable energy**

**(A) In general**

The term “marine and hydrokinetic renewable energy” means energy derived from—

- (i) waves, tides, and currents in oceans, estuaries, and tidal areas,
- (ii) free flowing water in rivers, lakes, and streams,
- (iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize non-mechanical structures to accelerate the flow of water for electric power production purposes, or
- (iv) differentials in ocean temperature (ocean thermal energy conversion).

**(B) Exceptions**

Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.

**(d) Qualified facilities**

For purposes of this section:

**(1) Wind facility**

In the case of a facility using wind to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and the construction of which begins before January 1, 2020. Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.

**(2) Closed-loop biomass facility**

**(A) In general**

In the case of a facility using closed-loop biomass to produce electricity, the term “qualified facility” means any facility—

- (i) owned by the taxpayer which is originally placed in service after December 31, 1992, and the construction of which begins before January 1, 2017, or
- (ii) owned by the taxpayer which before January 1, 2017, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

For purposes of clause (ii), a facility shall be treated as modified before January 1, 2017, if the construction of such modification begins before such date.

**(B) Expansion of facility**

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facil-

ity described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

**(C) Special rules**

In the case of a qualified facility described in subparagraph (A)(ii)—

- (i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and
- (ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

**(3) Open-loop biomass facilities**

**(A) In general**

In the case of a facility using open-loop biomass to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which—

- (i) in the case of a facility using agricultural livestock waste nutrients—
  - (I) is originally placed in service after the date of the enactment of this subclause and the construction of which begins before January 1, 2017, and
  - (II) the nameplate capacity rating of which is not less than 150 kilowatts, and
- (ii) in the case of any other facility, the construction of which begins before January 1, 2017.

**(B) Expansion of facility**

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

**(C) Credit eligibility**

In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

**(4) Geothermal or solar energy facility**

In the case of a facility using geothermal or solar energy to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and which—

- (A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or
- (B) in the case of a facility using geothermal energy, the construction of which begins before January 1, 2017.

Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

**(5) Small irrigation power facility**

In the case of a facility using small irrigation power to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before October 3, 2008.

**(6) Landfill gas facilities**

In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and the construction of which begins before January 1, 2017.

**(7) Trash facilities**

In the case of a facility (other than a facility described in paragraph (6)) which uses municipal solid waste to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and the construction of which begins before January 1, 2017. Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

**(8) Refined coal production facility**

In the case of a facility that produces refined coal, the term “refined coal production facility” means—

(A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2012.

**(9) Qualified hydropower facility****(A) In general**

In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term “qualified facility” means—

(i) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, 2017, and

(ii) any other facility placed in service after the date of the enactment of this paragraph and the construction of which begins before January 1, 2017.

**(B) Credit period**

In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as

beginning on the date the efficiency improvements or additions to capacity are placed in service.

**(C) Special rule**

For purposes of subparagraph (A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2017, if the construction of such improvement or addition begins before such date.

**(10) Indian coal production facility**

The term “Indian coal production facility” means a facility that produces Indian coal.

**(11) Marine and hydrokinetic renewable energy facilities**

In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term “qualified facility” means any facility owned by the taxpayer—

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and the construction of which begins before January 1, 2017.

**(e) Definitions and special rules**

For purposes of this section—

**(1) Only production in the United States taken into account**

Sales shall be taken into account under this section only with respect to electricity the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

**(2) Computation of inflation adjustment factor and reference price****(A) In general**

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for such calendar year in accordance with this paragraph.

**(B) Inflation adjustment factor**

The term “inflation adjustment factor” means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term “GDP implicit price deflator” means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

**(C) Reference price**

The term “reference price” means, with respect to a calendar year, the Secretary’s determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the

United States. For purposes of the preceding sentence, only contracts entered into after December 31, 1989, shall be taken into account.

**(3) Production attributable to the taxpayer**

In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

**(4) Related persons**

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

**(5) Pass-thru in the case of estates and trusts**

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

**[(6) Repealed. Pub. L. 109-58, title XIII, § 1301(f)(3), Aug. 8, 2005, 119 Stat. 990]**

**(7) Credit not to apply to electricity sold to utilities under certain contracts**

**(A) In general**

The credit determined under subsection (a) shall not apply to electricity—

- (i) produced at a qualified facility described in subsection (d)(1) which is originally placed in service after June 30, 1999, and
- (ii) sold to a utility pursuant to a contract originally entered into before January 1, 1987 (whether or not amended or restated after that date).

**(B) Exception**

Subparagraph (A) shall not apply if—

- (i) the prices for energy and capacity from such facility are established pursuant to an amendment to the contract referred to in subparagraph (A)(ii),
- (ii) such amendment provides that the prices set forth in the contract which exceed avoided cost prices determined at the time of delivery shall apply only to annual quantities of electricity (prorated for partial years) which do not exceed the greater of—

(I) the average annual quantity of electricity sold to the utility under the contract during calendar years 1994, 1995, 1996, 1997, and 1998, or

(II) the estimate of the annual electricity production set forth in the contract, or, if there is no such estimate, the greatest annual quantity of electricity sold to the utility under the contract in any of the calendar years 1996, 1997, or 1998, and

(iii) such amendment provides that energy and capacity in excess of the limitation in clause (ii) may be—

(I) sold to the utility only at prices that do not exceed avoided cost prices determined at the time of delivery, or

(II) sold to a third party subject to a mutually agreed upon advance notice to the utility.

For purposes of this subparagraph, avoided cost prices shall be determined as provided for in 18 CFR 292.304(d)(1) or any successor regulation.

**(8) Refined coal production facilities**

**(A) Determination of credit amount**

In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to \$4.375 per ton of qualified refined coal—

- (i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and
- (ii) sold by the taxpayer—
  - (I) to an unrelated person, and
  - (II) during such 10-year period and such taxable year.

**(B) Phaseout of credit**

The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

- (i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to
- (ii) \$8.75.

**(C) Application of rules**

Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

**(D) Special rule for steel industry fuel**

**(i) In general**

In the case of a taxpayer who produces steel industry fuel—

- (I) this paragraph shall be applied separately with respect to steel industry fuel and other refined coal, and
- (II) in applying this paragraph to steel industry fuel, the modifications in clause (ii) shall apply.

**(ii) Modifications**

**(I) Credit amount**

Subparagraph (A) shall be applied by substituting “\$2 per barrel-of-oil equivalent” for “\$4.375 per ton”.

**(II) Credit period**

In lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be the period beginning on the later of the date such

facility was originally placed in service, the date the modifications described in clause (iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in clause (iii) were placed in service.

**(III) No phaseout**

Subparagraph (B) shall not apply.

**(iii) Modifications**

The modifications described in this clause are modifications to an existing facility which allow such facility to produce steel industry fuel.

**(iv) Barrel-of-oil equivalent**

For purposes of this subparagraph, a barrel-of-oil equivalent is the amount of steel industry fuel that has a Btu content of 5,800,000 Btus.

**(9) Coordination with credit for producing fuel from a nonconventional source**

**(A) In general**

The term “qualified facility” shall not include any facility which produces electricity from gas derived from the biodegradation of municipal solid waste if such biodegradation occurred in a facility (within the meaning of section 45K) the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year.

**(B) Refined coal facilities**

**(i) In general**

The term “refined coal production facility” shall not include any facility the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year (or under section 29,<sup>1</sup> as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year).

**(ii) Exception for steel industry coal**

In the case of a facility producing steel industry fuel, clause (i) shall not apply to so much of the refined coal produced at such facility as is steel industry fuel.

**(10) Indian coal production facilities**

**(A) Determination of credit amount**

In the case of a producer of Indian coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal—

(i) produced by the taxpayer at an Indian coal production facility during the 11-year period beginning on January 1, 2006, and

(ii) sold by the taxpayer—

(I) to an unrelated person (either directly by the taxpayer or after sale or transfer to one or more related persons), and

(II) during such 11-year period and such taxable year.

**(B) Applicable dollar amount**

**(i) In general**

The term “applicable dollar amount” for any taxable year beginning in a calendar year means—

(I) \$1.50 in the case of calendar years 2006 through 2009, and

(II) \$2.00 in the case of calendar years beginning after 2009.

**(ii) Inflation adjustment**

In the case of any calendar year after 2006, each of the dollar amounts under clause (i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under paragraph (2)(B) for the calendar year, except that such paragraph shall be applied by substituting “2005” for “1992”.

**(C) Application of rules**

Rules similar to the rules of the subsection (b)(3) and paragraphs (1), (3), (4), and (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

**(11) Allocation of credit to patrons of agricultural cooperative**

**(A) Election to allocate**

**(i) In general**

In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

**(ii) Form and effect of election**

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

**(B) Treatment of organizations and patrons**

The amount of the credit apportioned to any patrons under subparagraph (A)—

(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

(ii) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

**(C) Special rules for decrease in credits for taxable year**

If the amount of the credit of a cooperative organization determined under sub-

section (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

- (i) such reduction, over
- (ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

#### (D) Eligible cooperative defined

For purposes of this section the term “eligible cooperative” means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

(Added Pub. L. 102-486, title XIX, §1914(a), Oct. 24, 1992, 106 Stat. 3020; amended Pub. L. 106-170, title V, §507(a)–(c), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 106-554, §1(a)(7) [title III, §319(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107-147, title VI, §603(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108-311, title III, §313(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108-357, title VII, §710(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1552–1557; Pub. L. 109-58, title XIII, §§1301(a)–(f)(4), 1302(a), 1322(a)(3)(C), Aug. 8, 2005, 119 Stat. 986–990, 1011; Pub. L. 109-135, title IV, §§402(b), 403(t), 412(j), Dec. 21, 2005, 119 Stat. 2610, 2628, 2637; Pub. L. 109-432, div. A, title II, §201, Dec. 20, 2006, 120 Stat. 2944; Pub. L. 110-172, §§7(b), 9(a), Dec. 29, 2007, 121 Stat. 2482, 2484; Pub. L. 110-343, div. B, title I, §§101(a)–(e), 102(a)–(e), 106(c)(3)(B), 108(a)–(d)(1), Oct. 3, 2008, 122 Stat. 3808–3810, 3815, 3819–3821; Pub. L. 111-5, div. B, title I, §1101(a), (b), Feb. 17, 2009, 123 Stat. 319; Pub. L. 111-312, title VII, §702(a), Dec. 17, 2010, 124 Stat. 3311; Pub. L. 112-240, title IV, §§406(a), 407(a), Jan. 2, 2013, 126 Stat. 2340; Pub. L. 113-295, div. A, title I, §§154(a), 155(a), title II, §210(g)(1), Dec. 19, 2014, 128 Stat. 4021, 4032; Pub. L. 114-113, div. P, title III, §301(a), div. Q, title I, §§186(a)–(c), (d)(2), 187(a), Dec. 18, 2015, 129 Stat. 3038, 3073, 3074.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.*

#### REFERENCES IN TEXT

The date of the enactment of this paragraph, the date of the enactment of this clause, the date of the enactment of this subclause, and the date of the enactment of the American Jobs Creation Act of 2004, referred to in subsecs. (b)(4)(B)(ii) and (d)(2)(C)(i), (3)(A)(i), (4) to (8), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

The date of the enactment of this clause and the date of the enactment of this paragraph, referred to in subsecs. (b)(4)(B)(iii), (c)(8), and (d)(9)(A), are the date of enactment of Pub. L. 109-58, which was approved Aug. 8, 2005.

Section 2(27) of the Solid Waste Disposal Act, referred to in subsec. (c)(6), probably should be section 1004(27)

of such Act which is classified to section 6903(27) of Title 42, The Public Health and Welfare.

The Federal Power Act, referred to in subsec. (c)(8)(C), is act June 10, 1920, ch. 285, 41 Stat. 1063. Part I of the Act is classified generally to subchapter I (§791a et seq.) of chapter 12 of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The date of the enactment of this subparagraph and the date of the enactment of this paragraph, referred to in subsec. (d)(2)(B), (3)(B), (11), are the date of enactment of Pub. L. 110-343, which was approved Oct. 3, 2008.

Section 29, referred to in subsec. (e)(9)(B)(i), was redesignated section 45K of this title by Pub. L. 109-58, title XIII, §1322(a)(1), Aug. 8, 2005, 119 Stat. 1011.

The date of enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (e)(9)(B)(i), is the date of enactment of title XIII of Pub. L. 109-58, which was approved Aug. 8, 2005.

#### PRIOR PROVISIONS

A prior section 45 was renumbered section 37 of this title.

#### AMENDMENTS

2015—Subsec. (b)(5). Pub. L. 114-113, §301(a)(2), added par. (5).

Subsec. (d)(1). Pub. L. 114-113, §301(a)(1), substituted “January 1, 2020” for “January 1, 2015”.

Subsec. (d)(2)(A). Pub. L. 114-113, §187(a)(1), substituted “January 1, 2017” for “January 1, 2015” wherever appearing.

Subsec. (d)(3)(A)(i)(I), (ii). Pub. L. 114-113, §187(a)(2), substituted “January 1, 2017” for “January 1, 2015”.

Subsec. (d)(4)(B). Pub. L. 114-113, §187(a)(3), substituted “January 1, 2017” for “January 1, 2015”.

Subsec. (d)(6). Pub. L. 114-113, §187(a)(4), substituted “January 1, 2017” for “January 1, 2015”.

Subsec. (d)(7). Pub. L. 114-113, §187(a)(5), substituted “January 1, 2017” for “January 1, 2015”.

Subsec. (d)(9)(A)(i), (ii), (C). Pub. L. 114-113, §187(a)(6), substituted “January 1, 2017” for “January 1, 2015”.

Subsec. (d)(10). Pub. L. 114-113, §186(b), amended par. (10) generally. Prior to amendment, text read as follows: “In the case of a facility that produces Indian coal, the term ‘Indian coal production facility’ means a facility which is placed in service before January 1, 2009.”

Subsec. (d)(11)(B). Pub. L. 114-113, §187(a)(7), substituted “January 1, 2017” for “January 1, 2015”.

Subsec. (e)(10)(A)(i). Pub. L. 114-113, §186(a), substituted “11-year period” for “9-year period”.

Subsec. (e)(10)(A)(ii)(I). Pub. L. 114-113, §186(c), inserted “(either directly by the taxpayer or after sale or transfer to one or more related persons)” after “unrelated person”.

Subsec. (e)(10)(A)(ii)(II). Pub. L. 114-113, §186(a), substituted “11-year period” for “9-year period”.

Subsec. (e)(10)(D). Pub. L. 114-113, §186(d)(2), struck out subpar. (D). Text read as follows: “The increase in the credit determined under subsection (a) by reason of this paragraph with respect to any facility shall be treated as a specified credit for purposes of section 38(c)(4)(A) during the 4-year period beginning on the later of January 1, 2006, or the date on which such facility is placed in service by the taxpayer.”

2014—Subsec. (b)(2). Pub. L. 113-295, §210(g)(1), substituted “\$2 amount” for “\$3 amount”.

Subsec. (d). Pub. L. 113-295, §155(a), substituted “January 1, 2015” for “January 1, 2014” wherever appearing.

Subsec. (e)(10)(A)(i), (ii)(II). Pub. L. 113-295, §154(a), substituted “9-year period” for “8-year period”.

2013—Subsec. (c)(6). Pub. L. 112-240, §407(a)(2), inserted “, except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined)” after “(42 U.S.C. 6903)”.

Subsec. (d)(1). Pub. L. 112-240, §407(a)(3)(A)(i), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.



Pub. L. 112-240, § 407(a)(1), substituted “January 1, 2014” for “January 1, 2013”.

Subsec. (d)(2)(A). Pub. L. 112-240, § 407(a)(3)(B), inserted concluding provisions.

Subsec. (d)(2)(A)(i). Pub. L. 112-240, § 407(a)(3)(A)(ii), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.

Subsec. (d)(3)(A)(i)(I). Pub. L. 112-240, § 407(a)(3)(A)(iii), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.

Subsec. (d)(3)(A)(ii). Pub. L. 112-240, § 407(a)(3)(C), substituted “the construction of which begins” for “is originally placed in service”.

Subsec. (d)(4). Pub. L. 112-240, § 407(a)(3)(D)(i), substituted “and which—”, subpars. (A) and (B), and concluding provisions for “and before January 1, 2014 (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.”

Subsec. (d)(6). Pub. L. 112-240, § 407(a)(3)(A)(iv), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.

Subsec. (d)(7). Pub. L. 112-240, § 407(a)(3)(A)(v), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.

Subsec. (d)(9). Pub. L. 112-240, § 407(a)(3)(E), designated introductory provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), realigned margins, added subpar. (C), and redesignated former subpar. (C) as (B).

Subsec. (d)(9)(B). Pub. L. 112-240, § 407(a)(3)(A)(vi), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.

Subsec. (d)(11)(B). Pub. L. 112-240, § 407(a)(3)(A)(vii), substituted “the construction of which begins before January 1, 2014” for “before January 1, 2014”.

Subsec. (e)(10)(A)(i), (ii)(II). Pub. L. 112-240, § 406(a), substituted “8-year period” for “7-year period”.

2010—Subsec. (d)(8)(B). Pub. L. 111-312 substituted “January 1, 2012” for “January 1, 2010”.

2009—Subsec. (d)(1). Pub. L. 111-5, § 1101(a)(1), substituted “2013” for “2010”.

Subsec. (d)(2)(A)(i), (ii), (3)(A)(i)(I), (ii), (4). Pub. L. 111-5, § 1101(a)(2), substituted “2014” for “2011”.

Subsec. (d)(5). Pub. L. 111-5, § 1101(b), substituted “and before October 3, 2008.” for “and before the date of the enactment of paragraph (11).”

Subsec. (d)(6), (7), (9)(A), (B). Pub. L. 111-5, § 1101(a)(2), substituted “2014” for “2011”.

Subsec. (d)(11)(B). Pub. L. 111-5, § 1101(a)(3), substituted “2014” for “2012”.

2008—Subsec. (b)(2). Pub. L. 110-343, § 108(b)(2), inserted “the \$3 amount in subsection (e)(8)(D)(ii)(I),” after “subsection (e)(8)(A).”

Subsec. (b)(4)(A). Pub. L. 110-343, § 102(d), substituted “(9), or (11)” for “or (9)”.

Subsec. (c)(1)(I). Pub. L. 110-343, § 102(a), added subpar. (I).

Subsec. (c)(7)(A). Pub. L. 110-343, § 108(a)(1), reenacted heading without change and amended text generally. Prior to amendment, subpar. (A) defined “refined coal”.

Subsec. (c)(7)(A)(i). Pub. L. 110-343, § 101(b)(1), amended subsec. (c)(7)(A)(i) as amended by Pub. L. 110-348, § 108(a)(1), by inserting “and” at end of subcl. (II), substituting period for “, and” at end of subcl. (III), and striking out subcl. (IV) which read as follows: “is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal, or”.

Subsec. (c)(7)(B). Pub. L. 110-343, § 101(b)(2), inserted “at least 40 percent of the emissions of” after “nitrogen oxide and”.

Subsec. (c)(7)(C). Pub. L. 110-343, § 108(a)(2), added subpar. (C).

Subsec. (c)(8)(C). Pub. L. 110-343, § 101(e), reenacted heading without change and amended text generally. Prior to amendment, subpar. (C) described a nonhydro-electric dam facility for purposes of subpar. (A).

Subsec. (c)(10). Pub. L. 110-343, § 102(b), added par. (10).

Subsec. (d)(1). Pub. L. 110-343, § 106(c)(3)(B), inserted at end “Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.”

Pub. L. 110-343, § 101(a)(1), substituted “January 1, 2010” for “January 1, 2009”.

Subsec. (d)(2)(A). Pub. L. 110-343, § 101(a)(2)(A), substituted “January 1, 2011” for “January 1, 2009” in cls. (i) and (ii).

Subsec. (d)(2)(B), (C). Pub. L. 110-343, § 101(d)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(3)(A). Pub. L. 110-343, § 101(a)(2)(B), substituted “January 1, 2011” for “January 1, 2009” in cls. (i)(I) and (ii).

Subsec. (d)(3)(B), (C). Pub. L. 110-343, § 101(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(4). Pub. L. 110-343, § 101(a)(2)(C), substituted “January 1, 2011” for “January 1, 2009”.

Subsec. (d)(5). Pub. L. 110-343, § 102(e), which directed amendment of par. (5) by substituting “the date of the enactment of paragraph (11)” for “January 1, 2012”, was executed by making the substitution for “January 1, 2011” to reflect the probable intent of Congress. See below.

Pub. L. 110-343, § 101(a)(2)(D), substituted “January 1, 2011” for “January 1, 2009”.

Subsec. (d)(6). Pub. L. 110-343, § 101(a)(2)(E), substituted “January 1, 2011” for “January 1, 2009”.

Subsec. (d)(7). Pub. L. 110-343, § 101(c), struck out “combustion” before “facilities” in heading and substituted “facility (other than a facility described in paragraph (6)) which uses” for “facility which burns”.

Pub. L. 110-343, § 101(a)(2)(F), substituted “January 1, 2011” for “January 1, 2009”.

Subsec. (d)(8). Pub. L. 110-343, § 108(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In the case of a facility that produces refined coal, the term ‘refined coal production facility’ means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2010.”

Pub. L. 110-343, § 101(a)(1), substituted “January 1, 2010” for “January 1, 2009”.

Subsec. (d)(9)(A), (B). Pub. L. 110-343, § 101(a)(2)(G), substituted “January 1, 2011” for “January 1, 2009”.

Subsec. (d)(11). Pub. L. 110-343, § 102(c), added par. (11).

Subsec. (e)(8)(D). Pub. L. 110-343, § 108(b)(1), added subpar. (D).

Subsec. (e)(9)(B). Pub. L. 110-343, § 108(d)(1), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

2007—Subsec. (c)(3)(A)(ii). Pub. L. 110-172, § 7(b)(1), struck out “which is segregated from other waste materials and” after “lignin material”.

Subsec. (d)(2)(B)(i) to (iii). Pub. L. 110-172, § 7(b)(2), inserted “and” at the end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: “the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and”.

Subsec. (e)(7)(A)(i). Pub. L. 110-172, § 9(a), substituted “originally placed in service” for “placed in service by the taxpayer”.

2006—Subsec. (d)(1) to (7), (9). Pub. L. 109-432 substituted “January 1, 2009” for “January 1, 2008” wherever appearing.

2005—Subsec. (b)(4)(A). Pub. L. 109-58, § 1301(c)(2), substituted “(7), or (9)” for “or (7)”.

Subsec. (b)(4)(B)(i). Pub. L. 109-58, § 1301(b)(1), inserted “or clause (iii)” after “clause (ii)”.

Subsec. (b)(4)(B)(ii). Pub. L. 109-58, §1301(f)(1), substituted “January 1, 2005,” for “the date of the enactment of this Act”.

Subsec. (b)(4)(B)(iii). Pub. L. 109-58, §1301(b)(2), added cl. (iii).

Subsec. (c). Pub. L. 109-58, §1301(d)(4), substituted “Resources” for “Qualified energy resources and refined coal” in heading.

Subsec. (c)(1)(H). Pub. L. 109-58, §1301(c)(1), added subpar. (H).

Subsec. (c)(3)(A)(ii). Pub. L. 109-135, §402(b), substituted “lignin material” for “nonhazardous lignin waste material”.

Pub. L. 109-58, §1301(f)(2), inserted “or any nonhazardous lignin waste material” after “cellulosic waste material”.

Subsec. (c)(7)(A)(i). Pub. L. 109-135, §403(t), struck out “synthetic” after “solid”.

Subsec. (c)(8). Pub. L. 109-58, §1301(c)(3), added par. (8).

Subsec. (c)(9). Pub. L. 109-58, §1301(d)(2), added par. (9).

Subsec. (d)(1) to (3). Pub. L. 109-58, §1301(a)(1), substituted “January 1, 2008” for “January 1, 2006” wherever appearing.

Subsec. (d)(4). Pub. L. 109-58, §1301(a)(2), substituted “January 1, 2008 (January 1, 2006, in the case of a facility using solar energy)” for “January 1, 2006”.

Subsec. (d)(5), (6). Pub. L. 109-58, §1301(a)(1), substituted “January 1, 2008” for “January 1, 2006”.

Subsec. (d)(7). Pub. L. 109-58, §1301(e), inserted at end “Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.”

Pub. L. 109-58, §1301(a)(1), substituted “January 1, 2008” for “January 1, 2006”.

Subsec. (d)(8). Pub. L. 109-135, §412(j)(1), substituted “In the case of a facility that produces refined coal, the term” for “The term”.

Subsec. (d)(9). Pub. L. 109-58, §1301(c)(4), added par. (9).

Subsec. (d)(10). Pub. L. 109-135, §412(j)(2), substituted “In the case of a facility that produces Indian coal, the term” for “The term”.

Pub. L. 109-58, §1301(d)(3), added par. (10).

Subsec. (e)(6). Pub. L. 109-58, §1301(f)(3), struck out heading and text of par. (6). Text read as follows: “In the case of a facility using poultry waste to produce electricity and owned by a governmental unit, the person eligible for the credit under subsection (a) is the lessee or the operator of such facility.”

Subsec. (e)(8)(C). Pub. L. 109-58, §1301(f)(4)(B), struck out “and (9)” after “paragraphs (1) through (5)”.

Subsec. (e)(9). Pub. L. 109-58, §1322(a)(3)(C)(i), substituted “section 45K” for “section 29” wherever appearing.

Pub. L. 109-58, §1301(f)(4)(A), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: “The term ‘qualified facility’ shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.”

Subsec. (e)(9)(B). Pub. L. 109-58, §1322(a)(3)(C)(ii), inserted “(or under section 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year)” before period at end.

Subsec. (e)(10). Pub. L. 109-58, §1301(d)(1), added par. (10).

Subsec. (e)(11). Pub. L. 109-58, §1302(a), added par. (11). 2004—Pub. L. 108-357, §710(b)(3)(B), inserted “, etc” after “resources” in section catchline.

Subsec. (b)(2). Pub. L. 108-357, §710(b)(3)(C), substituted “The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the \$4.375 amount in subsection (e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the

meaning of subsection (c)(7)(A)) in 2002” for “The 1.5 cent amount in subsection (a) and the 8 cent amount in paragraph (1)”.

Subsec. (b)(3). Pub. L. 108-357, §710(f), inserted “the lesser of ½ or” before “a fraction” in introductory provisions and “This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii)” in concluding provisions.

Subsec. (b)(4). Pub. L. 108-357, §710(c), added par. (4).

Subsec. (c). Pub. L. 108-357, §710(a), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) defined “qualified energy resources”, “closed-loop biomass”, “qualified facility”, and “poultry waste” for purposes of this section.

Subsec. (c)(3). Pub. L. 108-311 substituted “January 1, 2006” for “January 1, 2004” in subpars. (A) to (C).

Subsec. (d). Pub. L. 108-357, §710(b)(1), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108-357, §710(b)(1), redesignated subsec. (d) as (e).

Subsec. (e)(7)(A)(i). Pub. L. 108-357, §710(b)(3)(A), substituted “subsection (d)(1)” for “subsection (c)(3)(A)”.

Subsec. (e)(8). Pub. L. 108-357, §710(b)(2), added par. (8).

Subsec. (e)(9). Pub. L. 108-357, §710(d), added par. (9). 2002—Subsec. (c)(3). Pub. L. 107-147 substituted “2004” for “2002” in subpars. (A) to (C).

2000—Subsec. (d)(7)(A)(i). Pub. L. 106-554 substituted “subsection (c)(3)(A)” for “paragraph (3)(A)”.

1999—Subsec. (c)(1)(C). Pub. L. 106-170, §507(b)(1), added subpar. (C).

Subsec. (c)(3). Pub. L. 106-170, §507(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999.”

Subsec. (c)(4). Pub. L. 106-170, §507(b)(2), added par. (4).

Subsec. (d)(6), (7). Pub. L. 106-170, §507(c), added pars. (6) and (7).

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. P, title III, §301(b), Dec. 18, 2015, 129 Stat. 3038, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2015.”

Pub. L. 114-113, div. Q, title I, §186(e)(1), (2), Dec. 18, 2015, 129 Stat. 3074, provided that:

“(1) EXTENSION.—The amendments made by subsection (a) [amending this section] shall apply to coal produced after December 31, 2014.

“(2) MODIFICATIONS.—The amendments made by subsections (b) and (c) [amending this section] shall apply to coal produced and sold after December 31, 2015, in taxable years ending after such date.”

Amendment by section 186(d)(2) of Pub. L. 114-113 applicable to credits determined for taxable years beginning after Dec. 31, 2015, see section 186(e)(3) of Pub. L. 114-113, set out as a note under section 38 of this title.

Pub. L. 114-113, div. Q, title I, §187(c), Dec. 18, 2015, 129 Stat. 3074, provided that: “The amendments made by this section [amending this section and section 48 of this title] shall take effect on January 1, 2015.”

#### EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §154(b), Dec. 19, 2014, 128 Stat. 4021, provided that: “The amendment made by this section [amending this section] shall apply to coal produced after December 31, 2013.”

Pub. L. 113-295, div. A, title I, §155(c), Dec. 19, 2014, 128 Stat. 4021, provided that: “The amendments made by this section [amending this section and section 48 of this title] shall take effect on January 1, 2014.”

Pub. L. 113-295, div. A, title II, §210(h), Dec. 19, 2014, 128 Stat. 4032, provided that: “The amendments made by this section [amending this section and sections 45K,

168, 907, 1012, and 6045 of this title and provisions set out as a note under section 9501 of this title] shall take effect as if included in the provisions of the Energy Improvement and Extension Act of 2008 [Pub. L. 110-343, div. B] to which they relate.”

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title IV, § 406(b), Jan. 2, 2013, 126 Stat. 2340, provided that: “The amendment made by this section [amending this section] shall apply to coal produced after December 31, 2012.”

Pub. L. 112-240, title IV, § 407(d), Jan. 2, 2013, 126 Stat. 2342, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, section 48 of this title, and provisions set out as a note under section 48 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 2013].

“(2) MODIFICATION TO DEFINITION OF MUNICIPAL SOLID WASTE.—The amendments made by subsection (a)(2) [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

“(3) TECHNICAL CORRECTIONS.—The amendments made by subsection (c) [amending section 48 of this title and provisions set out as a note under section 48 of this title] shall apply as if included in the enactment of the provisions of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5] to which they relate.”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, § 702(b), Dec. 17, 2010, 124 Stat. 3311, provided that: “The amendment made by this section [amending this section] shall apply to facilities placed in service after December 31, 2009.”

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, § 1101(c), Feb. 17, 2009, 123 Stat. 319, provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].

“(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 102 of the Energy Improvement and Extension Act of 2008 [Pub. L. 110-343].”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, § 101(f), Oct. 3, 2008, 122 Stat. 3810, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to property originally placed in service after December 31, 2008.

“(2) REFINED COAL.—The amendments made by subsection (b) [amending this section] shall apply to coal produced and sold from facilities placed in service after December 31, 2008.

“(3) TRASH FACILITY CLARIFICATION.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008].

“(4) EXPANSION OF BIOMASS FACILITIES.—The amendments made by subsection (d) [amending this section] shall apply to property placed in service after the date of the enactment of this Act.”

Pub. L. 110-343, div. B, title I, § 102(f), Oct. 3, 2008, 122 Stat. 3811, provided that: “The amendments made by this section [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.”

Amendment by section 106(c)(3)(B) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Pub. L. 110-343, div. B, title I, § 108(e), Oct. 3, 2008, 122 Stat. 3821, provided that: “The amendments made by this section [amending this section and section 45K of this title] shall apply to fuel produced and sold after September 30, 2008.”

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(b) of Pub. L. 110-172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 7(e) of Pub. L. 110-172, set out as a note under section 1092 of this title.

Pub. L. 110-172, § 9(c), Dec. 29, 2007, 121 Stat. 2484, provided that: “The amendments made by this section [amending this section and section 856 of this title] shall take effect as if included in the provisions of the Tax Relief Extension Act of 1999 [Pub. L. 106-170] to which they relate.”

#### EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(b) of Pub. L. 109-135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(t) of Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

Pub. L. 109-58, title XIII, § 1301(g), Aug. 8, 2005, 119 Stat. 990, as amended by Pub. L. 110-172, § 11(a)(45), Dec. 29, 2007, 121 Stat. 2488, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].

“(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (e) and (f) [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004 [Pub. L. 108-357].”

Pub. L. 109-58, title XIII, § 1302(c), Aug. 8, 2005, 119 Stat. 991, provided that: “The amendments made by this section [amending this section and section 55 of this title] shall apply to taxable years of cooperative organizations ending after the date of the enactment of this Act [Aug. 8, 2005].”

Amendment by section 1322(a)(3)(C) of Pub. L. 109-58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109-58, set out as a note under section 45K of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108-357, title VII, § 710(g), Oct. 22, 2004, 118 Stat. 1557, as amended by Pub. L. 109-58, title XIII, § 1301(f)(6), Aug. 8, 2005, 119 Stat. 990, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.

“(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

“(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and

sold after December 31, 2004, in taxable years ending after such date.

“(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2005.

“(5) REFINED COAL PRODUCTION FACILITIES.—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act.”

Pub. L. 108–311, title III, §313(b), Oct. 4, 2004, 118 Stat. 1181, provided that: “The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2003.”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §603(b), Mar. 9, 2002, 116 Stat. 59, provided that: “The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2001.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §507(d), Dec. 17, 1999, 113 Stat. 1923, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 17, 1999].”

#### EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 38 of this title.

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2017—Internal Revenue Notice 2017–33.  
 2016—Internal Revenue Notice 2016–34.  
 2015—Internal Revenue Notice 2015–32.  
 2014—Internal Revenue Notice 2014–36.  
 2013—Internal Revenue Notice 2013–33.  
 2012—Internal Revenue Notice 2012–35.  
 2011—Internal Revenue Notice 2011–40.  
 2010—Internal Revenue Notice 2010–37.  
 2009—Internal Revenue Notice 2009–40.  
 2008—Internal Revenue Notice 2008–48.  
 2007—Internal Revenue Notice 2007–40.  
 2006—Internal Revenue Notice 2006–51.  
 2005—Internal Revenue Notice 2005–37.  
 2004—Internal Revenue Notice 2004–29.  
 2003—Internal Revenue Notice 2003–29.  
 2002—Internal Revenue Notice 2002–39.  
 2001—Internal Revenue Notice 2001–33.  
 2000—Internal Revenue Notice 2000–52.  
 1999—Internal Revenue Notice 99–26.  
 1998—Internal Revenue Notice 98–27.  
 1997—Internal Revenue Notice 97–30.  
 1996—Internal Revenue Notice 96–25.

### § 45A. Indian employment credit

#### (a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(1) the sum of—

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

#### (b) Qualified wages; qualified employee health insurance costs

For purposes of this section—

##### (1) Qualified wages

###### (A) In general

The term “qualified wages” means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

###### (B) Coordination with work opportunity credit

The term “qualified wages” shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51. If any portion of wages are taken into account under subsection (e)(1)(A) of section 51, the preceding sentence shall be applied by substituting “2-year period” for “1-year period”.

##### (2) Qualified employee health insurance costs

###### (A) In general

The term “qualified employee health insurance costs” means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

###### (B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

##### (3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed \$20,000.

#### (c) Qualified employee

For purposes of this section—

##### (1) In general

Except as otherwise provided in this subsection, the term “qualified employee” means, with respect to any period, any employee of an employer if—

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.