

amended sections 6802 to 6807 of Title 42. For complete classification of title I to the Code, see Tables.

Section 79z-5a of title 15, referred to in subsec. (d)(10)(A)(ii), was repealed by Pub. L. 109-58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

AMENDMENTS

2021—Subsec. (d)(20). Pub. L. 117-58, §40104(a)(1), added par. (20).

Subsec. (d)(21). Pub. L. 117-58, §40431(a), added par. (21).

2009—Subsec. (d)(16) to (19). Pub. L. 111-5 redesignated par. (16) relating to consideration of smart grid investments as (18) and par. (17) relating to smart grid information as (19).

2007—Subsec. (d)(16), (17). Pub. L. 110-140, §1307(a), added pars. (16) and (17) relating to consideration of smart grid investments and smart grid information, respectively.

Pub. L. 110-140, §532(a), added pars. (16) and (17) relating to integrated resource planning and rate design modifications to promote energy efficiency investments, respectively.

2005—Subsec. (d)(11) to (13). Pub. L. 109-58, §1251(a), added pars. (11) to (13).

Subsec. (d)(14). Pub. L. 109-58, §1252(a), added par. (14). Subsec. (d)(15). Pub. L. 109-58, §1254(a), added par. (15).

1992—Subsec. (c)(3). Pub. L. 102-486, §111(b), added par. (3).

Subsec. (d)(7) to (9). Pub. L. 102-486, §111(a), added pars. (7) to (9).

Subsec. (d)(10). Pub. L. 102-486, §712, added par. (10).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

STATE AUTHORITIES; CONSTRUCTION

Nothing in amendment by section 712 of Pub. L. 102-486 to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102-486, set out as a note under section 796 of this title.

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

REPORT TO PRESIDENT AND CONGRESS ON ENCOURAGEMENT OF INTEGRATED RESOURCE PLANNING AND INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY BY ELECTRIC UTILITIES

Pub. L. 102-486, title I, §111(e), Oct. 24, 1992, 106 Stat. 2796, provided that: "Not later than 2 years after the date of the enactment of this Act [Oct. 24, 1992], the Secretary shall transmit a report to the President and to the Congress containing—

"(1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2621(d)(7)-(9)];

"(2) an evaluation by the Secretary of whether and to what extent, integrated resource planning is likely to result in—

"(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

"(B) enhanced or reduced reliability of electric service; and

"(C) increased or decreased dependence on particular energy resources; and

"(3) a survey of practices and policies under which electric cooperatives prepare integrated resource plans, submit such plans to the Rural Electrification Administration and the extent to which such integrated resource planning is reflected in rates charged to customers.

The report shall include an analysis prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by utilities on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other demand side management measures and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs."

[For provisions relating to further requirements as to subject matter contained in report under section 111(e) of Pub. L. 102-486, set out above, see section 115(e) of Pub. L. 102-486, set out as a note under section 3203 of Title 15, Commerce and Trade.]

STUDY CONCERNING ELECTRIC RATES OF STATE UTILITY AGENCIES

Pub. L. 95-617, title VI, §601, Nov. 9, 1978, 92 Stat. 3164, directed the Secretary to conduct a study concerning the effects of provisions of Federal law on rates established by State utility agencies and to submit a report to Congress on the results of such study not later than 1 year after Nov. 9, 1978.

§ 2622. Obligations to consider and determine

(a) Request for consideration and determination

Each State regulatory authority (with respect to each electric utility for which it has rate-making authority) and each nonregulated electric utility may undertake the consideration and make the determination referred to in section 2621 of this title with respect to any standard established by section 2621(d) of this title in any proceeding respecting the rates of the electric utility. Any participant or intervenor (including an intervenor referred to in section 2631 of this title) in such a proceeding may request, and shall obtain, such consideration and determination in such proceeding. In undertaking such consideration and making such determination in any such proceeding with respect to the application to any electric utility of any standard established by section 2621(d) of this title, a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility may take into account in such proceeding—

(1) any appropriate prior determination with respect to such standard—

(A) which is made in a proceeding which takes place after November 9, 1978, or

(B) which was made before such date (or is made in a proceeding pending on such date) and complies, as provided in section 2634 of this title, with the requirements of this chapter; and

(2) the evidence upon which such prior determination was based (if such evidence is referenced in such proceeding).

(b) Time limitations

(1) Not later than 2 years after November 9, 1978 (or after October 24, 1992, in the case of

standards under paragraphs (7), (8), and (9) of section 2621(d) of this title), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for such consideration, with respect to each standard established by section 2621(d) of this title.

(2) Not later than three years after November 9, 1978 (or after October 24, 1992, in the case of standards under paragraphs (7), (8), and (9) of section 2621(d) of this title), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 2621 of this title with respect to each standard established by section 2621(d) of this title.

(3)(A) Not later than 2 years after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 2621(d) of this title.

(B) Not later than 3 years after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 2621 of this title with respect to each standard established by paragraphs (11) through (13) of section 2621(d) of this title.

(4)(A) Not later than 1 year after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 2621(d) of this title.

(B) Not later than 2 years after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 2621 of this title with respect to the standard established by paragraph (14) of section 2621(d) of this title.

(5)(A) Not later than 1 year after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for consideration, with respect to the standard established by paragraph (15) of section 2621(d) of this title.

(B) Not later than two years after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consider-

ation, and shall make the determination, referred to in section 2621 of this title with respect to each standard established by paragraph (15) of section 2621(d) of this title.

(6)(A) Not later than 1 year after December 19, 2007, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for consideration, with respect to the standards established by paragraphs (16) through (19) of section 2621(d) of this title.

(B) Not later than 2 years after December 19, 2007, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 2621 of this title with respect to each standard established by paragraphs (16) through (19) of section 2621(d) of this title.

(7)(A) Not later than 1 year after November 15, 2021, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority) and each nonregulated electric utility shall commence consideration under section 2621 of this title, or set a hearing date for consideration, with respect to the standard established by paragraph (20) of section 2621(d) of this title.

(B) Not later than 2 years after November 15, 2021, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority), and each nonregulated electric utility shall complete the consideration and make the determination under section 2621 of this title with respect to the standard established by paragraph (20) of section 2621(d) of this title.

(8)(A) Not later than 1 year after November 15, 2021, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority) and each nonregulated utility shall commence consideration under section 2621 of this title, or set a hearing date for consideration, with respect to the standard established by paragraph (21) of section 2621(d) of this title.

(B) Not later than 2 years after November 15, 2021, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority), and each nonregulated electric utility shall complete the consideration and make the determination under section 2621 of this title with respect to the standard established by paragraph (21) of section 2621(d) of this title.

(c) Failure to comply

Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 2621 of this title with respect to each standard established by section 2621(d) of this title in the first rate proceeding commenced after the date three years after November 9, 1978, respecting the rates of such utility if such State regulatory authority or nonregulated electric utility

has not, before such date, complied with subsection (b)(2) with respect to such standard. In the case of each standard established by paragraphs (11) through (13) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of the standard established by paragraph (14) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of the standard established by paragraph (15) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of the standards established by paragraphs (16) through (19) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to December 19, 2007. In the case of the standard established by paragraph (20) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to November 15, 2021. In the case of the standard established by paragraph (21) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to November 15, 2021.

(d) Prior State actions relating to standard under certain paragraphs of section 2621(d)

Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) and paragraphs (16) through (19) of section 2621(d) of this title in the case of any electric utility in a State if, before August 8, 2005—

- (1) the State has implemented for such utility the standard concerned (or a comparable standard);
- (2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or
- (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

(e) Prior State actions relating to standard under section 2621(d)(14)

Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 2621(d) of this title in the case of any electric utility in a State if, before August 8, 2005—

- (1) the State has implemented for such utility the standard concerned (or a comparable standard);
- (2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or
- (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.

(f) Prior State actions relating to standard under section 2621(d)(15)

Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (15) of section 2621(d) of this title in the case of any electric utility in a State if, before August 8, 2005—

- (1) the State has implemented for such utility the standard concerned (or a comparable standard);
- (2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or
- (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

(g) Prior State actions

Subsections (b) and (c) shall not apply to the standard established by paragraph (20) of section 2621(d) of this title in the case of any electric utility in a State if, before November 15, 2021—

- (1) the State has implemented for the electric utility the standard (or a comparable standard);
- (2) the State regulatory authority for the State or the relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard (or a comparable standard) for the electric utility; or
- (3) the State legislature has voted on the implementation of the standard (or a comparable standard) for the electric utility.

(h) Other prior State actions

Subsections (b) and (c) shall not apply to the standard established by paragraph (21) of section 2621(d) of this title in the case of any electric utility in a State if, before November 15, 2021—

- (1) the State has implemented for the electric utility the standard (or a comparable standard);
- (2) the State regulatory authority for the State or the relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard (or a comparable standard) for the electric utility; or
- (3) the State legislature has voted on the implementation of the standard (or a comparable standard) for the electric utility during the 3-year period ending on November 15, 2021.

(Pub. L. 95-617, title I, §112, Nov. 9, 1978, 92 Stat. 3122; Pub. L. 102-486, title I, §111(c), Oct. 24, 1992, 106 Stat. 2795; Pub. L. 109-58, title XII, §§1251(b)(1)-(3)(A), 1252(g)-(i)(1), 1254(b)(1)-(3)(A), Aug. 8, 2005, 119 Stat. 963, 966, 967, 971; Pub. L. 110-140, title XIII, §1307(b), Dec. 19, 2007, 121 Stat. 1793; Pub. L. 111-5, div. A, title IV, §408(b), Feb. 17, 2009, 123 Stat. 146; Pub. L. 117-58, div. D, title I, §40104(a)(2)(A)-(C)(i), title IV, §40431(b)(1)-(3)(A), Nov. 15, 2021, 135 Stat. 931, 932, 1048.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(B), was in the original “this title”, meaning title I (§101 et seq.) of Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3120, which en-

acted subchapters I to IV of this chapter and section 6808 of Title 42, The Public Health and Welfare, and amended sections 6802 to 6807 of Title 42. For complete classification of title I to the Code, see Tables.

CODIFICATION

“October 24, 1992”, referred to in subsec. (b)(1), (2), was in the original “the enactment of the Comprehensive National Energy Policy Act”, and was translated as meaning the enactment of the Energy Policy Act of 1992, Pub. L. 102-486, to reflect the probable intent of Congress. The Comprehensive National Energy Policy Act was the original short title of H.R. 776, which was enacted into law on Oct. 24, 1992, as Pub. L. 102-486.

AMENDMENTS

2021—Subsec. (b)(7). Pub. L. 117-58, § 40104(a)(2)(A), added par. (7).

Subsec. (b)(8). Pub. L. 117-58, § 40431(b)(1), added par. (8).

Subsec. (c). Pub. L. 117-58, § 40431(b)(2), inserted at end “In the case of the standard established by paragraph (21) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to November 15, 2021.”

Pub. L. 117-58, § 40104(a)(2)(B)(i), substituted “August 8, 2005. In the case of the standard established by paragraph (15) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of the standards established by paragraphs (16)” for “August 8, 2005. In the case of the standards established by paragraphs (16)” and inserted at end “In the case of the standard established by paragraph (20) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to November 15, 2021.”

Subsec. (d). Pub. L. 117-58, § 40104(a)(2)(B)(ii), repealed Pub. L. 109-58, § 1254(b)(2). See 2005 Amendment note below.

Subsec. (g). Pub. L. 117-58, § 40104(a)(2)(C)(i), added subsec. (g).

Subsec. (h). Pub. L. 117-58, § 40431(b)(3)(A), added subsec. (h).

2009—Subsecs. (b)(6), (d). Pub. L. 111-5 substituted “(16) through (19)” for “(17) through (18)” wherever appearing.

2007—Subsec. (b)(6). Pub. L. 110-140, § 1307(b)(1), added par. (6).

Subsec. (c). Pub. L. 110-140, § 1307(b)(2), inserted at end “In the case of the standards established by paragraphs (16) through (19) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to December 19, 2007.”

Subsec. (d). Pub. L. 110-140, § 1307(b)(3), inserted “and paragraphs (17) through (18)” before “of section 2621(d)” in introductory provisions.

2005—Subsec. (b)(3). Pub. L. 109-58, § 1251(b)(1), added par. (3).

Subsec. (b)(4). Pub. L. 109-58, § 1252(g), added par. (4).

Subsec. (b)(5). Pub. L. 109-58, § 1254(b)(1), added par. (5).

Subsec. (c). Pub. L. 109-58, § 1252(h), inserted at end “In the case of the standard established by paragraph (14) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005.”

Pub. L. 109-58, § 1251(b)(2), inserted at end “In the case of each standard established by paragraphs (11) through (13) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005.”

Subsec. (d). Pub. L. 109-58, § 1254(b)(2), which directed amendment of subsec. (d) by inserting at end “In the case of the standard established by paragraph (15), the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005.”, was repealed and made void by Pub. L. 117-58, § 40104(a)(2)(B)(ii). See Effective Date of 2021 Amendment note below.

Pub. L. 109-58, § 1251(b)(3)(A), added subsec. (d).

Subsec. (e). Pub. L. 109-58, § 1252(i)(1), added subsec. (e).

Subsec. (f). Pub. L. 109-58, § 1254(b)(3)(A), added subsec. (f).

1992—Subsec. (b)(1), (2). Pub. L. 102-486 inserted “(or after October 24, 1992, in the case of standards under paragraphs (7), (8), and (9) of section 2621(d) of this title)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-58, div. D, title I, § 40104(a)(2)(B)(ii), Nov. 15, 2021, 135 Stat. 931, provided that: “Paragraph (2) of section 1254(b) of the Energy Policy Act of 2005 (Public Law 109-58; 119 Stat. 971) [amending this section] is repealed and the amendment made by that paragraph (as in effect on the day before the date of enactment of this Act [Nov. 15, 2021]) is void, and section 112(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(d)) shall be in effect as if that amendment had not been enacted.”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

§ 2623. Adoption of certain standards

(a) Adoption of standards

Not later than two years after November 9, 1978, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall—

(1) adopt the standards established by subsection (b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(4) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 2633 of this title, the purposes of this chapter supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law.