the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(d) Definition of disability; special rules

For purposes of this section—

(1) Disability

The term ''disability'' has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Controlled groups

(A) In general

All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

(B) Dollar limitation

The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

(3) Partnerships and S corporations

In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(4) Short years

The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

(5) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(6) Treatment of predecessors

The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

(7) Denial of double benefit

In the case of the amount of the credit determined under this section—

(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

(B) no increase in the adjusted basis of any property shall result from such amount.

(e) Regulations

The Secretary shall prescribe regulations necessary to carry out the purposes of this section.

(Added Pub. L. 101–508, title XI, §11611(a), Nov. 5, 1990, 104 Stat. 1388–501.)

Editorial Notes

REFERENCES IN TEXT

The Americans With Disabilities Act of 1990, referred to in subsecs. (c)(1) and (d)(1), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, 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.

Statutory Notes and Related Subsidiaries

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.

Statutory Notes and Related Subsidiaries

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) 0.3 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 0.3 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 the 0.3 cent amount as increased under the preceding sentence is not a multiple of 0.05 cent, such amount shall be rounded to the nearest multiple of 0.05 cent. In any other case, if an amount as increased under this paragraph 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 tax-exempt bonds

The amount of the credit determined under subsection (a) with respect to any facility 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 15 percent or a fraction—

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of proceeds of an issue of any obligations the interest on which is exempt from tax under section 103 and which is used to provide financing for the qualified facility, and

(B) the denominator of which is the aggregate amount of additions to the capital account for the qualified facility 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.

(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), or (7) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last two sentences 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 which is placed in service before January 1, 2022, 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,

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

(D) in the case of any facility the construction of which begins after December 31, 2019, and before January 1, 2022, 40 percent.

(6) Increased credit amount for qualified facilities

(A) In general

In the case of any qualified facility which satisfies the requirements of subparagraph (B), the amount of the credit determined under subsection (a) (determined after the application of paragraphs (1) through (5) and without regard to this paragraph) shall be equal to such amount multiplied by 5.

(B) Qualified facility requirements

A qualified facility meets the requirements of this subparagraph if it is one of the following:

(i) A facility with a maximum net output of less than 1 megawatt (as measured in alternating current).

(ii) A facility the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (7)(A) and (8).

(iii) A facility which satisfies the requirements of paragraphs (7)(A) and (8).

(7) Prevailing wage requirements

(A) In general

The requirements described in this subparagraph with respect to any qualified facility are that the taxpayer shall ensure

that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in—

(i) the construction of such facility, and

(ii) with respect to any taxable year, for any portion of such taxable year which is within the period described in subsection (a)(2)(A)(ii), the alteration or repair of such facility,

shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. For purposes of determining an increased credit amount under paragraph (6)(A) for a taxable year, the requirement under clause (ii) is applied to such taxable year in which the alteration or repair of the qualified facility occurs.

(B) Correction and penalty related to failure to satisfy wage requirements

(i) In general

In the case of any taxpayer which fails to satisfy the requirement under subparagraph (A) with respect to the construction of any qualified facility or with respect to the alteration or repair of a facility in any year during the period described in subparagraph (A)(ii), such taxpayer shall be deemed to have satisfied such requirement under such subparagraph with respect to such facility for any year if, with respect to any laborer or mechanic who was paid wages at a rate below the rate described in such subparagraph for any period during such year, such taxpayer—

(I) makes payment to such laborer or mechanic in an amount equal to the sum of—

(aa) an amount equal to the difference between—

(AA) the amount of wages paid to such laborer or mechanic during such period, and

(BB) the amount of wages required to be paid to such laborer or mechanic pursuant to such subparagraph during such period, plus

(bb) interest on the amount determined under item (aa) at the underpayment rate established under section 6621 (determined by substituting ''6 percentage points'' for ''3 percentage points'' in subsection (a)(2) of such section) for the period described in such item, and

(II) makes payment to the Secretary of a penalty in an amount equal to the product of—

(aa) $5,000, multiplied by

(bb) the total number of laborers and mechanics who were paid wages at a rate below the rate described in subparagraph (A) for any period during such year.

(ii) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply with respect to the assessment or collection of any penalty imposed by this paragraph.

(iii) Intentional disregard

If the Secretary determines that any failure described in clause (i) is due to intentional disregard of the requirements under subparagraph (A), such clause shall be applied—

(I) in subclause (I), by substituting ''three times the sum'' for ''the sum'', and

(II) in subclause (II), by substituting ''$10,000'' for ''5,000[1]'' in item (aa) thereof.

(iv) Limitation on period for payment

Pursuant to rules issued by the Secretary, in the case of a final determination by the Secretary with respect to any failure by the taxpayer to satisfy the requirement under subparagraph (A), subparagraph (B)(i) shall not apply unless the payments described in subclauses (I) and (II) of such subparagraph are made by the taxpayer on or before the date which is 180 days after the date of such determination.

(8) Apprenticeship requirements

The requirements described in this paragraph with respect to the construction of any qualified facility are as follows:

(A) Labor hours

(i) Percentage of total labor hours

Taxpayers shall ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to subparagraph (B), be performed by qualified apprentices.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage shall be—

(I) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent,

(II) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and

(III) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

(B) Apprentice to journeyworker ratio

The requirement under subparagraph (A)(i) shall be subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State apprenticeship agency.

[1] So in original. Probably should be ''$5,000''.

(C) Participation

Each taxpayer, contractor, or subcontractor who employs 4 or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility shall employ 1 or more qualified apprentices to perform such work.

(D) Exception

(i) In general

A taxpayer shall not be treated as failing to satisfy the requirements of this paragraph if such taxpayer—

(I) satisfies the requirements described in clause (ii), or

(II) subject to clause (iii), in the case of any failure by the taxpayer to satisfy the requirement under subparagraphs (A) and (C) with respect to the construction, alteration, or repair work on any qualified facility to which subclause (I) does not apply, makes payment to the Secretary of a penalty in an amount equal to the product of—

(aa) $50, multiplied by

(bb) the total labor hours for which the requirement described in such subparagraph was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

(ii) Good faith effort

For purposes of clause (i), a taxpayer shall be deemed to have satisfied the requirements under this paragraph with respect to a qualified facility if such taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in section 3131(e)(3)(B), and—

(I) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or

(II) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

(iii) Intentional disregard

If the Secretary determines that any failure described in subclause (i)(II) is due to intentional disregard of the requirements under subparagraphs (A) and (C), subclause (i)(II) shall be applied by substituting ''$500'' for ''$50'' in item (aa) thereof.

(E) Definitions

For purposes of this paragraph—

(i) Labor hours

The term ''labor hours''—

(I) means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor, and

(II) excludes any hours worked by—

(aa) foremen,

(bb) superintendents,

(cc) owners, or

(dd) persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

(ii) Qualified apprentice

The term ''qualified apprentice'' means an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B).

(9) Domestic content bonus credit amount

(A) In general

In the case of any qualified facility which satisfies the requirement under subparagraph (B)(i), the amount of the credit determined under subsection (a) (determined after the application of paragraphs (1) through (8)) shall be increased by an amount equal to 10 percent of the amount so determined.

(B) Requirement

(i) In general

The requirement described in this clause is satisfied with respect to any qualified facility if the taxpayer certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that any steel, iron, or manufactured product which is a component of such facility (upon completion of construction) was produced in the United States (as determined under section[2] 661 of title 49, Code of Federal Regulations).

(ii) Steel and iron

In the case of steel or iron, clause (i) shall be applied in a manner consistent with section 661.5 of title 49, Code of Federal Regulations.

(iii) Manufactured product

For purposes of clause (i), the manufactured products which are components of a qualified facility upon completion of construction shall be deemed to have been produced in the United States if not less than the adjusted percentage (as determined under subparagraph (C)) of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States.

(C) Adjusted percentage

(i) In general

Subject to subclause (ii), for purposes of subparagraph (B)(iii), the adjusted percentage shall be 40 percent.

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[2] So in original. Probably should be ''part''.

(ii) Offshore wind facility

For purposes of subparagraph (B)(iii), in the case of a qualified facility which is an offshore wind facility, the adjusted percentage shall be 20 percent.

(10) Phaseout for elective payment

(A) In general

In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, the amount of such credit shall be replaced with—

(i) the value of such credit (determined without regard to this paragraph), multiplied by

(ii) the applicable percentage.

(B) 100 percent applicable percentage for certain qualified facilities

In the case of any qualified facility—

(i) which satisfies the requirements under paragraph (9)(B), or

(ii) with a maximum net output of less than 1 megawatt (as measured in alternating current),

the applicable percentage shall be 100 percent.

(C) Phased domestic content requirement

Subject to subparagraph (D), in the case of any qualified facility which is not described in subparagraph (B), the applicable percentage shall be—

(i) if construction of such facility began before January 1, 2024, 100 percent, and

(ii) if construction of such facility began in calendar year 2024, 90 percent.

(D) Exception

(i) In general

For purposes of this paragraph, the Secretary shall provide exceptions to the requirements under this paragraph if—

(I) the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or

(II) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(ii) Applicable percentage

In any case in which the Secretary provides an exception pursuant to clause (i), the applicable percentage shall be 100 percent.

(11) Special rule for qualified facility located in energy community

(A) In general

In the case of a qualified facility which is located in an energy community, the credit determined under subsection (a) (determined after the application of paragraphs (1) through (10), without the application of paragraph (9)) shall be increased by an amount equal to 10 percent of the amount so determined.

(B) Energy community

For purposes of this paragraph, the term ''energy community'' means—

(i) a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))),

(ii) a metropolitan statistical area or non-metropolitan statistical area which—

(I) has (or, at any time during the period beginning after December 31, 2009, had) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), and

(II) has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary), or

(iii) a census tract—

(I) in which—

(aa) after December 31, 1999, a coal mine has closed, or

(bb) after December 31, 2009, a coal-fired electric generating unit has been retired, or

(II) which is directly adjoining to any census tract described in subclause (I).

(12) Regulations and guidance

The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

(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 1004(27) 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 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 the purpose of producing steam, and

(III) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction, or

(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 production 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).

(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 nonmechanical structures to accelerate the flow of water for electric power production purposes,

(iv) differentials in ocean temperature (ocean thermal energy conversion), or

(v) pressurized water used in a pipeline (or similar man-made water conveyance) which is operated—

(I) for the distribution of water for agricultural, municipal, or industrial consumption, and

(II) not primarily for the generation of electricity.

(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, 2025. 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, 2025, or

(ii) owned by the taxpayer which before January 1, 2025, 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, 2025, 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 facility 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, 2025, 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, 2025.

(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 the construction of which begins before January 1, 2025. 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, 2025.

(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, 2025. 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, 2025, 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, 2025.

(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, 2025, 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 25 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, 2025.

(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,[3] 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 16-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 16-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 ad-

[3] See References in Text note below.

justment 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 subsection (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.

(12) Coordination with energy credit for qualified biogas property

The term ''qualified facility'' shall not include any facility which produces electricity from gas produced by qualified biogas property (as defined in section 48(c)(7)) if a credit is allowed under section 48 with respect to such property for the taxable year or any prior taxable year.

(13) Special rule for electricity used at a qualified clean hydrogen production facility

Electricity produced by the taxpayer shall be treated as sold by such taxpayer to an unrelated person during the taxable year if—

(A) such electricity is used during such taxable year by the taxpayer or a person related to the taxpayer at a qualified clean hydrogen production facility (as defined in section 45V(c)(3)) to produce qualified clean hydrogen (as defined in section 45V(c)(2)), and

(B) such use and production is verified (in such form or manner as the Secretary may prescribe) by an unrelated third party.

(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; Pub. L. 115–123, div. D, title I, §§40408(a), 40409(a), Feb. 9, 2018, 132 Stat. 149, 150; Pub. L. 115–141, div. U, title IV, §401(a)(14)–(16), Mar. 23, 2018, 132 Stat. 1185; Pub. L. 116–94, div. Q, title I, §§127(a), (c)(1), (2)(A), 128(a), Dec. 20, 2019, 133 Stat. 3231, 3232; Pub. L. 116–260, div. EE, title I, §§131(a), (c)(1), 145(a), Dec. 27, 2020, 134 Stat. 3052, 3054; Pub. L. 117–169, title I, §§13101(a)–(c), (e)(1), (2)(A), (f)–(j), 13102(f)(4), 13204(b)(1), Aug. 16, 2022, 136 Stat. 1906–1913, 1916, 1939.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

Editorial Notes

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.

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

2022—Subsec. (a)(1). Pub. L. 117–169, § 13101(b)(1), substituted ''0.3 cents'' for ''1.5 cents''.

Subsec. (b)(2). Pub. L. 117–169, § 13101(i)(1), substituted ''If the 0.3 cent amount as increased under the preceding sentence is not a multiple of 0.05 cent, such amount shall be rounded to the nearest multiple of 0.05 cent. In any other case, if an amount as increased under this paragraph is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.'' for ''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.''

Pub. L. 117–169, § 13101(b)(2), substituted ''The 0.3 cent'' for ''The 1.5 cent''.

Subsec. (b)(3). Pub. L. 117–169, § 13101(h), amended par. (3) generally. Prior to amendment, par. (3) related to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

Subsec. (b)(4)(A). Pub. L. 117–169, § 13101(j)(1), substituted ''or (7)'' for ''(7), (9), or (11)''.

Pub. L. 117–169, § 13101(i)(2), substituted ''last two sentences'' for ''last sentence''.

Subsec. (b)(5). Pub. L. 117–169, § 13101(e)(2)(A), inserted ''which is placed in service before January 1, 2022'' after ''using wind to produce electricity'' in introductory provisions.

Subsec. (b)(6) to (8). Pub. L. 117–169, § 13101(f), added pars. (6) to (8).

Subsec. (b)(9). Pub. L. 117–169, § 13101(g)(2), added par. (9). Former par. (9) (added by section 13101(f), see below) redesignated (12).

Pub. L. 117–169, § 13101(f), added par. (9), which was subsequently redesignated (12).

Subsec. (b)(10), (11). Pub. L. 117–169, § 13101(g)(2), added pars. (10) and (11).

Subsec. (b)(12). Pub. L. 117–169, § 13101(g)(1), redesignated par. (9) as (12).

Subsec. (c)(10)(A)(v). Pub. L. 117–169, § 13101(j)(2)(A), added cl. (v). Conforming amendment striking ''or'' in cl. (iii) of subsec. (c)(10)(A) was executed by striking the ''or'' at the end of the clause, to reflect the probable intent of Congress.

Subsec. (d)(1). Pub. L. 117–169, § 13101(e)(1), substituted ''January 1, 2025'' for ''January 1, 2022''.

Subsec. (d)(2)(A). Pub. L. 117–169, § 13101(a)(1), substituted ''January 1, 2025'' for ''January 1, 2022'' wherever appearing.

Subsec. (d)(3)(A)(i)(I), (ii). Pub. L. 117–169, § 13101(a)(2), substituted ''January 1, 2025'' for ''January 1, 2022''.

Subsec. (d)(4). Pub. L. 117–169, § 13101(c), substituted ''and the construction of which begins before January 1, 2025'' for ''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, 2022''.

Concluding provisions following former subpar. (B) were joined with the preceding paragraph to reflect the probable intent of Congress.

Subsec. (d)(6), (7). Pub. L. 117–169, § 13101(a)(3), (4), substituted ''January 1, 2025'' for ''January 1, 2022''.

Subsec. (d)(9)(A)(i), (ii), (C). Pub. L. 117–169, § 13101(a)(5), substituted ''January 1, 2025'' for ''January 1, 2022''.

Subsec. (d)(11)(A). Pub. L. 117–169, § 13101(j)(2)(B), substituted ''25'' for ''150''.

Subsec. (d)(11)(B). Pub. L. 117–169, § 13101(a)(6), substituted ''January 1, 2025'' for ''January 1, 2022''.

Subsec. (e)(12). Pub. L. 117–169, § 13102(f)(4), added par. (12).

Subsec. (e)(13). Pub. L. 117–169, § 13204(b)(1), added par. (13).

2020—Subsec. (b)(5)(D). Pub. L. 116–260, § 131(c)(1), substituted ''January 1, 2022'' for ''January 1, 2021''.

Subsec. (d)(1), (2)(A), (3)(A), (4)(B), (6), (7), (9), (11)(B). Pub. L. 116–260, § 131(a), substituted ''January 1, 2022'' for ''January 1, 2021'' wherever appearing.

Subsec. (e)(10)(A). Pub. L. 116–260, § 145(a), substituted ''16-year period'' for ''15-year period'' in two places.

2019—Subsec. (b)(5)(D). Pub. L. 116–94, § 127(c)(2)(A), added subpar. (D).

Subsec. (d)(1). Pub. L. 116–94, § 127(c)(1), substituted ''January 1, 2021'' for ''January 1, 2020''.

Subsec. (d)(2)(A), (3)(A), (4)(B), (6), (7), (9), (11)(B). Pub. L. 116–94, § 127(a), substituted ''January 1, 2021'' for ''January 1, 2018'' wherever appearing.

Subsec. (e)(10)(A). Pub. L. 116–94, § 128(a), substituted ''15-year period'' for ''12-year period'' in two places.

2018—Subsec. (c)(6). Pub. L. 115–141, § 401(a)(14), substituted ''section 1004(27)'' for ''section 2(27)''.

Subsec. (c)(7)(A)(i)(II). Pub. L. 115–141, § 401(a)(15), substituted ''for the purpose'' for ''for purpose''.

Subsec. (c)(7)(A)(i)(III). Pub. L. 115–141, § 401(a)(16), substituted '', or'' for period at end.

Subsec. (d). Pub. L. 115–123, § 40409(a), substituted ''January 1, 2018'' for ''January 1, 2017'' wherever appearing.

Subsec. (e)(10)(A)(i), (ii)(II). Pub. L. 115–123, § 40408(a), substituted ''12-year period'' for ''11-year period''.

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 nonhydroelectric 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).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–169, title I, §13101(k), Aug. 16, 2022, 136 Stat. 1913, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 48 of this title] shall apply to facilities placed in service after December 31, 2021.

''(2) CREDIT REDUCED FOR TAX-EXEMPT BONDS.—The amendment made by subsection (h) [amending this section] shall apply to facilities the construction of which begins after the date of enactment of this Act [Aug. 16, 2022].

''(3) DOMESTIC CONTENT, PHASEOUT, ENERGY COMMUNITIES, AND HYDROPOWER.—The amendments made by subsections (g) and (j) [amending this section] shall apply to facilities placed in service after December 31, 2022.''

Pub. L. 117–169, title I, §13102(q), Aug. 16, 2022, 136 Stat. 1921, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 48, 50, and 7701 of this title] shall apply to property placed in service after December 31, 2021.

''(2) OTHER PROPERTY.—The amendments made by subsections (f), (g), (h), (i), (j), (*l*), (n), and (*o*) [amending this section and sections 48, 50, and 7701 of this title] shall apply to property placed in service after December 31, 2022.

''(3) SPECIAL RULE FOR PROPERTY FINANCED BY TAX-EXEMPT BONDS.—The amendments made by subsection (m) [amending section 48 of this title] shall apply to property the construction of which begins after the date of enactment of this Act [Aug. 16, 2022].''

Pub. L. 117–169, title I, §13204(b)(3), Aug. 16, 2022, 136 Stat. 1940, provided that: ''The amendments made by this subsection [amending this section and section 45U of this title] shall apply to electricity produced after December 31, 2022.''

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. EE, title I, §131(d), Dec. 27, 2020, 134 Stat. 3052, provided that: ''The amendments made by this section [amending this section and section 48 of this title] shall take effect on January 1, 2021.''

Pub. L. 116–260, div. EE, title I, §145(b), Dec. 27, 2020, 134 Stat. 3054, provided that: ''The amendments made by this section [amending this section] shall apply to coal produced after December 31, 2020.''

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–94, div. Q, title I, §127(d), Dec. 20, 2019, 133 Stat. 3232, provided that: ''The amendments made by this section [amending this section and section 48 of this title] shall take effect on January 1, 2018.''

Pub. L. 116–94, div. Q, title I, §128(b), Dec. 20, 2019, 133 Stat. 3232, provided that: ''The amendment made by this section [amending this section] shall apply to coal produced after December 31, 2017.''

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–123, div. D, title I, §40408(b), Feb. 9, 2018, 132 Stat. 149, provided that: ''The amendment made by this section [amending this section] shall apply to coal produced after December 31, 2016.''

Pub. L. 115–123, div. D, title I, §40409(c), Feb. 9, 2018, 132 Stat. 150, provided that: ''The amendments made by this section [amending this section and section 48 of this title] shall take effect on January 1, 2017.''

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:

2024—Internal Revenue Notice 2024–69.
2023—Internal Revenue Notice 2023–51.
2022—Internal Revenue Notice 2022–20.
2021—Internal Revenue Notice 2021–32.
2020—Internal Revenue Notice 2020–38.
2019—Internal Revenue Notice 2019–41, Internal Revenue Notice 2020–9.
2018—Internal Revenue Notice 2018–50, Internal Revenue Notice 2020–9.

2017—Internal Revenue Notice 2017–33,Internal Revenue Notice 2018–36.
2016—Internal Revenue Notice 2016–34.
2015—Internal Revenue Notice 2015–32, Internal Revenue Notice 2016–11.
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.

(2) Individuals receiving wages in excess of $30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) Inflation adjustment

The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d), except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term ''qualified employee'' shall not include—