

PART C—HYDROELECTRIC

§ 15881. Hydroelectric production incentives**(a) Incentive payments**

For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) Definitions

For purposes of this section:

(1) Qualified hydroelectric facility

The term “qualified hydroelectric facility” means a turbine or other generating device owned or solely operated by a non-Federal entity—

(A) that generates hydroelectric energy for sale; and

(B)(i) that is added to an existing dam or conduit; or

(ii)(I) that has a generating capacity of not more than 20 megawatts;

(II) for which the non-Federal entity has received a construction authorization from the Federal Energy Regulatory Commission, if applicable; and

(III) that is constructed in an area in which there is inadequate electric service, as determined by the Secretary, including by taking into consideration—

(aa) access to the electric grid;

(bb) the frequency of electric outages; or

(cc) the affordability of electricity.

(2) Existing dam or conduit

The term “existing dam or conduit” means any dam or conduit the construction of which was completed before November 15, 2021, and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) Conduit

The term “conduit” has the same meaning as when used in section 823a(a)(2) of title 16.

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after November 15, 2021.

(c) Eligibility window

Payments may be made under this section only for electric energy generated from a qualified hydroelectric facility which begins oper-

ation during the period of 22 fiscal years beginning with the first full fiscal year occurring after August 8, 2005.

(d) Incentive period

A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the “incentive period”). Such period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.

(e) Amount of payment**(1) In general**

Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than \$1,000,000 in 1 calendar year.

(2) Adjustments

The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2005 in the same manner as provided in the provisions of section 45K(d)(2)(B) of title 26, except that in applying such provisions the calendar year 2005 shall be substituted for calendar year 1979.

(f) Sunset

No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of 32 fiscal years beginning with the first full fiscal year occurring after August 8, 2005, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section \$125,000,000 for fiscal year 2022, to remain available until expended.

(Pub. L. 109-58, title II, §242, Aug. 8, 2005, 119 Stat. 677; Pub. L. 116-260, div. Z, title III, §3005(a), Dec. 27, 2020, 134 Stat. 2511; Pub. L. 117-58, div. D, title III, §40331, Nov. 15, 2021, 135 Stat. 1022.)

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 117-58, §40331(2), substituted “November 15, 2021” for “August 8, 2005” in concluding provisions.

Subsec. (b)(2). Pub. L. 117-58, §40331(1), substituted “before November 15, 2021” for “before August 8, 2005”.

Subsec. (e)(1). Pub. L. 117-58, §40331(3), substituted “\$1,000,000” for “\$750,000”.

Subsec. (g). Pub. L. 117-58, §40331(4), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: “There are authorized to be appro-

apropriated to the Secretary to carry out the purposes of this section \$10,000,000 for each of fiscal years 2021 through 2036.’’

2020—Subsec. (b)(1). Pub. L. 116–260, §3005(a)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ‘‘The term ‘qualified hydroelectric facility’ means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.’’

Subsec. (c). Pub. L. 116–260, §3005(a)(2), substituted ‘‘22’’ for ‘‘10’’.

Subsec. (e)(2). Pub. L. 116–260, §3005(a)(3), substituted ‘‘section 45K(d)(2)(B)’’ for ‘‘section 29(d)(2)(B)’’.

Subsec. (f). Pub. L. 116–260, §3005(a)(4), substituted ‘‘32’’ for ‘‘20’’.

Subsec. (g). Pub. L. 116–260, §3005(a)(5), substituted ‘‘each of fiscal years 2021 through 2036’’ for ‘‘each of the fiscal years 2006 through 2015’’.

Statutory Notes and Related Subsidiaries

WAGE RATE REQUIREMENTS

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

§ 15882. Hydroelectric efficiency improvement incentives

(a) Incentive payments

The Secretary shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) Limitations

Incentive payments under this section shall not exceed 30 percent of the costs of the capital improvement concerned and not more than 1 payment may be made with respect to improvements at a single facility. No payment in excess of \$5,000,000 may be made with respect to improvements at a single facility in any 1 fiscal year.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$75,000,000 for fiscal year 2022 to remain available until expended.

(Pub. L. 109–58, title II, §243, Aug. 8, 2005, 119 Stat. 678; Pub. L. 116–260, div. Z, title III, §3005(b), Dec. 27, 2020, 134 Stat. 2511; Pub. L. 117–58, div. D, title III, §40332(a), Nov. 15, 2021, 135 Stat. 1023.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–58, §40332(a)(1), inserted ‘‘incentives’’ after ‘‘improvement’’ in section catchline.

Subsec. (b). Pub. L. 117–58, §40332(a)(2), substituted ‘‘30 percent’’ for ‘‘10 percent’’ and ‘‘\$5,000,000’’ for ‘‘\$750,000’’ and inserted ‘‘in any 1 fiscal year’’ before period.

Subsec. (c). Pub. L. 117–58, §40332(a)(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ‘‘There are authorized to be appropriated to carry out this section not more than \$10,000,000 for each of fiscal years 2021 through 2036.’’

2020—Subsec. (c). Pub. L. 116–260 substituted ‘‘each of fiscal years 2021 through 2036’’ for ‘‘each of the fiscal years 2006 through 2015’’.

Statutory Notes and Related Subsidiaries

WAGE RATE REQUIREMENTS

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

§ 15883. Maintaining and enhancing hydroelectricity incentives

(a) Definition of qualified hydroelectric facility

In this section, the term ‘‘qualified hydroelectric facility’’ means a hydroelectric project that—

(1)(A) is licensed by the Federal Energy Regulatory Commission; or

(B) is a hydroelectric project constructed, operated, or maintained pursuant to a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act (16 U.S.C. 791a et seq.);

(2) is placed into service before November 15, 2021; and

(3)(A) is in compliance with all applicable Federal, Tribal, and State requirements; or

(B) would be brought into compliance with the requirements described in subparagraph (A) as a result of the capital improvements carried out using an incentive payment under this section.

(b) Incentive payments

The Secretary shall make incentive payments to the owners or operators of qualified hydroelectric facilities for capital improvements directly related to—

(1) improving grid resiliency, including—

(A) adapting more quickly to changing grid conditions;

(B) providing ancillary services (including black start capabilities, voltage support, and spinning reserves);

(C) integrating other variable sources of electricity generation; and

(D) managing accumulated reservoir sediments;

(2) improving dam safety to ensure acceptable performance under all loading conditions (including static, hydrologic, and seismic conditions), including—

(A) the maintenance or upgrade of spillways or other appurtenant structures;

(B) dam stability improvements, including erosion repair and enhanced seepage controls; and

(C) upgrades or replacements of floodgates or natural infrastructure restoration or protection to improve flood risk reduction; or

(3) environmental improvements, including—

(A) adding or improving safe and effective fish passage, including new or upgraded turbine technology, fish ladders, fishways, and all other associated technology, equipment, or other fish passage technology to a qualified hydroelectric facility;

(B) improving the quality of the water retained or released by a qualified hydroelectric facility;