



6450-01-P

DEPARTMENT OF ENERGY

Notice of Availability of Guidance and Application for Hydroelectric Incentive Program

AGENCY: Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability of guidance and open application period.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of updated guidance for the Energy Policy Act of 2005 program. The guidance describes the hydroelectric incentive payment requirements and explains the type of information that owners or authorized operators of qualified hydroelectric facilities must provide DOE when applying for hydroelectric incentive payments. This incentive is available for electric energy generated and sold for a specified 10-year period as authorized under the Energy Policy Act of 2005. In Congressional appropriations for Federal fiscal year 2019, DOE received funds to support this hydroelectric incentive program. At this time, DOE is only accepting applications from owners and authorized operators of qualified hydroelectric facilities for hydroelectricity generated and sold in calendar year 2018.

DATES: DOE is currently accepting applications from **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** through **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Applications must be sent to *hydroincentive@ee.doe.gov* by midnight EDT, **[INSERT DATE 30 DAYS AFTER DATE OF**

PUBLICATION IN THE *FEDERAL REGISTER*], or they will not be considered timely filed for calendar year 2018 incentive payments.

ADDRESSES: Interested parties are to submit applications electronically to:

hydroincentive@ee.doe.gov. DOE's guidance is available at:

<https://www.energy.gov/eere/water/water-power-funding-opportunities>.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Corey Vezina, U.S. Department of Energy, Golden Field Office, 15013 Denver West Parkway, Golden, CO 80401, (240) 562-1382 or by email at: *hydroincentive@ee.doe.gov*. Further instruction can be found in the guidance posted at: *<https://www.energy.gov/eere/water/water-power-funding-opportunities>*. *Electronic communications are recommended for correspondence and required for submission of application information.*

SUPPLEMENTARY INFORMATION: In the Energy Policy Act of 2005 (EPAct 2005; Public Law 109-58), Congress established a new program to support the expansion of hydropower energy development at existing dams and impoundments through an incentive payment procedure. Under Section 242 of EPAct 2005, the Secretary of Energy is directed to provide incentive payments to the owner or authorized operator of qualified hydroelectric facilities for energy generated and sold by a qualified hydroelectric facility for a specified 10-year period (*See* 42 U.S.C. 15881). The 2019 Consolidated Appropriations Act authorized funding for the Section 242 program for conventional hydropower under EPAct 2005. In FY 2019, DOE allocated \$6.6M for this purpose.

Recently DOE made minor updates to clarify its Guidance for the Energy Policy Act of 2005 Section 242. The April 2019 Guidance is available at: <https://www.energy.gov/eere/water/water-power-funding-opportunities>. Each application will be reviewed based on the Guidance. The majority of the Guidance changes were minor and involved edits such as consistently referring to the facilities at issue as “hydroelectric generation facility” or moving existing Guidance to a different portion of the Guidance to improve clarity. For example, the “Added” definition was formerly contained in the “Qualified hydroelectric facility” definition but is now a standalone definition.

The description of how DOE calculates incentive payments was moved from the “Qualified-kilowatt-hours (kWh)” definition to a new “Payment Calculation” and equation in Section V. This section and equation reflect how DOE has been calculating incentive payments since the Department started receiving appropriations for this program and was added to the Guidance this year to increase transparency. The Guidance clarifies that the inflation adjustment required at 42 U.S.C. 15881(e)(2) is made in accordance with data similar to that used by the Internal Revenue Service in its annual Publications of Inflation Adjustment Factor and Reference Prices for other code sections of the Internal Revenue Code. Also under Section V., the Guidance now provides three hypothetical examples to explain when hydroelectric generation facility production would be eligible for incentive payments based on statutory date requirements.

Section VI. includes a clarification that applications for each incentive period must be properly completed and submitted to DOE each year and cannot simply refer to an application from a

previous year. Section VI. removes the application requirement that applicants notify DOE at least six months before a facility is expected to be first used. In Section VII., the Guidance states that an appeal may be dismissed for any reason that an appeal would be subject to dismissal under Office of Hearings and Appeals procedural regulations at 10 CFR part 1003. Finally, in Section VII. OHA grants DOE an opportunity to submit a written response to an appeal and allows the appellant the opportunity to reply to DOE's response.

DOE notes that applicants that received incentive payments for prior calendar years must submit a full application addressing all eligibility requirements for hydroelectricity generated and sold in calendar year 2018. DOE will not consider previously submitted application materials.

Applications that refer to previous application materials or statements in lieu of submitting current information will not be considered. As authorized under Section 242 of EPAct 2005, and as explained in the Guidance, DOE also notes that it will only accept applications from qualified hydroelectric facilities that began operations at an existing dam or conduit during the inclusive period beginning October 1, 2005, and ending on September 30, 2015. Therefore, although DOE is accepting applications for full calendar year 2018 production, the qualified hydroelectric facility must have begun operations starting October 1, 2005, through September 30, 2015, for DOE to consider the application.

When submitting information to DOE for Section 242 program, it is recommended that applicants carefully read and review the completed content of the Guidance for this process.

When reviewing applications, DOE may corroborate the information provided with information that DOE finds through FERC e-filings, contact with power off-taker, and other due diligence measure carried out by reviewing officials. DOE may require the applicant to conduct and submit an independent audit at its own expense, or DOE may conduct an audit to verify the number of kilowatt-hours claimed to have been generated and sold by the qualified hydroelectric facility and for which an incentive payment has been requested or made.

Signed in Washington, DC on April 30, 2019.

Steve Chalk,
Acting Deputy Assistant Secretary for
Renewable Power,
Energy Efficiency and Renewable Energy.

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