

the above-mentioned proceedings and shall have power to issue and execute all necessary process and to make and enforce all writs, orders and decrees to compel compliance with the lawful orders and regulations of the commission and of the Secretary of the Army, and to compel the performance of any condition imposed under the provisions of this chapter. In the event a decree revoking a license is entered, the court is empowered to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and assume all outstanding obligations and liabilities of the licensee which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of section 807 of this title at the termination of the license.

(June 10, 1920, ch. 285, pt. I, § 26, 41 Stat. 1076; re-numbered pt. I, Aug. 26, 1935, ch. 687, title II, § 212, 49 Stat. 847; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

#### REFERENCES IN TEXT

Proceedings in equity, referred to in text, were abolished by the adoption of Rule 2 of the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure, which provided that "there shall be one form of action to be known as 'civil action'".

#### CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued military Department of the Army under administrative supervision of Secretary of the Army.

### § 821. State laws and water rights unaffected

Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

(June 10, 1920, ch. 285, pt. I, § 27, 41 Stat. 1077; re-numbered pt. I, Aug. 26, 1935, ch. 687, title II, § 212, 49 Stat. 847.)

### § 822. Reservation of right to alter or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this chapter or the rights of any licensee thereunder.

(June 10, 1920, ch. 285, pt. I, § 28, 41 Stat. 1077; re-numbered pt. I, Aug. 26, 1935, ch. 687, title II, § 212, 49 Stat. 847.)

### § 823. Repeal of inconsistent laws

All Acts or parts of Acts inconsistent with this chapter are repealed: *Provided*, That nothing contained herein shall be held or construed to modify or repeal any of the provisions of the Act of Congress approved December 19, 1913, granting certain rights-of-way to the city and county of San Francisco, in the State of California.

(June 10, 1920, ch. 285, pt. I, § 29, 41 Stat. 1077; re-numbered pt. I, Aug. 26, 1935, ch. 687, title II, § 212, 49 Stat. 847.)

#### REFERENCES IN TEXT

Herein, referred to in text, means act June 10, 1920, which is classified generally to this chapter.

The Act of Congress approved December 19, 1913, referred to in text, was not classified to the Code.

#### CODIFICATION

As originally enacted, this section contained the further proviso: "That section 18 of an Act making appropriations for the construction, repair and preservation, of certain public works on rivers and harbors, and for other purposes, approved August 8, 1917, is hereby repealed."

### § 823a. Conduit hydroelectric facilities

#### (a) Qualifying conduit hydropower facilities

(1) A qualifying conduit hydropower facility shall not be required to be licensed under this subchapter.

(2)(A) Any person, State, or municipality proposing to construct a qualifying conduit hydropower facility shall file with the Commission a notice of intent to construct such facility. The notice shall include sufficient information to demonstrate that the facility meets the qualifying criteria.

(B) Not later than 15 days after receipt of a notice of intent filed under subparagraph (A), the Commission shall—

(i) make an initial determination as to whether the facility meets the qualifying criteria; and

(ii) if the Commission makes an initial determination, pursuant to clause (i), that the facility meets the qualifying criteria, publish public notice of the notice of intent filed under subparagraph (A).

(C) If, not later than 45 days after the date of publication of the public notice described in subparagraph (B)(ii)—

(i) an entity contests whether the facility meets the qualifying criteria, the Commission shall promptly issue a written determination as to whether the facility meets such criteria; or

(ii) no entity contests whether the facility meets the qualifying criteria, the facility shall be deemed to meet such criteria.

(3) For purposes of this section:

(A) The term "conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agri-

cultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(B) The term “qualifying conduit hydro-power facility” means a facility (not including any dam or other impoundment) that is determined or deemed under paragraph (2)(C) to meet the qualifying criteria.

(C) The term “qualifying criteria” means, with respect to a facility—

(i) the facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit;

(ii) the facility has an installed capacity that does not exceed 5 megawatts; and

(iii) on or before August 9, 2013, the facility is not licensed under, or exempted from the license requirements contained in, this subchapter.

#### (b) Exemption qualifications

Subject to subsection (c), the Commission may grant an exemption in whole or in part from the requirements of this subchapter, including any license requirements contained in this subchapter, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

(1) utilizes for such generation only the hydroelectric potential of a conduit; and

(2) has an installed capacity that does not exceed 40 megawatts.

#### (c) Consultation with Federal and State agencies

In making the determination under subsection (b) the Commission shall consult with the United States Fish and Wildlife Service<sup>1</sup> National Marine Fisheries Service<sup>1</sup> and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

(1) such terms and conditions as the Fish and Wildlife Service<sup>1</sup> National Marine Fisheries Service<sup>1</sup> and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

#### (d) Violation of terms of exemption

Any violation of a term or condition of any exemption granted under subsection (b) shall be treated as a violation of a rule or order of the Commission under this chapter.

#### (e) Fees for studies

The Commission, in addition to the requirements of section 803(e) of this title, shall establish fees which shall be paid by an applicant for

a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.

(June 10, 1920, ch. 285, pt. I, § 30, as added Pub. L. 95-617, title II, § 213, Nov. 9, 1978, 92 Stat. 3148; amended Pub. L. 99-495, § 7, Oct. 16, 1986, 100 Stat. 1248; Pub. L. 113-23, § 4(a), Aug. 9, 2013, 127 Stat. 494.)

#### REFERENCES IN TEXT

The Fish and Wildlife Coordination Act, referred to in subsec. (c), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, which is classified generally to sections 661 to 666c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 30 of act June 10, 1920, was classified to section 791 of this title, prior to repeal by act Aug. 26, 1935, ch. 687, title II, § 212, 49 Stat. 847.

#### AMENDMENTS

2013—Subsecs. (a), (b). Pub. L. 113-23, § 4(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which authorized the Commission to grant exemptions from the requirements of this subchapter for certain hydroelectric facilities and prohibited the granting of exemptions to facilities with certain capacities.

Subsec. (c). Pub. L. 113-23, § 4(a)(2), substituted “subsection (b)” for “subsection (a)” in introductory provisions.

Subsec. (d). Pub. L. 113-23, § 4(a)(3), substituted “subsection (b)” for “subsection (a)”.

1986—Subsec. (b). Pub. L. 99-495, § 7(a), inserted provision setting the maximum installation capacity for exemptions under subsec. (a) at 40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes.

Subsec. (c). Pub. L. 99-495, § 7(b), which directed the insertion of “National Marine Fisheries Service” after “the Fish and Wildlife Service” in both places such term appears, was executed by inserting “National Marine Fisheries Service” after “the United States Fish and Wildlife Service” and “the Fish and Wildlife Service”, as the probable intent of Congress.

Subsec. (e). Pub. L. 99-495, § 7(c), added subsec. (e).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-495 effective with respect to each license, permit, or exemption issued under this chapter after Oct. 16, 1986, see section 18 of Pub. L. 99-495, set out as a note under section 797 of this title.

#### APPLICATION OF SUBSECTION (c)

Pub. L. 99-495, § 8(c), Oct. 16, 1986, 100 Stat. 1251, provided that: “Nothing in this Act [see Short Title of 1986 Amendment note set out under section 791a of this title] shall affect the application of section 30(c) of the Federal Power Act [16 U.S.C. 823a(c)] to any exemption issued after the enactment of this Act [Oct. 16, 1986].”

<sup>1</sup> So in original. Probably should be followed by a comma.

**§ 823b. Enforcement****(a) Monitoring and investigation**

The Commission shall monitor and investigate compliance with each license and permit issued under this subchapter and with each exemption granted from any requirement of this subchapter. The Commission shall conduct such investigations as may be necessary and proper in accordance with this chapter. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this subchapter and with the terms and conditions of exemptions granted from any requirement of this subchapter.

**(b) Revocation orders**

After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this subchapter or any exemption granted from any requirement of this subchapter where any licensee or exemptee is found by the Commission:

- (1) to have knowingly violated a final order issued under subsection (a) after completion of judicial review (or the opportunity for judicial review); and
- (2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding.

In any such proceeding, the order issued under subsection (a) shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

**(c) Civil penalty**

Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this subchapter, any term, or condition of a license, permit, or exemption under this subchapter, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed \$10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

**(d) Assessment**

(1) Before issuing an order assessing a civil penalty against any person under this section, the Commission shall provide to such person notice of the proposed penalty. Such notice shall, except in the case of a violation of a final order issued under subsection (a), inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) In the case of the violation of a final order issued under subsection (a), or unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Commission shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in Part,<sup>1</sup> the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Commission shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in Part,<sup>1</sup> such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Commission.

(4) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation in a timely manner at any time prior to a final decision by the court of appeals under paragraph (2) or by the district court under paragraph (3).

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Commission under paragraph (3), the Commission shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(6)(A) Notwithstanding the provisions of title 28 or of this chapter, the Commission may be

<sup>1</sup> So in original. Probably should not be capitalized.