

during the first 3 calendar years of production, beginning on or after December 19, 2007.

**(B) Utilities**

If the project produces net excess power and an electric utility purchases or transmits the excess power, 50 percent of so much of the grant as is attributable to the net excess power shall be paid to the electric utility purchasing or transporting the net excess power.

**(4) Useful thermal energy**

In the case of waste energy recovery that produces useful thermal energy that is used for a purpose different from that for which the project is principally designed, a grant under this section shall be made to the owner or operator of the waste energy recovery project at the rate of \$10 for each 3,412,000 Btus of the excess thermal energy used for the different purpose.

**(c) Grants to States**

In the case of any State that has achieved 80 percent or more of waste heat recovery opportunities identified by the Secretary under this part, the Administrator shall make a 1-time grant to the State in an amount of not more than \$1,000 per megawatt of waste-heat capacity recovered (or a thermal equivalent) to support State-level programs to identify and achieve additional energy efficiency.

**(d) Eligibility**

The Secretary shall—

(1) establish rules and guidelines to establish eligibility for grants under subsection (b);

(2) publicize the availability of the grant program known to owners or operators of recoverable waste energy sources and sites listed on the Registry; and

(3) award grants under the program on the basis of the merits of each project in recovering or preventing waste energy throughout the United States on an impartial, objective, and not unduly discriminatory basis.

**(e) Limitation**

The Secretary shall not award grants to any person for a combined heat and power project or a waste heat recovery project that qualifies for specific Federal tax incentives for combined heat and power or for waste heat recovery.

**(f) Authorization of appropriations**

There are authorized to be appropriated to the Secretary—

(1) to make grants to projects and utilities under subsection (b)—

(A) \$100,000,000 for fiscal year 2008 and \$200,000,000 for each of fiscal years 2009 through 2012; and

(B) such additional amounts for fiscal year 2008 and each fiscal year thereafter as may be necessary for administration of the waste energy recovery incentive grant program; and

(2) to make grants to States under subsection (b), \$10,000,000 for each of fiscal years 2008 through 2012, to remain available until expended.

(Pub. L. 94-163, title III, §373, as added Pub. L. 110-140, title IV, §451(a), Dec. 19, 2007, 121 Stat. 1627.)

PRIOR PROVISIONS

A prior section 6343, Pub. L. 94-163, title III, §373, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-619, title VI, §§601(a), 691(b)(2), Nov. 9, 1978, 92 Stat. 3282, 3288, related to identification of major energy-consuming industries and corporations in the United States, prior to repeal by Pub. L. 99-509, title III, §3101(b), Oct. 21, 1986, 100 Stat. 1888.

EFFECTIVE DATE

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

**§ 6344. Additional incentives for recovery, use, and prevention of industrial waste energy**

**(a) Consideration of standard**

**(1) In general**

Not later than 180 days after the receipt by a State regulatory authority (with respect to each electric utility for which the authority has ratemaking authority), or nonregulated electric utility, of a request from a project sponsor or owner or operator, the State regulatory authority or nonregulated electric utility shall—

(A) provide public notice and conduct a hearing respecting the standard established by subsection (b); and

(B) on the basis of the hearing, consider and make a determination whether or not it is appropriate to implement the standard to carry out the purposes of this part.

**(2) Relationship to State law**

For purposes of any determination under paragraph (1) and any review of the determination in any court, the purposes of this section supplement otherwise applicable State law.

**(3) Nonadoption of standard**

Nothing in this part prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any standard described in paragraph (1), pursuant to authority under otherwise applicable State law.

**(b) Standard for sales of excess power**

For purposes of this section, the standard referred to in subsection (a) shall provide that an owner or operator of a waste energy recovery project identified on the Registry that generates net excess power shall be eligible to benefit from at least 1 of the options described in subsection (c) for disposal of the net excess power in accordance with the rate conditions and limitations described in subsection (d).

**(c) Options**

The options referred to in subsection (b) are as follows:

**(1) Sale of net excess power to utility**

The electric utility shall purchase the net excess power from the owner or operator of the eligible waste energy recovery project during the operation of the project under a contract entered into for that purpose.

**(2) Transport by utility for direct sale to third party**

The electric utility shall transmit the net excess power on behalf of the project owner or

operator to up to 3 separate locations on the system of the utility for direct sale by the owner or operator to third parties at those locations.

**(3) Transport over private transmission lines**

The State and the electric utility shall permit, and shall waive or modify such laws as would otherwise prohibit, the construction and operation of private electric wires constructed, owned, and operated by the project owner or operator, to transport the power to up to 3 purchasers within a 3-mile radius of the project, allowing the wires to use or cross public rights-of-way, without subjecting the project to regulation as a public utility, and according the wires the same treatment for safety, zoning, land use, and other legal privileges as apply or would apply to the wires of the utility, except that—

(A) there shall be no grant of any power of eminent domain to take or cross private property for the wires; and

(B) the wires shall be physically segregated and not interconnected with any portion of the system of the utility, except on the customer side of the revenue meter of the utility and in a manner that precludes any possible export of the electricity onto the utility system, or disruption of the system.

**(4) Agreed on alternatives**

The utility and the owner or operator of the project may reach agreement on any alternate arrangement and payments or rates associated with the arrangement that is mutually satisfactory and in accord with State law.

**(d) Rate conditions and criteria**

**(1) Definitions**

In this subsection:

**(A) Per unit distribution costs**

The term “per unit distribution costs” means (in kilowatt hours) the quotient obtained by dividing—

(i) the depreciated book-value distribution system costs of a utility; by

(ii) the volume of utility electricity sales or transmission during the previous year at the distribution level.

**(B) Per unit distribution margin**

The term “per unit distribution margin” means—

(i) in the case of a State-regulated electric utility, a per-unit gross pretax profit equal to the product obtained by multiplying—

(I) the State-approved percentage rate of return for the utility for distribution system assets; by

(II) the per unit distribution costs; and

(ii) in the case of a nonregulated utility, a per unit contribution to net revenues determined multiplying—

(I) the percentage (but not less than 10 percent) obtained by dividing—

(aa) the amount of any net revenue payment or contribution to the owners or subscribers of the nonregulated utility during the prior year; by

(bb) the gross revenues of the utility during the prior year to obtain a percentage; by

(II) the per unit distribution costs.

**(C) Per unit transmission costs**

The term “per unit transmission costs” means the total cost of those transmission services purchased or provided by a utility on a per-kilowatt-hour basis as included in the retail rate of the utility.

**(2) Options**

The options described in paragraphs (1) and (2) in subsection (c) shall be offered under purchase and transport rate conditions that reflect the rate components defined under paragraph (1) as applicable under the circumstances described in paragraph (3).

**(3) Applicable rates**

**(A) Rates applicable to sale of net excess power**

**(i) In general**

Sales made by a project owner or operator of a facility under the option described in subsection (c)(1) shall be paid for on a per kilowatt hour basis that shall equal the full undiscounted retail rate paid to the utility for power purchased by the facility minus per unit distribution costs, that applies to the type of utility purchasing the power.

**(ii) Voltages exceeding 25 kilovolts**

If the net excess power is made available for purchase at voltages that must be transformed to or from voltages exceeding 25 kilovolts to be available for resale by the utility, the purchase price shall further be reduced by per unit transmission costs.

**(B) Rates applicable to transport by utility for direct sale to third parties**

**(i) In general**

Transportation by utilities of power on behalf of the owner or operator of a project under the option described in subsection (c)(2) shall incur a transportation rate that shall equal the per unit distribution costs and per unit distribution margin, that applies to the type of utility transporting the power.

**(ii) Voltages exceeding 25 kilovolts**

If the net excess power is made available for transportation at voltages that must be transformed to or from voltages exceeding 25 kilovolts to be transported to the designated third-party purchasers, the transport rate shall further be increased by per unit transmission costs.

**(iii) States with competitive retail markets for electricity**

In a State with a competitive retail market for electricity, the applicable transportation rate for similar transportation shall be applied in lieu of any rate calculated under this paragraph.

**(4) Limitations****(A) In general**

Any rate established for sale or transportation under this section shall—

(i) be modified over time with changes in the underlying costs or rates of the electric utility; and

(ii) reflect the same time-sensitivity and billing periods as are established in the retail sales or transportation rates offered by the utility.

**(B) Limitation**

No utility shall be required to purchase or transport a quantity of net excess power under this section that exceeds the available capacity of the wires, meter, or other equipment of the electric utility serving the site unless the owner or operator of the project agrees to pay necessary and reasonable upgrade costs.

**(e) Procedural requirements for consideration and determination****(1) Public notice and hearing****(A) In general**

The consideration referred to in subsection (a) shall be made after public notice and hearing.

**(B) Administration**

The determination referred to in subsection (a) shall be—

(i) in writing;

(ii) based on findings included in the determination and on the evidence presented at the hearing; and

(iii) available to the public.

**(2) Intervention by Administrator**

The Administrator may intervene as a matter of right in a proceeding conducted under this section—

(A) to calculate—

(i) the energy and emissions likely to be saved by electing to adopt 1 or more of the options; and

(ii) the costs and benefits to ratepayers and the utility; and

(B) to advocate for the waste-energy recovery opportunity.

**(3) Procedures****(A) In general**

Except as otherwise provided in paragraphs (1) and (2), the procedures for the consideration and determination referred to in subsection (a) shall be the procedures established by the State regulatory authority or the nonregulated electric utility.

**(B) Multiple projects**

If there is more than 1 project seeking consideration simultaneously in connection with the same utility, the proceeding may encompass all such projects, if full attention is paid to individual circumstances and merits and an individual judgment is reached with respect to each project.

**(f) Implementation****(1) In general**

The State regulatory authority (with respect to each electric utility for which the au-

thority has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law—

(A) implement the standard determined under this section; or

(B) decline to implement any such standard.

**(2) Nonimplementation of standard****(A) In general**

If a State regulatory authority (with respect to each electric utility for which the authority has ratemaking authority) or nonregulated electric utility declines to implement any standard established by this section, the authority or nonregulated electric utility shall state in writing the reasons for declining to implement the standard.

**(B) Availability to public**

The statement of reasons shall be available to the public.

**(C) Annual report**

The Administrator shall include in an annual report submitted to Congress a description of the lost opportunities for waste-heat recovery from the project described in subparagraph (A), specifically identifying the utility and stating the quantity of lost energy and emissions savings calculated.

**(D) New petition**

If a State regulatory authority (with respect to each electric utility for which the authority has ratemaking authority) or nonregulated electric utility declines to implement the standard established by this section, the project sponsor may submit a new petition under this section with respect to the project at any time after the date that is 2 years after the date on which the State regulatory authority or nonregulated utility declined to implement the standard.

(Pub. L. 94-163, title III, §374, as added Pub. L. 110-140, title IV, §451(a), Dec. 19, 2007, 121 Stat. 1628.)

## PRIOR PROVISIONS

Prior sections 6344 and 6344a were repealed by Pub. L. 99-509, title III, §3101(b), Oct. 21, 1986, 100 Stat. 1888.

Section 6344, Pub. L. 94-163, title III, §374, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to establishment of individual energy improvement targets for each of the 10 most energy-consumptive industries.

Section 6344a, Pub. L. 94-163, title III, §374A, as added Pub. L. 95-619, title IV, §461(c), Nov. 9, 1978, 92 Stat. 3273, related to targets for increased utilization of energy-saving recovered materials for specified industries.

## EFFECTIVE DATE

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

**§ 6345. Clean Energy Application Centers****(a) Renaming****(1) In general**

The Combined Heat and Power Application Centers of the Department of Energy are re-