

ance Partnership Program. See section 6345 of this title.

PRIOR PROVISIONS

A prior section 6342, Pub. L. 94-163, title III, § 372, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to establishment and maintenance of an energy efficiency program, prior to repeal by Pub. L. 99-509, title III, § 3101(b), Oct. 21, 1986, 100 Stat. 1888.

Statutory Notes and Related Subsidiaries

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.

§ 6343. Waste energy recovery incentive grant program

(a) Establishment

The Secretary shall establish in the Department of Energy a waste energy recovery incentive grant program to provide incentive grants to—

- (1) owners and operators of projects that successfully produce electricity or incremental useful thermal energy from waste energy recovery;
- (2) utilities purchasing or distributing the electricity; and
- (3) States that have achieved 80 percent or more of recoverable waste heat recovery opportunities.

(b) Grants to projects and utilities

(1) In general

The Secretary shall make grants under this section—

- (A) to the owners or operators of waste energy recovery projects; and
- (B) in the case of excess power purchased or transmitted by a electric utility, to the utility.

(2) Proof

Grants may only be made under this section on receipt of proof of waste energy recovery or excess electricity generation, or both, from the project in a form prescribed by the Secretary.

(3) Excess electric energy

(A) In general

In the case of waste energy recovery, a grant under this section shall be made at the rate of \$10 per megawatt hour of documented electricity produced from recoverable waste energy (or by prevention of waste energy in the case of a new facility) by the project 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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