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Title 16 - CONSERVATION

CHAPTER 12 - FEDERAL REGULATION AND DEVELOPMENT OF POWER

SUBCHAPTER I - REGULATION OF THE DEVELOPMENT OF WATER POWER AND RESOURCES

Sec. 823a - Conduit hydroelectric facilities

From the U.S. Government Publishing Office, www.gpo.gov**§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 30 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 agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(B) The term "qualifying conduit hydropower 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 40 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 Service¹ National Marine Fisheries Service¹ 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 Service¹ National Marine Fisheries Service¹ 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; Pub. L. 115–270, title III, §3002, Oct. 23, 2018, 132 Stat. 3863.)

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

2018—Subsec. (a)(2)(C). Pub. L. 115–270, §3002(1), substituted "30 days" for "45 days" in introductory provisions.

Subsec. (a)(3)(C)(ii). Pub. L. 115–270, §3002(2), substituted "40 megawatts" for "5 megawatts".

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]."

¹ *So in original. Probably should be followed by a comma.*