

**U.S. Department of Energy Grid Deployment Office Guidance on Implementing Section 40332  
of the Infrastructure Investment and Jobs Act of 2021: Hydroelectric Efficiency Improvement  
Incentives**

March 22, 2023

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## I. Purpose, Scope, and Authority

This Guidance, prepared by the Department of Energy (DOE) Grid Deployment Office's (GDO) Hydroelectric Incentives Program, describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of hydroelectric facilities at existing dams pursuant to Section 243 of the Energy Policy Act of 2005 (EPAct 2005), Hydroelectric Efficiency Improvement Incentives, as amended by Section 40332 of the Infrastructure Investment and Jobs Act of 2021 (IIJA)<sup>1</sup>. Section 243 of EPAct 2005 requires the Secretary to make incentive payments to the owner or authorized operator of a hydroelectric facility at an existing dam, subject to the availability of appropriations,<sup>2</sup> for capital improvements directly related to improving facility efficiency by at least three percent.<sup>3</sup> DOE will issue incentive payments upon receipt of an application that demonstrates that the applicant is eligible to receive such payment and satisfies the other requirements as deemed necessary.

Section 243 sets various limitations for the payments available for hydroelectric efficiency improvement incentives that include:

- (1) incentive payments shall not exceed 30% of the costs of the applicable capital improvement(s);
- (2) not more than 1 incentive payment may be made to a single eligible hydroelectric facility per fiscal year; and
- (3) the amount of the incentive payment shall not exceed \$5,000,000.<sup>4</sup>

Any determinations made under Section 243 with regard to an incentive payment are not subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Parts 200 and 910, nor the Financial Assistance Rules, 10 C.F.R. Part 600. Any incentive payment in connection with Section 243 shall be considered a benefit.

As part of this Guidance, DOE may allocate up to 25% of the funding for Small projects. Projects under 10 megawatts (MW) represent over 75% of the nation's hydropower fleet. Many of these projects are owned by small businesses, municipal entities, nonprofit organizations, and/or Indian Tribes. Small hydropower projects owned by small businesses, municipal entities, nonprofit organizations and/or Indian Tribes often have fewer financial resources than larger hydropower facilities or hydropower facilities owned by larger corporations and are more likely to decommission hydropower projects because of the economic uncertainties associated with the relicensing and maintenance of these facilities.<sup>5</sup> As a result, projects to maintain and enhance hydropower at these facilities often face financial barriers relative to larger hydropower facilities and may need additional time or support. In recognition of this challenge, DOE may set aside up to 25% of the funding under this Guidance for Small projects, defined as hydropower projects that have a nameplate capacity of less than 10 MW and owned

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<sup>1</sup> Pub. L. No. 117-58. 42 U.S.C. § 15882

<sup>2</sup> Section 40332 of the Infrastructure and Jobs Act of 2021 appropriated \$75,000,000 until expended for EPAct 2005 Section 243: Hydroelectric Efficiency Improvement Incentives.

<sup>3</sup> 42 U.S.C. § 15882(a)

<sup>4</sup> 42 U.S.C. 15882(b)

<sup>5</sup> A 2022 hydropower industry owners survey found that 71.4% municipal owned electric utilities and 25% of rural cooperative electric utilities were actively considering decommissioning existing hydropower facilities. Ear to the River Final Report, available at: <https://info.kleinschmidtgroup.com/ear-to-the-river-results>.

by small businesses, municipal entities, nonprofit organizations, electric cooperatives, and/or Indian Tribes.

In keeping with the Administration's goals, and as a federal agency whose mission includes strengthening our Nation's energy prosperity, DOE seeks eligible projects that not only contribute to the country's energy technology and climate goals, but also promote the following goals: (1) create good paying, high quality, local jobs; (2) advance diversity, equity, inclusion, and accessibility for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, (3) support meaningful community and labor engagement; and (4) contribute to the goal that 40% of the overall benefits from certain federal investments flow to disadvantaged communities (the Justice40 Initiative).<sup>6</sup>

DOE intends to expend all available funds for eligible projects under this Guidance through at least one solicitation. In the event of oversubscription, meaning the amount of incentives requested in eligible applications exceeds the appropriated funding, DOE will maximize the positive impacts of funding to the U.S. hydropower fleet by prioritizing funding based on a ranking of applications by their total facility efficiency improvement, as described in Sections VI and VIII of this guidance.

*This guidance may be revised in the future or codified through rulemaking.*

## **II. List of Definitions**

The following terms apply exclusively to GDO's Hydroelectric Efficiency Improvement Incentives:

*Application period* means the period identified by DOE in the Federal Register notice that announces the schedule for accepting applications and the deadline for submissions.

*Calendar year* means a period beginning on January 1 and ending on December 31.

*Capital improvement project* means the construction, addition, improvement, modification, replacement, rearrangement, reinstallation, renovation, or alteration of tangible assets, such as real property, buildings, equipment, and intellectual property (including software) used in hydroelectric operations that have a useful life of more than one year, which are capitalized in accordance with generally accepted accounting principles.

*Dam* means any structure for impounding or diverting water, as defined by 18 C.F.R. § 12.3(b)(6).

*Disadvantaged communities* refers to communities as defined by the U.S. Department of Energy pursuant to E.O. 14008, the Office of Management and Budget's Interim Justice40 Implementation Guidance M-21-28, and Addendum M-23-09. DOE recognizes disadvantaged communities as defined and identified by the [Climate and Economic Justice Screening Tool | U.S. Climate Resilience Tool](#).<sup>7</sup>

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<sup>6</sup> The Justice40 initiative, created by Executive Order 14008, establishes a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities..

<sup>7</sup> See Department of Energy General Guidance for Justice40 Implementation, at 5-8, available at <https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf>.

*DOE* means the U.S. Department of Energy.

*Electric Cooperative* means a cooperatively owned-electric utility.

*Electric Utility* means a person or federal or state agency that sells electric energy.

*Exemption from Licensing* means a small hydroelectric power project or a small conduit hydroelectric facility as defined by 18 C.F.R. § 4.30.

*FERC* means the Federal Energy Regulatory Commission.

*Fiscal year* means the period beginning October 1 and ending on September 30.

*Gross head* means the difference between the upstream headrace water level and tailrace water level for reaction turbines and the difference between the upstream headrace water level and the centerline of the machine or nozzle for impulse turbines.

*Hydroelectric Facility* includes the hydroelectric units, water conveyances, and other appurtenances associated with an impoundment or diversion created by one or more existing dams, including but not limited to conduit hydropower facilities.

*Hydroelectric Unit* means a hydroelectric turbine and its associated generator and control equipment required to produce electricity.

*Incentive payment* means the payment which an eligible hydroelectric facility owner or authorized operator may receive, subject to Congressional appropriations, upon successfully proving eligibility. Incentive payment shall not exceed the statutory limit established in 42 U.S.C. § 15882(b) per hydroelectric facility per fiscal year and may be adjusted if appropriated funds are insufficient to make full payments to all eligible hydroelectric facilities.

*Incentive Payment Application* means an application for an incentive payment for an eligible hydroelectric facility that is submitted during the application period. Applications for incentive payments must be properly completed and submitted to DOE by the deadline for application submissions announced by DOE in the Federal Register.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians as defined in 25 U.S.C. § 5304(e).

*Measured power production* means measurement of power production performed at the point of common coupling that meets or exceeds C12.20-2010 Class 0.2 accuracy.

*Municipality* means a city, county, irrigation district, drainage district, or other political subdivision or agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power.

*Net head* is the head of water available at the point of entry to the turbine. This is equal to the gross head minus losses in the water conveyance system.

*Nonprofit organization* means a tax-exempt organization or enterprise that does not operate for profits for its owners.

*Secretary* means the Secretary of the U.S. Department of Energy, or such officers or employees of the U.S. Department of Energy as designated by the Secretary of the U.S. Department of Energy.

*Small Business* means (1) a business organized for profit, with a place of business located in the United States, (2) that is more than 50% owned and controlled by one or more individuals who are citizens or permanent resident aliens of the United States, or by other small business concerns that are each more than 50% owned and controlled by one or more individuals who are citizens or permanent resident aliens of the United States; and (3) has no more than 500 employees, including [affiliates](#).

*Small project* means an eligible hydroelectric facility with a nameplate capacity of 10MW or less that is owned or operated by a small business, Indian Tribe, a municipality, nonprofit organization, or electric cooperative.

*Stamped documents* means documents that have been certified by an appropriately licensed professional engineer.

*State* means the District of Columbia, Puerto Rico, and any of the States, Commonwealths, territories, and possessions of the United States.

*Theoretical power* means the maximum hydropower power output with 100% efficiency.

### **III. Who may apply and what is an eligible Hydroelectric Facility?**

The owner or authorized operator of a hydroelectric facility at an existing dam may apply for an incentive payment. In order to be eligible for a hydroelectric efficiency improvement incentive payment under Section 243, the following qualifications must be met:

- (1) The hydroelectric facility at the dam must have been placed in service before November 15, 2021.
- (2) The hydroelectric facility must be operable at the time an application is submitted. Non-operable facilities are not eligible for a payment.
- (3) The capital improvement(s) are made:
  - a. On the hydroelectric facility side of the point of interconnection or common coupling with the electric utility, or
  - b. In a facility that remotely controls hydroelectric facility operations.
- (4) The capital improvement(s) must increase the efficiency of the hydroelectric facility by at least 3%.

### **IV. How will DOE allocate funding for eligible capital improvement projects?**

(a) If adequate funds are available, DOE will fund all eligible capital improvement projects at the limits set forth in Section 243 (30% of total project costs not to exceed \$5,000,000 per facility per fiscal year). In addition, DOE may allocate funding as follows:

- (1) Up to 25% of the appropriated funds may be allocated for Small projects, as defined in Section II and
- (2) The remaining appropriated funds may be made available to eligible hydroelectric facilities that do not meet the criteria described for Small projects.

(b) In the event of oversubscription. DOE will allocate appropriated funding according to the procedures outlined below in Section VIII of this Guidance.

**V. At what stage in the development process would a capital improvement project be eligible to apply for an incentive payment?**

To be eligible to apply for a hydroelectric efficiency improvement incentive payment, a capital improvement project at an eligible hydroelectric facility must have applied for or already received all Federal, State, and/or Tribal authorizations and have initiated, requested, or completed any required federal environmental review processes under the National Environmental Policy Act of 1969 (NEPA).<sup>8</sup> Where authorizations and/or NEPA processes have not yet concluded, any awards would be conditioned upon successful completion of permitting and/or NEPA processes, as detailed in Section VII. For projects determined by DOE to need additional NEPA review, the recipient must be prepared to support DOE in the completion of NEPA review process (e.g., biological evaluations, reviews under the National Historic Preservation Act, environmental assessments) prior to receiving an incentive payment. The recipient may be required to prepare the records and the costs to prepare the necessary records may be included as part of the project costs.

An eligible capital improvement project at an eligible hydroelectric facility may apply for an incentive payment for any materials procured or other costs incurred toward this project after November 15, 2021.

**VI. What are the general application requirements?**

DOE will evaluate each application to determine whether the project meets the criteria included in this Guidance, including (1) whether the facility meets the definition of an eligible hydroelectric facility as defined in Section III, and (2) whether the improvement is an eligible capital improvement as defined in Section II.

This section describes the specific data and information DOE needs to determine eligibility to receive an incentive payment. To qualify, the applicant must demonstrate an increase of at least three percent in the efficiency improvement percentage for the hydroelectric facility where the capital improvement(s) were made or are to be made. For projects that receive an incentive payment, additional documentation, if noted below, may be required prior to DOE making a final payment, including the collection of metrics and/or other data related to funding from IJJA. Capital improvement projects completed prior to application submittal must provide all documentation required for DOE to make a final payment, as described in this section, at the time of application.

(a) When and how to apply

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<sup>8</sup> 42 U.S.C. § 4321, et seq.

- (1) DOE will announce a schedule and deadline for accepting applications in a Federal Register notice. Application(s) for an incentive payment must be filed during the application period defined by DOE in the notice.
- (2) Failure to file an application by the DOE-established deadline shall disqualify the owner or authorized operator from eligibility for an incentive payment during that application period. Applications filed outside of the application period will not be accepted.
- (3) Each application must include all the information set forth in this section (as applicable). To expedite application review and processing, it is recommended that all submitted materials are named or internally labelled such that it is clear which application requirement(s) each piece of information is intended to address. See “Suggested File Structure” table in the Appendix to this guidance. Use of the “Suggested File Structure” table is voluntary. Applicants are required to submit new application material with each application period.

(b) An application for an incentive payment must include:

- (1) The name of the hydroelectric facility or other official designation;
- (2) The name, mailing address, telephone number, and email address of a point of contact to respond to questions or requests for additional information, and notification of eligibility determination;
- (3) The name of the owner of the hydroelectric facility;
- (4) The location and physical address of the hydroelectric facility including nine-digit zip code;
- (5) If applicable, a clear statement noting the application is requesting funding as a Small project as defined in Section II of the guidance:
  - a. Applications submitted for Small projects must include documentation confirming eligibility as a small business, Indian Tribe, municipality, or electric cooperative, as defined above in Section II;
- (6) A description of the hydroelectric facility, including:
  - a. Proof of authorization to operate, as demonstrated by FERC license, exemption, or qualifying conduit determination letter, or any of the following:
    - i. a lease of power privilege granted by the Bureau of Reclamation,
    - ii. Congressional authorization, or
    - iii. other federal or state documentation;
  - b. The year the facility began commercial operation;
  - c. The number of hydroelectric units that are part of the facility and the nameplate capacity of each hydroelectric unit;
  - d. The operating range of each hydroelectric unit, including the range of hydraulic head seen at the turbine, in feet, and flow rates, in cubic feet per second;
  - e. Annual generation data, as shown on invoices from the electric utility, from the last five years of facility operation to enable DOE to understand baseline generation at the facility. If five years of generation data are unavailable or, if invoices from the electric utility are unavailable, include all available generation data from the time period and a statement explaining why less than five years of data are available;
- (7) Documentation relating to the existing conditions and the capital improvement(s) at the hydroelectric facility, including:

- a. A detailed written narrative describing the capital improvement project at the hydroelectric facility and the expected efficiency improvement(s) including:
  - i. Investment justification of efficiency improvement(s). If multiple capital improvements are included in an application, provide an estimate or the known efficiency improvement attributable to each particular capital improvement with justification for the investment;
  - ii. Stamped documentation including calculations, spreadsheets, mathematical models, or other appropriate techniques that quantitatively demonstrate the efficiency improvement in the hydroelectric facility due to the capital improvement(s).
  - iii. Where applicable, provide supporting manufacturer documentation of the expected efficiency increase;
- b. In lieu of the Section VI(b)(7)(a)(ii) requirement above, the applicant may use the following method to calculate the efficiency improvement for the hydroelectric facility due to the capital improvement(s). If efficiency is or will be improved at more than one hydroelectric unit, perform the calculations below separately for each unit to calculate the combined efficiency at the facility. Spreadsheets tools with examples are available on the [GDO Hydroelectric Incentive Program website](#). Use of the spreadsheets is strictly voluntary. Applicants may modify the spreadsheet to meet their requirements:
  - i. For each hydroelectric unit, provide time series data for a minimum of one and up to five prior years, reported hourly, daily, or monthly (preferably hourly), recording:
    1. average flow in either cubic feet per second (cfs) or cubic meters per second (cms);
    2. gross operating head in feet (ft) or meters (m);
    3. net operating head in feet (ft) or meters (m), and
    4. total kilowatt-hours (kWh) or megawatt-hours (MWh) of measured / recorded power production;
  - ii. Calculate the theoretical power production for the time series data at each hydroelectric unit by using one of the two following power equations:
    1.  $P \text{ (kWh)} = Q \cdot H / 11.81$ , where  $Q$ =Flow in cubic feet per second (cfs) and  $H$ =Net Head in feet (ft), or
    2.  $P \text{ (kWh)} = 9.81 \cdot Q \cdot H$ , where  $Q$ =Flow in cubic meters per second (cms) and  $H$ =Net Head in meters (m);
  - iii. Add the time series historical power production data for the hydroelectric unit(s) to calculate total power production;
  - iv. Add the theoretical power production data for the hydroelectric unit(s) to calculate the total theoretical power production;
  - v. For each unit, divide the total power production by the total theoretical power production and multiply the result by 100 to calculate the pre-capital improvement hydroelectric facility efficiency;
  - vi. For each unit, use the historical head and flow data to estimate the post-capital improvement power generation using manufacturer's efficiency data per model tests or other resources;



- c. If applicable, documentation demonstrating that the capital improvement(s) will increase efficiency or generation at the hydroelectric facility beyond its original design specifications. If oversubscription occurs and applications are prioritized in order to maximize positive benefits, as described in Section VIII(a)(5), applications that have demonstrated an increase in efficiency or generation at the hydroelectric facility beyond original design specifications will be awarded a bonus point;
- d. A project work plan describing the current status of the capital improvement project, the expected remaining steps in planning, developing or constructing the project and the Community Benefits Plan in Section VI(b)13;
- e. A written narrative describing and, where possible, identifying potential areas of risk in the project work plan or other sources of risk associated with the capital improvement (e.g., project completion schedule, procuring materials and equipment, deployment of new technologies);
- f. A project timeline summarizing the major steps/milestones described in the capital improvement project work plan;
- g. A monitoring plan that will document the effectiveness of the capital improvement project;
- h. If the capital improvement includes the installation of advanced controls, include an associated cybersecurity plan;
- i. A project budget summarizing:
  - i. The total cost of the capital improvement(s);
  - ii. The major cost categories of the capital improvement(s);
  - iii. The total amount of funding requested, and;
  - iv. Any other federal funding sources used to support the project;
- j. A detailed, itemized list of expected or actual capital costs for the capital improvement and documentation of the stated costs including but not limited to, as applicable, price estimates, vendor quotes, statements, invoices, or bills of sale for the capital improvement being applied for;
- k. As applicable, documentation from FERC or other applicable federal agencies demonstrating permitting is underway or authorization has been granted to implement the capital improvement(s);
- l. Documentation from FERC or other applicable federal agencies demonstrating compliance or engagement in processes associated with gaining compliance with the National Environmental Policy Act of 1969 (NEPA),<sup>9</sup> or a request for a DOE NEPA determination as described in Section V;
- m. If applicable, documentation demonstrating compliance or engagement in processes associated with gaining compliance with Section 106 of the National Historic Preservation Act of 1966, as described in Section V;
- n. With respect to the funding restrictions outlined in Section X of this Guidance:
  - i. A statement on whether the Build America, Buy America requirements apply to the project and the impact, if any, this requirement may have on the project's budget;

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<sup>9</sup> 42 U.S.C. § 4321, et seq.

- ii. If an applicant is seeking a waiver of the Build America, Buy America requirements, a written waiver request that includes all of the information outlined in Section X (A) of this Guidance;
  - o. Acknowledgment that the applicant will comply with all of the Davis-Bacon Act requirements as outlined in Section X (B) of this Guidance;
  - p. If the project affects Indian Tribes, evidence to support that the project does not disturb, desecrate, or otherwise impair the integrity of a sacred site or Tribal Cultural Property of an Indian Tribe. Supporting documentation from an Indian Tribe potentially impacted by the capital improvement project is encouraged.
- (8) A summary or abstract document and a summary slide of the proposed capital and efficiency improvement(s) that is available for public release;
- (9) A tax identification number of the hydroelectric facility;
- (10) The creation or update of a Federal System for Award Management (SAM) account is required and confirmed with the assignment of a Unique Entity Identifier (UEI) number created in SAM.gov;
- (11) A statement indicating that the applicant is the owner of the hydroelectric facility or is the authorized operator of the hydroelectric facility and has the written consent of an authorized executive official of the hydroelectric facility owner to file an application; and
- (12) A statement signed by an authorized executive official certifying that the information contained in the application is accurate.
- (13) A Community Benefits Plan that demonstrates the applicant's approach to ensuring the capital improvement advances the following four goals: 1) community and labor engagement; 2) investing in the American workforce 3) advancing diversity, equity, inclusion, and accessibility (DEIA); and 4) contributing to the Justice40 Initiative. The Community Benefits Plan should be no more than 12 pages.
  - a. Community and Labor Engagement: The Community Benefits Plan must set forth the applicant's prior actions and future plans to engage with an inclusive collection of local stakeholders, including labor unions, local government, Tribal government, and community-based organizations that support or work with disadvantaged communities. By facilitating community input and social buy-in and strengthening accountability, such agreements may substantially reduce or eliminate certain risks associated with the capital improvement(s). Community and labor engagement should lay the groundwork for a Community Benefits Agreement. The Community Benefits Plan should illustrate project viability and social risk mitigation through the delivery of high-quality jobs, minimal environmental impact, and allocation of project benefits to disadvantaged communities. Applicants may provide letters of commitment from representative organizations reflecting substantive feedback on the applicant's approach to community benefits including the American workforce; DEIA; and the Justice40 Initiative detailed below. Community and labor engagement should ideally lay the groundwork for the eventual negotiation of Workforce and Community Agreements, which could take the form of one or more kinds of negotiated agreements with communities, labor unions, or, ideally, both. Examples include, registered apprenticeship programs, labor-management training partnerships, quality pre-apprenticeship programs, card check neutrality, and local and targeted hiring goals.

- b. Workforce Continuity and Good Jobs Plan: In the Workforce Continuity and Good Jobs Plan, please describe specific efforts to ensure a well-trained and skilled workforce will be available and engaged to complete the capital improvement(s). A Project Labor Agreement may provide sufficient detail on skill requirements and provide assurances of skilled worker availability. Unless already included in Project Labor Agreement, applicants should provide sufficient detail on the following:
- i. How the applicant will ensure ready access to a sufficient supply of appropriately skilled labor to ensure high-quality construction of the capital improvement(s), including a description of any required professional certifications and/or training (in-house, apprenticeship, etc.);
  - ii. How the applicant will minimize risks of labor disputes and disruptions that would jeopardize the timeliness and cost-effectiveness of the construction of the capital improvement(s);
  - iii. How the applicant will provide a safe and healthy workplace that trains on the recognition, avoidance, abatement, and prevention of safety and health hazards in workplaces, and avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
  - iv. How the construction of the capital improvement(s) prioritizes local hires, or an explanation of unfeasibility;
  - v. Records to substantiate the information in items i-iii;
  - vi. Labor Engagement: Project planning should include engagement with appropriate building and construction trades unions. Provide description of engagement and any agreements with the relevant construction trade unions plans to address skill certifications, use of registered apprentices, dispute resolution, project stabilization, and other conditions.
- c. Diversity, equity, inclusion, and accessibility (DEIA) Plan: The Community Benefits Plan must include a section describing how DEIA objectives will be incorporated into the capital improvement(s). The section should detail how the applicant will partner with underrepresented businesses, educational institutions, and training organizations that serve workers who face barriers to accessing quality jobs, and/or other project partners to help address DEIA. The following is a non-exhaustive list of potential DEIA actions that could be included in a DEIA Plan. This list is offered to provide guidance to applicants and is not intended to be comprehensive or mandatory. Note that the DEIA Plan is required separate and apart from a Justice40 Implementation Plan because the DEIA Plan is primarily internally focused on the capital improvement(s) workforce while the Justice40 Implementation Plan is primarily externally focused on the communities impacted by the hydroelectric facility's operations.
- i. Commitment to contract with Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses, and Veteran Owned Businesses;
  - ii. To fill open positions created by the capital improvement(s), applicant partnered with workforce training organizations serving under-represented

communities and those facing systemic barriers to quality employment such as those with disabilities, returning citizens, opportunity youth, and veterans.

- d. Justice40 Initiative: Applicants must provide an overview of benefits to disadvantaged communities that the capital improvement(s) can deliver, supported by measurable milestones. Specifically, the Justice40 Initiative section must include:
- i. Identification of applicable disadvantaged communities to which the anticipated project benefits will flow;
  - ii. Identification of applicable benefits that are quantifiable, measurable, and trackable, including, at a minimum, a discussion of the relevance of each of the eight DOE Justice40 Initiative benefits outlined below;
    1. Benefits include (but are not limited to) measurable direct or indirect investments or positive project outcomes that achieve or contribute to the following in disadvantaged communities: (1) a decrease in energy burden; (2) a decrease in environmental exposure and burdens; (3) an increase in access to low-cost capital; (4) an increase in high quality job creation, the clean energy job pipeline, and job training for individuals; (5) increases in clean energy enterprise creation and contracting (e.g., minority-owned or disadvantaged business enterprises); (6) increases in energy democracy, including community ownership; (7) increased parity in clean energy technology access and adoption; and (8) an increase in energy resilience. In addition, applicants should also discuss how the capital improvement will maximize all of the benefits listed in #4 above;
    2. A description of how and when anticipated benefits are expected to flow to disadvantaged communities. For example, will the benefits be provided directly within the disadvantaged community or communities identified in the Justice40 Initiative section, or are the benefits expected to flow in another way? Further, will the benefits flow during project development or after project completion, and how will the applicant report benefits delivered?
    3. A discussion of anticipated negative and cumulative environmental impacts on disadvantaged communities. Are there anticipated negative or positive environmental impacts associated with the proposed capital improvement(s), and how will the applicant mitigate any negative impacts? Within the context of cumulative impacts created by the capital improvement, applicants should use Environmental Protection Agency EJSCREEN tool to quantitatively discuss existing environmental impacts in the project area;

(c) Final Payment Documentation Requirements:

Prior to disbursing a final incentive payment, DOE must receive proof of completion of the project and evidence documenting the improvement. For projects completed prior to application submission, these materials must be included in the application. The following information must be provided:

- (1) Statement of final completion and owner's acceptance of the work;

- (2) Stamped documents demonstrating the efficiency improvement(s) estimated in Section VI(b)(7) was measured and proven in the field through an independent performance test such as directed by ASME PTC 18, IEC 60041 or another relevant and equivalent standard;
- (3) Any other post-project proof of improvement related to the project determined by DOE; and
- (4) Paid invoices that demonstrate project costs as requested in Section VI(b)(7)(i).

## **VII. What is the timing of incentive payments?**

Upon a DOE determination that the hydroelectric facility and capital improvement(s) meet eligibility requirements, DOE will make a payment to eligible applicants, subject to available funds. For eligible improvements that have not reached completion, including where permitting and/or NEPA or NHPA processes have not completed, DOE will send written notice approving or disapproving the application as eligible for an incentive payment as described in Section VIII and will set milestones for completion of the capital improvement(s) based upon a review of the milestones requested in Section VI(b)(7)(f) and conditioned upon successful completion of permitting and/or NEPA or NHPA processes, if applicable. Depending on the amount of time required to complete the capital improvement(s), DOE may, at their sole discretion, require progress reports or other periodic documentation from applicants, such as metrics or data related to funding from IJJA. Applicants may request time extensions to the milestones set by DOE. DOE will review requests for time extensions and may approve or deny requests for time extensions at their sole discretion. Once DOE determines the capital improvement(s) are complete and the hydroelectric facility efficiency was improved by at least 3%, as per documentation required under Section VI of this Guidance, DOE will make a payment to the applicant not to exceed the statutory limit of 30% of total project costs not to exceed \$5,000,000.

## **VIII. What are the procedures for processing applications?**

### **(a) Processing Applications**

- (1) GDO will open the application period by publishing a notice in the Federal Register, which will define the application period and direct applicants where to the Guidance. Applications are to be submitted to the GDO's Hydroelectric Incentives Program following the instructions provided in the Federal Register notice.
- (2) Following submission of an application, DOE will review and consider the completeness of the application data and may request supplementary information relating to the application. When DOE has been satisfied that sufficient information has been reported, the application will be reviewed for eligibility consistent with this Guidance. Applications with significant deficiencies may be determined to be incomplete and may be required to re-submit and will receive a new time stamp.
- (3) Applicants must respond to any request for supplemental information relating to their application in a reasonable period of time. Delays exceeding 10 business days in response to a request for information shall constitute the basis for classifying a hydroelectric facility as ineligible.
- (4) DOE may require the applicant to conduct at its own expense and submit an independent audit, or DOE may conduct an audit, to verify the capital improvement has been made by the hydroelectric facility and for which an incentive payment has been requested or made.
- (5) In the event of oversubscription, eligible applications will be prioritized to maximize benefits. Projects will be organized by Small projects (as defined in Section II) and remaining eligible

hydroelectric facilities and prioritization will occur based on a ranking of applications by their efficiency improvement percentage, rounded to three significant digits to the right of the decimal point. Applications demonstrating the capital improvement(s) increased the hydroelectric facility's efficiency or generation beyond original design specifications will be awarded a bonus of 1% to their efficiency improvement percentage. Applications with the same total efficiency improvement percentage, after any bonuses are awarded, will be ranked by nameplate capacity with larger facilities taking priority over smaller facilities. Funds will be awarded starting with the applications with the highest scores and proceeding until all remaining funds available in the application period are exhausted.

- (6) DOE shall issue written notice of the determination to each applicant and for each hydroelectric facility with the following content:
  - a. Disapproving or approving the application as eligible for an incentive payment; and
  - b. Setting forth the applicant's incentive payment amount and the timing of the payments.
- (7) If the application does not meet the requirements of this Guidance or if some portion of the capital improvement claimed in the application is disallowed as ineligible for payment, DOE shall issue a written notice denying the application in whole or in part with an explanation of the basis for denial.

#### **IX. FAQ**

- 1) When is the deadline to apply?
  - a) DOE will announce a schedule and deadline for accepting applications in a Federal Register notice. See Section VIII(a)(1).
- 2) What types of hydropower facilities are eligible?
  - a) Hydroelectric facilities at existing dams that were been placed in service before November 15, 2021 are eligible to apply for a payment.
  - b) The hydroelectric facility must be operable at the time an application is submitted. Non-operable facilities are not eligible for a payment.
  - c) Dams are defined as any structure for impounding or diverting water, meaning a broad range of conventional and conduit hydroelectric projects that are connected to dams or diversions are eligible to apply for a payment as long as they meet the other criteria noted above.
- 3) What are the eligibility criteria for the incentives?
  - a) Capital improvement(s) (defined in Section II) that increase the efficiency of a hydroelectric facility by at least 3% are eligible for an incentive payment.
  - b) The capital improvement(s) must be made on the hydroelectric facility side of the point of interconnection or common coupling with the electric utility, or in a facility that remotely controls hydroelectric facility operations (Section III).
  - c) Capital improvement(s) at an eligible hydroelectric facility must have already received all Federal, State, and/or Tribal authorizations and completed any required federal environmental review processes under the National Environmental Policy Act of 1969 (Section V).
  - d) Only materials procured or other costs incurred after November 15, 2021 for capital improvement(s) at an eligible hydroelectric facility are eligible for incentive payments (Section V).

- e) Example 1: a capital improvement that improved the efficiency of one unit by at least 3%, while other units in a facility were unchanged, would be eligible for an incentive payment as long as the other criteria noted above were met.
  - f) Example 2: a capital improvement that reduces the losses in the water conveyance system resulting in a efficiency gain of at least 3% due to increase in net head would be eligible for an incentive payment as long as the other criteria noted above were met.
  - g) Example 3: a capital improvement that reduces the losses in the water conveyance system resulting in an efficiency gain of 2% due to increase in related net head and an increase of 1.5% efficiency due to improved trash racks and intake structure resulting in total efficiency improvement of 3.5% would be eligible for an incentive payment as long as the other criteria noted above were met.
- 4) I have already started making modifications that I think would qualify under this Guidance. Are capital improvements made prior to November 15, 2021 eligible?
    - a) No. Only materials procured or other costs incurred after November 15, 2021 for capital improvement(s) at an eligible hydroelectric facility are eligible for incentive payments (Section V).
  - 5) My company owns multiple hydroelectric facilities. Is there a limit on how many applications I can file? Can I file one for each facility?
    - a) There is no limit to the number of facilities for which applications can be filed by a single owner. All eligible capital improvements at a single facility should be included in one application. Only one incentive payment can be made to a single eligible hydroelectric facility per fiscal year.
  - 6) If it takes longer than expected to complete the capital improvements would a time extension be granted? What if NEPA review takes longer than expected?
    - a) Applicants may request time extensions to any milestones set by DOE. DOE will review requests for time extensions and may approve or deny requests for time extensions at their sole discretion (Section VII).
  - 7) Can FERC documentation be used in lieu of requested components in the application process?
    - a) FERC documentation may be submitted as part of an application provided the documentation succinctly addresses specific application requirements in Section VI. All applications will be reviewed for completeness (Section VIII(a)(2)).
  - 8) What documentation may be requested during potential periodic progress reports?
    - a) Periodic progress reports may be requested or required of applicants (see Section VII). Documentation or reporting requests could include but are not limited to:
      - i) Summaries of work or completed tasks;
      - ii) Summaries of expenditures (labor and materials) with invoices;
      - iii) Documentation related to previous, current, and/or potential delays;
      - iv) Photos;
      - v) Metrics or other data related to funding from IJJA.
  - 9) Will there be an appeal process for denied applications?
    - a) An appeal process is available for denied applications (see Section XI).

- 10) Can you provide more detail about what will happen in the event of oversubscription?
- a) If Small projects are oversubscribed but funding is available for projects that do not meet the Small project criteria, the eligible Small projects that were not awarded an incentive will be reviewed for funding along with the eligible applications that do not meet the Small project criteria.
  - b) If oversubscription occurs for projects that do not meet the Small project criteria, any funding remaining for Small projects will be used to fund the projects that do not meet the Small project criteria.
- 11) Can I apply for incentive funds under both Section 243 and Section 247?
- a) Yes, however, the statutory limitations of 30% of project costs up to \$5 million apply for each incentive payment under either Section 243 or Section 247.
- 12) Do for-profit entities, such as investor-owned utilities, have to comply with the Buy America requirements detailed in Section X(a)?
- a) No. The requirements only apply to a State, local government, territory, Indian Tribe, Institution of Higher Education, or nonprofit organization.
- 13) Do projects that were completed prior to the application period have to have complied with the Buy America and Davis Bacon requirements detailed in Section X?
- a) Yes. Applicants may request a waiver from Buy America requirements. See Section X for details on how to seek a waiver. Waivers are not possible for Davis Bacon requirements.
- 14) Can other enterprise plans or investments be used to meet the Community Benefits Plan requirements listed in Section VI(b)(13)?
- a) Applicants may reference or include existing plans or investments as part of an application. However, it is likely that applicants will need to bolster their existing plans or investment to meet the objectives of the Community Benefits Plan. The application must describe how the proposed project will meet the four goals detailed in Section VI(b)(13): 1) community and labor engagement; 2) investing in the American workforce 3) advancing diversity, equity, inclusion, and accessibility (DEIA); and 4) contributing to the Justice40 Initiative.

## **X. Funding Restrictions**

All applicants are subject to the following requirements.

### **(a) Build America, Buy America Requirements:**

The Build America, Buy America Act (Buy America) requires:

- All iron, steel, and manufactured products used in the project must be produced in the United States; and
- All construction materials used in the project must be manufactured in the United States.

In general, whether a given project must apply this requirement is dependent on several factors, such as the recipient's entity type, whether the work involves "infrastructure," as that term is defined in Section 70914 of the IIJA, based in part on whether the infrastructure in question is publicly owned or serves a



public function. For Section 243 specifically, all projects are considered “infrastructure” within the Buy America provision of the IIJA, based on implementation guidance from the Office of Management and Budget (OMB) issued on April 18, 2022.

Moreover, based on the OMB guidance, the Buy America requirements of the IIJA do not apply to DOE projects in which the recipient is a for-profit entity; the requirements only apply to projects whose recipient is a State, local government, territory, Indian Tribe, Institution of Higher Education, or nonprofit organization.

- Each recipient of a Section 243 incentive payment must agree (1) to fulfill the commitments regarding the procurement of U.S.-produced products, and (2) to fulfill the commitments made in its application regarding the procurement of other key component metals and manufactured products domestically that are deemed available in sufficient and reasonably available quantities or of a satisfactory quality at the time of award negotiation. Applicants may seek waivers of these requirements in very limited circumstances and for good cause shown.

For purposes of the Buy America requirements, based both on the statute and OMB Guidance Document dated April 18, 2022, the following definitions apply:

**Construction materials** includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

Moreover, according to the OMB guidance document:

When determining if a program has infrastructure expenditures, Federal agencies should interpret the term “infrastructure” broadly and consider the definition provided above as illustrative and not exhaustive. When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or

improvement of a private home for personal use, for example, would not constitute an infrastructure project.

DOE, not the applicant, will have the final say as to whether a given project includes infrastructure, as defined herein. Accordingly, in cases where the “public” nature of the infrastructure is unclear, but the other relevant criteria are met DOE strongly recommends that applicants complete their full application with the assumption that Buy America requirements will apply to the proposed project.

**Project** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

In accordance with Section 70914 of the IIJA, none of the project funds may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America requirements only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does the Buy America requirements apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

These requirements must flow down to all sub-awards, all contracts, subcontracts and purchase orders for work performed under the proposed project, except where the prime recipient is a for-profit entity. Based on guidance from the Office of Management and Budget (OMB), the Buy America requirements of the IIJA do not apply to DOE projects in which the recipient is a for-profit entity; the requirements only apply to projects whose recipient is a State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization.

For additional information related to the application and implementation of these Buy America requirements, please see OMB Memorandum M-22-11, issued April 18, 2022: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

## **Waivers**

In limited circumstances, DOE may waive the application of the Buy America requirements where DOE determines that:

- (1) applying the Buy America requirements would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

If an applicant or recipient is seeking a waiver of the Buy America requirements, it may submit a waiver request with its application or after it has been notified of its selection. A waiver request must include:

- A detailed justification for the use of “non-domestic” iron, steel, manufactured products, or construction materials to include an explanation as to how the non-domestic item(s) is essential to the project
- A certification that the applicant or recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers;
- Applicant/Recipient name and Unique Entity Identifier (UEI)
- Total estimated project cost, DOE and cost-share amounts
- Project description and location (to the extent known)
- List and description of iron or steel item(s), manufactured goods, and construction material(s) the applicant or recipient seeks to waive from Domestic Content Procurement Preference requirement, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- Waiver justification including due diligence performed (e.g., market research, industry outreach) by the applicant or recipient
- Anticipated impact if no waiver is issued

DOE may require additional information before considering the waiver request.

Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [DOE Buy America Requirement Waiver Requests | Department of Energy](#).

DOE’s decision concerning a waiver request is not appealable.

#### **(b) Davis-Bacon Act Requirements**

Section 243 Incentive payments will be funded under Division D of the Bipartisan Infrastructure Law. Accordingly, per Section 41101 of that law, all laborers and mechanics employed by the recipient, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under Section 243 shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA).

Applicants shall provide written assurance acknowledging the DBA requirements above, and confirming that the laborers and mechanics performing construction, alteration, or repair work on projects funded in whole or in part by awards made under Section 243 are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

Applicants acknowledge that they will comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
- (3) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (4) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (5) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the United States Department of Labor (DOL) upon request, as required by 29 CFR 5.6(a)(2).
- (6) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
- (7) cooperating with any authorized representative of the DOL in their inspection of records, interviews with employees, and other actions undertaken as part of a DOL investigation.
- (8) posting in a prominent and accessible place the wage determination(s) and DOL Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- (9) notifying the Grid Deployment Office's Hydroelectric Incentive Program Section 243 of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR Parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; DOL investigations; or legal or judicial proceedings related to the labor standards under a contract, a subcontract, or subrecipient award.
- (10) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>), its successor system, or other manner of compliance as directed by the Contracting Officer.

Recipients of funding under Section 243 will also be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance. The DOL offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction>, and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

DOE anticipates contracting with a third party for a Davis-Bacon Act electronic payroll compliance software application. Recipients of funding under this FOA must ensure the timely electronic submission of weekly certified payrolls through this software as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access. Applicants should indicate if a waiver will be sought.

#### **(c) National Environmental Policy Act (NEPA) Requirements**

DOE's decision whether and how to distribute federal funds under this incentive Guidance is subject to NEPA (42 U.S.C. § 4321, et seq.). NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their proposed actions. For additional background on NEPA, please see DOE's NEPA website, at <https://www.energy.gov/nepa>.

While NEPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, all recipients selected for an incentive payment will be required to assist in the timely and effective completion of the NEPA process in the manner most pertinent to their project. If DOE determines certain records must be prepared to complete the NEPA review process (e.g., biological evaluations or environmental assessments), the recipient may be required to prepare the records and the costs to prepare the necessary records may be included as part of the project costs.

#### **(d) Other Requirements**

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246, as amended, Equal Employment Opportunity:

- Recipients and their contractors and subcontractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- Recipients and their contractors and subcontractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- Recipients and their contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

### **XI. Administrative Appeals**

- (a) Application denials, in whole or in part, may be appealable to the DOE Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with the procedures set forth below and in accordance with the procedural regulations codified at 10 C.F.R. Part 1003.

- (b) If an applicant does not file an appeal in accordance with these requirements, the determination of DOE shall become final. If an applicant files an appeal on a timely basis in accordance with these requirements, the decision and order of the Office of Hearings and Appeals shall be final. If the Office of Hearings and Appeals determines that payment is required, the Director of the Office of Hearings and Appeals shall remand the application to the Grid Deployment Office to pay the incentive.
- (c) The appeal shall contain:
1. a concise statement of the ground(s) upon which the applicant contests the written notice of DOE;
  2. a copy of the DOE notice denying the application;
  3. contact information (i.e., name, telephone number, mailing and e-mail addresses) for a representative able to respond to questions and provide information relevant to the appeal; and
  4. any data, documentation, or other relevant information supporting a showing by the appellant that the denial of eligibility or disallowance of payment, either in whole or in part, is arbitrary and capricious.
- (d) The appeal, including attachments, should be electronically filed with the Office of Hearings and Appeals (OHA), U.S. Department of Energy, at: [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov). Upon filing, OHA will confirm receipt of the appeal and assign the appeal a case number.
- (e) The following matters are not subject to appeal:
1. the denial of an application on the basis of untimeliness;
  2. a denial of an incentive payment based upon DOE's determination that insufficient appropriated funds are available to make payments to all eligible applicants;
  3. Decision concerning a waiver request with respect to Build America, Buy America requirements.
- (f) The appeal process shall proceed as follows:
1. An appeal under these procedures must be filed within ten (10) days of an applicant receiving the determination by DOE denying eligibility or a claim for payment, in whole or in part.
  2. In evaluating an appeal, OHA may require the submission of additional information by the appellant regarding any statement, data, documentation, or other information included in an appeal. OHA may also solicit and accept submissions of relevant information from other sources, including DOE, provided that the appellant is afforded an opportunity to respond to all such submissions. OHA may, on its own initiative, convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal. OHA will determine the scope and format of any conference or hearing convened under these procedures, as well as the parties allowed to participate.
  3. OHA may issue an order summarily dismissing an appeal if: (a) the appeal is not filed in a timely manner, unless good cause is shown; (b) the appeal is defective on its face; (c) the appellant fails to provide additional information requested by OHA within the time specified by OHA; or (d) for any other reason that the appeal would be subject to dismissal under the OHA procedural regulations codified at 10 C.F.R. Part 1003.

4. OHA will provide DOE with the opportunity to submit a written response to an appeal within a period of time specified by OHA. OHA will provide the appellant with a copy of DOE’s response and allow the appellant to submit a reply within a period of time specified by OHA.
5. Within thirty (30) days of receiving all required information, including additional information requested by OHA subsequent to the submission of the appeal, OHA shall issue a written decision granting or denying the appeal, in whole or in part. The decision shall include a written statement setting forth the relevant facts and basis for the determination. Upon issuance, OHA shall serve an electronic version of the decision upon the appellant and the DOE Grid Deployment Office. The decision will also be published on the OHA website: <http://www.energy.gov/oha>. The decision of OHA shall constitute the final agency action and the appellant’s final right of administrative review under the Grid Deployment Office’s Hydroelectric Incentive Program.
6. All expenses incurred by the appellant in pursuing any appeal before OHA shall be borne exclusively by the appellant.

## XII. Appendix

To expedite application review and processing, it is recommended that all submitted materials are named and/or internally labelled such that it is clear which application requirement(s) each piece of information is intended to address. The information below provides a suggested approach to this process for applicants. Use of this suggested approach is voluntary.

It is recommended all submitted file names begin with an Identifier as shown in the table below. The Identifier should consist of a single word that describes the hydroelectric facility. For example, an applicant could combine the name of the hydroelectric facility with its location into one word.

Some application requirements have been grouped together into single files. These files are signified by color coded rows as shown in the table below. For example, the “Name of the hydroelectric facility or other official designation” and the “Name, mailing address, telephone number, and email address of a point of contact” can be submitted in a single file named “Identifier\_General\_Information.” When multiple application requirements are submitted within in a single file, it is recommended that the applicant label each component’s location within the file.

Application Requirement	Suggested File Format	Page Limit	Suggested File Name	Location reference in Guidance
Name of the hydroelectric facility or other official designation	PDF	n/a	Identifier_General_Information	VI. (b) (1)
Name, mailing address, telephone number, and email				VI. (b) (2)

address of a point of contact				
Name of the owner of the hydroelectric facility	PDF	n/a	Identifier_General_Information	VI. (b) (3)
Location and physical address of the hydroelectric facility				VI. (b) (4)
Year the facility began commercial operation				VI. (b) (6) b.
Number of hydroelectric units that are part of the facility and the nameplate capacity of each hydroelectric unit				VI. (b) (6) c.
Operating range of each hydroelectric unit				VI. (b) (6) d.
Statement on whether the Build America, Buy America requirements apply to the project and the impact				VI. (b) (7) n.
Acknowledgment that the applicant will comply with all of the Davis-Bacon Act requirements as outlined in Section X (B) of this Guidance				VI. (b) (7) o.
Tax identification number				VI. (b) (9)
Unique Entity Identifier (UEI) number created in SAM.gov				VI. (b) (10)
Statement noting the application is				PDF



requesting funding as a small project				
Proof of authorization to operate	PDF	n/a	Identifier_Authorization_To_Operate	VI. (b) (6) a.
Annual generation data	PDF or MS Excel	n/a	Identifier_Generation_Data	VI. (b) (6) e.
Investment justification of efficiency improvement(s)	PDF & MS Excel for any calculations	n/a	Identifier_Narrative	VI. (b) (7) a. i.
Stamped documentation that quantitatively demonstrate the efficiency improvement in the hydroelectric facility due to the capital improvement(s)	PDF & MS Excel	n/a	Identifier_Stamped_Documentation	VI. (b) (7) a. ii. Or VI. (b) (7) b.
Supporting manufacturer documentation	PDF	n/a	Identifier_Manufacturer_Documentation	VI. (b) (7) a. iii.
Documentation demonstrating that the capital improvement(s) will increase efficiency or generation at the hydroelectric facility beyond original specifications	PDF or MS Excel for any calculation	n/a	Identifier_Efficiency_Beyond_Documentation	VI. (b) (7) c.
Project work plan	PDF	n/a	Identifier_Project_Plan	VI. (b) (7) d.
Written narrative describing and, where possible, identifying potential areas of risk in the project work plan or other sources of risk associated with the capital improvement				VI. (b) (7) e.

Project timeline	PDF	n/a	Identifier_Project_Plan	VI. (b) (7) f.
Monitoring plan				VI. (b) (7) g.
Cybersecurity plan	PDF	n/a	Identifier_Cybersecurity_Plan	VI. (b) (7) h.
Project budget	MS Excel	n/a	Identifier_Project_Budget_And_Costs	VI. (b) (7) i.
Itemized list of expected or actual capital costs for the capital improvement and documentation of the stated costs				VI. (b) (7) j.
Documentation from FERC or other applicable federal agencies demonstrating authorization to implement the capital improvement(s)	PDF	n/a	Identifier_Authorization_And_Compliance	VI. (b) (7) k.
Documentation from FERC or other applicable federal agencies demonstrating compliance with the National Environmental Policy Act of 1969 (NEPA)				VI. (b) (7) l.
Documentation demonstrating compliance with Section 106 of the National Historic Preservation Act of 1966				VI. (b) (7) m.
Summary or abstract document for public release	PDF	1	Identifier_Abstract	VI. (b) (8)
Summary slide of the proposed capital	MS PowerPoint	1	Identifier_Slide	VI. (b) (8)

and efficiency improvement(s)				
Statement indicating that the applicant is the owner or authorized operator of the hydroelectric facility	PDF	n/a	Identifier_Owner_Statement	VI. (b) (11)
Statement signed by an authorized executive official certifying application's accuracy	PDF	n/a	Identifier_Executive_Authorization	VI. (b) (12)
Community Benefits Plan	PDF	12	Identifier_Community_Benefits_Plan	VI. (b) (13)