Application Guidance for the Maintaining and Enhancing Hydroelectricity Incentives – Section 247 of the Energy Policy Act of 2005 (EPAct 2005)

May 8, 2023

The U.S. Department of Energy (DOE) releases application guidance and opens the 2023 application period. The application guidance describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of qualified hydroelectric facilities pursuant to Section 247 of the Energy Policy Act of 2005 (EPAct 2005), Maintaining and Enhancing Hydroelectricity Incentives, as amended by Section 40333 of the Infrastructure Investment and Jobs Act of 2021 (IIJA), Pub. L. No. 117-58.

Dates: DOE will accept Letters of Intent (LOI) for a 45-day period starting May 8, 2023, through 5:00 p.m. ET, June 22, 2023.
Full applications will be accepted for a 105-day application period starting June 23, 2023, through 5:00 p.m. ET, October 6, 2023.
To be eligible to file a full application, prospective applicants must first file a Letter of Intent. Failure to file an LOI or application by the DOE-established deadline for the LOI phase or full application phase shall disqualify the owner or authorized operator from eligibility for an incentive payment in that application period.

Addresses: Interested parties are to submit the Letter of Intent and full application electronically to the Clean Energy Infrastructure Funding Opportunity eXCHANGE, located at https://infrastructure-exchange.energy.gov/.
The guidance is available via the Grid Deployment Office website https://www.energy.gov/gdo/section-247-maintaining-and-enhancing-hydroelectricity-incentives.

For Further Information Contact: Questions may be addressed to Ms. Luciana Ciocci, U.S. Department of Energy, Grid Deployment Office, 1000 Independence Ave., S.W., Washington, D.C., 20585, or by email at hydroelectricincentives@hq.doe.gov. Electronic communications are recommended for correspondence.

U.S. Department of Energy Grid Deployment Office Guidance on Implementing Section 40333 of the Infrastructure Investment and Jobs Act of 2021: Maintaining and Enhancing Hydroelectricity Incentives

May 8, 2023

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I. Purpose and Scope

This Guidance, prepared by the U.S. 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 qualified hydroelectric facilities pursuant to Section 247 of the Energy Policy Act of 2005 (EPAct 2005), Maintaining and Enhancing Hydroelectricity Incentives, as amended by Section 40333 of the Infrastructure Investment and Jobs Act of 2021 (IIJA), Pub. L. No. 117-58.[1]

The provision requires the Secretary to make incentive payments to the owner or authorized operator of a qualified hydroelectric facility, subject to the availability of appropriations, for capital improvements directly related to improving grid resilience (including the addition of energy storage such as reservoir capacity, pumped storage hydropower, and batteries) and dam safety and related to environmental improvements. Incentive payments may only be made upon receipt by the Secretary of an incentive payment application that demonstrates that the applicant is eligible to receive such payment and satisfies the other requirements as deemed necessary.

Limitations for the incentive payments include:

(1) Incentive payments shall not exceed 30% of the costs of the applicable capital improvement(s).

(2) Not more than one incentive payment may be made to a single qualified hydroelectric facility in any fiscal year, the amount of which shall not exceed $5,000,000.

All developments within an individual Federal Energy Regulatory Commission (FERC)-licensed hydroelectric project will be treated as a single hydroelectric facility and may receive one incentive payment subject to the above limitations per fiscal year.

Any determinations made under EPAct 2005 Section 247 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, or to the Financial Assistance Rules, 10 C.F.R. Part 600. Any incentive payment in connection with Section 247 shall be considered a benefit.

As part of this Guidance, DOE intends to allocate up to 25% of the funding for Small projects, defined as hydropower projects that have a nameplate capacity of less than 10 MW and are owned by small businesses, municipal entities (including electric cooperatives), nonprofit organizations 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 economic uncertainties associated with relicensing and maintenance of these facilities.[2] As a result, projects to maintain and enhance hydropower at these smaller facilities often face financial barriers relative to larger hydropower facilities and may need additional time or support. In

[1] Section 40333 of the Infrastructure and Jobs Act of 2021 appropriated $553,600,000 until expended for EPAct 2005 Section 247: Maintaining and Enhancing Hydroelectricity Incentives.

[2] 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/eartotheriver-results.

recognition of this challenge, DOE intends to set aside up to 25% of the funding under this Guidance for Small projects.

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).[3]

DOE intends to expend all available funds for eligible projects through at least one solicitation. In the event of oversubscription, meaning the amount of incentives requested in eligible applications exceeds the funding appropriated, DOE will maximize the positive impacts of funding to the U.S. hydropower fleet by prioritizing funding based on specific project criteria, as described in Sections VIII, IX, and XI of this Guidance.

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

II. Authority

Through the IIJA, Congress amended EPAct 2005 and established Section 247 to incentivize owners or operators of qualified hydroelectric facilities to make capital improvements related to improving grid resiliency and dam safety and related to environmental improvements.[4]

III. List of Definitions

The following terms apply exclusively to GDO's Maintaining and Enhancing Hydroelectricity Incentives:

Ancillary services refer to the six services called out in FERC Order 888,[5] black-start capabilities, and those referenced in FERC's more recent staff paper, Docket No. AD21-10-000.[6] The six Order 888 services are: (1) Scheduling, System Control, and Dispatch Service; (2) Reactive Supply and Voltage Control Service; (3) Regulation (Regulation Service) and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve–Spinning Reserve Service (Spinning Reserve Service); and (6) Operating Reserve–Supplemental Reserve Service (Supplemental Reserve Service). The new services in the staff paper are flexibility and ramping products, which are designed to help manage the changing system needs and reduce out-of-market actions by operators associated with integrating increased amounts of variable renewable energy. Each of these services is defined in more detail below.

[3] 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.
[4] 42 U.S.C. § 15883; Pub. L. No. 117-58, § 40333.
[5] Available at: https://www.ferc.gov/industries-data/electric/industry-activities/open-access-transmission-tariff-oatt-reform/history-oatt-reform/order-no-888
[6] Available at: https://www.ferc.gov/sites/default/files/2021-09/20210907-4002_Energy%20and%20Ancillary%20Services%20Markets_2021_0.pdf

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.

Appurtenant structures are ancillary features of a dam such as inlet and outlet works, spillways, tunnels, or power plants.

Black-start capability means the capability of generating units to start without an outside electrical supply or the demonstrated ability of a generating unit to automatically remain operating at reduced levels when disconnected from the grid.

Calendar year means a period beginning January 1 and ending 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 (facilities), 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, and as further outlined below.

Common reliability metrics means metrics that are used to quantify the frequency of outages, including but not limited to the System Average Interruption Frequency Index.

Dam safety condition classification is used by the National Inventory of Dams for the Dam Condition Assessment. These terms are defined by the Bureau of Reclamation and categorize the condition of a dam as one of the following:

- Satisfactory – No existing or potential dam safety deficiencies are recognized. Safe performance is expected under all anticipated conditions.
- Fair – No existing dam safety deficiencies are recognized for normal loading conditions. Infrequent hydrologic or seismic events would probably result in a dam safety deficiency.
- Poor – A potential dam safety deficiency is clearly recognized for normal loading conditions. Immediate actions to resolve the deficiency are recommended; reservoir restrictions may be necessary until resolution of the problem.
- Unsatisfactory – A dam safety deficiency exists for normal loading conditions. Immediate remedial action is required for resolution of the problem.

Disadvantaged communities refer to communities as defined by the DOE 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.

DOE means the U.S. Department of Energy.

Electric cooperative means a cooperatively owned electric utility.

Electric grid means an interconnected and contiguous network where robust transmission and generation assets are connected to a regional distribution system for the purpose of delivering

electricity from producers to consumers. It consists of power stations, electrical substations, transmission, and power distribution assets.

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

Energy Imbalance Service: Energy Imbalance Service is provided when a difference occurs between the scheduled and actual delivery of energy to a load located within a control area over a single hour. The transmission provider must offer this service when the transmission service is used to serve load within its control area.

Erosion repairs are repairs performed for locations where the surfaces (banks, streambeds, embankments, or other surfaces) are worn away by floods, waves, wind, or any other natural processes.

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.

FERC-licensed project boundary means those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources in accordance with 18 C.F.R. § 4.41(h)(2) (Exhibit G).

Firm capacity refers to capacity that is available under a specified time of adverse condition. This capacity can be provided by generation or storage (e.g., reservoir capacity, battery storage, or pumped storage hydropower). Note that firm capacity needs and its definition typically vary by region, generation type, and, in the case of storage, duration.

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

Flexibility reserves supply energy in real-time operation to help satisfy variable renewable energy-related energy imbalance and ramping requirements. Product names vary by region and include but may not be limited to Up-Ramp Capability, Down-Ramp Capability, Flexible Ramping Reserves, Up Ramp and Down Ramp, and Short-Term Reserves.

Future hydrologic conditions are potential variations in the magnitude, duration, timing, frequency, or rate of change of natural water flow.

Hazard potential means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the dam or misoperation of the dam or appurtenances.

Hazard potential classification is the Federal Emergency Management Agency (FEMA) and Interagency Committee on Dam Safety (ICODS) system adopted in 2004 that categorizes dams according to the degree of adverse incremental consequences of a failure or misoperation of a dam. The hazard potential classification does not reflect in any way on the current condition of the dam (e.g., safety, structural integrity, flood routing capacity). FEMA defines low, significant, and high hazard dams, which are defined below. The California Natural Resources Agency Division of Safety of Dams creates an "extremely high" classification. This Guidance uses both of these hazard potential classification systems, including:

- Extremely High – Generally identifies dams expected to cause an inundation area with a population of 1,000 or more persons, or the inundation of facilities or infrastructure which poses a significant threat to public safety.
- High – Failure or misoperation will probably cause loss of human life.
- Significant – Failure or misoperation results in no probable loss of human life but can cause economic loss, environmental damage, or disruption of lifeline facilities, or can impact other concerns. Significant hazard potential classification dams are often located in predominantly rural or agricultural areas but could be located in areas with population and significant infrastructure.
- Low – Results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the owner's property. Ensure acceptable performance under all loading conditions.

Incentive payment means the payment that a qualified hydroelectric facility owner or authorized operator may receive, subject to congressional appropriations, upon successfully proving eligibility under this Guidance. Incentive payment shall not exceed the statutory limit established in 42 U.S.C. § 15883 per qualified hydroelectric facility per calendar year and may be adjusted if appropriated funds are insufficient to make full payments to all qualified hydroelectric facilities.

Incentive payment application means an application for an incentive payment for a qualified 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.

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).

Inundation area is the area that would be affected by flooding from an uncontrolled release of a dam's reservoir.

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

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.

Operating Reserve–Spinning Reserve Service (Spinning Reserve Service) is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output and by non-generation resources capable of providing this service. The transmission provider must offer this service when the transmission service is used to serve load within its control area.

Operating Reserve–Supplemental Reserve Service (Supplemental Reserve Service) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service. The transmission provider must offer this service when the transmission service is used to serve load within its control area.

Reactive Supply and Voltage Control Service: In order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits, generation facilities and non-generation resources capable of providing this service that are under the control of the control area operator are operated to produce (or absorb) reactive power.

Regulation (Regulation Service) and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation for which the output is raised or lowered (predominantly through the use of automatic generating control equipment) and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load.

Reliability assessment is an independent evaluation and reporting of the overall reliability, adequacy, and associated risks that could negatively impact the grid operation. Examples are the North American Electric Reliability Corporation's (NERC's) summer, winter, and long-term reliability assessments.

Scheduling, System Control, and Dispatch Service is required to schedule the movement of power through, out of, within, or into a control area. This service can be provided only by the operator of the control area in which the transmission facilities used for transmission service are located.

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.

Seepage means the infiltration and internal movement of water through a dam, a dam's foundation, or a reservoir area, including abutments.

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 a qualified hydroelectric facility with a nameplate capacity of 10 MW or less that is owned or operated by a small business, Indian Tribe, municipality, nonprofit organization, or electric cooperative.

Species of conservation concern means species that (1) are designated as federally threatened or endangered by the Endangered Species Act per 16 U.S.C. § 1531 et seq.; (2) have a NatureServe Conservation Status of S1 (Critically Imperiled), S2 (Imperiled), or S3 (Vulnerable); (3) are included as a

species of concern in a comprehensive plan applicable to the hydropower facility where the improvement will occur; or (4) are culturally significant to Indian Tribes.

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.

Watershed means the geographical area drained by a river or river system or a portion thereof.

Watershed-scale benefits means benefits from a capital improvement that extend beyond a hydroelectric facility's boundary to achieve broad, positive impacts to more than a single reach, stream, or river.

IV. Who may apply?

An owner or authorized operator of an existing facility that is licensed or has received an exemption from licensing from FERC pursuant to the Federal Power Act (16 U.S.C. 791a et seq.) or is a hydroelectric project constructed, operated, or maintained pursuant to a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act prior to November 15, 2021, may apply for incentive payments for maintaining and enhancing its facility.

V. What is a qualified hydroelectric facility?

A qualified hydroelectric facility:

(a) Is licensed by FERC or is a hydroelectric project constructed, operated, or maintained pursuant to a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act (16 U.S.C. 791a et seq.), or has a FERC-issued exemption;

(b) Was placed into service before November 15, 2021; and

(c) Is in compliance with all applicable Federal, State, and Tribal requirements, or would be brought into compliance with all applicable Federal, State, and Tribal requirements as a result of the capital improvements carried out using an incentive payment under this section.

VI. How will DOE allocate funding for eligible capital improvement projects?

(a) If adequate appropriated funds are available, DOE will fund all qualified capital improvement projects at the limits set forth in Section 247 (30% of total project costs, not to exceed $5,000,000). 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 III; and

    (2) The remaining appropriated funds may be made available to eligible qualified hydroelectric facilities that do not meet the criteria described for Small projects.

(b) In the event that the incentive program is oversubscribed, DOE will allocate appropriated funding according to the procedures outlined in Section XI (a)(6) of this Guidance.

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

An owner or authorized operator of a qualified hydropower project is eligible to apply for an incentive payment after they have applied for (or the have already received) all Federal, State, and/or Tribal authorizations including but not limited to the National Environmental Policy Act of 1969 (NEPA) and National Historic Preservation Act of 1966 (NHPA). Where authorizations have not yet been obtained, any awards would be conditioned upon successful completion of permitting. If the FERC process results in modifications of the proposed capital improvement that significantly change the outcomes or benefits described in the application, recipients may be required to submit a revised application subject to further review and/or denial or reduction of payment. If this situation results in unallocated funds, funding may be distributed to the highest ranked unfunded project within the same subcategory or reserved for a future funding solicitation.

For projects determined by DOE to need additional NEPA review, the recipient must be prepared to support DOE in the completion of the 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 a qualified hydroelectric facility may apply for an incentive payment for any materials procured or other costs incurred toward this project after November 15, 2021.

VIII. What are the general application requirements?

(a) When and how to apply:

(1) To be eligible to file a full application, prospective applicants must first file a Letter of Intent (LOI). The LOI must include the following information:

(i) The name of the hydroelectric facility or other official designation.

(ii) The name, mailing address, telephone number, and email address of a point of contact.

(iii) A short (less than 200 words) description of the capital improvement project.

(iv) If applicable, a clear statement noting the application is requesting funding as a Small project as defined in Section III of the Guidance.

(v) A clear statement designating one category for which the applicant seeks funding for the capital improvement project (i.e., improving grid resiliency, improving dam safety, or environmental improvements).

(vi) Documentation relating to the capital improvement project, including:

a. A description of the current status of the capital improvement project and the expected remaining steps in planning, developing, or constructing the project.

b. If the capital improvement project is not complete, the current status of FERC authorization for the project, including status of any filed applications and associated NEPA compliance.

(vii) Expected or actual total capital costs for the capital improvement and the amount of requested incentive payment.

(2) DOE will accept Letters of Intent for a 45-day window/period. Full applications will be accepted throughout a 105-day application window/period. Interested parties are to submit the Letter of Intent electronically to the Clean Energy Infrastructure Funding Opportunity eXCHANGE, located at https://infrastructure-exchange.energy.gov/. Questions may be addressed to Ms. Luciana Ciocci, U.S. Department of Energy, Grid Deployment Office, 1000 Independence Ave., S.W., Washington, D.C., 20585, or by email at hydroelectricincentives@hq.doe.gov. Electronic communications are recommended for correspondence.

(3) Applicants may file one or more applications during the application period, but total funding per hydroelectric facility may not exceed $5,000,000. Capital improvements that occur across multiple categories or subcategories, for grid resiliency or environmental improvements as detailed in Section VIII(b)(7), must be filed in separate applications, even if the improvements occur at the same facility.

(4) Failure to file an application by the DOE-established deadline for the LOI or full application period shall disqualify the owner or authorized operator from eligibility for an incentive payment in that application period.

(5) Applications for incentive payments must be properly completed and submitted to DOE before the close of the application period. Applications filed outside of the application period will not be accepted.

(i) Each application must include all of the information set forth in Section VIII(b) and IX (as applicable). Applicants are required to submit new application materials with each application period.

(b) A full 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 for notification of eligibility determination.

(3) The name of the owner of the hydroelectric generation facility.

(4) The location and physical address of the hydroelectric generation facility, including nine-digit ZIP code.

(5) A description of the hydroelectric generation facility, including FERC license or exemption type and docket number and the year the facility began commercial operation.

(6) If applicable, a clear statement noting the application is requesting funding as a Small project as defined in Section III of the Guidance.

Applications submitted for Small projects must include documentation confirming eligibility as a small business, Indian Tribe, municipality, or electric cooperative, as defined in Section III.

(7) A clear statement designating one category for which the applicant seeks funding for the capital improvement project (i.e., improving grid resiliency, improving dam safety, or environmental improvements), as well as a subcategory (if within improving grid resiliency or environment improvements), for which the applicant seeks funding, as described in Section IX of this Guidance. The statement must include a written narrative documenting how the capital improvement(s) are consistent with the designated category and subcategory.

(8) Documentation relating to the existing conditions and the capital improvement at the hydroelectric generation facility, including:

(i) A detailed, written narrative describing the capital improvement project at the hydroelectric generation facility, the need or rationale for the project, and the expected outcomes or benefits of the project

(ii) If the hydroelectric facility is not in compliance with all applicable Federal, State, and/or Tribal requirements, include a short narrative explaining why the facility is out of compliance and provide the following additional information:

a. Documentation from the appropriate Federal, State, and/or Tribal entity confirming the noncompliance

b. Description for how the capital improvement is expected to bring the facility back into compliance

c. Documentation from the appropriate Federal, State, and/or Tribal entity that the capital improvement, when implemented, will bring the facility into compliance. A project work plan describing the current status of the capital improvement project and the expected remaining steps in planning, developing, or constructing the project.

(iii) 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).

(iv) A project timeline summarizing the major steps/milestones described in the capital improvement project work plan and Community Benefits Plan in Section VIII(b)(13).

(v) Any monitoring plans, required through the FERC regulatory process or otherwise, that will document the effectiveness of the capital improvement project.

(vi) A project budget summarizing:

a. The total cost of the capital of the capital improvement(s);

b. The major cost categories of the capital improvement(s);

c. The total amount of incentive payment requested; and

d. Any other federal funding sources used to support the project.

(vii) 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.

(viii) If applicable, documentation of FERC authorization of the capital improvement project, or if an amendment to the license is required, proof that a final application for authorization has been filed with FERC.

(ix) If applicable, a request for a DOE NEPA determination as described in Section VII.

(x) If applicable, documentation demonstrating compliance with Section 106 of the National Historic Preservation Act of 1966 has been completed or is currently ongoing as described in Section VII.

(xi) 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.

(xii) All information or documentation required in Section IX of this Guidance for the category and subcategory designated in Section VIII(b)(7).

(xiii) With respect to the funding restrictions outlined in Section XIII of this Guidance:

a. A statement on whether Build America, Buy America requirements apply to the project and the impact, if any, this requirement may have on the project's budget. 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 XIII(a) of this Guidance.

b. Acknowledgment that the applicant will comply with all of the Davis-Bacon Act requirements as outlined in Section XIII(b) of this Guidance.

(9) A tax identification number of the hydroelectric generation 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 generation facility or is the authorized operator of the hydroelectric generation facility and has the written consent of an authorized executive official of the facility owner to file an application.

(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. Refer to the Community Benefits Plan Objectives Summary for additional information regarding the Community Benefits Plan.

(i) 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.

(ii) 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:

a. 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.).

b. 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).

c. 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).

d. How the construction of the capital improvement(s) prioritizes local hires, or an explanation of infeasibility.

e. Records to substantiate the information in items a–c.

f. 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.

(iii) 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 generation facility's operations.

a. Commitment to contract with Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses, and Veteran Owned Businesses.

b. To fill open positions created by the capital improvement(s), applicant partnered with workforce training organizations serving underrepresented communities and those facing systemic barriers to quality employment such as those with disabilities, returning citizens, opportunity youth, and veterans.

(iv) 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:

a. Identification of applicable disadvantaged communities to which the anticipated project benefits will flow.

b. 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) of this paragraph.

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 project, 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.

IX. What types of capital improvement projects qualify for incentive payments and what information does DOE need to determine whether a project is eligible?

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 a qualified hydroelectric facility (Section V) and (2) whether the improvement is an eligible capital improvement as defined in this section.

This section describes the type of capital improvement projects that may qualify for incentive payments as well as the specific data and information DOE needs to determine whether the project is eligible to receive payment. In addition, this section describes how the materials submitted in the application will meet the project-specific criteria used to prioritize projects in the event the program is oversubscribed.

To qualify, the applicant must demonstrate that the capital improvement project has a reasonable nexus to the operations and/or environmental impacts of the facilities in the FERC-licensed project boundary (e.g., project structures or controls) or defined boundary pursuant to a permit or valid existing right-of-way granted prior to June 10, 1920.

In accordance with EPAct 2005 Section 247, DOE will provide incentive payments for qualifying capital improvement projects that directly relate to these categories:

- Category 1: Improving grid resiliency.
- Category 2: Improving dam safety to ensure acceptable performance under all loading conditions (including static, hydrologic, and seismic conditions).
- Category 3: Environmental improvements.

EPAct 2005 Section 247 divides each of these qualifying categories into subcategories. This section reiterates these statutory subcategories and describes the documentation required to be provided in an application related to each category and/or subcategory, as applicable. For projects that are awarded an incentive, additional documentation noted below may be required prior to final payment. Capital improvement projects completed prior to application submittal must provide documentation required to make a final payment, as described in this section, at the time of application.

Category 1: Improving Grid Resiliency

(a) Subcategories: EPAct 2005 Section 247 identifies subcategories for capital improvement projects that directly relate to the category of improving grid resiliency to include:

(1) Adapting more quickly to changing grid conditions.

(2) Providing ancillary services (including black-start capabilities, voltage support, and spinning reserves).

(3) Integrating other variable sources of electricity generation.

(4) Managing accumulated reservoir sediments.

Capital improvement projects applying in the improving grid resiliency category must directly address one of the subcategories listed in the language above. In addition, projects within this category must also select a subcategory as specified in Section VIII(b)(7).

(b) Application documentation requirements:

In addition to the application requirements included in Section VIII of this Guidance, applications that propose capital improvement projects that improve grid resiliency must provide the following documentation, as applicable:

(1) For any capital improvement project being performed to meet requirements, stamped drawings and/or calculation sheets or a detailed project report that summarizes the deficiency and demonstrates how the improvement will address it.

(2) For capital improvement projects intended to meet Subcategories 1, 2, or 3 of improving grid resiliency:

(i) Stamped drawings, calculation sheets, or other appropriate documentation that clearly describes current conditions, the approach, and the expected or quantified outcome made through the capital improvement project.

(3) For capital improvement projects intended to meet Subcategory 4 (managing accumulated reservoir sediments) of improving grid resiliency:

(i) Describe the approach and demonstrate how the approach will help manage accumulated reservoir sediments.

(c) Project prioritization in the event of oversubscription:

In the event the program is oversubscribed, project prioritization will occur based on criteria specific to the category and subcategory selected in the application submission, as applicable. DOE will use the documentation submitted with the application to determine a score. Scoring is weighted toward maximizing operational flexibility, firm capacity, and ancillary services, and provides alternatives to reservoir dredging. The tables below and the following paragraphs explain the project evaluation criteria and the scoring process. In the event of a tie score between two capital improvement projects, projects will be ranked by nameplate capacity from highest to lowest.

Subcategories 1(a)1 and 1(a)3: Adapting more quickly to changing grid conditions or integrating other sources of electricity generation			**Points**	**Total Possible Points**
Operating Range (MW)	0%–5% over baseline		1	**4**
	5.01%–10% over baseline		2	
	10.01%–15% over baseline		3	
	>15% over baseline		4	
Flexibility (MW/min, start/stops per day)	Ramp rates (MW/min)	0%–5% over baseline	1	**4**
		5.01%–10% over baseline	2	
		10.01%–15% over baseline	3	
		>15% over baseline	4	
	Start/stops (per day, over baseline)		2	**2**
	Automation and advanced controls		2	**2**
Firm Capacity, including generation and energy storage (MW, MWh)	0%–5% over baseline		1	**4**
	5.01%–10% over baseline		2	
	10.01%–15% over baseline		3	
	>15% over baseline		4	
Grid Reliability	Addresses grid reliability needs		4	**4**
			Total Possible Points	**20**

Subcategory 1(a)2: Providing ancillary services	No	Yes	Total Possible Points
Adds or increases one service	0	2	2
Adds or increases two services	0	4	6
Adds or increases three services	0	6	12
Adds or increases four services	0	8	20
Total Possible Points			**20**

Subcategory 1(a)4: Managing accumulated reservoir sediments	No	Yes	Total Possible Points
Increases facility's reservoir storage capacity	0	4	4
Decreases the level of reservoir sediment at the intake	0	4	4
Provides an alternative to dredging	0	6	6
Improves downstream habitat	0	6	6
Total Possible Points			**20**

Each application submission requires supporting documentation as described in Sections VIII(b) and IX(1)(b) that are used in scoring within each subcategory. The documentation provided will be used by DOE to determine independent subcategory scores by summing the individual scores of the four criteria in each subcategory. The maximum score possible in each subcategory is **20 points**. Scores across the four subcategories in the Grid Resiliency category will be ranked.

Applications under Subcategories 1(a)1 and 1(a)3 will receive 1 point if the capital improvement increases the facility's operating range up to 5%, 2 points if the increase is between 5% and 10%, 3 points if the increase is between 10% and 15%, and 4 points if the increase is over 15%.

Applications under Subcategories 1(a)1 and 1(a)3 will receive 1 point if the capital improvement increases the facility's ramp rate up to 5%, 2 points if the increase is between 5% and 10%, 3 points if the increase is between 10% and 15%, and 4 points if the increase is over 15%. Note that firm capacity projects can include capacity upgrades and the addition of energy storage (e.g., reservoir capacity, pumped storage hydropower, or batteries).

Applications under Subcategories 1(a)1 and 1(a)3 will receive 2 points if the capital improvement increases the number of start/stops cycles that are permitted each day.

Applications under Subcategories 1(a)1 and 1(a)3 will receive 2 points if the capital improvement adds remote automation and advanced controls capabilities (i.e., adds the capability for the plant to accept and respond to remote set points).

Applications under Subcategories 1(a)1 and 1(a)3 will receive 1 point if the capital improvement increases the facility's firm capacity capability up to 5%, 2 points if the increase is between 5% and 10%, 3 points if the increase is between 10% and 15%, and 4 points if the increase is over 15%.

Applications under Subcategories 1(a)1 and 1(a)3 will receive 4 points if the capital improvement addresses reliability assessment needs as identified by a third party (e.g., NERC summer, winter, or long-term assessment).

Applications under Subcategory 1(a)2 will receive 2 points if the capital improvement adds or increases one ancillary service.

Applications under Subcategory 1(a)2 will receive 6 points if the capital improvement adds or increases two ancillary services.

Applications under Subcategory 1(a)2 will receive 12 points if the capital improvement adds or increases three ancillary services.

Applications under Subcategory 1(a)2 will receive 20 points if the capital improvement adds or increases four or more ancillary services.

Applications under Subcategory 1(a)4 will receive 4 points if the capital improvement increases the facility's storage capacity.

Applications under Subcategory 1(a)4 will receive 4 points if the capital improvement decreases the level of reservoir sediment at the intake.

Applications under Subcategory 1(a)4 will receive 6 points if the capital improvement provides an alternative to dredging.

Applications under Subcategory 1(a)4 will receive 6 points if the capital improvement improves downstream habitat.

(d) 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) Documentation, including supporting data or evidence to support completion of the project.

(3) Any other post-project proof of improvement related to the project determined by DOE.

(4) Paid invoices that demonstrate project costs as requested in Section VIII(b)(8)(vii).

Category 2: Improving Dam Safety

(a) Subcategories:

EPAct 2005 Section 247 identifies subcategories for capital improvement projects that improve dam safety to ensure acceptable performance under all loading conditions (including static, hydrologic, and seismic conditions) to include:

(1) The maintenance or upgrade of spillways or other appurtenant structures.

(2) Dam stability improvements, including erosion repair and enhanced seepage controls.

(3) Upgrades or replacements of floodgates or natural infrastructure restoration or protection to improve flood risk reduction.

Applications for improving dam safety incentive payments must directly address one or more of the subcategories listed in the language above.

(b) Application documentation requirements:

In addition to the application requirements included in Section VIII of this Guidance, applications that propose capital improvement projects that improve dam safety must provide the following documentation, as applicable:

(1) Current FEMA hazard potential classification.

(2) Current dam safety condition classification.

(3) Documentation of state- or FERC-identified dam safety issues, including but not limited to state or FERC inspection reports.

(4) Dam Inundation Map with overlayed population (residences or centers)—applies to high or extremely high hazard classifications only.

(5) If applicable, narrative and supporting evidence (such as hydrologic and hydraulic modeling) describing how the capital improvement increases resiliency to future hydrologic conditions.

(6) Photographic or modeling evidence, of the dam safety risk/fault addressed by the capital improvement project, prior to project construction.

(7) If applicable, a description of how completion of the dam safety improvement will result in the facility meeting dam safety requirements.

(c) Project prioritization in the event of oversubscription:

In the event the program is oversubscribed, project prioritization will occur based on criteria specific to the category and subcategory selected in the application submission, as applicable. DOE will use the documentation submitted with the application to determine a score. Scoring is weighted toward high-hazard dams in poor or unsatisfactory condition to minimize threats to public safety. The table below and the following paragraph explains the project evaluation criteria and the scoring process for the dam safety category. In the event of a tie score between two capital improvement projects, projects will be ranked by nameplate capacity from highest to lowest.

Category 2: Dam Safety					**Total Possible Points**
Dam Safety Condition Classification	Satisfactory	Fair	Poor	Unsatisfactory	
	0	2	4	6	**6**

Hazard Potential Classification	Low Hazard	Significant Hazard	High Hazard	Extremely High Hazard	**6**
	0	2	4	6	
Project increases resiliency to future hydrologic conditions	No	Yes			
	0	2			**2**
				Total Possible Points	**14**

Unlike other categories, the scoring noted above is not specific to a particular dam safety subcategory and is consistent for all dam safety applications.

Each application submission requires supporting documentation as described in Section VIII(b) and Section IX(2)(b) that are used in scoring: hazard potential classification, dam safety condition classification, and, if applicable, a narrative explaining how the capital improvement increases resiliency to future hydrologic conditions with supporting evidence/documentation. These three documents will determine three independent scores, which will be added together for the total application score. The maximum score possible in this category is **14 points**.

The hazard potential classification of the dam will identify the first score where a low-hazard dam scores 0 points, a significant-hazard dam scores 2 points, a high-hazard dam scores 4 points, and an extremely high-hazard dam scores 6 points.

The dam safety condition classification of the dam will identify the second score where a satisfactory dam scores 0 points, a fair dam scores 1 point, a poor dam scores 4 points, and an unsatisfactory dam scores 6 points.

Lastly, if the capital improvement increases the resiliency to future hydrologic conditions, it will score 2 points. If not, it will score 0 points. Improvements that increase resiliency to future hydrologic conditions are given points because such improvements may reduce the risks associated with not preparing for changes in hydrologic conditions.

(d) 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) Photographic or modeling evidence of dam safety risk/fault addressed by capital improvement project after project completion.

(3) Any post-project proof of improvement related to the project determined by DOE, for example:

(i) Updated dam inspection report.

(ii) Any reports produced by monitoring equipment to support evidence.

(4) Documentation from FERC and/or other authorities, as applicable, stating that the project meets dam safety requirements after completion of the dam safety capital improvement project.

(5) Any other post-project proof of improvement related to the project determined by DOE.

(6) Paid invoices that demonstrate project costs as requested in Section VIII(b)(8)(vii).

Category 3: Environmental Improvements

(a) Subcategories:

EPAct 2005 Section 247 identifies the subcategories for capital improvement projects that directly relate to environmental improvements to include:

(1) Adding or improving safe and effective fish passage, including new or upgraded turbine technology, fish ladders, fishways, and all other associated technology, equipment, or other fish passage technology to a qualified hydroelectric facility.

(2) Improving the quality of the water retained or released by a qualified hydroelectric facility.

(3) Promoting downstream sediment transport processes and habitat maintenance.

(4) Improving recreational access to the project vicinity including roads, trails, boat ingress and egress, flows to improve recreation, and infrastructure that improves river recreation opportunities.

Applications for environmental improvement incentive payments must directly address one of the subcategories listed in the language above. In addition, applications in this category must also select a subcategory as specified in Section VIII(b)(7).

(b) Application documentation requirements:

In addition to the application requirements included in Section VIII of this Guidance, applications that propose capital improvement projects for environmental improvements must provide the following documentation, as applicable:

(1) Any relevant data or studies that provide support for the project.

(2) Evidence of consultation and/or engagement, completed or intended, with federal, state, or Tribal natural resource agencies.

(3) Any FERC license conditions that will be satisfied by the capital investment.

(4) If applicable, evidence to support project benefits to species of conservation concern and/or culturally significant species.

(5) If applicable, evidence to support watershed-scale project benefits.

(6) If applicable, evidence that recreational improvement(s) provide benefits to a disadvantaged community:

(i) Applicants should use the Climate and Economic Justice Screening Tool (CEJST) to identify disadvantaged communities and submit a statement that identifies both the benefit and the benefited community.

(ii) Benefits may fall under the eight Justice40 Program policy priorities as established by DOE, pursuant to the direction provided by Executive Order 14008 as referenced in Section VIII(13)(iv)(b)(1).

(7) If applicable, evidence that demonstrates the improvements create public recreational opportunities in the vicinity of the facility *beyond those otherwise required* by resource agencies or the facility's FERC license, exemption, or other authorization.

(8) If applicable, a description of how the environmental improvement will allow the facility to meet its environmental requirements.

(c) Project prioritization in the event of oversubscription:

In the event the program is oversubscribed, project prioritization will occur based on criteria specific to the category and subcategory selected in the application submission, as applicable. DOE will use the documentation submitted with the application to determine a score. To maximize environmental benefits, scoring is weighted toward new fish passage, new improvements to water quality, improving downstream aquatic habitat, and new recreational access. Applications for capital improvements in the first three subcategories that create benefits for species of conservation concern or of cultural significance to Indian Tribes, or that create watershed-scale benefits receive a higher point weighting to reflect the importance of such improvements. Applications in the recreation subcategory that create benefits for disadvantaged communities identified by the CEJST or that create recreational access beyond agency requirements also receive a higher point weighting to reflect the additional value of the capital improvements. The tables below and the following paragraphs explain the project evaluation criteria and the scoring process for the Environmental Improvements category. In the event of a tie score between two capital improvement projects, projects will be ranked by nameplate capacity from highest to lowest.

Subcategory 3(a)1: Fish Passage	**No**	**Yes**	**Total Possible Points**
Improves existing fish passage and protection	0	1	**1**
Creates new fish passage and protection	0	2	**2**
Benefits species of conservation concern and/or culturally significant species	0	4	**4**
Provides watershed-scale benefits	0	4	**4**
		Total Possible Points	**11**

Subcategory 3(a)2: Water Quality	**No**	**Yes**	**Total Possible Points**
Improves existing water quality infrastructure	0	1	**1**
Creates new water quality infrastructure	0	2	**2**
Benefits species of conservation concern and/or culturally significant species	0	4	**4**
Provides watershed-scale benefits	0	4	**4**

	Total Possible Points	**11**

Subcategory 3(a)3: Sediment Transport and Habitat Maintenance	**No**	**Yes**	**Total Possible Points**
Improves existing sediment transport and habitat maintenance	0	1	**1**
Creates new sediment transport and habitat maintenance	0	2	**2**
Benefits species of conservation concern and/or culturally significant species	0	4	**4**
Provides watershed-scale benefits	0	4	**4**
	Total Possible Points		**11**

Subcategory 3(a)4: Recreation	**No**	**Yes**	**Total Possible Points**
Improves existing recreational access	0	1	**1**
Creates new recreational access	0	2	**2**
Benefits a disadvantaged community	0	4	**4**
Creates public recreational opportunities beyond those otherwise required by resource agencies or the facility's FERC license, exemption, water quality certificate, or other authorization	0	4	**4**
	Total Possible Points		**11**

Each application submission requires supporting documentation as described in Section VIII(b) and Section IX(3)(b) that are used in scoring within each subcategory. The documentation provided will be used by DOE to determine independent subcategory scores by summing the individual scores of the four criteria in each subcategory. The maximum score possible in each subcategory is **11 points**. Scores across the four subcategories in the Environmental Improvements category will be ranked.

Applications will receive 1 point if the capital improvement improves existing infrastructure or recreation access (e.g., through repair or alteration of existing structures or equipment).

Applications will receive 2 points if the capital improvement creates new infrastructure or recreation access (e.g., through the construction or installation of new structures, equipment or recreational access, or the full replacement of previously existing structure, equipment, or recreational access).

Applications under Subcategories 3(a)1, 3(a)2, and 3(a)3 will receive 4 points if the capital improvement provides benefits to species of conservation concern and/or culturally significant species.

Applications under Subcategories 3(a)1, 3(a)2, and 3(a)3 will receive 4 points if the capital improvement provides watershed-scale benefits.

Applications under Subcategory 3(a)4 will receive 4 points if the capital improvement benefits a disadvantaged community.

Applications under subcategory 3(a)4 will receive 4 points if the capital improvement creates recreational opportunities beyond those otherwise required by resource agencies or the facility's FERC license, exemption, or other authorization.

(d) 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) Documentation, including supporting data or evidence to support completion of the project.

(3) If applicable, documentation from FERC and/or other authorities, as applicable, stating that the project meets environmental requirements after completion of the capital improvement project.

(4) Any other post-project proof of improvement related to the project determined by DOE.

(5) Paid invoices that demonstrate project costs as requested in Section VIII(b)(8)(vii).

X. What is the timing of incentive payments?

Upon a DOE determination that the facility and capital improvement meet eligibility requirements, DOE will make up to two separate payments to eligible applicants, subject to available funds. For eligible projects that have not reached completion, DOE will make an initial incentive payment, upon project approval, of a predetermined amount, determined on a case-by-case basis, not to exceed one-third of the total incentive payment for the capital improvement project.

DOE, in consultation with FERC, if applicable, may set milestones for completion of the capital improvement(s) based on a review of the milestones requested in Section VIII. 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, including the collection of metrics and/or other data related to funding from IIJA. 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.

Thereafter, once DOE determines the capital improvement project is complete per documentation as required under Section IX of this Guidance and the project is in compliance with all Federal, State, and Tribal requirements, including all permitting and environmental review(s) required under NEPA, DOE will make a second and final payment to the applicant totaling the remainder of the incentive payment, which cannot exceed the statutory limit of 30% of total project costs. For eligible, approved projects that are complete at the time of application, the total incentive amount may be disbursed in one payment.

XI. 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 to this Guidance. Applications are to be submitted to the GDO's Hydroelectric Incentives Program following the instructions included in the Federal Register notice.

(2) Following submission of an application, DOE will review and consider the completeness of the application materials and may request supplementary information relating to the application. When DOE is 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 applicants may be required to resubmit. Resubmitted applications 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 and submit, at its own expense, 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, DOE will determine the extent to which funds are available to be obligated under each of the three qualifying capital improvement project categories, as outlined in Section IX of this Guidance, for the application period. Upon completion of evaluating each application and any other relevant information for eligibility, DOE will then:

(i) Organize applications by category within Small projects (as defined in Section III) and within remaining eligible qualified hydroelectric facilities by qualifying capital improvement project category (grid resiliency, dam safety, and environmental).

(ii) Each qualifying capital improvement project within mall projects and remaining eligible qualified hydroelectric facilities will be scored and ranked highest to lowest based on the criteria provided in Section IX of this Guidance.

(iii) DOE will initially select the highest ranked project for funding under each qualifying capital improvement project category in the following order: (1) improving grid resiliency, (2) environmental improvements, and (3) improving dam safety projects.

(iv) After the initial selection of three qualifying projects in (iii), DOE will then select the next highest-scoring project in each qualifying capital improvement project category in the following order: (1) improving dam safety, (2) environmental improvements, (3) improving grid resiliency.

(v) The selection process will continue according to the procedures in (iii) and (iv) above until all the allocated funds within the application period are exhausted. Applications within the same qualifying capital improvement project category with the same score

will be ranked by nameplate capacity, with larger facilities taking priority over smaller facilities.

(vi) In the event that one category of projects has been completely funded, projects in the remaining two categories will continue to be selected in the order described in (iii) and (iv) 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:

(i) Disapproving or approving the application as eligible for an incentive payment.

(ii) 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 program 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.

XII. FAQ

When is the deadline to apply?

An LOI must be submitted by 5 p.m. ET, on the 45th day following the release of the solicitation. Thereafter, full applications will be accepted for a 105-day application period.

Do I need to submit an LOI in order to be eligible to submit a full application?

Yes. Only projects that submit LOIs within the designated LOI period, will be eligible to submit a full application.

Will DOE determine my application's eligibility based on my LOI?

No. Eligibility will be determined by review of a full application. DOE will not respond to submitted LOIs.

What types of hydroelectric facilities are eligible?

In order to be eligible, a facility must meet the definition of a "qualified hydroelectric facility," which means the facility:

(a) Is licensed by FERC or is a hydroelectric project constructed, operated, or maintained pursuant to a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act (16 U.S.C. 791a et seq.), or has a FERC-issued exemption.

(b) Was placed into service before November 15, 2021.

(c) Is in compliance with all applicable Federal, State, and Tribal requirements, or would be brought into compliance with all applicable Federal, State, and Tribal requirements as a result of the capital improvements carried out using an incentive payment under this section.

I have already started making modifications that I think would qualify under this Guidance. Are capital improvements made prior to November 15, 2021, eligible?

No. Only materials procured or other costs incurred after November 15, 2021, are eligible for incentive payments.

Are multiple developments within a single FERC-licensed hydroelectric project treated as individual hydroelectric facilities and each eligible for an incentive payment of 30% of project costs up to $5 million per fiscal year?

Developments within an individual FERC-licensed hydroelectric project will be treated as a single hydroelectric facility and only one incentive payment may be made to each hydroelectric facility per fiscal year.

My company owns multiple hydroelectric facilities. Is there a limit on how many applications I can file? Can I file one for each facility?

There is no limit to the number of facilities for which applications can be filed by a single owner. Applications for capital improvements across different categories (i.e., grid resiliency, dam safety, and environmental improvements) must be filed in separate applications. However, developments within an individual FERC-licensed hydroelectric project will be treated as a single hydroelectric facility and only one incentive payment may be made to each hydroelectric facility per fiscal year.

If it takes longer than expected to complete the capital improvement would a time extension be granted? What if NEPA review takes longer than expected?

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.

What documentation may be requested during potential periodic progress reports?

Periodic progress reports may be requested or required of applicants. Documentation or reporting requests could include but are not limited to:

1. Summaries of work or completed tasks.
2. Summaries of expenditures (labor and materials) with invoices.
3. Documentation related to previous, current, and/or potential delays.
4. Photos.
5. Metrics or other data related to funding from IIJA.

Will there be an appeal process for denied applications?

Yes. An appeal process is available for applications deemed ineligible (see Section XIV).

Can DOE provide more detail about what will happen in the event of oversubscription?

If the 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 payment will be reviewed for funding along with the eligible applications that do not meet the Small project criteria.

If oversubscription occurs for projects that do not meet the Small project criteria, any unused funding remaining for Small projects will be used to fund those projects.

Can I apply for an incentive payments under both EPAct 2005 Section 243 and Section 247?

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.

Do for-profit entities, such as investor-owned utilities, have to comply with the Buy America requirements detailed in Section XIII?

No. The requirements of Buy America only apply to state, local government, territory, Indian Tribe, institutions of higher education, and nonprofit organizations.

Must projects that were completed prior to the application period have to comply with Buy America and Davis-Bacon Act requirements discussed in Section XIII?

Yes. However, applicants may request a waiver from Buy America requirements (See Section XIII). Waivers are not available for Davis-Bacon Act requirements.

Can other enterprise plans or investments be used to meet the Community Benefits Plan requirements listed in the general application requirements, in section VIII?

Applicants may reference or include existing plans or investments as part of an application. However, applicants will likely need to bolster their existing plans or investments 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 XIII(b)(13), which include: (1) community and labor engagement; (2) investing in the American workforce; (3) advancing diversity, equity, inclusion, and accessibility; and (4) contributing to the Justice40 Initiative.

XIII. Funding Restrictions

All applicants are subject to the following requirements.

(a) Build America, Buy America Requirements:

The Build America, Buy America Act (Buy America) requirements include:

- All iron, steel, and manufactured products used in the project must be produced in the United States.
- 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 247 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.[7]

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 "non-federal entity," e.g., a state, local government, territory, Indian Tribe, institution of higher education, or nonprofit organization.

- Each recipient of a Section 247 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 are or consist primarily of:

- Nonferrous metals
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Lumber
- 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

[7] M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure (April 18, 2022) (17 Pages, 521 KB)

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.
>
> (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, the requirements do 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 do 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 subawards and 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 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, 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.
>
> (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%.

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 247 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 247 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 247 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 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 U.S. 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 Section 247 program 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, OMB 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 247 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 program 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 s 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.

XIV. 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.

(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. 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 qualified 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 Production Incentive Program.

(6) All expenses incurred by the appellant in pursuing any appeal before OHA shall be borne exclusively by the appellant.

XV. Appendix: Recommended Application Documentation Naming Convention

Documentation required for all applications

Application Requirement	Suggested File Format	Page Limit	Suggested Filename	Location Reference in Guidance
Name of the hydroelectric facility or other official designation	PDF	n/a	Identifier_General_Information	VIII. (b) (1)
Name, mailing address, telephone number, and email address of a point of contact				VIII. (b) (2)
Name of the owner of the hydroelectric facility				VIII. (b) (3)
Location and physical address of the hydroelectric facility				VIII. (b) (4)
A tax identification number of the hydroelectric generation facility				VIII. (b) (9)
Federal System for Award Management (SAM) account				VIII. (b) (10)
A description of the hydroelectric generation facility, including FERC license or exemption	PDF	n/a	Identifier_Authorization_And_Compliance	VIII. (b) (5)
If applicable, a clear statement noting the application is requesting funding as a Small project as defined in Section III of the Guidance	PDF	n/a	Identifier_Small_Project_Statement	VIII. (b) (6)
A clear statement designating one category for which the applicant seeks funding for the capital improvement project	PDF	n/a	Identifier_Category_Designation	VIII. (b) (7)
Documentation relating to the existing conditions and the capital improvement	PDF	n/a	Identifier_Project_Plan	VIII. (b) (8)

at the hydroelectric generation facility				
A statement indicating that the applicant is the owner of the hydroelectric generation facility or is the authorized operator	PDF	n/a	Identifier_Owner_Statement	VIII. (b) (11)
A statement signed by an authorized executive official certifying that the information contained in the application is accurate	PDF	n/a	Identifier_Executive_Authorization	VIII. (b) (12)
A Community Benefits Plan	PDF	n/a	Identifier_Community_Benefits_Plan	VIII. (b) (13)

Documentation required for each subcategory

Category 1: Improving Grid Resiliency			
Documents for Category 1 Applications			
Application Requirement	**Suggested File Format**	**Suggested Filename**	**Location in Guidance**
For projects being performed to meet requirements, stamped drawings and/or calculation sheets **OR** a detailed project report that summarizes that summarize the deficiency and demonstrates how the improvement will address it	PDF & MS Excel	If stamped drawings are submitted to substantiate claims, please use: Identifier_Stamped_Documentation Alternatively, if a detailed project report is submitted, please use: Identifier_Project_Report	IX. Category 1 (b) (1)
Documents for Category 1 Subcategory 1, 2, or 3 Applications			
For projects intended to meet Subcategories 1, 2, or 3 of improving grid resiliency: stamped drawings, calculation sheets, or other appropriate documentation that clearly describes current conditions, the approach, and the expected or quantified outcome made through the capital improvement project	PDF & MS Excel	Identifier_Stamped_Documentation	IX. Category 1 (b) (2) (i)
Documents for Category 1 Subcategory 4 Applications			
For capital improvement projects intended to meet Subcategory 4 (managing accumulated reservoir sediments) of improving grid resiliency: approach description	PDF	Identifier_Approach_Description	IX. Category 1 (b) (3) (i)
Documentation Required for Final Incentive Payment			
Statement of final completion and owner's acceptance of the work	PDF	Grid_Final_Statement	IX. Category 1 (d) (1)
Documentation, including supporting data or evidence to support completion of the project	Various	Grid_Completion	IX. Category 1 (d) (2)
Any other post-project proof of improvement related to the project determined by DOE	Various	Grid_Additional_Evidence	IX. Category 1 (d) (3)
Paid invoices that demonstrate project costs as requested in Section VIII(b)(8)(vii)	MS Excel or PDF	Grid_Paid_Invoice	IX. Category 1 (d) (4)

Category 2: Improving Dam Safety			
Application Requirement	**Suggested File Format**	**Suggested Filename**	**Location in Guidance**
Current FEMA hazard potential classification	PDF	DamSafety_Hazard_Classification	IX. Category 2 (b) (1)
Current dam safety condition classification	PDF	DamSafety_Condition_Classification	IX. Category 2 (b) (2)
Documentation of state- or FERC-identified dam safety issues, including but not limited to state or FERC inspection reports	PDF	DamSafety_Issues_Identification	IX. Category 2 (b) (3)
Dam Inundation Map with overlayed population (residence or centers)—applies to high- or extremely high-hazard classifications only	PDF	DamSafety_Inundation_Map	IX. Category 2 (b) (4)
If applicable, narrative and supporting evidence (such as hydrologic and hydraulic modeling) describing how the capital improvement increases resiliency to future hydrologic conditions	PDF	DamSafety_Hydrologic_Description	IX. Category 2 (b) (5)
Photographic or modeling evidence, of the dam safety risk/fault addressed by the capital improvement project, prior to project construction	PDF	DamSafety_Visual_Evidence_Prior	IX. Category 2 (b) (6)
If applicable, a description of how the dam safety improvement will allow the facility to meet its requirements	PDF	DamSafety_Compliance_Description	IX. Category 2 (b) (7)
Documentation Required for Final Incentive Payment			
Statement of final completion and owner's acceptance of the work	PDF	DamSafety_Final_Statement	IX. Category 2 (d) (1)
Photographic or modeling evidence of dam safety risk/fault addressed by capital improvement project after project completion	PDF	DamSafety_Visual_Evidence_Final	IX. Category 2 (d) (2)
Any post-project proof of improvement related to the project determined by DOE	Various	DamSafety_Completion	IX. Category 2 (d) (3)
If applicable, documentation from FERC and/or other authorities, as applicable, stating that the project meets dam safety requirements after completion of the dam safety capital improvement project	PDF	DamSafety_Compliance_Evidence	IX. Category 2 (d) (4)
Any other post-project proof of improvement related to the project determined by DOE	Various	DamSafety_Additional_Evidence	IX. Category 2 (d) (5)
Paid invoices that demonstrate project costs as requested in Section VIII(b)(8)(vii)	MS Excel or PDF	DamSafety_Paid_Invoice	IX. Category 2 (d) (6)

Category 3: Environmental Improvements			
Application Requirement	**Suggested File Format**	**Suggested Filename**	**Location in Guidance**
Any relevant data or studies that provide support for the project	PDF	Environmental_Supporting_Data	IX. Category 3 (b) (1)
Evidence of consultation and/or engagement, completed or intended, with federal, state, or Tribal natural resource agencies	PDF	Environmental_Benefits_Consultation	IX. Category 3 (b) (2)
Any FERC license conditions that will be satisfied by the capital investment	PDF	Environmental_FERC_Conditions	IX. Category 3 (b) (3)
If applicable, evidence to support project benefits to species of conservation concern and/or culturally significant species	PDF	Environmental_Conservation_Evidence	IX. Category 3 (b) (4)
If applicable, evidence to support watershed-scale project benefits	PDF	Environmental_Watershed_Benefits	IX. Category 3 (b) (5)
If applicable, evidence that recreational improvement(s) provide benefits to a disadvantaged community	PDF or JPG (exported image from CEJST)	Environmental_Disadvantaged_Benefits	IX. Category 3 (b) (6)
If applicable, evidence that demonstrates the improvements creates public recreational opportunities in the vicinity of the facility *beyond those otherwise required* by resource agencies or the facility's FERC license, exemption, or other authorization	PDF	Environmental_Recreational_Benefits	IX. Category 3 (b) (7)
If applicable, a description of how the environmental improvement will allow the facility to meet its requirements	PDF	Environmental_Compliance_Description	IX. Category 3 (b) (8)
Documentation Required for Final Incentive Payment			
Statement of final completion and owner's acceptance of the work	PDF	Environmental_Final_Statement	IX. Category 3 (d) (1)
Documentation, including supporting data or evidence to support completion of the project	Various	Environmental_Completion	IX. Category 3 (d) (2)
If applicable, documentation from FERC and/or other authorities, as applicable, stating that the project meets its environmental requirements after completion of the capital improvement project	PDF	Environmental_Compliance_Evidence	IX. Category 3 (d) (3)
Any other post-project proof of improvement related to the project determined by DOE	Various	Environmental_Additional_Evidence	IX. Category 3 (d) (4)
Paid invoices that demonstrate project costs as requested in Section VIII(b)(8)(vii)	MS Excel or PDF	Environmental_Paid_Invoice	IX. Category 3 (d) (5)
Statement of final completion and owner's acceptance of the work	PDF	Environmental_Final_Statement	IX. Category 3 (d) (1)