

lished to the satisfaction of the Secretary of Energy that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(Pub. L. 96-294, title II, §232, June 30, 1980, 94 Stat. 697.)

§ 8833. Guaranteed construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to guarantee, and guarantee, against loss on up to 90 per centum of the principal and interest, any loan which is made solely to provide funds for the construction of a municipal waste energy project and which does not exceed 90 per centum of the cost of the construction of the project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(b) Estimated project construction costs as determinative of revised amount of guarantee

In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, guarantee, against loss on up to 90 per centum of the principal and interest, a loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total estimated costs.

(c) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary of Energy makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(d) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(e) Payment to lender

If the Secretary of Energy determines that—

- (1) the borrower is unable to meet payments and is not in default,
- (2) it is in the public interest to permit the borrower to continue to pursue the purposes of such project, and
- (3) the probable net benefit to the United States in paying the principal and interest due under a loan guarantee agreement will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(f) Preconditions

A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary of Energy that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(g) Payment of interest; tax consequences

(1) With respect to any loan or debt obligation which is—

(A) issued after June 30, 1980, by, or on behalf of, any State or any political subdivision or governmental entity thereof,

(B) guaranteed by the Secretary of Energy under this section, and

(C) not supported by the full faith and credit of the issuer as a general obligation of the issuer,

the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successors in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(2) With respect to the amount of obligations described in paragraph (1) that the issuer would have been able to issue as tax exempt obligations (other than obligations secured by the full faith and credit of the issuer as a general obligation of the issuer), the Secretary of Energy is authorized to pay only to the issuer any portion of the interest on such obligations, as determined by the Secretary of the Treasury after taking into account the interest rate which would have been paid on the obligations had they been issued as tax exempt obligations without being so guaranteed by the Secretary of Energy and the interest rate actually paid on the obligations when issued as taxable obligations. Such payments shall be made in amounts determined by the Secretary of Energy, and in accordance with such terms and conditions as the Secretary of the Treasury shall require.

(h) Fees

(1) A fee or fees may be charged and collected by the Secretary of Energy for any loan guarantee under this section.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the maximum of the guarantee.

(Pub. L. 96-294, title II, §233, June 30, 1980, 94 Stat. 698; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this title", meaning title II of Pub. L. 96-294,

June 30, 1980, 94 Stat. 683, as amended, known as the Biomass Energy and Alcohol Fuels Act of 1980, which enacted this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amended sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

AMENDMENTS

1986—Subsec. (g)(1). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

§ 8834. Price support loans and price guarantees

(a) Authority of Secretary of Energy with respect to loans for existing projects; disbursements, etc.

(1) In the case of any existing municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined under paragraph (3) for the operation of such project. Payments under any such loan shall be disbursed on an annual basis, as determined (in accordance with paragraph (3)) on the basis of the amount of biomass energy produced and sold by that project during the 12-month period involved and the type and cost of fuel displaced by the biomass energy sold.

(2)(A)¹ In the case of any support loan under this section for an existing municipal waste energy project—

(i) disbursements under such loan may not be made for more than 5 consecutive 12-month periods;

(ii) the amount of the disbursement for the second and any subsequent 12-month period for which disbursements are to be made under the support loan shall be reduced by an amount determined by multiplying the amount calculated under paragraph (3) by a factor determined by dividing the number of 12-month periods for which disbursements are made under the support loan into the number of such periods which have elapsed;

(iii) commencing at the end of the last of such 12-month periods, the support loan shall be repayable over a period equal to the then remaining useful life of the project (as determined by the Secretary) or 10 years, whichever is shorter; and

(iv) commencing at the end of such last 12-month period, such loan shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(3) The amount of the loan payment to be disbursed under this subsection for any year with respect to each type of biomass energy produced and sold by an existing municipal waste energy project shall be equal to—

(A)(i) the standard support price reduced by the cost of the fuel displaced by the biomass energy sold, or (ii) \$2.00, whichever is lower, multiplied by

(B) the amount of such biomass energy sold (in millions of Btu’s).

(b) Authority of Secretary of Energy with respect to loans for new projects; disbursements, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined in accordance with the provisions of subsection (a) of this section, except as provided in paragraph (2).

(2) In the case of any loan under this subsection for a new municipal waste energy project—

(A) disbursements under such loan may not be made for more than 7 consecutive 12-month periods (with reductions as provided in subsection (a)(2)(A)(ii)) of this section;

(B) such loan shall bear interest at a rate not in excess of the rate prescribed under subsection (a) of this section; and

(C) the principal of or interest on such loan shall, in accordance with the support loan agreement, be repayable, commencing at the end of the last 12-month period covered by the support loan, over a period not in excess of the period equal to the then remaining useful life of the project (as determined by the Secretary) or 15 years, whichever is shorter.

(c) Authority of Secretary of Energy with respect to guarantees for new projects; pricing determinations, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price guarantee for the operation of such project which guarantees that the price the owner or operator will receive for all or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the guarantee agreement.

(2)(A) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(B) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or variant thereof, for purposes of subparagraph (A).

(3) In the case of any price guarantee under this subsection for a new municipal waste energy project—

(A) disbursements under such guarantee may not be made for more than 7 consecutive 12-month periods; and

(B) amounts paid under this subsection may be required to be repaid to the Secretary of Energy under such terms and conditions as the Secretary may prescribe, including interest at a rate not in excess of the rate prescribed under subsection (a) of this section.

(d) Definitions; sale price of retained fuel; rules relating to fuel displacement

For purposes of this section—

¹ So in original. No subpar. (B) has been enacted.