

otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SUBCHAPTER II—LOAN GUARANTIES

§ 1141. Establishment of loan guaranty program

(a) Congressional declaration of policy

It is the policy of the Congress to encourage and assist in the commercial development of practicable means to produce useful energy from geothermal resources with environmentally acceptable processes. Accordingly, it is the policy of the Congress to facilitate such commercial development by authorizing the Chairman of the Project to designate an appropriate Federal agency to guarantee loans for such purposes.

(b) Authorization of heads of designated agencies to guarantee loans

In order to encourage the commercial production of energy from geothermal resources, the head of the designated agency is authorized to, in consultation with the Secretary of the Treasury, guarantee, and to enter into commitments to guarantee, lenders against loss of principal or interest on loans made by such lenders to qualified borrowers for the purposes of—

- (1) the determination and evaluation of the resource base;
- (2) research and development with respect to extraction and utilization technologies;
- (3) acquiring rights in geothermal resources;
- (4) development, construction, and operation of facilities for the demonstration or commercial production of energy using geothermal resources; or
- (5) construction and operation of a new commercial, agricultural, or industrial structure or facility or modification and operation of an existing commercial, agricultural, or industrial structure or facility, when geothermal hot water or steam is to be used within or by such structure or facility, or modification thereto, for the purposes of space heating or cooling, industrial or agricultural processes, onsite generation of electricity for use other than for sale or resale in commerce, other commercial applications, or combinations of applications separately eligible under this subchapter for loan guarantee assistance.

(c) Extent of guarantee

Any guaranty under this subchapter shall apply only to so much of the principal amount of any loan as does not exceed 75 percent of the aggregate cost of the project with respect to which the loan is made, except that any guarantee made for a loan to an electric, housing, or other cooperative, or to a municipality (as defined in section 796(7) of title 16), may apply to so much of the principal amount of the loan as does not exceed 90 percent of the aggregate cost of the project. In determining the aggregate cost of a project for purposes of the preceding sentence, there shall be excluded the cost of constructing electrical transmission lines to the extent that the cost of constructing such lines exceeds 25 percent of the aggregate cost of the project (as determined without regard to this sentence); except that the Secretary may waive or limit the application of this sentence with re-

spect to any project located in the State of Hawaii upon a finding that such project is remote from the area of primary consumption, that a transmission line is required before the geothermal reservoir can be developed, and that the particular transmission line involved will be used for more than the plant which is the subject of the loan guarantee. In the case of a guaranty for the purposes specified in subsection (b)(5), the aggregate cost of the project shall be deemed to be that portion of the total cost of construction and operation which is directly related to the utilization of geothermal energy within the structure or facility in question, except that the aggregate cost of the project with respect to which the loan is made may be the total cost including construction and operation in cases where the facility or structure has been located near a geothermal energy resource predominantly for the purpose of utilizing geothermal energy, or as determined by the Secretary of Energy the economic viability of the project is substantially dependent upon the performance of the geothermal reservoir.

(d) Terms and conditions of guaranties

Loan guaranties under this subchapter shall be on such terms and conditions as the head of the designated agency determines, except that a guaranty shall be made under this subchapter only if—

- (1) the loan bears interest at a rate not to exceed such annual per centum on the principal obligation outstanding as the head of the designated agency determines to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar loans and risks by the United States;
- (2) the terms of such loan require full repayment over a period not to exceed thirty years, or the useful life of any physical asset to be financed by such loan, whichever is less (as determined by the head of the designated agency);
- (3) in the judgment of the head of the designated agency, the amount of the loan (when combined with amounts available to the qualified borrower from other sources) will be sufficient to carry out the project; and
- (4) in the judgment of the head of the designated agency, there is reasonable assurance of repayment of the loan by the qualified borrower of the guaranteed indebtedness.

(e) Limitations on amount of guaranty; exceptions; procedures applicable

The amount of the guaranty for any loan for a project shall not exceed \$100,000,000: *Provided*, That in the case of a guaranty under subsection (b)(5), the amount of the guaranty for any loan for a project shall not exceed \$50,000,000 and the amount of the guaranty for any combination of loans for any single qualified borrower shall not exceed \$200,000,000, unless the Secretary of Energy determines in writing that a guaranty in excess of these amounts is in the national interest. Any such determination shall be submitted to the Speaker of the House and the Committee on Science, Space, and Technology of the House of Representatives, and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate, accompanied by a

full and complete report on the proposed project and guaranty. The proposed guaranty or commitment to guarantee shall not be finalized under authority granted by this chapter prior to the expiration of thirty calendar days (not including any date on which either House of Congress is not in session) from the date on which such report is received by the Speaker of the House and the President of the Senate.

(f) “Qualified borrower” defined

As used in this subchapter, the term “qualified borrower” means any public or private agency, institution, association, partnership, corporation, political subdivision, or other legal entity which (as determined by the head of the designated agency) has presented satisfactory evidence of an interest in geothermal resources and is capable of performing research or completing the development and production of energy in an acceptable manner.

(g) Payment of interest; criteria

With respect to any guaranty which is issued after February 25, 1978, by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under this subchapter and for which the interest paid on such obligation and received by the purchaser thereof is included in gross income for the purposes of chapter 1 of title 26, the Secretary of Energy shall pay to such issuer out of the fund established by this subchapter such portion of the interest on such obligations, as determined by the Secretary of Energy, in consultation with the Secretary of the Treasury, to be appropriated after taking into account current market yields (1) on obligations of such issuer, if any, or (2) on other obligations with similar terms and conditions, the interest on which is not so included in gross income for purposes of chapter 1 of title 26, and in accordance with such terms and conditions as the Secretary of Energy shall require in consultation with the Secretary of the Treasury.

(h) Pledge of full faith and credit of United States to guaranties

The full faith and credit of the United States is pledged to the payment of all guaranties issued under this subchapter with respect to principal and interest.

(i) Fees for guaranties; amount, collection, etc.

The Secretary of Energy shall charge and collect fees for guaranties in amounts sufficient in his judgment to cover applicable administrative costs and probable losses on guaranteed obligations, but in any event not to exceed 1 per centum per annum of the outstanding indebtedness covered by each guaranty. Fees collected under this subsection shall be deposited in the fund established by this subchapter.

(j) Minimization of capital market impact of guaranties

The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of any guaranty exceeding \$25,000,000 will have the minimum possible impact on the capital markets of the United States, taking into

account other Federal direct and indirect commercial securities activities.

(Pub. L. 93-410, title II, §201, Sept. 3, 1974, 88 Stat. 1086; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-238, title V, §§505-509, Feb. 25, 1978, 92 Stat. 86, 87; Pub. L. 96-294, title VI, §641(1), June 30, 1980, 94 Stat. 768; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-437, §11(b), Nov. 2, 1994, 108 Stat. 4589.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-437 substituted “Science, Space, and Technology” for “Science and Technology”.

1986—Subsec. (g). 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.

1980—Subsec. (c). Pub. L. 96-294 inserted provisions relating to guarantees for loans to an electric, housing, or other cooperative, or to a municipality (as defined in section 796(7) of title 16).

1978—Subsec. (b)(4). Pub. L. 95-238, §506, substituted “using” for “from”.

Subsec. (b)(5). Pub. L. 95-238, §505, added par. (5).

Subsec. (c). Pub. L. 95-238, §507, inserted provisions relating to guarantees for the purposes specified in subsec. (b)(5) of this section.

Subsec. (e). Pub. L. 95-238, §508, inserted proviso relating to guaranty under subsec. (b)(5) of this section, and provisions relating to exceptions to limitations on amounts guaranteed and procedures applicable to implementation of greater amounts, and substituted “\$100,000,000” for “\$25,000,000” and “\$200,000,000” for “\$50,000,000”.

Subsecs. (g) to (j). Pub. L. 95-238, §509, added subsecs. (g) to (j).

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted for “Administrator” (meaning Administrator of Energy Research and Development Administration, see section 501(2) of Pub. L. 95-238, title V, Feb. 25, 1978, 92 Stat. 86) in subsecs. (c), (e), (g), and (i), pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 1142. Payment of guaranteed obligation by Secretary of Energy

(a) Default by borrower and demand by holder of obligation of unpaid amount; amount of payment by Secretary of Energy; defenses available; forbearance by holder of obligation

If there is a default by the borrower, as defined in regulations promulgated by the Secretary of Energy and set forth in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Secretary of Energy. Within such period as may be specified in the guarantee or related agreements, the Secretary of Energy shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of the guaranteed obligation as to which the borrower has defaulted, unless the Secretary of Energy finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any fore-