

§ 3507(a)(1)(F), into this section by inserting “or Administrator” after “Secretary” wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-163, § 3507(a)(1)(F), which directed the amendment of section 1275(e) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110-181, § 3522(b). See 2008 Amendment notes and Historical and Revision notes above.

SUBCHAPTER III—PARTICULAR PROJECTS

§ 53731. Commercial demonstration ocean thermal energy conversion facilities and plantships

(a) IN GENERAL.—Under subchapter I of this chapter, the Administrator may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(c) ECONOMIC SOUNDNESS.—The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

(d) REASONABLENESS OF RISK.—A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the Administrator, certifies to the Administrator that, for the facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider—

(1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of the facility or plantship.

(e) AMOUNT OF OBLIGATION.—The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of—

(1) the actual cost or depreciated actual cost of the facility or plantship; or

(2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual

cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

(f) OTEC DEMONSTRATION FUND.—

(1) IN GENERAL.—There is a special sub-account, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.

(2) USE AND OPERATION.—The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However—

(A) amounts received by the Administrator under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and

(B) when obligations issued by the Administrator under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the Administrator under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.

(3) TRANSFERS.—Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the Administrator under section 53723 of this title related to the OTEC Demonstration Fund.

(4) LIABILITY.—The parent account is not liable for a guarantee or commitment to guarantee made under this section.

(5) MAXIMUM UNPAID PRINCIPAL AMOUNT.—The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed \$1,650,000,000.

(g) ISSUANCE AND PAYMENT OF OBLIGATIONS.—Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the Administrator under that section related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.

(h) TAXATION OF INTEREST.—Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(Pub. L. 109-304, § 8(c), Oct. 6, 2006, 120 Stat. 1620; Pub. L. 109-163, div. C, title XXXV, § 3507(a)(2)(H), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110-181, div. C, title XXXV, § 3522(a)(9)(D), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 53731(a) | 46 App.:1279c(a) (1st sentence), (1), (4). | June 29, 1936, ch. 858, title XI, §1110, as added Pub. L. 96-320, title II, §203(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, §1606(f), Aug. 13, 1981, 95 Stat. 752; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104-239, §11(3), Oct. 8, 1996, 110 Stat. 3134. |
| 53731(b) | 46 App.:1279c(a) (2d sentence words before (1)). | |
| 53731(c) | 46 App.:1279c(a)(2). | |
| 53731(d) | 46 App.:1279c(b). | |
| 53731(e) | 46 App.:1279c(a)(3). | |
| 53731(f) | 46 App.:1279c(c). | |
| 53731(g) | 46 App.:1279c(d). | |
| 53731(h) | 46 App.:1279c(e). | |

In subsection (a), the words “upon such terms as he shall prescribe” are omitted as unnecessary because section 53702(a) of the revised title provides the Secretary authority to prescribe the terms. The text of 46 App. U.S.C. 1279c(a)(1) is omitted as obsolete.

In subsection (f)(1), the words “account established under section 53717(b)(1) of this title” are substituted for “Federal Ship Financing Fund” because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

In subsection (f)(2)(B), the word “conversion” is substituted for “conversional” to correct an apparent error.

AMENDMENTS

2008—Pub. L. 110-181, §3522(b), repealed Pub. L. 109-163, §3507(a)(2)(H). See 2006 Amendment note below.

Pub. L. 110-181, §3522(a)(9)(D), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(2)(H), into this section by substituting “Administrator” for “Secretary” wherever appearing, except when followed by “of Energy”. See 2006 Amendment note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-163, §3507(a)(2)(H), which directed the amendment of section 1279c of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§ 53732. Eligible export vessels

(a) APPLICABLE TERMS.—The Administrator may guarantee an obligation for an eligible export vessel in accordance with—

- (1) the terms applicable under this chapter for vessels documented under the laws of the United States; or
- (2) other terms the Administrator determines are more favorable than those terms and compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) INTERAGENCY COUNCIL.—

- (1) ESTABLISHMENT.—There is an interagency council to carry out this section.
- (2) COMPOSITION.—The council is composed of the following individuals or their designees:
 - (A) The Administrator, who is the chairman of the council.
 - (B) The Secretary of the Treasury.
 - (C) The Secretary of State.
 - (D) The Assistant to the President for Economic Policy.

(E) The United States Trade Representative.

(F) The President and Chairman of the Export-Import Bank of the United States.

(3) FUNCTIONS.—The council shall—

- (A) obtain information on shipbuilding loan guarantees, direct and indirect subsidies, and other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards;
- (B) consult regularly with United States shipbuilders to obtain the essential information about international shipbuilding competition on which to set terms for loan guarantees under subsection (a)(2); and
- (C) provide guidance to the Administrator in establishing terms for loan guarantees under subsection (a)(2).

(4) ANNUAL REPORT.—Not later than January 31 of each year, the Administrator shall submit to Congress a report on activities of the Administrator under this section during the preceding year. The report shall include—

- (A) documentation of sources of information about assistance by governments of other countries to shipyards in those countries; and
- (B) a summary of recommendations made to the Administrator during the preceding year about applications submitted to the Administrator during that year for loan guarantees to construct eligible export vessels.

(c) REQUIRED FINDINGS.—

(1) BENEFIT TO SHIPBUILDING INDUSTRY.—The Administrator may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the Administrator finds that the construction, reconstruction, or reconditioning of the vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency.

(2) PRIORITY OF DOCUMENTED VESSELS.—The Administrator may not make a commitment to guarantee an obligation for an eligible export vessel unless the Administrator determines that making the commitment will not result in denial of an economically sound application for a commitment to guarantee an obligation for a vessel documented under the laws of the United States and operating in the domestic or foreign commerce of the United States. The Administrator has sole discretion in making the determination. In making the determination, the Administrator shall consider—

- (A) the status and economic soundness of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States that are operating or will be operating in the domestic or foreign commerce of the United States; and
- (B) the amount of guarantee authority available.

(d) RESTRICTION ON TRANSFER OF VESSEL.—The Administrator may not guarantee or make a