

O'Brien, Meghan

From: Ku, Ruth
Sent: Tuesday, July 03, 2012 1:41 PM
To: Arigbede, Kimberley; Cestari, Kenneth; Donovan, Nancy; Heimert, Kimberly; Hodges, Sven; Leong, Alvin; O'Brien, Meghan; Weinstein, Steven
Cc: Richardson, Susan; Tanvir, Shafia
Subject: USC Version of Title XVII
Attachments: Doc1.docx; Section 16511-16514.docx
Categories: Yellow Category

Dear colleagues,

Susan asked me to circulate an electronic version of Title XVII as set forth in the US Code that includes the new DBA provision and the combined self-pay and appropriated funds credit subsidy provision. Note that the codified version does not include Section 1705 which has expired and is attached separately.

Also, please note that we have been referring to the section references (e.g., 1702 or 1703) of the Public Law No. 109-58 which is not the official version of the statute. The no. 109 in 109-58 refers to the 109th Congress, and I understand that the no. 58 refers to the number of the statute passed. The USC version of Title XVII at 42 USC 16511 is official, but you'll note that its section references are different than those used in the Public Law.

Thanks,
Ruth

Ruth Ku
Attorney Advisor
Loan Guarantee Program
U.S. Department of Energy
1000 Independence Avenue, SW
Room 4B-150
Washington, DC 20585
Ph: (202) 586-3399
Fax: (202) 586-7809
Ruth.Ku@hq.doe.gov

-CITE-

42 USC Sec. 16511
(112-90)

01/03/2012

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 149 - NATIONAL ENERGY POLICY AND PROGRAMS

SUBCHAPTER XV - INCENTIVES FOR INNOVATIVE TECHNOLOGIES

-HEAD-

Sec. 16511. Definitions

-STATUTE-

In this subchapter:

(1) Commercial technology

(A) In general

The term "commercial technology" means a technology in
general use in the commercial marketplace.

(B) Inclusions

The term "commercial technology" does not include a
technology solely by use of the technology in a demonstration
project funded by the Department.

(2) Cost

The term "cost" has the meaning given the term "cost of a loan

guarantee" within the meaning of section 661a(5)(C) of title 2.

(3) Eligible project

The term "eligible project" means a project described in section 16513 of this title.

(4) Guarantee

(A) In general

The term "guarantee" has the meaning given the term "loan guarantee" in section 661a of title 2.

(B) Inclusion

The term "guarantee" includes a loan guarantee commitment (as defined in section 661a of title 2).

(5) Obligation

The term "obligation" means the loan or other debt obligation that is guaranteed under this section.

-SOURCE-

(Pub. L. 109-58, title XVII, Sec. 1701, Aug. 8, 2005, 119 Stat.

1117.)

-CITE-

42 USC Sec. 16512
(112-90)

01/03/2012

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 149 - NATIONAL ENERGY POLICY AND PROGRAMS

SUBCHAPTER XV - INCENTIVES FOR INNOVATIVE TECHNOLOGIES

-HEAD-

Sec. 16512. Terms and conditions

-STATUTE-

(a) In general

Except for division C of Public Law 108-324 [15 U.S.C. 720 et seq.], the Secretary shall make guarantees under this or any other Act for projects on such terms and conditions as the Secretary determines, after consultation with the Secretary of the Treasury, only in accordance with this section.

(b) Specific appropriation or contribution

(1) (!1) In general

No guarantee shall be made unless -

(A) an appropriation for the cost of the guarantee has been made;

(B) the Secretary has received from the borrower a payment in full for the cost of the guarantee and deposited the payment into the Treasury; or

(C) a combination of one or more appropriations under subparagraph (A) and one or more payments from the borrower under subparagraph (B) has been made that is sufficient to cover the cost of the guarantee.

(c) Amount

Unless otherwise provided by law, a guarantee by the Secretary shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.

(d) Repayment

(1) In general

No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower.

(2) Amount

No guarantee shall be made unless the Secretary determines that

the amount of the obligation (when combined with amounts available to the borrower from other sources) will be sufficient to carry out the project.

(3) Subordination

The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(e) Interest rate

An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(f) Term

The term of an obligation shall require full repayment over a period not to exceed the lesser of -

(1) 30 years; or

(2) 90 percent of the projected useful life of the physical asset to be financed by the obligation (as determined by the Secretary).

(g) Defaults

(1) Payment by Secretary

(A) In general

If a borrower defaults on the obligation (as defined in regulations promulgated by the Secretary and specified in the guarantee contract), the holder of the guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(B) Payment required

Within such period as may be specified in the guarantee or related agreements, the Secretary shall pay to the holder of the guarantee the unpaid interest on, and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that the default has been remedied.

(C) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and

approved by the Secretary.

(2) Subrogation

(A) In general

If the Secretary makes a payment under paragraph (1), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the guarantee or related agreements including, where appropriate, the authority (notwithstanding any other provision of law) to -

(i) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements; or

(ii) permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines this to be in the public interest.

(B) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to

the property.

(C) Terms and conditions

A guarantee agreement shall include such detailed terms and conditions as the Secretary determines appropriate to -

(i) protect the interests of the United States in the case of default; and

(ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.

(3) Payment of principal and interest by Secretary

With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the borrower, from funds appropriated for that purpose, the principal and interest payments which become due and payable on the unpaid balance of the obligation if the Secretary finds that -

(A)(i) the borrower is unable to meet the payments and is not in default;

(ii) it is in the public interest to permit the borrower to

continue to pursue the purposes of the project; and

(iii) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(B) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the borrower is obligated to pay under the agreement being guaranteed; and

(C) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(4) Action by Attorney General

(A) Notification

If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(B) Recovery

On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from -

(i) such assets of the defaulting borrower as are associated with the obligation; or

(ii) any other security pledged to secure the obligation.

(h) Fees

(1) In general

The Secretary shall charge and collect fees for guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.

(2) Availability

Fees collected under this subsection shall -

(A) be deposited by the Secretary into the Treasury; and

(B) remain available until expended, subject to such other conditions as are contained in annual appropriations Acts.

(i) Records; audits

(1) In general

A recipient of a guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(2) Access

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

(j) Full faith and credit

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

(k) Wage rate requirements

All laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by a loan guaranteed under this subchapter shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. With respect to the labor standards in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64

Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40.

-SOURCE-

(Pub. L. 109-58, title XVII, Sec. 1702, Aug. 8, 2005, 119 Stat.

1117; Pub. L. 111-85, title III, Sec. 310, Oct. 28, 2009, 123 Stat.

2873; Pub. L. 112-74, div. B, title III, Sec. 305(1), Dec. 23,

2011, 125 Stat. 877.)

-REFTEXT-

REFERENCES IN TEXT

Division C of Public Law 108-324, referred to in subsec. (a), is division C of Pub. L. 108-324, Oct. 13, 2004, 118 Stat. 1255, known as the Alaska Natural Gas Pipeline Act, which is classified principally to chapter 15D (Sec. 720 et seq.) of Title 15, Commerce and Trade. For complete classification of division C to the Code, see Short Title note set out under section 720 of Title 15 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (k), is set out in the Appendix to Title 5, Government Organization and Employees.

-MISC1-

AMENDMENTS

2011 - Subsec. (b). Pub. L. 112-74 added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows:

"No guarantee shall be made unless -

"(1) an appropriation for the cost has been made; or

"(2) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury."

2009 - Subsec. (k). Pub. L. 111-85 added subsec. (k).

-FOOTNOTE-

(!1) So in original. No par. (2) has been enacted.



-CITE-

42 USC Sec. 16513
(112-90)

01/03/2012

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 149 - NATIONAL ENERGY POLICY AND PROGRAMS

SUBCHAPTER XV - INCENTIVES FOR INNOVATIVE TECHNOLOGIES

-HEAD-

Sec. 16513. Eligible projects

-STATUTE-

(a) In general

The Secretary may make guarantees under this section only for projects that -

(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and

(2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.

(b) Categories

Projects from the following categories shall be eligible for a guarantee under this section:

(1) Renewable energy systems.

(2) Advanced fossil energy technology (including coal gasification meeting the criteria in subsection (d)).

(3) Hydrogen fuel cell technology for residential, industrial, or transportation applications.

(4) Advanced nuclear energy facilities.

(5) Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon.

(6) Efficient electrical generation, transmission, and distribution technologies.

(7) Efficient end-use energy technologies.

(8) Production facilities for the manufacture of fuel efficient vehicles or parts of those vehicles, including electric drive vehicles and advanced diesel vehicles.

(9) Pollution control equipment.

(10) Refineries, meaning facilities at which crude oil is refined into gasoline.

(c) Gasification projects

The Secretary may make guarantees for the following gasification projects:

(1) Integrated gasification combined cycle projects

Integrated gasification combined cycle plants meeting the emission levels under subsection (d), including -

(A) projects for the generation of electricity -

(i) for which, during the term of the guarantee -

(I) coal, biomass, petroleum coke, or a combination of coal, biomass, and petroleum coke will account for at least 65 percent of annual heat input; and

(II) electricity will account for at least 65 percent of net useful annual energy output;

(ii) that have a design that is determined by the Secretary to be capable of accommodating the equipment likely to be necessary to capture the carbon dioxide that would otherwise be emitted in flue gas from the plant;

(iii) that have an assured revenue stream that covers project capital and operating costs (including servicing all debt obligations covered by the guarantee) that is approved

by the Secretary and the relevant State public utility
commission; and

(iv) on which construction commences not later than the
date that is 3 years after the date of the issuance of the
guarantee;

(B) a project to produce energy from coal (of not more than
13,000 Btu/lb and mined in the western United States) using
appropriate advanced integrated gasification combined cycle
technology that minimizes and offers the potential to sequester
carbon dioxide emissions and that -

(i) may include repowering of existing facilities;

(ii) may be built in stages;

(iii) shall have a combined output of at least 100
megawatts;

(iv) shall be located in a western State at an altitude
greater than 4,000 feet; and

(v) shall demonstrate the ability to use coal with an
energy content of not more than 9,000 Btu/lb;

(C) a project located in a taconite-producing region of the

United States that is entitled under the law of the State in which the plant is located to enter into a long-term contract approved by a State public utility commission to sell at least 450 megawatts of output to a utility;

(D) facilities that -

(i) generate one or more hydrogen-rich and carbon monoxide-rich product streams from the gasification of coal or coal waste; and

(ii) use those streams to facilitate the production of ultra clean premium fuels through the Fischer-Tropsch process; and

(E) a project to produce energy and clean fuels, using appropriate coal liquefaction technology, from Western bituminous or subbituminous coal, that -

(i) is owned by a State government; and

(ii) may include tribal and private coal resources.

(2) Industrial gasification projects

Facilities that gasify coal, biomass, or petroleum coke in any combination to produce synthesis gas for use as a fuel or feedstock and for which electricity accounts for less than 65

percent of the useful energy output of the facility.

(3) Petroleum coke gasification projects

The Secretary is encouraged to make loan guarantees under this subchapter available for petroleum coke gasification projects.

(4) Liquefaction project

Notwithstanding any other provision of law, funds awarded under the Department of Energy's Clean Coal Power Initiative for Fischer-Tropsch coal-to-oil liquefaction projects may be used to finance the cost of loan guarantees for projects awarded such funds.

(d) Emission levels

In addition to any other applicable Federal or State emission limitation requirements, a project shall attain at least -

(1) total sulfur dioxide emissions in flue gas from the project that do not exceed 0.05 lb/MMBtu;

(2) a 90-percent removal rate (including any fuel pretreatment) of mercury from the coal-derived gas, and any other fuel, combusted by the project;

(3) total nitrogen oxide emissions in the flue gas from the

project that do not exceed 0.08 lb/MMBtu; and

(4) total particulate emissions in the flue gas from the project that do not exceed 0.01 lb/MMBtu.

(e) Qualification of facilities receiving tax credits

A project that receives tax credits for clean coal technology shall not be disqualified from receiving a guarantee under this subchapter.

-SOURCE-

(Pub. L. 109-58, title XVII, Sec. 1703, Aug. 8, 2005, 119 Stat. 1120; Pub. L. 109-168, Sec. 1(b)(1), Jan. 10, 2006, 119 Stat. 3580; Pub. L. 110-140, title I, Sec. 134(b), Dec. 19, 2007, 121 Stat. 1513.)

-MISC1-

AMENDMENTS

2007 - Subsec. (b)(8). Pub. L. 110-140 added par. (8) and struck out former par. (8) which read as follows: "Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles."

2006 - Subsec. (c)(4). Pub. L. 109-168 substituted "Department of

Energy's Clean Coal Power Initiative for Fischer-Tropsch" for

"clean coal power initiative under part A of subchapter IV for".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

-CITE-

42 USC Sec. 16514
(112-90)

01/03/2012

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 149 - NATIONAL ENERGY POLICY AND PROGRAMS

SUBCHAPTER XV - INCENTIVES FOR INNOVATIVE TECHNOLOGIES

-HEAD-

Sec. 16514. Authorization of appropriations

-STATUTE-

(a) In general

There are authorized to be appropriated such sums as are necessary to provide the cost of guarantees under this subchapter.

(b) Use of other appropriated funds

The Department may use amounts awarded under the Clean Coal Power Initiative to carry out the project described in section 16513(c)(1)(C) of this title, on the request of the recipient of such award, for a loan guarantee, to the extent that the amounts have not yet been disbursed to, or have been repaid by, the recipient.

-SOURCE-

(Pub. L. 109-58, title XVII, Sec. 1704, Aug. 8, 2005, 119 Stat.

1122; Pub. L. 109-168, Sec. 1(b)(2), Jan. 10, 2006, 119 Stat.

3580.)

-MISC1-

AMENDMENTS

2006 - Subsec. (b). Pub. L. 109-168 substituted "Clean Coal Power Initiative" for "clean coal power initiative under part A of subchapter IV".

SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION PROJECTS.

(a) In General- Notwithstanding section 1703, the Secretary may make guarantees under this section only for the following categories of projects that commence construction not later than September 30, 2011:

- (1) Renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components.
- (2) Electric power transmission systems, including upgrading and reconductoring projects.
- (3) Leading edge biofuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life-cycle greenhouse gas emissions compared to other transportation fuels.

(b) Factors Relating to Electric Power Transmission Systems- In determining to make guarantees to projects described in subsection (a)(2), the Secretary may consider the following factors:

- (1) The viability of the project without guarantees.
- (2) The availability of other Federal and State incentives.
- (3) The importance of the project in meeting reliability needs.
- (4) The effect of the project in meeting a State or region's environment (including climate change) and energy goals.

(c) Wage Rate Requirements- The Secretary shall require that each recipient of support under this section provide reasonable assurance that all laborers and mechanics employed in the performance of the project for which the assistance is provided, including those employed by contractors or subcontractors, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code (commonly referred to as the 'Davis-Bacon Act').

(d) Limitation- Funding under this section for projects described in subsection (a)(3) shall not exceed \$500,000,000.

(e) Sunset- The authority to enter into guarantees under this section shall expire on September 30, 2011.'

(b) Table of Contents Amendment- The table of contents for the Energy Policy Act of 2005 is amended by inserting after the item relating to section 1704 the following new item:

` Sec. 1705. Temporary program for rapid deployment of renewable energy and electric power transmission projects.'.