

retary concerned 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).

**(e) 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.

**(f) Payment to lender**

If the Secretary concerned 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 with such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under the loan 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.

**(g) Preconditions**

(1) A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary concerned 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 rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(2) The Secretary concerned shall ensure that the lender bears a reasonable degree of risk in the financing of such project.

(Pub. L. 96-294, title II §214, June 30, 1980, 94 Stat. 690.)

**Editorial Notes**

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (c), is Pub. L. 93-224, Dec. 29, 1973, 87 Stat. 937, which is classified generally to chapter 24 (§2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

This chapter, referred to in subsec. (e), was in the original "this title", meaning title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

**Statutory Notes and Related Subsidiaries**

DEFAULTED LOANS UNDER DEPARTMENT OF ENERGY ALCOHOL FUELS LOAN GUARANTEE PROGRAM; SALE OF ASSETS; UNOBLIGATED FUNDS

Pub. L. 101-121, title II, Oct. 23, 1989, 103 Stat. 732, provided that:

"Notwithstanding 31 U.S.C. 3302, funds derived from the sale of assets as a result of defaulted loans made under the Department of Energy Alcohol Fuels Loan Guarantee program, or any other funds received in connection with this program, shall hereafter be credited to the Biomass Energy Development account, and shall be available solely for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program for loans guaranteed prior to January 1, 1987.

"Unobligated balances available in the 'Alternative fuels production' account may hereafter be used for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program, subject to the determination by the Secretary of Energy that such unobligated funds are not needed for carrying out the purposes of the Alternative Fuels Production program: *Provided*, That the use of these unobligated funds for payment of defaulted loans and associated costs shall be available only for loans guaranteed prior to January 1, 1987: *Provided further*, That such funds shall be used only after the unobligated balance in the Department of Energy Alcohol Fuel Loan Guarantee reserve has been exhausted."

**§ 8815. Price guarantees**

**(a) Authority of Secretary concerned; minimum sales price**

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, that the price that the owner or operator of any biomass energy project 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 price guarantee or commitment to guarantee.

**(b) Cost-plus arrangements as basis**

(1) 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.

(2) 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 paragraph (1).

**(c) Maximum dollar amount of liability of United States**

Each price guarantee, or commitment to guarantee, which is made under this section shall specify the maximum dollar amount of liability of the United States under that guarantee.

**(d) Renegotiation of sales price and maximum liability**

If the Secretary determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the price guarantee, and maximum liability under such guarantee, may be renegotiated.

(Pub. L. 96-294, title II, §215, June 30, 1980, 94 Stat. 692.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original "this title", meaning title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

#### § 8816. Purchase agreements

##### (a) Authority of Secretary concerned; consultative requirements

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to make, and make, purchase agreements for all or part of the biomass energy production of any biomass energy project, if the Secretary determines—

- (1) that such biomass energy is of a type, quantity, and quality that can be used by Federal agencies; and
- (2) that the quantity of such biomass energy, if delivery is accepted, would not exceed the likely needs of Federal agencies.

Each Secretary concerned shall consult with the other Secretary before making any determination under paragraph (2).

##### (b) Maximum sales price

The sales price specified in a purchase agreement under this section may not exceed the estimated prevailing market price as of the date of delivery, as determined by the Secretary of Energy, unless the Secretary concerned determines that such sales price must exceed the estimated prevailing market price in order to ensure the production of biomass energy to achieve the purposes of this chapter.

##### (c) Assurances required

The Secretary concerned in entering into, or committing to enter into, a purchase agreement under this section shall require—

- (1) assurances that the quality of the biomass energy purchased will meet standards for the use for which such energy is purchased;
- (2) assurances that the ordered quantities of such energy will be delivered on a timely basis; and
- (3) such other assurances as may reasonably be required.

##### (d) Arrangements for delivery pursuant to agreement; charge to Federal agency receiving delivery

The Secretary concerned may take delivery of biomass energy pursuant to a purchase agreement under this section if appropriate arrangements have been made for its distribution to and use by one or more Federal agencies. Any Federal agency receiving such energy shall be charged (in accordance with otherwise applicable law), from sums appropriated to such Federal agency, for the prevailing market price as

of the date of delivery, as determined by the Secretary of Energy, for the product which the biomass energy is replacing.

##### (e) Consultative requirements

The Secretary concerned shall consult with the Secretary of Defense and the Administrator of the General Services Administration in carrying out this section.

##### (f) Terms and conditions

Each purchase agreement, and commitment to enter into a purchase agreement, under this section shall provide that the Secretary concerned retains the right to refuse delivery of the biomass energy involved upon such terms and conditions as shall be specified in the purchase agreement.

##### (g) Maximum dollar amount of liability of United States

Each purchase agreement, or commitment to enter into a purchase agreement, which is made under this section shall specify the maximum dollar amount of liability of the United States under that agreement.

##### (h) Renegotiation of sales price and maximum liability

If the Secretary concerned determines, in the discretion of the Secretary, that—

- (1) a biomass energy project would not otherwise be satisfactorily completed or continued, and
- (2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the purchase agreement, and maximum liability under such agreement, may be renegotiated.

(Pub. L. 96-294, title II, §216, June 30, 1980, 94 Stat. 692.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (h)(2), was in the original "this title", meaning title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

#### § 8817. General requirements regarding financial assistance

##### (a) Priorities, terms, availability, etc.

(1) Priority for financial assistance under this subchapter, and the most favorable financial terms available, shall be provided to a person for any biomass energy project that—

- (A) uses a primary fuel other than petroleum or natural gas in the production of biomass fuel, such as geothermal energy resources, solar energy resources, or waste heat; or
- (B) applies new technologies which expand the possible feedstocks, produces new forms of biomass energy, or produces biomass fuel using improved or new technologies.

Nothing in this paragraph shall be construed to exclude financial assistance for any project