



## **Improvements to DOE Loan Guarantee Program in Title IV of S. 336, *The American Recovery and Reinvestment Act of 2009***

### **Background**

To date, the Department of Energy's Loan Guarantee Program is an idea better in theory than in practice. Since its inception in 2005, few project solicitations have been issued and not a single "innovative" renewable energy project has actually received a loan guarantee. Currently, the government requires the borrower to pay the full costs of the loan, which can be more than 10% of the obligation. Both the House and Senate economic recovery bills make modifications to the Loan Guarantee Program, adding a temporary program to spur the rapid deployment of renewable energy projects. Under this new program, the federal government will pay the full costs of loans, thereby eliminating a significant burden on applicants.

As drafted, the temporary program would apply only to "commercial" renewable energy systems and electric transmission systems. However, most solar technologies are considered "innovative" renewable energy systems, as they are performing at the pilot or demonstration scale. Changes are required to ensure that shovel-ready solar power plants can take advantage of the temporary program designed for rapid deployment of renewable energy projects. These shovel-ready projects represent billions of dollars of investment and will create over 25,000 new jobs.

### **Proposed Solution**

Modify Section 404 to include both commercial and innovative technologies as follows:

**"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 commercial and new or significantly improved technology projects under subsection (b) that will reach financial close not later than September 30, 2012.

"(b) CATEGORIES.—Projects from only the following categories shall be eligible for support under this section:

"(1) Renewable energy systems.

"(2) Electric power transmission systems

"(c) AUTHORIZATION LIMIT.—There are authorized to be appropriated \$10,000,000,000 to the Secretary for fiscal years 2009 through 2012 to provide the cost of guarantees made under section.

"(d) SUNSET.—The authority to enter into guarantees under this section shall expire on September 30, 2012."



## **Discussion**

The Energy Policy Act of 2005 created the original Loan Guarantee Program for innovative technologies and specified that commercial technologies were not eligible for the program. In statute, “commercial technology” was defined as “a technology in general use in the commercial marketplace.” (22 U.S.C. 16511)

In its final rule, DOE further clarified that a commercial technology is one that has (a) been installed in three or more commercial projects in the United States and (b) has been in operation in each such commercial project for a period of at least five years. (72 FR 60120)

By contrast, DOE defined a “new or significantly improved technology” as one that is not a commercial technology, and that has either: (a) only recently been developed, discovered or learned; or (b) involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to commercial technologies in use in the United States. (72 FR 60118)

Most solar technologies do not meet the standard for “commercial technologies” and would therefore be ineligible for the new, temporary Loan Guarantee Program aimed at the rapid deployment of renewables. Including “new or significantly improved” technologies in the program would enable solar power projects to secure a loan guarantee and begin building clean, renewable energy systems.

**Department of Energy**  
**American Recovery & Reinvestment Act of 2009 (S. 111-336)**  
**Energy and Water Appropriations**

**Senate Mark Implementation Challenges**

**Program Office:** Solar Energy Technologies Program

**Stimulus Initiative Text:** S. 336, Title IV (Energy and Water Development), Subtitle 17 (Innovative Technology Loan Guarantee Program)

Clause (1): *Subject to section 502 of the Congressional Budget Act of 1974, commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005, shall not exceed a total principal amount of \$50,000,000,000 for eligible projects, to remain available until committed*

Clause (2): *Provided further, That for an additional amount for the cost of guaranteed loans authorized by section 1702(b)(1) and section 1705 of the Energy Policy Act of 2005, \$9,500,000,000, available until expended, to pay the costs of guarantees made under this section:*

**Authorization Language:** Section 1702(b)(1) and (2) of the Energy Policy Act of 2005

**Implementation Challenges:**

- Clause (2) provides for the payment of a credit subsidy fee by the Treasury for loan guarantees as defined in Section 1702(b)(1) of the Energy Policy Act of 2005.
- Further, the payment of this subsidy fee only applies to “commercial” technologies as defined in Section 1705 of the Energy Policy Act.
- Payment of the credit subsidy would not be available for “new and significantly improved” technologies as defined by Section 1703 of the Energy Policy Act. These technologies are typically being developed and demonstrated by early stage companies, most of which are being severely affected by the present financial situation and therefore do not have significant funds with which to pay for the credit subsidy fee themselves.
- As written, companies that are developing new and significantly improved technologies would face a very significant financial hurdle to use the Loan Guarantee Program, possibly preventing the deployment of these new technologies that offer significant advantages in cost or performance from commercial technologies.
- If this clause is corrected, then Clause (1) should also be made to include both commercial and new and significantly improved technologies as well. This will create two funding sources for both types of technologies: one with a Federally paid credit subsidy fee (as provided for under 1702(b)(1)) and one without that is self-funded (as provided for under 1702(b)(2)).

**Recommended Fix:**

- Clause (1) should be modified to indicate that either **Section 1703 or Section 1705** apply for consideration of receiving the credit subsidy fee paid by the Treasury under this clause.

- Clause (2) should be modified to indicate that either 1705 **or** 1703 apply for consideration of receiving the credit subsidy fee paid by the Treasury under this clause.

**Point of Contact**

John Lushetsky  
Manager, Solar Energy Technology Program  
[John.lushetsky@ee.doe.gov](mailto:John.lushetsky@ee.doe.gov)  
202-287-1685

*Please complete the field above as briefly as possible by noon on Friday, January 30, 2009. Please send responses to Niall O'Connor at [Niall.O'Connor@hq.doe.gov](mailto:Niall.O'Connor@hq.doe.gov).*

- “(D) renewable projects; and
- “(E) lower emission transportation.

**“SEC. 737. FELLOWSHIP AND EXCHANGE PROGRAMS.**

22 USC 7907.

“The Secretary of State, in coordination with the Secretary of Energy, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall carry out fellowship and exchange programs under which officials from developing countries visit the United States to acquire expertise and knowledge of best practices to reduce greenhouse gas intensity in their countries.

**“SEC. 738. AUTHORIZATION OF APPROPRIATIONS.**

22 USC 7908.

“There are authorized to be appropriated such sums as are necessary to carry out this part.

**“SEC. 739. EFFECTIVE DATE.**22 USC 7901  
note.

“Except as otherwise provided in this part, this part takes effect on October 1, 2005.”

## TITLE XVII—INCENTIVES FOR INNOVATIVE TECHNOLOGIES

**SEC. 1701. DEFINITIONS.**

22 USC 16511.

In this title:

→ **(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 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)).

**(3) ELIGIBLE PROJECT.—**The term “eligible project” means a project described in section 1703.

**(4) GUARANTEE.—**

**(A) IN GENERAL.—**The term “guarantee” has the meaning given the term “loan guarantee” in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

**(B) INCLUSION.—**The term “guarantee” includes a loan guarantee commitment (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)).

**(5) OBLIGATION.—**The term “obligation” means the loan or other debt obligation that is guaranteed under this section.

**SEC. 1702. TERMS AND CONDITIONS.**

22 USC 16512.

**(a) IN GENERAL.—**Except for division C of Public Law 108–324, 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, in accordance with this section.

**(b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—**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.

(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.

42 USC 16513.

**SEC. 1703. ELIGIBLE PROJECTS.**

(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 fuel efficient vehicles, including hybrid 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 title available for petroleum coke gasification projects.

Loans.

(4) LIQUEFACTION PROJECT.—Notwithstanding any other provision of law, funds awarded under the clean coal power initiative under subtitle A of title IV for 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 title.

42 USC 16514.

**SEC. 1704. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to provide the cost of guarantees under this title.

(b) USE OF OTHER APPROPRIATED FUNDS.—The Department may use amounts awarded under the clean coal power initiative under subtitle A of title IV to carry out the project described in section 1703(c)(1)(C), 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.

## TITLE XVIII—STUDIES

**SEC. 1801. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.**

(a) DEFINITION.—For purposes of this section “petroleum” means crude oil, motor gasoline, jet fuel, distillates, and propane.

(b) STUDY.—The Secretary shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service, or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet United States demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

(d) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report



# Federal Register

---

**Tuesday,  
October 23, 2007**

---

**Part III**

## **Department of Energy**

---

**10 CFR Part 609**

**Loan Guarantees for Projects That  
Employ Innovative Technologies; Final  
Rule**

**DEPARTMENT OF ENERGY****10 CFR Part 609****RIN 1901-AB21****Loan Guarantees for Projects That Employ Innovative Technologies**

**AGENCY:** Office of the Chief Financial Officer, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** On May 16, 2007, the Department of Energy (DOE or the Department) published a Notice of Proposed Rulemaking and opportunity for comment (NOPR) to establish regulations for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (Title XVII or the Act). Title XVII authorizes the Secretary of Energy (Secretary) to make loan guarantees for projects that “avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.” Title XVII also identifies ten categories of technologies and projects that are potentially eligible for loan guarantees. The two principal goals of Title XVII are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. DOE believes that commercial use of these technologies will help sustain and promote economic growth, produce a more stable and secure energy supply and economy for the United States, and improve the environment. Having considered all of the comments submitted to DOE in response to the NOPR, the Department today is issuing this final rule.

**DATES:** *Effective Date:* This rule is effective upon October 23, 2007.

**FOR FURTHER INFORMATION CONTACT:**

David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-8336, e-mail: [lgprogram@hq.doe.gov](mailto:lgprogram@hq.doe.gov); or Warren Belmar, Deputy General Counsel for Energy Policy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-6758, e-mail: [warren.belmar@hq.doe.gov](mailto:warren.belmar@hq.doe.gov); or Lawrence R. Oliver, Assistant General Counsel for Fossil Energy and Energy Efficiency, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-

9521, e-mail: [lawrence.oliver@hq.doe.gov](mailto:lawrence.oliver@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Introduction and Background
- II. Public Comments on the Notice of Proposed Rulemaking and DOE’s Responses
  - A. Technologies
    - 1. Definition of New or Significantly Improved Technologies
    - 2. Definition of Technologies in General Use
    - 3. Nuclear Generation Projects
  - B. Financial Structure Issues
    - 1. Lender Risk, Stripping and Pari Passu
    - 2. Equity Requirements for Project Sponsors
    - 3. Other Governmental Assistance
  - C. Project Costs
  - D. Solicitation
  - E. Payment of the Credit Subsidy Cost
  - F. Assessment of Fees
  - G. Eligible Lenders and Servicing Requirements
  - H. Federal Credit Reform Act of 1990 (FCRA)
    - I. Default and Audit Provisions
    - J. Tax Exempt Debt
    - K. Full Faith and Credit
    - L. Responses to August 2006 Solicitation
  - M. Other Issues Raised in the Public Comments
- III. Regulatory Review
  - A. Executive Order 12866
  - B. National Environmental Policy Act of 1969
  - C. The Regulatory Flexibility Act
  - D. Paperwork Reduction Act
  - E. Unfunded Mandates Reform Act of 1995
  - F. Treasury and General Government Appropriations Act, 1999
  - G. Executive Order 13132
  - H. Executive Order 12988
  - I. Treasury and General Government Appropriations Act, 2001
  - J. Executive Order 13211
  - K. Congressional Notification
  - L. Approval by the Office of the Secretary of Energy

**I. Introduction and Background**

Today’s final rule establishes policies, procedures and requirements for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514). Title XVII authorizes the Secretary of Energy, after consultation with the Secretary of the Treasury, to make loan guarantees 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.” (42 U.S.C. 16513(a))

On May 16, 2007, the Department published a Notice of Proposed Rulemaking and Opportunity for

Comment (NOPR, 72 FR 27471) to establish regulations for the Title XVII loan guarantee program. DOE held a public meeting on the NOPR in Washington, DC on June 15, 2007.

Section 20320(a) of Public Law 110-5, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110-5) authorized DOE to issue guarantees under the Title XVII program for loans in the “total principal amount, any part of which is to be guaranteed, of \$4,000,000,000.” Section 20320(b) of Public Law 110-5 further provides that no loan guarantees may be issued under the Title XVII program until DOE promulgates final regulations that include “(1) programmatic, technical, and financial factors the Secretary will use to select projects for loan guarantees; (2) policies and procedures for selecting and monitoring lenders and loan performance; and (3) any other policies, procedures, or information necessary to implement Title XVII of the Energy Policy Act of 2005.” The regulations being finalized today fulfill that requirement.

Section 1702 of the Act outlines general terms and conditions for Loan Guarantee Agreements and directs the Secretary to include in Loan Guarantee Agreements “such detailed terms and conditions as the Secretary determines appropriate to “(i) protect the interests of the United States in case of a default [as defined in regulations issued by the Secretary]; and (ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.” (42 U.S.C. 16512(g)(2)(c)) Section 1702(i) requires the Secretary to prescribe regulations outlining record-keeping and audit requirements. This final rule sets forth application procedures, outlines terms and conditions for Loan Guarantee Agreements, and lists records and documents that project participants must keep and make available upon request.

**II. Public Comments on the NOPR and DOE’s Responses**

DOE received comments on the NOPR from 47 interested parties. Twenty interested parties presented oral comments and/or submitted written comments for the record at the public meeting. DOE summarizes below the major areas of the NOPR on which it received public comment, and discusses the Department’s responses to those comments. Only major areas of the NOPR are discussed here, although DOE carefully reviewed all comments it received on the NOPR, and in some cases made adjustments to the rule text

that are not discussed at length in this preamble.

#### A. Technologies

A principal purpose of the Title XVII loan guarantee program is to support “innovative technology” projects in the United States that “employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.” (42 U.S.C. 16513(a)(2)) Section 1701(1) (A) of the Act defines “commercial technology” as “a technology in general use in the commercial marketplace.” (42 U.S.C. 16511(1)(A))

Title XVII does not require, but on the other hand does not prohibit, different treatment for different eligible technologies or projects in the Title XVII program. Furthermore, the Act does not explain or define the phrase “new or significantly improved” in section 1703(a)(2), nor does it explain or define the terms “general use” or “commercial marketplace.” In the NOPR, DOE proposed to define the term “new or significantly improved technology” to mean “a technology concerned with the production, consumption, or transportation of energy, and that has either only recently been discovered or learned, or that involves or constitutes one or more meaningful and important improvements in the productivity or value of the technology.” (72 FR 27480)

Because Title XVII focuses on encouraging and incentivizing innovative technologies not already in “general use” in the U.S. commercial marketplace, DOE stated in the NOPR that the Title XVII loan guarantee program should only be open to projects that employ a technology that has been used in a very limited number of U.S. commercial projects or used in a commercial project for only a limited period of time. Therefore, DOE proposed two possible ways of interpreting “general use”: it could mean “ordered for, installed in, or used in five or more commercial projects in the United States,” or “in operation in a commercial project in the United States for a period of five years, as measured beginning on the date the technology was commissioned on a project.” (72 FR 27480) DOE requested comment on these alternatives, and also on whether the same definition should apply to all types of projects and technologies eligible for loan guarantees. (72 FR 27474) As DOE stated in the NOPR, a project may be eligible for a Title XVII loan guarantee if it uses technology that has been used in any number of projects and for any period of time outside the United States,

so long as the technology is not in “general use” in the United States.

#### 1. Definition of New or Significantly Improved Technology

*Public Comments:* Section 609.2 of the proposed regulations defined “new or significantly improved technology” to mean “a technology concerned with the production, consumption or transportation of energy, and that has either only recently been discovered or learned, or that involves or constitutes one or more meaningful and important improvements in the productivity or value of the technology.” Several commenters expressed the view that this definition is too narrow because it does not include improvements in “new systems or system integration.” Other commenters stated that the definition should reference or include the term “commercial use.” Some commenters stated that the definition was appropriate.

Parson & Whittemore Incorporated (P&W) and Forest Energy System, LLC (FES), for example, assert that the proposed definition of new or significantly improved fails to capture the potential value of “systems” rather than individual technologies. They recommend expanding the definition to include improvements from new systems or systems integration. (P&W at 1; FES at 1).

The Nuclear Energy Institute (NEI) and Bechtel Corporation (Bechtel) challenged the NOPR’s proposal to require that the technology be both new or significantly improved *and* not in general use in the commercial marketplace in the United States. They maintain that Title XVII only requires that a technology be new or significantly improved “as compared to” commercial technologies in service in the U.S. at the time the guarantee is issued. (NEI at 25; Bechtel at 5).

The Verenum Corporation (Verenum) stated that it is possible that a technology has been in existence for some time but has never been commercially applied for some reason, such as a technology that was not viable when competing with oil at \$20 a barrel but is competitive with oil at \$60 a barrel. Verenum stated that DOE should focus on technologies “not yet in” use and therefore should make the definition of New or Significantly Improved Technology refer to the defined term “Commercial Technology.” (Verenum at 10).

The Union of Concerned Scientists (UCS), however, stated that “DOE needs to develop objective criteria to demarcate ‘new’ or ‘significantly improved’ technologies from the

sprucing up and recycling of current technologies,” and asserted that the approach of the NOPR relied upon “subjective judgments concerning the definition rather than employing more objective, quantitative measures of novelty and significant improvement.” (UCS at 1). UCS did not, however, offer any suggestions as to what sort of “objective, quantitative measures of novelty and significant improvement” would be appropriate for adoption in the rule. TXU Generation Development Company LLC (TXU) argued that the rule should adopt a “flexible definition” with DOE and expert consultants making decisions on particular technologies at the preliminary application stage. (TXU at 7).

Eastman Chemical Company (Eastman) supported the NOPR’s proposed disqualification of projects solely in the research, development, or demonstration phase as long as the criteria is applied “to the overall project and does not make a project ineligible just because one subsection of technology is new.” Eastman adds: “Arguably, a use of proven or commercial technologies in a new or novel configuration, combination, or implementation method, such as polygeneration should qualify as a ‘new or significantly improved technology.’” (Eastman at 3).

Beacon Power Corporation (Beacon) recommends broadening the definition by adding the following italicized phrase so that the definition would read: “technologies concerned with the \* \* \* productivity or value of the technology or an improvement over an existing technology that will perform the same function.” (Beacon at 3). Ameren Services Company (Ameren) supported the proposed definition of new or significantly improved technologies, subject to the addition of the following phrase: “in service in the United States at the time the guarantee is issued,” which is part of the statutory definition in § 1703(a)(2) of the Act. (Ameren at 2).

*DOE Response:* There is no one universally accepted or agreed upon definition of the term “technology.” Generally, technology is thought to be the practical application of science to industrial or commercial objectives. Technology may also include electronic or digital products and systems considered as a group. DOE believes that the term “technology” in Title XVII was intended to have a very broad meaning, given the purposes of Title XVII, and therefore does not believe it is advisable to set down by rule a narrow definition of what will be considered a “technology” for purposes of this program.

However, the Department believes it is important to establish what may enable a particular technology to be considered “new or significantly improved”. By its explicit terms, the Title XVII loan guarantee program is not open to all technologies and projects, but only those that are new or significantly improved in comparison to commercial technologies in use in the United States.

Several commenters asserted that the proposed definition of “new and significantly improved technology” in the NOPR mistakenly requires that in order to be eligible for a loan guarantee, a project must employ a technology that is both new and improved and is not in commercial use in the United States.

They argue that the regulatory definition should be clarified to make clear that the test is new or significantly improved *as compared to* commercial technologies in service in the United States. They correctly quote Title XVII, but are mistaken as to the import of that language and the language in the NOPR. Either a technology is in general use in the U.S. commercial marketplace or it is not. If it is in general use, then the same technology could not possibly be “new or significantly improved” in comparison to technology in general use in the U.S. commercial marketplace, and it is ineligible for a Title XVII loan guarantee. Yet a technology does not automatically become eligible for a Title XVII loan guarantee merely because it is not a U.S. commercial technology; rather, it must be “new or significantly improved” in comparison to such commercial technology. If the statute required only that it be “new” or “different” in comparison to commercial technologies, then it might well be that in order to become eligible for a Title XVII guarantee, all a project sponsor would need to show is that it was using a technology currently not in commercial use in the United States. But such an interpretation of Title XVII would render as surplusage the words “or significantly improved” in section 1703(a)(2) of the Act. As a result, the term “new or significantly improved” cannot simply mean not currently in commercial use in the United States; it must mean that the technology itself is either newly developed, or it must constitute a significant improvement over technologies currently in U.S. commercial use. Notably, in order to be eligible for a loan guarantee a technology need not be *both* new and significantly improved, but must only be one or the other.

DOE does believe it is useful to clarify that while a “new” technology must be newly developed, discovered or learned,

a “significantly improved” technology may in fact be “old” but a significant improvement over technologies currently in commercial use in the United States. Thus, and as noted in the NOPR, DOE agrees with the assertions by some commenters that a technology could be eligible for a loan guarantee even if it was developed long ago and even if it is used in the same commercial application outside the United States, as long as that technology is not in general commercial use for that application in the United States at the time the loan guarantee is issued. Consistent with DOE’s interpretation of section 1703(a)(2) of the Act, section 609.2 of the final rule provides, in part, as follows:

*New or significantly improved technology* means a technology concerned with the production, consumption or transportation of energy that is not a Commercial Technology, and that has either: (i) Only recently been developed, discovered or learned; or (ii) involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

## 2. Definition of Technologies in General Use

*Public Comments:* Under section 1703(a)(2) of the Act, projects are eligible for Title XVII loan guarantees only if they employ new or significantly improved technologies as compared to “commercial technologies” that are “in service in the United States” when guarantees are issued. Section 1701(1)(A) defines “commercial technology” to mean “a technology in general use in the commercial marketplace.” The NOPR proposed two alternative definitions of “general use”: A technology would be considered to be in “general use” if it had been “ordered for, installed in, or used in five or more [commercial] projects in the United States”; or alternatively, if it had been “in operation in a commercial project in the United States for a period of five or more years as measured beginning on the date the technology was commission[ed] on a project.” This definition is important because, as noted above, a proposed technology cannot qualify a project for a Title XVII loan guarantee if it is in “general use” in the U.S. commercial marketplace.<sup>1</sup>

<sup>1</sup>Notably, the existence of technology in a project that is in general commercial use in the United States does not in itself *disqualify* a project from eligibility for a Title XVII loan guarantee. Most if not all projects that are eligible for loan guarantees will employ some technologies that are in such general use.

Several commenters stated that the first of the alternatives set forth in the NOPR was acceptable, but the second alternative definition should not be an option or should be revised. On the other hand, several commenters stated that the second alternative definition would be appropriate for nuclear projects because the early operational phase is more useful in determining whether a technology is workable and acceptable. Other commenters stated that the second alternative should not be adopted because it likely would lead to a very large number of nuclear projects being eligible for loan guarantees since there is a long period of time between initiation of work on a nuclear generation facility and the completion of five years of operation, and during this time a large number of projects using the same technology could apply for and be granted loan guarantees. Still other commenters were of the view that it is impossible to adequately define “general use” and asserted that DOE therefore should approve or disapprove loan guarantee proposals to use technologies on a case-by-case basis. Commenters also expressed the view that the two alternative definitions for “general use” should be combined into one definition.

More specifically, in their joint comments Constellation Nuclear Utilities, Inc., Entergy Corporation, Exelon Corporation, and NRG Energy, Inc. (Nuclear Utilities) asserted that for nuclear technologies the definition of a technology that is in “general use” should be based upon five or more years of operation of any given new design (e.g., an advanced reactor design that is separately certified by the Nuclear Regulatory Commission (NRC)). They argued that if DOE were to use the “five or more projects” alternative for defining what constituted “general use,” it would be essential that the phrase “order for, installed in, or used in” should be changed to “ordered for, installed in, and used in,” since for nuclear plants, ordering would take place many years before use. (Nuclear Utilities at 19–20). NEI, Dominion Resources Services, Inc. (Dominion) and Excelsior Energy, Inc. (Excelsior) submitted similar comments. (NEI at 24, Dominion at 12, Excelsior at 2–3).

Southern Company Services, Inc., (Southern) stated that technology should be considered in “general use” when financing has been established for five or more projects in the United States. Southern stated that its proposed interpretation of “general use” would assist DOE’s effort in having a broad portfolio of large and small projects with a wide variety of technologies

supported by the Title XVII program, because it would limit the number of project participants that employ the same technology. Southern also asserted that the successful implementation of five projects employing a particular technology should greatly reduce the concerns of the credit markets, and stated that not considering a technology to be in "general use" until it has been in operation in a commercial project in the United States for five years could result in an unlimited number of projects utilizing the same technology. (Southern at 1).

Verenium stated that if over a five-year period a technology has been used in fewer than five projects, the technology is probably not in general use because it would indicate there is some barrier to competitiveness. The restriction to five projects, according to Verenium, should be stated as only a "presumption," so that DOE could deviate from it in appropriate circumstances. Verenium further argued that the term "ordered for" may be ambiguous, and thus suggested the use of "in the process of being installed" if DOE adopts an alternative employing this concept, and thus suggested the following language for the definition of Commercial Technology:

*"Commercial Technology means a technology in general use in the commercial marketplace in the United States, but does not include a technology solely by use of such technology in a demonstration project funded by DOE. A technology is presumed to be in general use if it has been installed or used or is in the process of being installed in five commercial projects in the United States."*

(Verenium at 12–13).

Standard & Poor's (S&P) stated that projects involving integrated gasification combined cycle (IGCC) and coal-to-liquids (CTL) technologies currently lack a commercial track record and therefore would be assigned a risk premium by that rating agency. However, S&P said that if there are at least five operational projects using a particular technology, and as long as there was a material track record of operations, the perceived risk and thus the risk premium associated with the technology would be substantially reduced. (S&P at 2). The Iogen Corporation (Iogen), believes that the definition proposed in the NOPR is too restrictive and notes that the financial community has displayed great reticence to providing debt financing at reasonable commercial rates for new technologies that have not been widely demonstrated. Iogen would prefer that DOE not adopt a single "bright line" test and that the Department instead rely on

market forces to determine the need for a guarantee. However, if the Department is going to develop a test, Iogen proposes to combine the two alternatives into one modified definition, so that a particular technology would be considered to be in general use if it had been installed or used in five or more projects in the United States for a period of five years. (Iogen at 2–3).

The Coal Utilization Research Council (CURC) stated that the "proposed definition of general use is not suitable as it relates to projects that will use technologies that have been in commercial use for other applications," and that "size, process configurations, and technology modifications are among the several general characteristics of projects that need to be considered when applying the general use definition." (CURC at 5). Baard Energy L.L.C. (Baard) proposed that, with respect to CTL projects, "general use" should be defined by the first alternative set forth in the NOPR, i.e., technologies that have been installed and used in five or more commercial projects in the United States. Baard asserts that the second alternative, five years, is too short. In order to accommodate construction schedules for CTL plants and to allow for innovations and improvements, Baard maintains that the second alternative should be extended to ten years. (Baard at 3).

Bechtel Power Corporation (Bechtel) recommends combining the two alternatives for determining "general use" proposed in the NOPR, as follows:

The technology or combination of technologies have been ordered for, installed in, and used in five or more projects in the U.S., each for a period of five years, measured from date of commissioning.

Bechtel's other comments regarding "general use" are focused on new nuclear technologies that have never been built in the United States. According to Bechtel, the technologies in question ("Gen III" and "Gen III+" nuclear designs) should be judged individually for purposes of determining whether either of the alternative meanings of "general use" proposed in the NOPR apply to them. Bechtel states that the "general use" language in the rule must clearly distinguish new generations or new applications of a technology such as Gen III or Gen III+ in order to assure that they are not excluded from loan guarantee eligibility by the fact that over 100 nuclear plants have been built in the United States, when those plants used different designs and were constructed in a much different industry

and regulatory environment. (Bechtel at 4).

CPS supports the second alternative definition set forth in the NOPR, and submits that the five to seven year construction period for a nuclear project means that starting the "clock" from the time the technology is commissioned on a project, may mean that the project is disqualified at or prior to the technology's in-service date. CPS asserts that guarantees should be available, to the extent of appropriations, until each distinct technology is in full commercial operation. (CPS at 7). Abengoa Bioenergy New Technologies (ABNT) recommends that DOE select the definition which utilizes time from first commercialization as the basis for defining "general use." ABNT argues that if the other alternative is selected, DOE will be discouraging competition and applications from a number of projects which are eligible under a given solicitation or invitation, and that by determining eligibility on the basis of "a fixed window of time," DOE will provide certainty that a project will remain eligible for a loan guarantee at some future time regardless of intervening events with other projects or technologies. ABNT does not dispute the NOPR's proposal of a five-year time frame, but suggests that a superior approach may be to establish a time frame according to the commercial technology defined in each solicitation or invitation. (ABNT at 1).

*DOE Response:* DOE agrees with concerns expressed by many commenters about the "five project" alternative proposed in the NOPR. These commenters were concerned that a definition that did not include an operational component, which lenders need to develop confidence that a technology is proven and is viable in actual commercial operation, may not be workable for this program, and may not result in effective reduction of commercial risk and effective increased commercial marketplace acceptance prior to the closing of loan guarantee program eligibility. DOE believes that other entities considering incorporation of a particular technology into their planning want to see technologies proven in actual practice before investing substantial sums on that technology and incorporating it into large-scale capital expenditure plans. Furthermore, operational experience reduces risk from the standpoint of the credit and debt markets, and can lead to increased access to capital markets at lower rates. We particularly note and find persuasive S&P's comment that if there were at least five operational projects in a particular technology

within the United States, the perceived risk premium associated with the technology should be substantially reduced. We also note that adoption of the "five projects" proposal in the NOPR but without including an operational period could result in technologies or projects involving very long development and construction times being disqualified from receiving additional loan guarantees before even one project had commenced commercial operations, or in extreme cases, before any projects employing the technology had even commenced construction.

After review and evaluation of the comments, DOE accordingly has revised section 609.2 of the NOPR as follows:

**Commercial Technology** means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used in three or more commercial projects in the United States, in the same general application as in the proposed project, and has been in operation in each such commercial project for a period of at least five years. The five year period shall be measured, for each project, starting on the in service date of the project or facility employing that particular technology. For purposes of this section, commercial projects include projects that have been the recipients of loan guarantees from DOE under this part.

DOE believes this definition reasonably addresses the concerns that DOE considers persuasive. By referring to the "same general application" as the proposed project, the definition provides that a technology is not necessarily considered in "general use" if it has been used for completely different projects or applications than in the proposed project. For example, the fact that fuel cells have been used in some small-scale applications for flashlights would not disqualify an application for a project that proposed to use fuel cells to power a motor vehicle. The definition also makes clear that it is only use of a technology in a project in the United States that can potentially render it in "general use" for the purposes of this program. The definition provides that each of three projects using a particular technology must be in service for five years before the technology is considered to be in general use. Thus, this definition deals with the concern expressed by some commenters that technologies should be barred from program eligibility only if there has been substantial actual operational experience with them. Finally, the definition clarifies that projects that have received loan guarantees will be counted when determining whether technologies have

been used in a sufficient number of projects to render them no longer eligible for the program. DOE believes this is consistent with the overall purpose of the program in encouraging the introduction of new and improved technologies into the commercial marketplace, but ensuring that technologies do not remain forever dependent on loan guarantee support in order to be commercially viable. The Title XVII program should help introduce technologies to the commercial marketplace, but it should be up to those technologies and to the commercial marketplace as to whether the technologies continue to be economically and technologically viable, or not.

DOE notes that even though the definition of "commercial technology" it is adopting in this rule may permit multiple projects using the same technology to be eligible for a Title XVII guarantee, DOE is under no obligation to seek authority for, or to issue solicitations for, all or any particular technology that may fall within the outer limits of eligibility for a loan guarantee, as that eligibility is prescribed by Title XVII and this rule. Indeed, it is perfectly possible that DOE may decide not to issue a solicitation covering a certain technology, even though projects using that technology would be eligible under this rule for a loan guarantee. Furthermore, this definition of "commercial technology" in no way limits DOE's ability to include within a solicitation a selection criterion, and assign a weighting for that criterion, based on the number of projects already in service using that technology.

### 3. Nuclear Generation Projects

*Public Comments:* Comments from the nuclear industry asserted that regulations proposed in the NOPR were not appropriate or workable for commercial nuclear power projects because of the size and unique regulatory and litigation-related risks surrounding these projects. The industry's stated primary concern is the ability of industry participants to access the capital markets at what they view as reasonable rates, terms and conditions.

CPS Energy (CPS), on behalf of itself and the Large Public Power Conference, a group of utility companies with nuclear power facilities, recommended that new nuclear technology should be defined separately and differently from other technologies eligible for Title XVII loan guarantees. CPS cited two principal factors supporting this recommendation: (1) The capital intensive nature of new nuclear development; and (2) the

different technologies proposed represent vastly different scales of new technology, as compared with other types of eligible projects. CPS stated that the cost of new nuclear generating capability is in the neighborhood of \$2,000 per kilowatt and the capacity of the plants is in excess of 1,300 megawatts, that five different reactor technologies are being proposed, and that none of the technologies currently are in operation in the United States. Therefore, CPS asserted that each of the five technologies should be treated as a distinct new technology eligible for loan guarantees. (CPS at 7).

Iogen, however, strongly opposed DOE making the loan guarantee program more favorable for larger projects involving electricity generation from nuclear power or coal combustion/gasification than for other types of projects, such as those that would advance the President's "20 in Ten" initiative, which Iogen said depends on the widespread deployment of advanced biofuels refineries. (Iogen at 1). The American Council on Global Nuclear Competitiveness (ACGNC) stated that DOE should look beyond nuclear power plants when defining the term "advanced nuclear energy facilities" that appear in section 1703 of the Act. ACGNC stated that this language is broad enough to allow DOE to issue loan guarantees to projects that will restore the domestic nuclear energy design, manufacturing, service and supply industry, such as uranium mining and milling operations; uranium conversion and enrichment facilities; reactor component fabrication facilities; and used fuel recycling plants. (ACGNC at 2-3). Goldman and Sachs & Co. (Goldman Sachs) recommended that the final rule expressly include nuclear power generating stations and advanced technology low enriched uranium (LEU) production facilities in the definition of what could constitute an eligible project. Goldman Sachs emphasized that the described facilities are essential to fostering the domestic development of emissions-free, affordable base-load nuclear power generation, and that advanced nuclear energy facilities are one of the ten categories of projects specifically addressed in the Act. (Goldman Sachs at 5).

*DOE Response:* Nuclear projects were the only type of projects for which some commenters asserted the final rule should accord different treatment than other technologies. However, most if not all of those comments argued that different treatment was appropriate because of the very large cost and long construction and permitting/licensing time for such projects. And yet, similar

1 such projects may include plant efficiency improvements  
2 for integration with carbon capture technology.

3           NON-DEFENSE ENVIRONMENTAL CLEANUP

4           For an additional amount for “Non-Defense Environ-  
5 mental Cleanup”, \$483,000,000, to remain available until  
6 September 30, 2010.

7           URANIUM ENRICHMENT DECONTAMINATION AND  
8                            DECOMMISSIONING FUND

9           For an additional amount for “Uranium Enrichment  
10 Decontamination and Decommissioning Fund”,  
11 \$390,000,000, to remain available until September 30,  
12 2010, of which \$70,000,000 shall be available in accord-  
13 ance with title X, subtitle A of the Energy Policy Act of  
14 1992.

15                           SCIENCE

16           For an additional amount for “Science”,  
17 \$430,000,000, to remain available until September 30,  
18 2010.

19           TITLE 17—INNOVATIVE TECHNOLOGY LOAN  
20                            GUARANTEE PROGRAM

21           Subject to section 502 of the Congressional Budget  
22 Act of 1974, commitments to guarantee loans under sec-  
23 tion 1702(b)(2) of the Energy Policy Act of 2005, shall  
24 not exceed a total principal amount of \$50,000,000,000  
25 for eligible projects, to remain available until committed:

1 *Provided*, That these amounts are in addition to any au-  
2 thority provided elsewhere in this Act and this and pre-  
3 vious fiscal years: *Provided further*, That such sums as are  
4 derived from amounts received from borrowers pursuant  
5 to section 1702(b)(2) of the Energy Policy Act of 2005  
6 under this heading in this and prior Acts, shall be collected  
7 in accordance with section 502(7) of the Congressional  
8 Budget Act of 1974: *Provided further*, That the source of  
9 such payment received from borrowers is not a loan or  
10 other debt obligation that is guaranteed by the Federal  
11 Government: *Provided further*, That pursuant to section  
12 1702(b)(2) of the Energy Policy Act of 2005, no appro-  
13 priations are available to pay the subsidy cost of such  
14 → guarantees: *Provided further*, That none of the loan guar-  
15 antee authority made available in this Act shall be avail-  
16 able for commitments to guarantee loans under section  
17 1702(b)(2) of the Energy Policy Act of 2005 for any  
18 projects where funds, personnel, or property (tangible or  
19 intangible) of any Federal agency, instrumentality, per-  
20 sonnel or affiliated entity are expected to be used (directly  
21 or indirectly) through acquisitions, contracts, demonstra-  
22 tions, exchanges, grants, incentives, leases, procurements,  
23 sales, other transaction authority, or other arrangements,  
24 to support the project or to obtain goods or services from  
25 the project: *Provided further*, That none of the loan guar-

1 antee authority made available in this Act shall be avail-  
2 able under section 1702(b)(2) of the Energy Policy Act  
3 of 2005 for any project unless the Director of the Office  
4 of Management and Budget has certified in advance in  
5 writing that the loan guarantee and the project comply  
6 with the provisions under this title: *Provided further*, That  
7 for an additional amount for the cost of guaranteed loans  
8 authorized by section 1702(b)(1) and section 1705 of the  
9 Energy Policy Act of 2005, \$9,500,000,000, available  
10 until expended, to pay the costs of guarantees made under  
11 this section: *Provided further*, That of the amount pro-  
12 vided for Title XVII, \$15,000,000 shall be used for admin-  
13 istrative expenses in carrying out the guaranteed loan pro-  
14 gram.

15 OFFICE OF THE INSPECTOR GENERAL

16 For necessary expenses of the Office of the Inspector  
17 General in carrying out the provisions of the Inspector  
18 General Act of 1978, as amended, \$5,000,000, to remain  
19 available until expended.

20 ATOMIC ENERGY DEFENSE ACTIVITIES

21 NATIONAL NUCLEAR SECURITY ADMINISTRATION

22 WEAPONS ACTIVITIES

23 For an additional amount for weapons activities,  
24 \$1,000,000,000, to remain available until September 30,  
25 2010.