



[6450-01-M]

## DEPARTMENT OF ENERGY

[10 CFR Part 790]

FEDERAL LOAN GUARANTEES FOR  
GEOHERMAL ENERGY UTILIZATION

Proposed Rulemaking: Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

**SUMMARY:** This proposed regulation revises 10 CFR 790 published on May 26, 1976, to conform with provisions in Title V of the "Department of Energy Act of 1978-Civilian Applications," Pub. L. 95-238 enacted February 25, 1978. Title V contains amendments to the "Geothermal Energy Research, Development, and Demonstration Act of 1974," Pub. L. 93-410, which authorized the establishment of the Geothermal Loan Guaranty Program that had been implemented by the Energy Research and Development Administration (ERDA). On October 1, 1977, the Department of Energy (DOE) pursuant to the Department of Energy Organization Act, Pub. L. 95-91 assumed the functions and the authority of ERDA to execute the Geothermal Loan Guaranty Program. Therefore this proposed regulation implements the transfer to the Secretary of Energy of responsibilities and authorities of ERDA's Administrator pertaining to the Geothermal Loan Guaranty Program. Additionally, this proposed regulation contains other revisions and amendments to the previously published regulations for the Geothermal Loan Guaranty Program that clarify DOE financial policy and remove certain ambiguities identified during the past two years of operating experience. Amendments and revisions to 10 CFR Part 790 are not effective at this time. DOE will accept and process guaranty applications for loans of less than \$50,000,000 based on authority contained in Section 508(1) of Pub. L. 95-238 but their approval may be delayed until publication of a modification of the existing regulation which removes the limit specified in Pub. L. 93-410 prior to its amendment by Pub. L. 95-238. Guaranty applications for loans in excess of \$50,000,000 will not be accepted until DOE publishes final regulations implementing the Community Impact Assistance provisions authorized in Sec. 205 of Pub. L. 93-410 as amended.

Written comments will be received and public hearings will be held with respect to this proposed rulemaking.

**DATES:** Written comments must be received on or before March 6, 1979; requests to speak, on or before January 29, 1979; hearing testimony, on or before February 8, 1979; public hear-

ing dates, February 13 and February 21, 1979.

**ADDRESSES:** Written comments and requests to speak to Department of Energy, Public Hearing Management, Room 2313, Box TX, 2000 M Street, N.W., Washington, D.C. 20461. The hearings will be held on February 13, 1979, at the U.S. Courthouse, Main Post Office Building, 7th and Mission Streets, Courtroom 15, San Francisco, CA, and on February 21, 1979 at the Department of Energy, 2626 West Mockingbird Lane, Dallas, TX.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Fallick, Department of Energy, Washington, DC 20461 (202) 633-8903.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Comment Procedures
- III. Additional Information

**I. BACKGROUND**

On May 26, 1976, ERDA published in the *FEDERAL REGISTER* (41 FR 21433) a final regulation containing policies, filing procedures and other instructions under which lenders may obtain a Federal guaranty on loans to qualified borrowers related to the commercial development of practicable means to produce, with environmentally acceptable processes, useful energy from geothermal resources. That regulation became effective on June 25, 1976 thereby permitting applications for guarantees on loans for geothermal projects to be submitted to ERDA.

This proposed regulation incorporates many of the changes to the Geothermal Loan Guaranty Program contained in Pub. L. 95-238. The amendments to Pub. L. 95-238, in summary, provide: That the full faith and credit of the United States is pledged to the payment of these guarantees; that DOE can borrow funds from the Department of the Treasury if balances in the Geothermal Resources Development Fund are insufficient to enable DOE to carry out its guaranty and other responsibilities; the authority to assist the borrower in making payment on loan principal; that DOE may complete and operate a plant acquired through default; for loan limitations of \$50 million per project and of \$200 million per qualified borrower; for clarification on the scope of projects utilizing geothermal energy in direct heat processes; a limitation of 1% on a guaranty fee to be imposed annually on the outstanding guaranteed debt and permits fee collection to be deposited in the Geothermal Resources Development Fund; and, that DOE can reimburse to qualified public agencies and Indian tribes a portion of the interest when a holder of their debt

guaranteed under this regulation is required to include that income under Chapter 1 of the Internal Revenue Code.

This proposed regulation contains other revisions and amendments to the previously published regulations for the Geothermal Loan Guaranty Program that clarify DOE financial policy and remove certain ambiguities identified during two years of operating experience. Section 790.36 has been revised to clarify provisions dealing with termination, withdrawal and reduction of a guaranty. Section 790.37, "Default and Demand," has been expanded to provide that holders as well as lenders may make demand for payment in the event of default. Section 790.13, "Deviations" has been added to increase flexibility during program execution. Section 790.12 sets forth the conditions under which loans may be placed through the Federal Financing Bank. Section 790.37(g) provides that in certain situations a joint agreement between DOE and the lender may allow for the lender to liquidate project assets. Comments and opinions on these sections are specifically solicited.

Sec. 509 of Pub. L. 95-238 provides the authority for DOE to make interest differential payments to qualified public organizations. This Section contains an ambiguity by referring to "any guaranty which is issued after the enactment of this subsection, by, or in behalf of, any State, political subdivision, or Indian Tribe...". The word "guaranty" has been used instead of the more usual term "obligation" in referring to the note issued by a qualified public organization as evidence of its debt. The proposed regulation implements this provision in Subsection 790.4(d). Parties having a view on this Subpart as an implementation of Section 509 are specifically requested to provide DOE with comments.

**II. COMMENT PROCEDURES****A. WRITTEN COMMENTS**

Interested persons are invited to submit written comments with respect to the proposed regulations to Department of Energy, Box TX, Public Hearing Management, Room, 2313, 2000 M Street N.W., Washington, D.C. 20461. The outside of the envelope and documents submitted to DOE should be identified with the designation "Federal Loan Guarantees for Geothermal Energy Utilization." Fifteen copies of all written comments and related information should be submitted in time to be received by DOE by March 6, 1979 in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. Any material not accompanied by a state-

ment of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

**B. PUBLIC HEARING**

1. *Participation Procedures.* Public hearings on the proposed regulations will be held at 9:30 a.m. on February 13, 1979 at the U.S. Courthouse, Main Post Office Building, 7th and Mission Streets, Courtroom 15, San Francisco, CA, and at 9:30 a.m. on February 21, 1979, at the Department of Energy, 2626 West Mockingbird Lane, Dallas, TX. Any person who has an interest in the proposed regulations or who is a representative of a group or class of persons which has an interest in them may make a written request for an opportunity to make oral presentation. The request should be addressed to Public Hearing Management, Department of Energy, Box TX, Room 2313, 2000 M Street, NW., Washington, D.C. 20461, on or before January 29, 1979. Persons making a request to speak should describe their interest in the proceeding, provide a concise summary of the proposed oral presentation and a phone number where they may be reached. Each person who, in DOE's judgment, proposes to present relevant and material information will be notified by DOE of their participation to be heard before 4:30 p.m., February 2, 1979, and shall be expected to submit 15 copies of the proposed statement to Public Hearing Management, Department of Energy, Box TX, Room 2313, 2000 M Street, NW., Washington, D.C. 20461, on or before February 9, 1979.

2. *Conduct of Hearing.* DOE reserves the right to arrange the schedule of presentations to be heard and to establish procedures governing the conduct of hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer who will determine whether the question is relevant and material, and whether time limitations permit it to be presented for answer.

Any other procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the

hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

**III. ADDITIONAL INFORMATION**

In accordance with its proposed plan for improving Government Regulations (43 FR 18634, May 1, 1978), DOE has determined that this proposed regulation is significant because Congress regards the accelerated development of geothermal energy to be of widespread concern. Further, geothermal energy development is a significant part of the National Energy Plan for expansion of nonconventional sources of energy. This proposed regulation modifies an existing program, as called for by Pub. L. 95-238, and increases the amount of guarantees which may be made to an individual or for a specific project. However, the total dollar loan guaranty authorization of \$300,000,000 for this program was not increased by this legislation and therefore the changes contained herein are not expected to have a major impact on the availability of geothermal energy over the program already in existence. DOE has, therefore, determined that the enhanced program as implemented by this proposed regulation will to have a major economic impact over the existing program and that the preparation of the economic regulatory analysis, called for by DOE's procedure on Improving Energy Regulations, is not necessary.

This proposed regulation which amends and revises existing program regulations has been reviewed in accordance with existing DOE policy that implements the National Environmental Policy Act of 1969 and has been determined not to be of a nature that requires the preparation of an Environmental Impact Statement pursuant to the requirements of the National Environmental Policy Act of 1969.

10 CFR Part 790 is proposed to be revised to read as follows:

**Part 790—The Geothermal Loan Guaranty Program**

**Subpart A—General Provisions**

- Sec.
- 790.1 Purpose.
- 790.2 Objectives.
- 790.3 Effective date. [Reserved]
- 790.4 Eligible loans and priorities.
- 790.5 Definitions.
- 790.6 Loan guaranty criteria.
- 790.7 Interest and principal assistance.
- 790.8 [Reserved]

- Sec.
- 790.9 Period of guarantees and assistance contracts.
- 790.10 Information for States and Indian Tribes.
- 790.11 Full faith and credit and incontestability.
- 790.12 Use of Federal Financing Bank.
- 790.13 Deviations.

**Subpart B—Applications**

- 790.20 Filing.
- 790.21 Supporting information.
- 790.22 Project cost illustrations.
- 790.23 Environmental Considerations.
- 790.24 Mandatory purchase of flood insurance.

**Subpart C—Servicing and Closing**

- 790.30 Loan servicing by lender.
- 790.31 Guaranty fee.
- 790.32 Geothermal resources development fund.
- 790.33 Project monitoring.
- 790.34 Loan disbursements by lender.
- 790.35 Satisfactory documentary evidence.
- 790.36 Reduction or withdrawal of guaranty.
- 790.37 Default, demand, payment and collateral liquidation.
- 790.38 Perfection of liens and preservation of collateral.
- 790.39 Treatment of payments.
- 790.40 Assignment and participation.
- 790.41 Survival of guaranty agreement.
- 790.42 Modifications to existing guaranty agreements.
- 790.43 Other Federal assistance.
- 790.44 Inventions and other intellectual property.
- 790.45 Closing.
- 790.46 Suspension, termination, or cancellation of operations or production on Federal land administered by the Secretary of the Interior.
- 790.47 Appeals.

**AUTHORITY:** Title II of the Geothermal Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93-410; Department of Energy Organization Act, Pub. L. 95-91; Title V of the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95-238.

**Subpart A General Provisions**

**§ 790.1 Purpose.**

The purpose of this regulation is to set forth policies and procedures under which the Department of Energy (DOE) will issue a Federal guaranty on loans related to the commercial development of practicable means to produce, in an environmentally acceptable manner, energy from geothermal resources.

**§ 790.2 Objectives.**

The objectives of the Federal geothermal loan guaranty program are: (a) To encourage and assist the private and public sectors to accelerate development of geothermal resources with environmentally acceptable processes by enabling the Secretary of the Department of Energy in the exercise of reasonable judgment, to minimize a lender's financial risk that is associated with the development of new geo-

thermal resources and technology; (b) to develop normal borrower-lender relationships which will in time encourage the flow of credit for the utilization of geothermal resources without the need for Federal assistance; and (c) to enhance competition and to encourage new entrants into the geothermal market.

§ 790.3 Effective date. [Reserved]

§ 790.4 Eligible loans and priorities.

(a) The Secretary may approve agreements to guaranty, and commitments to guaranty, lenders against the loss of principal and accrued interest on loans made by such lenders to qualified borrowers. Any such agreements shall be made subject to the application of priorities and preferential considerations for guarantees as set forth in paragraph (b) of this section and subject to criteria in § 790.6. Such agreements may be entered into only for the purposes of:

(1) Determination and evaluation of the commercial potential of geothermal resources;

(2) Research and development with respect to geothermal extraction and utilization technologies, including but not limited to the mitigation of adverse environmental effects;

(3) Acquisition of rights in geothermal resources;

(4) Development, construction, and operation of facilities for the demonstration or commercial production of energy through the use of geothermal resources; or,

(5) Construction and operation of a new commercial, agricultural, or industrial structure or facility or modification and operation of an existing commercial, agricultural, or industrial structure or facility, when geothermal hot water or steam is to be used within or by such structure or facility, or modification thereto, for the purposes of space heating or cooling, industrial or agricultural processes, onsite generation of electricity for use other than for sale or resale in commerce; other commercial applications, or combinations of applications separately eligible for loan guaranty assistance under this regulation.

(b) In complying with the objectives of the Geothermal Loan Guaranty Program, the Secretary will give first priority consideration to those applications for projects having a plan of operations which shows substantial promise of the prompt development of useful energy from geothermal resources. Second priority consideration will be given to those applications for projects designed to demonstrate or utilize new technological advances. Third priority will be given to projects that will demonstrate or exploit the commercial potential of new geother-

mal resource areas. The Secretary will give lower priority consideration to applications involving projects that initially propose geological and geophysical exploration, or the acquisition of land or leases. Within each category of priority as described herein, preferential consideration will be given to (1) applications in which the lender is providing a portion of the loan for which a guaranty is not requested, (2) projects to be carried out by small public and private utilities and small businesses, and (3) projects from which the Federal Government will receive royalty payments.

(c) Not less than ten percent of the amount available for loan guarantees during a fiscal year will be allocated to guarantees on loans to small public and private utilities and small businesses, as defined in § 790.5. The Secretary, at his discretion, may adjust the allocation reserved for such concerns. To the extent that guarantees on loans to such concerns are not issued within six months following the beginning of each fiscal year, the uncommitted allocation of loan guarantees for such concerns, at the discretion of the Secretary, may become available on an unrestricted basis.

(d) A loan application which, in the Secretary's view, should meet usual loan standards of lenders without a Federal guaranty will be regarded by the Secretary as not eligible for a loan guaranty under this regulation. In addition, an application for a loan for a portion of the project, or an application which does not present an acceptable plan to repay the proposed guaranteed debt, or for projects which are devoted exclusively to the extraction or production of geothermal byproducts as defined in § 790.5(b), or projects devoted exclusively to the desalination of geothermal brines will not be eligible for a Federal loan guaranty under this regulation.

(e) No loan shall be guaranteed if the income from such loan is excluded from gross income for purposes of Chapter I of the Internal Revenue Code of 1954, referred to in this section as Tax Exempt Securities. However, a guaranty may be issued in accordance with this regulation on a debt issued by, or on behalf of, a State, political subdivision, or Indian Tribe (which would normally issue Tax Exempt Securities) if the income received by a purchaser of that debt is included as gross income for purposes of Chapter I of the Internal Revenue Code of 1954, as amended. For such transactions, the Secretary shall pay to the issuer of the debt that portion of the interest which is found to be appropriate after consultation with the Secretary of the Treasury, regarding current market yields on other obligations of the issuer or other obligations

which have similar terms and conditions. Payments under this subsection by the Secretary shall be made to the issuer in accordance with terms and conditions in the guaranty agreement.

§ 790.5 Definitions.

For purposes of this regulation:

(a) "Geothermal resources" means (1) all products of geothermal processes, embracing indigenous steam, geopressed fluids, hot water, and brines, (2) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations, and (3) any byproduct derived from them;

(b) "Byproduct" means any mineral or minerals or gases which are found in solution or in association with geothermal or geopressed resources and which have a value of less than 75 percent of the value of the geothermal steam and associated geothermal resources or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(c) "Secretary" means the Secretary of the Department of Energy or a representative authorized by the Secretary;

(d) "Manager" means the Manager of the Department of Energy's San Francisco Operations Office, 1333 Broadway, Oakland, California 94612, or a duly authorized representative of the Manager;

(e) "Lender" means any person engaged in the business of lending money and having the capability of servicing the loan, or the Federal Financing Bank.

(f) "Qualified Borrower" (after this referred to as the borrower) means any public or private agency, institution, joint venture, limited partnership, association, cooperative, partnership, corporation, individual, political subdivision, or other legal entity having authority to enter into a loan agreement and who meet the criteria of this regulation.

(g) A "loan" is an obligation involving a borrower and a lender, evidenced in writing, making available to the borrower money at a specified rate of interest for a limited period of time. The loan instrument may not provide for conversion into an equity relationship with the borrower;

(h) "Project" means an undertaking to develop geothermal resources at a specific site which when completed will result in an identifiable product, system, or resource for which a market potentially exists. Examples of a project include, but are not limited to, exploration and full-field development well drilling, power plant construction, equipment manufacturing,

research and development, construction of transmission lines from a geothermal power plant, and other ventures to utilize geothermal energy to serve as an energy source for direct heat applications, such as crop drying and greenhousing;

(i) A "small public or private electric utility, including its affiliates," is a business concern primarily engaged in the generation, transmission and/or distribution of electric energy for sale whose total electric output for its preceding fiscal year did not exceed four million megawatt-hours;

(j) A "small business, including its affiliates," is a concern which is independently owned and operated, is not dominant in its field of operation, and which does not have assets exceeding \$9 million, or a net worth in excess of \$4 million, and does not have an average net income, after Federal income taxes, for the preceding two years in excess of \$400,000 (average net income to be computed without benefit of any carryover loss);

(k) "Default" means only the actual failure by the borrower to make payment of interest or principal in accordance with a schedule in the loan agreement, or to meet other requirements specified as a default condition in the guaranty agreement;

(l) "Estimated aggregate cost of the project" means those reasonable and customary costs incurred or to be paid by the borrowers which are directly connected with the project, including construction and start-up costs but excluding costs specified in § 790.22(c).

(m) "Holder" means the entity that lawfully holds all or any part of the guaranteed loan; and,

(n) "Guaranty fee" means a charge made by DOE for its administrative cost in processing and monitoring guaranteed loans and for probable guaranteed loan losses.

(o) "Federal Finance Bank" means the agency operating within the United States Department of the Treasury which has the authority to purchase Federally guaranteed debt.

#### § 790.6 Loan guaranty criteria.

In addition to meeting the requirements for eligibility set forth in § 790.4(a), a guaranty or commitment to guaranty may be made only if the following conditions are met as determined by the Secretary on the written recommendation by the Manager: (Criteria applicable to the lender may not pertain to guarantees in which the Federal Financing Bank is the lender).

(a) The application form is signed by an authorized official of the lender and the borrower;

(b) The lender has demonstrated a willingness and capability of servicing the loan in an acceptable manner;

(c) The lender has set forth reasons acceptable to the Secretary why the loan would not be made to the borrower without a Federal loan guaranty;

(d) There is satisfactory evidence demonstrating that the lender is competent to administer loan terms and conditions, and is competent to administer terms and conditions in the guaranty agreement that are applicable to the lender;

(e) The guaranty shall apply only to the amount of the loan that does not exceed 75 percent of the estimated aggregate cost of the project.

(f) When the amount of the guaranty requested is equal to 100% of the loan made by the lender, the lender must set forth reasons satisfactory to the Secretary fully establishing why it is unwilling to undertake a loan having less than the maximum guaranty;

(g) The loan bears interest at a rate not to exceed an annual percent on the principal obligation outstanding as the Secretary determines, in consultation with the Secretary of the Treasury, to be reasonable, taking into account the range of interest rates for similar loans and risks which are Federally guaranteed.

(h) The term of the loan requires, as determined by the Secretary, the lesser of (1) full repayment over a period of no more than 30 years, (2) no longer than the expected average useful life of major physical assets essential to the project, or (3) the borrower's ability to repay the loan based on the project's cash flow projection.

(i) The amount of the loan together with other funds available to the borrower will be sufficient to carry out the project;

(j) There is reasonable assurance of repayment of the guaranteed portion of the loan by the borrower, and assurance that loan repayment is not dependent on interest or principal assistance;

(k) The amount of a guaranty for any loan for a project does not exceed \$50,000,000.

(l) The total dollar amount of guarantees made under this regulation for any combination of outstanding loans to any single borrower does not exceed \$200,000,000, unless the Secretary determines in writing that a guaranty in excess of these amounts is in the national interest and does not adversely impact competition. Such determinations shall be submitted to the Speaker of the House and the Chairman of the Committee on Science and Technology of the House of Representatives, and to the President of the Senate and the Chairman of the Committee on Energy and Natural Resources of the Senate, accompanied by a full and complete report on the proposed project and guaranty. The pro-

posed guaranty or commitment to guarantee will not be finalized prior to the expiration of 30 calendar days (not including any date on which either House of Congress is not in session) from the date on which the report is received by the Speaker of the House and the President of the Senate.

(m) The project is to be performed in the United States, its territories or possessions, or on property owned or leased by the United States outside the United States, its territories or possessions;

(n) The project is technically feasible;

(o) There is acceptable evidence that the borrower will initiate and complete the project in a timely and efficient manner;

(p) There is a sufficiency of encouraging geophysical, geological, hydrological and geochemical data;

(q) The borrower agrees to make available to the Secretary on a timely basis adequate technical or economic information as specified in the guaranty agreement, and, subject to provisions in § 790.20(b)(2), and further agrees to the public dissemination of specified project information.

(r) There is satisfactory evidence of the borrower's interest in geothermal resources;

(s) There is satisfactory evidence that the project will be carried out by the use of environmentally acceptable processes in such a manner as to mitigate any adverse environmental impact to the maximum extent practicable, and to comply with any applicable environmental protection and pollution control requirements;

(t) The environmental risks of the project have been evaluated in accordance with § 790.23;

(u) The terms and conditions set forth in the loan agreement are acceptable;

(v) The borrower and any non-guaranteed lender agree in writing that the terms and conditions set forth in a non-guaranteed loan agreement relating to the project must be acceptable to the Secretary before such agreement is effective;

(w) The Secretary of the Treasury has insured the Secretary of Energy to the maximum extent feasible that the timing, interest rate, and terms and conditions of any guaranty exceeding \$25,000,000 will have the minimum possible impact on the capital market of the United States taking into account other Federal direct and indirect commercial securities activities; and

(x) There are no significant adverse competitive impacts from cumulative guarantees in excess of \$50,000,000 to any single borrower.

**§ 790.7 Interest and principal assistance.**

(a) Whenever the borrower is unable to pay required interest or principal, the Manager, upon approval by the Secretary, may enter into interest or principal assistance contracts with the borrower to pay the lender for and on behalf of the borrower the interest charges or principal payments which become due and payable if the Secretary finds that:

(1) The borrower is unable to meet such payments and is not in default;

(2) That it is in the public interest to permit the borrower to continue to pursue the purposes of the project, and,

(3) That the probable net cost to the Federal Government in paying such amounts will be less than that which would result in the event of a default.

(b) The amounts which the Manager is authorized to pay under an interest or principal assistance agreement shall be no greater than the amount of interest or principal which the borrower is obligated to pay under the loan agreement; and

(c) The principal or interest assistance agreement shall provide that the borrower repay the amounts received on terms and conditions, including interest, which are satisfactory to the Secretary.

**§ 790.8 [Reserved]****§ 790.9 Period of guarantees and assistance contracts.**

No loan guaranty agreements or commitments to guaranty will be made or interest or principal assistance contracts entered into after September 3, 1984. Guaranty agreements in effect at that time will continue until the term of the loan is completed or until the guaranteed portion of the loan is repaid in full with accrued interest, whichever occurs first. Similarly, interest or principal assistance contracts in effect on September 3, 1984, will remain in effect until the contract term expires or is otherwise terminated.

**§ 790.10 Information for States and Indian Tribes.**

The Secretary, the Manager, or a Regional Representative of the Secretary will, as appropriate, meet with Governors of directly affected States, regional associations of Governors, heads of State agencies and commissions responsible for energy or environmental matters, and Indian Tribes for the purpose of:

(a) Discussing the status of projects guaranteed under this regulation;

(b) Identifying means to remove or mitigate legal and regulatory barriers to the accelerated use of geothermal resources;

(c) Evaluating plans to encourage growth in the geothermal industry;

(d) Discussing community impacts which may result from projects receiving a loan guaranty under this regulation; or

(e) Other areas deemed appropriate.

**§ 790.11 Full faith and credit and incontestability.**

The full faith and credit of the United States is pledged to the payment of all guarantees issued in accordance with these regulations, and such guarantees shall be valid and incontestable by the Government, except for fraud or misrepresentation by the holder of the guaranteed obligation. A guaranty agreement entered into in accordance with these regulations shall be conclusive evidence that the guaranty and the underlying loan are in compliance with applicable laws and these regulations, and that such loan has been approved.

**§ 790.12 Use of Federal Financing Bank.**

(a) Loans guaranteed in accordance with these regulations may be funded through the Federal Financing Bank whenever the Secretary has made each of the following determinations:

(1) The loan is 100% guaranteed;

(2) Private funding of the debt is not available at acceptable terms, rate or fees acceptable to the Secretary; and

(3) Federal Financing Bank funding will not have a material adverse effect on the objectives of the program.

(b) Whenever a loan is funded through the Federal Financing Bank, the loan shall be serviced in accordance with the loan servicing requirements of these regulations by parties acceptable to the Manager. The servicing cost shall be paid by the borrower in addition to any guaranty fee charged by the lender to the borrower, and may be included in the estimated aggregate cost of the project.

**§ 790.13 Deviations.**

To the extent that such requirements are not specified by Pub. L. 93-410 as amended or other applicable statutes, DOE's Assistant Secretary for Resource Applications may authorize deviations on an individual application basis from the requirements of this regulation (except § 790.23) upon a finding that such deviation is essential to program objectives and the special circumstances in the application submitted by the borrower and lender make such deviation clearly in the best interest of the Government. Recommendation for any deviation shall be submitted in writing by the Manager to the Assistant Secretary for Resource Applications. Such recommendations should include a supporting statement, which indicates briefly the nature of the deviation requested and

the reasons therefore. This deviation authority may not be redelegated.

**Subpart B—Applications****§ 790.20 Filing.**

(a) A completed application for a loan guaranty under this regulation must be on a form provided by the Manager and be signed by the prospective borrower and submitted to the Manager who is responsible for processing the application. If the application involves a private lender, the form shall be signed by the lender. Application forms and information regarding the filing of applications may be obtained from the Director, Geothermal Loan Guaranty Program Office, San Francisco Operations Office, Department of Energy, 1323 Broadway, Oakland, California 94612. Telephone (415) 273-7151.

(b)(1) Prior to receipt of an application, the Manager is authorized to conduct preliminary discussions with prospective lenders or borrowers wishing to obtain information or advice regarding eligibility for a loan guaranty and compliance with filing requirements.

(2) Subject to requirements of law and applicable regulations, information such as trade secrets, commercial and financial information, geological, geophysical and geographical information and data (including maps) concerning wells which the borrower or lender submits to DOE during the preliminary discussion or at any other time throughout the duration of the project on a privileged or confidential basis, will not be publicly disclosed by DOE without prior notification to the submitter. Information asserted by the borrower or lender to be privileged or confidential shall be appropriately identified and marked. The guaranty agreement shall identify those items of information which the borrower will make available to the Manager for public dissemination.

(c) Supporting information and cost data submitted by the applicants shall be updated and furnished to the Manager whenever changes occur during the pendency of the guaranty application.

**§ 790.21 Supporting information.**

(a) The lender and borrower shall provide information, as prescribed by the Manager, to supplement the application. The following items are provided to illustrate the range of supporting information which may be required to enable the Manager to prepare a recommendation with respect to any pending application.

(1) Full description of the scope, nature, extent, milestones and location of the proposed project;

(2) A detailed budget-type breakdown of both the estimated aggregate cost of the project and the amount to be borrowed;

(3) Evidence showing that the amount of the loan together with equity or other financing will be sufficient to complete the project;

(4) The borrower's plan to repay the loan, including cash flow projections, assumptions regarding marketability of the project's results or product, descriptions of the project's technical and economic feasibility, and environmental acceptability;

(5) The aggregate outstanding amount of guaranty commitments or guaranteed loans made to the borrower under the provisions of these regulations;

(6) Where relevant to the purpose of the loan guaranty, a copy of the borrower's title or lease agreement to the property on which the project is to be carried out, supported by title opinion or other acceptable evidence of the borrower's ownership interest;

(7) Subject to § 790.20(b)(2), technical information and reports, geophysical data, well logs and core data, financial statements, milestone schedules, and maps and charts;

(8) Information covering the management experience of each officer or key person in the borrower's organization who is to be associated with the project and a description of salaries (and other financial remuneration including profit sharing and stock options) to be paid to officers and employees of the borrower that are, or will be, directly associated with the project;

(9) A description of the borrower's management concept, and business plan or plan of operations, to be employed in carrying out the project;

(10) A description of the intended sources and amount of capital and its form (equity, loans from principals, loans from the lender, outside financing, or factoring) together with evidence of a commitment from these sources and a copy of each such agreement, and evidence of the financial ability of each source to honor its commitment;

(11) A listing of assets associated or to be associated with the project, including appropriate data as to value and useful life of major assets essential to the project, and a description of any other security;

(12) A listing of all permits or authorizations required by Federal, State and local government agencies to conduct the project and a copy of each application for approval of such permits or authorizations when issued or a statement of planned filing dates and expected date of approval;

(13) A description of the borrower's organization and, as applicable, a copy

of the business certificate, partnership agreement or corporate charter, bylaws, and appropriate authorizing resolutions;

(14) The lender's written assessment of all aspects of the borrower's loan application in such detail as would be expected by prudent lenders considering a loan without a guaranty, together with copies of the proposed loan agreement, the borrower's financial statements, investigations from credit bureaus, references, bank inquiries, and professional organizations;

(15) A copy of all existing loan agreements and written assurance from any existing lenders of project funds that the loan amounts as well as terms and conditions imposed by lenders on such loans will not be altered in any significant respect without the prior approval of the Secretary;

(16) Evidence of consultation conducted by the borrower with appropriate agencies of any affected State regarding the proposed project, and a description of any adverse social or economic impacts which may occur in the community in which the project will be located;

(17) A disclosure by the lender of (i) whether any of its officers, directors, major stockholders or other major owners have a financial interest in the borrower and (ii) whether any of the borrower's officers, directors, major stockholders or other major owners have a financial interest in the lender; and

(18) Any other information required by the Manager to fully evaluate the guaranty application.

(b) In addition to supporting information illustrated in paragraph (a) of this section, the Manager may independently obtain or may require the lender to include with the guaranty application information regarding the lender as deemed necessary by the Manager, including but not limited to:

(1) Description of the lender's organization and a copy of the business certificate, partnership agreement or corporate charter, bylaws, and appropriate authorizing resolutions;

(2) Copies of investigation reports obtained from credit bureaus, reference and bank inquiries, and professional associations;

(3) A description of the management experience of each officer or key person in the lender's organization who will be servicing the loan;

(4) A description of the management techniques to be employed by the lender in surveillance of the loan;

(5) When appropriate to the project, evidence of the lender's experience in surveying the financial aspects of complex technological projects; and

(6) A copy of the lenders' conditional loan commitment document, if any, issued to the borrower.

(c) The Manager shall consider the application and other relevant information and shall be responsible for: (1) Determining whether the application is in compliance with these regulations; (2) assessing and evaluating the financial, technical, environmental, legal, management, and marketing aspects of the project; (3) assessing the availability of the project's financing, other than that provided by the proposed guaranty for the project, and assessing whether such financing is adequately committed; and, (4) recommending to the Secretary approval or nonapproval of the application. The Manager shall include with a recommendation for approval a proposed guaranty agreement containing appropriate terms and conditions pertinent to the project, previously discussed and negotiated by the Manager with the lender and borrower. When not approved by the Secretary, the Manager will provide the borrower and lender with a written statement setting forth the basis for the non-approval of the guaranty application.

§ 790.22 Project cost illustrations.

(a) The cost elements set forth in paragraphs (b) and (c), of this section are only for the purpose of illustrating the manner by which the estimated aggregate cost for construction and initial startup of the project can be determined. It is expected that these project costs will be recorded in accordance with generally accepted accounting principles and practices which are consistently applied.

(b) Except as set forth in paragraph (c) of this section, reasonable and customary costs for construction and initial startup paid or to be paid by the borrower or the applicants for a guaranty that are directly connected to the project are generally permitted in computing the estimated aggregate project cost. These costs include, but are not limited to the following:

(1) Employees' salaries and wages, consultant fees and other outside assistance;

(2) Land purchase or lease payments, including reasonable real estate commissions;

(3) Engineering fees, surveys, plates, title insurance, recording fees and legal fees incurred in connection with land acquisition;

(4) Site improvements, site restoration and abandonment costs, access roads and fencing;

(5) Drilling of exploration wells, shallow heat-flow wells, and test, production and reinjection wells;

(6) Buildings, transmission lines, powerplant equipment, and machinery;

(7) Taxes (including tax advances associated with community impact planning) to be paid to Federal, State and

local government agencies and other taxing authorities;

(8) Insurance, including flood insurance, and bonds of all types;

(9) Engineering, geological, and architectural fees paid in connection with drilling, machinery selection, design, acquisition and installation;

(10) Research, exploration or development necessary to complete the project;

(11) Professional services and fees necessary to obtain licenses and permits and to prepare environmental reports and data;

(12) Interest costs charged by the lender;

(13) Interest payments to other lenders;

(14) Costs incurred for the benefit of the project prior to approval of the guaranty agreement that are directly connected with the project;

(15) Technical and socio-economic information dissemination costs, and community impact assistance costs;

(16) Costs to provide safety and environmental protection equipment, facilities and services;

(17) Travel and transportation costs;

(18) Bond financing costs and trustee fees;

(19) Fees for royalties and licenses;

(20) Costs associated with acquiring geophysical and other technical data;

(21) Financial and legal services costs;

(22) Costs to comply with terms and conditions specified in the guaranty agreement or with applicable laws, rules and regulations.

(23) Expenses associated with initial period of starting operations; and

(24) A contingency reserve.

(c) Costs which are not considered as part of the estimated aggregate cost of the project and are not a project cost are illustrated below:

(1) Company organizational expenses;

(2) Parent corporation general and administrative expenses and other parent corporation assessments;

(3) Dividends and profit sharing to stockholders, employees and officers;

(4) Goodwill, franchises, or trade or brand name costs;

(5) Except as provided in § 790.31, fees and commissions charged to the borrower for obtaining loans and Federal assistance;

(6) Loan commitment fees charged by lenders, except as specifically approved by the Secretary, and finders' fees;

(7) Operation expenses (including interest costs) incurred after an initial period of start-up; and,

(8) Costs that are excessive or are not directly required to carry out the project.

(d) Independently, or at the direction of the Secretary, the Manager

may cause to be performed a review of any or all cost elements included by the applicant in the estimated aggregate project cost. The applicant shall make available records and other data necessary to permit the Manager to carry out such review. In carrying out this responsibility, the Manager may utilize employees of Federal agencies or may direct the applicant to submit to a review performed by an independent public accountant or other competent authority.

(e) When costs incurred prior to the approval of the guaranty agreement, as provided in § 790.22(b)(14), are included in the estimated aggregate project cost, the applicant, if requested by the Manager, shall make available to auditors selected by the Manager financial and other records necessary to complete an audit of such costs if requested by the Manager.

(f) In the case of a guaranty for the purposes specified in § 790.4(a)(5), the aggregate cost of the project can be that portion of the total cost of construction and start-up operations which is directly related to the utilization of geothermal energy within the structure or facility, except that the aggregate cost of the project may include construction and start-up operations when the facility or structure is to be located near a geothermal energy resource predominantly for the purpose of utilizing geothermal energy, or as determined by the Secretary the economic viability of the project is substantially dependent on the performance of the geothermal reservoir.

#### § 790.23 Environmental considerations.

(a) The issuance of a Federal guaranty for a loan under these regulations is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq. Pub. L. 91-190) and applicable regulations, rules and guidelines implementing NEPA. NEPA requires the identification and environmental review of "major Federal actions significantly affecting the quality of the human environment." DOE shall follow its general regulation governing its procedures and policies implementing NEPA.

(b) In addition to generally applicable criteria used to determine the proper scope of environmental review to be accorded individual applications, DOE shall review and consider the environmental impacts associated with the commercial operation of the project throughout its useful life. Such considerations shall be carried out even where the proposed guaranty may be limited to only a small or preliminary segment of the entire commercial project. (For example, if the guaranty is for a project to complete a

steam supply system for a future powerplant, the environment impacts of construction and operation of the powerplant and related transmission lines over the useful life of the plant would be evaluated along with the impacts associated with drilling and surface gathering construction.) Any specific action under a guaranty, such as approval of a disbursement, shall not be made unless the applicable requirements of the NEPA and the DOE implementing NEPA regulations have been met.

(d) The issuance of a loan guaranty under this regulation is subject to the provisions of Executive Order 11988—Floodplain Management, and 11990—Protection of Wetlands. Borrowers applying for loan guarantees under this regulation should familiarize themselves with these Orders and with the DOE regulations implementing them (proposed 10 CFR Part 1022, published at 43 FR 31108, July 19, 1978).

#### § 790.24 Mandatory purchase of flood insurance.

The Flood Disaster Protection Act of 1973 (Pub. L. 92-234) may require purchase by the borrower of flood insurance as a condition of receiving a guaranty on loans for acquisitions or construction purposes in an identified flood plain area having special flood hazards. Questions emanating from borrowers or lenders regarding compliance with provisions of the Flood Disaster Protection Act and guidelines of the Federal Insurance Administration will be referred to the Manager.

#### Subpart C—Servicing and Closing

#### § 790.30 Loan servicing by lender.

Except when the loan is placed through the Federal Financing Bank, guaranty agreements approved in accordance with these regulations shall provide that:

(a) Loan servicing is a responsibility of the lender who shall exercise such care and diligence in the disbursement, servicing, and repayment of the loan as would be exercised by a reasonable and prudent lender in dealing with a loan without guaranty;

(b) The loan agreement shall provide specific dates for the payment of principal and interest and shall provide a period of grace of not less than 30 days for the making of any payment. The lender shall not grant the borrower any further extension of time over and above any grace period without the prior written consent of the Manager;

(c) The lender shall notify the Manager in writing without delay:

(1) That disbursement for the first project milestone is ready to be made, together with evidence from the bor-

rower that the project has commenced or is about to commence;

(2) Of the date and amount of disbursement for each subsequent project milestone under the loan;

(3) If, excluding any grace period, the lender has not received payment within 10 days after the date specified for payment in the loan agreement, together with evidence of appropriate notifications made by the lender to the borrower;

(4) Of any failure, known to the lender, by an intended source of capital to honor its commitment;

(5) Of any failure by the borrower, known to the lender, to comply with terms and conditions as set forth in the loan agreement and any failure by the borrower to comply with guaranty terms and conditions that the lender has agreed to monitor;

(6) If the lender has information that the borrower may be approaching any of the default conditions set forth in the loan agreement or that the borrower may not be able to meet any future scheduled payment of principal or interest; or

(7) Of all material changes from the cash flow projections in effect at the time the loan guaranty application is approved.

(d) The lender agrees not to demand accelerated repayment unless the borrower has defaulted in the payment of principal or interest or in other cases if such demand has been approved in writing by the Manager.

(e) The loan agreement may defer the repayment of principal for a period of time as agreed to by the Secretary.

(f) The guaranty agreement shall require the lenders to submit to the Manager periodic financial reports on the status and condition of the guaranteed loan. The guaranty agreement shall prescribe the frequency, format and content of these reports. However, such report shall, as a minimum, be required annually. Reports shall be furnished to the Manager until such time as the guaranteed portion of the loan and interest or principal assistance is repaid.

**§ 790.31 Guaranty fee.**

(a) A guaranty fee of not more than one percent shall be paid annually by the lender at a rate specified in the guaranty agreement. Fees collected by the Manager shall be deposited in the Geothermal Resource Development Fund. The fee shall be imposed on the average amount of the guaranteed portion of the loan outstanding during the year. The fee requirement may be passed to the borrower by the lender and in such instances may be included in the estimated aggregate cost of the project. When the Federal Financing Bank is the lender, the borrower shall

pay the guaranty fee directly to the Manager.

(b) At the time the guaranty agreement is concluded, as set forth in § 790.45(d), the lender shall present to the Manager payment of the first year's guaranty fee. Subsequent payments of the fee shall be made yearly by the lender on the anniversary date of closing. If an interest or principal assistance contract is in effect, payments of this fee, if passed by the lender to the borrower, may be deferred by the Secretary for an appropriate time.

(c) The Secretary shall periodically determine whether the guaranty fee being imposed is sufficient to cover anticipated administrative, probable default, and when appropriate, establish a revised fee rate, not to exceed one percent, to be applied to new guaranty agreements.

**§ 790.32 Geothermal resources development fund.**

(a) As provided in Sec. 204(a) of Pub. L. 93-410, there is established in the Treasury of the United States a Geothermal Resources Development Fund, which is available to the Secretary in carrying out any loan guaranty, interest or principal assistance, and interest differential payments. Balances in the Fund are available for necessary administrative expenses incurred by or on behalf of DOE in carrying out the provisions of this regulation.

(b) Appropriations to the Geothermal Resource Development Fund that are made available through legislation, or repayments made by borrowers in accordance with terms and conditions in interest or principal assistance contracts, or amounts returned through recoveries by the U.S. Attorney General, or amounts collected as guaranty fees shall be deposited in the Fund.

(c) If at any time Geothermal Resource Development Fund balances are insufficient to enable the Secretary to discharge DOE's obligations and responsibilities under this regulation, the Secretary, subject to provisions in appropriations acts, may borrow funds from the secretary of the Treasury upon the issuance of notes or other obligation instruments containing terms and conditions prescribed by the Secretary of the Treasury.

**§ 790.33 Project monitoring.**

The guaranty agreement shall provide that employees and representatives of DOE shall, with the Manager's approval, have access at reasonable times and under reasonable circumstances to the project site. The lender, to the extent lawful and within its control, and borrower will assure avail-

ability of information related to the project as is necessary to permit the Manager to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the guaranty.

**§ 790.34 Loan disbursements by lender.**

(a) Unless otherwise provided in the guaranty agreement, the lender shall not provide the borrower with any funds under the loan agreement until the lender has:

(1) Provided the notification set forth in § 790.30(c) (1) and (2) and has received written notice from the Manager that disbursement for the applicable milestone is approved; and,

(2) Received from the borrower satisfactory documentary evidence, as provided in § 790.35, that loan drawdowns requested will be used to pay allowable project costs incurred or to be incurred by the borrower.

(b) When the loan is fully guaranteed, the guaranty agreement shall provide that the lender will withhold loan drawdowns from the borrower only upon written notification from the Manager.

**§ 790.35 Satisfactory documentary evidence.**

The loan agreement shall provide that the borrower furnish to the lender a written statement in support of each request by the borrower for loan drawdowns. This statement shall set forth in such detail as the lender or Manager may require the purposes for which drawdown is requested and an attestation that such disbursements will be used only for such purposes. Each such request shall be signed by a person authorized to order the expenditure of the borrower's funds.

**§ 790.36 Reduction or withdrawal of guaranty.**

The Secretary, may, upon the written recommendation of the Manager, reduce or withdraw any guaranty by written notice to the lender and the borrower if he determines that:

(a) Initiation of the project has not occurred within the period of time set forth in the guaranty agreement. Within 60 days after the guaranty is withdrawn under this circumstance, the Manager shall reimburse the lender for the full amount of the guaranty fee paid by the lender if the fee has not been passed to the borrower;

(b) The borrower has failed to acquire capital from intended or alternate sources, or has failed to comply with material terms and conditions as set forth in the loan or guaranty agreement. The Manager shall, if appropriate, notify the borrower and the

lender that the guaranty shall be reduced to the amount that has been received by the borrower as of the date of the notice. Drawdowns permitted by the lender after such notification is received will not be covered by the guaranty; or

(c) The lender has failed to comply with any material term or condition set forth in the guaranty or loan agreement. The guaranty may be reduced to the amount that has been received by the borrower as of the date the Manager's notice of reduction of the guaranty. Notice of the Manager's finding that a material term has not been complied with by the lender shall be sent by the Manager to the borrower and the lender. Following notification, the borrower will be allowed reasonable time to acquire a substitute lender that is capable of complying with provisions in the loan and guaranty agreements. If the borrower obtains a substitute lender satisfactory to the Secretary, a new guaranty agreement will be executed. Upon execution of the guaranty agreement by the substitute lender and DOE, the Secretary may provide that the original lender shall be reimbursed by the borrower for unpaid principal outstanding and accrued interest.

(d) In the event the Secretary, in his discretion determines, upon recommendation by the Manager of discussions with the borrower and lender, that the project's economic success or environmental acceptability is no longer achievable. Written notice shall be given to the borrower and lender of this determination and the guaranty shall then be reduced to amounts which have been received by the borrower as of the date that the notice is received by the lender.

#### § 790.37 Default, demand, payment and collateral liquidation.

(a) In the event that the borrower has defaulted in the making of required payments of principal or interest on any portion of a loan guaranteed in accordance with these regulations, and such default has not been cured within the period of grace provided in the loan agreement, the lender, or any other holder, or nominee or trustee empowered to act for the lender or holder (referred to in this section collectively as "holder"), may make written demand upon the Manager for payment pursuant to the guaranty agreement.

(b) In the event that the borrower is in default as a result of a breach of one or more of terms and conditions of the guaranty agreement, note, loan agreement, or other contractual obligation related to the transaction, other than the borrower's obligation to pay principal or interest, as provided in § 790.37(a) the holder shall

not automatically be entitled to make demand for payment pursuant to the guaranty, unless the Secretary agrees in writing that such default has materially effected the rights of the parties, and finds that the holder should be entitled to receive payment of the outstanding guaranteed debt.

(c) No provision of these regulations shall be construed to preclude forbearance by the holder and the Secretary for the benefit of the borrower.

(d) Upon the making of demand for payment as provided in § 790.37 (a) or (b), the holder shall provide, in conjunction with such demand or immediately thereafter, at the request of the Manager, such supporting documentation as may be reasonably required to justify such demand.

(e) Payment of the guaranteed debt shall be made 60 days after receipt by the Manager of written demand for payment: *Provided*, The demand is in compliance with terms of the guaranty agreement, applicable law, and these regulations. The guaranty agreement will provide that interest shall accrue during that period at the rate stated in the loan agreement.

(f) Upon payment of the guaranteed debt pursuant to these regulations, the holder shall transfer and assign to the Manager all rights held by the holder in the guaranteed portion of the debt which was guaranteed. Such assignment shall include the guaranteed portion of the loan and related security and collateral rights. Through such payments and assignment, the Secretary shall be subrogated to the rights of the recipient of the payment and shall have superior rights in and to the property acquired from the recipient of the payment.

(g) Where the guaranty agreement so provides, the lender and the Manager may jointly agree to a plan of liquidation of the collateral pledged to secure the guaranteed debt, and thereafter the lender may undertake such liquidation and make application of the proceeds derived thereby in accordance with the terms and conditions of the loan and guaranty agreements and the written plan of liquidation.

(h) Where payment of the guaranteed debt has been made and the lender has not undertaken a plan of liquidation, the Secretary, in accordance with the rights received through subrogation and acting through the U.S. Attorney General, shall seek to foreclose on the collateral assets and take such other legal action as necessary for the protection of the Government.

(i) If the Secretary is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or

take any other necessary action which the Secretary deems appropriate, in order that the original goals and objectives of the project will, to the extent possible, be realized.

(j) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the guaranty agreement to recover costs incurred by the Government as a result of the defaulted loan. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second to reimbursement of any amounts paid by DOE as a result of the loan guaranty; third to any amounts owed to DOE under related principal and interest assistance contracts; and fourth to any other lawful claims held by the Government on such proceeds. Any sums remaining after full payment of the above shall be available for the benefit of other parties lawfully entitled to claim them.

#### § 790.38 Perfection of liens and preservation of collateral.

(a) The guaranty agreement shall provide that: (1) The lender will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged collateral for the guaranteed portion of the loan; and, (2) upon default by the borrower, the holder of pledged collateral shall take actions such as the Manager may reasonably require to provide for the care, preservation, protection and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default of the loan. The Manager shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by the Manager. Except as provided in § 790.37, the lender shall not waive or relinquish, without the consent of the Manager, any collateral for the loan to which the United States would be subrogated upon payments under the guaranty agreement.

(b) In the event of a default, the Manager may enter into contracts as required to preserve the collateral for the loan and to complete unfulfilled environmental requirements. The cost of such contracts may be charged to the Geothermal Resource Development Fund.

#### § 790.39 Treatment of payments.

(1) When the lender holds a guaranteed and non-guaranteed portion of the same loan, payments of principal under the loan agreement made by the borrower shall be applied by the

lender to reduce the guaranteed and non-guaranteed portions of the loan on a proportionate basis.

**§ 790.40 Assignment and participation.**

(a) The lender may not assign to another lender those loan servicing functions required by the guaranty agreement unless prior written approval is obtained from the Manager.

(b) The lender may sell all or part of the guaranteed loan or provide other parties with participating shares in the guaranteed loan without the prior consent of the Secretary. However, the original lender shall continue to be responsible for and perform the duties and obligations of the lender as set forth in the guaranty agreement, unless the Secretary approves a substitute lender in accordance with § 790.36.(c).

(c) If participating shares in the guaranteed loan are sold by a lender, written notice thereof shall be given by the lender to the Manager and the borrower in the manner prescribed in the guaranty agreement.

**§ 790.41 Survival of guaranty agreement.**

Any guaranty agreement shall be binding upon the lender, the borrower and the Secretary and upon their successors and assigns. No delay or failure of the Secretary or the Manager in the exercise of any right or remedy and no single or partial exercise of any right or remedy shall preclude the exercise of any further rights; and no action taken or omitted by the Secretary or the Manager shall be deemed a waiver of any right or remedy of the United States. Each guaranty agreement shall contain provisions setting forth these conditions.

**§ 790.42 Modifications to existing guaranty agreements.**

The Manager may approve modifications to terms and conditions in existing loan and guaranty agreements only upon determining that such modifications will not (a) substantially change the project's scope, cost and purpose; (b) deviate from provisions in this regulation; or (c) compromise the loan agreement schedule for loan repayment. When the Manager finds that a substantive modification to existing terms and conditions is desirable or necessary, or is requested in writing by the borrower and lender, a written recommendation shall be forwarded for determination by DOE's Assistant Secretary for Resource Applications.

**§ 790.43 Other Federal assistance.**

(a) Nothing in these regulations shall be interpreted to deny or limit the borrower's right to seek and obtain other Federal financial assistance (e.g., contracts, grants, cooperative agreements, direct loans or guar-

anteed loans). For purposes of this section, other financial assistance does not include revenue sharing funds or any tax benefits. However, the total amount of Federal financial assistance, including guarantees made under these regulations, obtained by the borrower for the benefit of the project, shall not exceed 75 percent of the estimated aggregate cost of the project to be undertaken by the borrower.

(b) After concluding a loan guaranty agreement hereunder, the borrower shall not undertake any work in connection with the project for a Federal agency without the Manager's written approval.

**§ 790.44 Inventions and other intellectual property.**

(a) Inventions and other intellectual property accruing to the borrower and resulting from the project will remain with the borrower. In the case of default, such property shall be treated as project assets in accordance with terms and conditions in the guaranty agreement.

(b) The guaranty agreement may provide that inventions or other intellectual property utilized in or resulting from the project, which are owned or controlled by the borrower, shall be made available for use within the United States upon reasonable terms and conditions including provisions, if necessary, which protect the confidentiality thereof, if such action is determined by the Secretary to be in the public interest. This requirement will normally not be included where the principal purpose of the loan to be guaranteed is to utilize generally available technology to determine and evaluate a new geothermal resource base, or the acquisition of rights in geothermal resources.

(c) Where the principal purpose of the loan is for research and development with respect to extraction and utilization technologies, or for the development or demonstration of new and unique facilities or equipment, a requirement to make inventions and other intellectual property available to other domestic parties shall be included in the guaranty agreement unless the Secretary determines, upon the recommendation of the Manager, that such a requirement would either seriously impair the borrower's ability to conduct the project or the borrower's competitive position, or be inconsistent with the borrower's pre-existing contractual obligations. The Secretary's determination on this matter shall include consideration of whether attainment of the objectives of the geothermal loan guaranty program, as set forth in § 790.2, will be adversely affected by this requirement.

**§ 790.45 Closing.**

(a) When an application for a loan guaranty has been approved by the Secretary, the Manager shall notify the lender and the borrower and provide them with a copy of the guaranty agreement or commitment to guaranty approved by the Secretary;

(b) A preclosing conference will be arranged by the Manager, if the lender or borrower requests one, to discuss the terms and conditions contained in the approved guaranty agreement;

(c) Requests by the lender or borrower for substantive modification of the terms and conditions set forth in the guaranty agreement shall be submitted by the Manager for the Secretary's consideration, supported by such documentation and facts as would justify the requests; and,

(d) Immediately after approval of all terms and conditions by the parties, the Manager shall arrange with the lender and the borrower for the preparation and review of necessary documents and agree upon a date for execution of the guaranty agreement and payment of the guaranty fee.

**§ 790.46 Suspension, termination or cancellation of operations or production on Federal land administered by the Secretary of the Interior.**

(a) The Manager shall inform the Supervisor (as defined in 30 CFR 270.2 (c)) when a loan guaranty is approved involving a Federal lease, so as to provide for future coordination of the loan guaranty program and lease administration.

(b) Under regulations issued by the Department of Interior, a leaseholder may, as provided in 43 CFR 3205.3-8 and 30 CFR 270.17, apply for suspension of operations or production, or both, under a producing geothermal lease (or for relief from any drilling or producing requirements of such a lease). When a loan guaranty has been issued under this regulation for a project to be conducted by a qualified borrower who is a lessee under the above cited regulation, the borrower shall submit a copy of any suspension application to the Manager, together with a statement setting forth complete information showing the effect of such suspension on the borrower's ability to comply with terms and conditions set forth in the loan and guaranty agreements. The Manager shall notify the borrower and the Secretary in those situations when approval of any such application might cause default by the borrower. Except in cases where potential environmental safety or reservoir damage is imminent, the borrower shall obtain the Manager's approval prior to submitting a suspension application to the Supervisor.

## PROPOSED RULES

(c) 43 CFR 3204.3 requires that each geothermal lease issued by the Department of the Interior provide for the readjustment of terms and conditions at not less than 10-year intervals beginning 10 years after the date geothermal steam is produced. When a guaranty under this regulation has been issued for a loan on a project to be conducted by a borrower who is a lessee, and the borrower files an objection to any proposed readjustment with the Authorized Officer (as defined in 43 CFR 3000.0-5(f)) a copy of the objection shall be submitted without delay by the borrower to the Manager. The Manager shall forward a copy of the objection to the Secretary and to those lenders concerned, and shall consult with the Authorized Officer regarding any final action by the Authorized Officer which might terminate the lease. The Manager shall prepare an assessment on the effect of the proposed readjustment of lease terms and conditions that would substantially limit the borrower's ability to comply with the terms and conditions set forth in the loan agreement.

The Manager shall forward his assessment in writing to the Secretary, the Authorized Officer and the supervisor.

(d) Upon receipt by the lessee of notice of a proposed cancellation of a lease by the Authorized Officer, the lessee with a loan guaranteed under this regulation will provide the Manager and the lender with notice of such proposed action. Upon receipt of such notice the Manager will consult with the Supervisor and Authorized Officer for the purpose of determining whether the public interest can best be served by an acceptable alternative arrangement, such as obtaining assignments for a party qualified to hold geothermal leases who is a qualified borrower and who is willing to assume the original lessee's loan agreement and related undertaking, so that operation and production can continue.

§ 790.47 Appeals.

Any guaranty agreement shall include a provision that specifies that any dispute concerning a question of fact arising under a guaranty agreement shall be decided in writing by

the Manager. The borrower or lender, as appropriate, may within seven days after receipt of any such decision request reconsideration by the Manager. If not satisfied with the final written decision, the borrower or lender, may appeal the decision within 30 days, in writing, to the Chairman, Board of Contract Appeals (BCA), Department of Energy, Washington, D.C. 20545. That Board when functioning to resolve such loan guaranty disputes, shall proceed in the same general manner as when it presides over appeals involving contract disputes. The decision of the Board with respect to such appeals shall be the final decision of the Department.

Signed at Washington, D.C., this 29th day of December, 1978.

STANLEY I. WEISS,  
*Deputy Assistant Secretary, Utility and Industrial Energy Applications, Resource Applications.*

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