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**UNIVERSITY OF UTAH
RESEARCH INSTITUTE
EARTH SCIENCE LAB.**

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Explanation

Title 10:
Chapter II—Federal E:
Chapter III—Energy R

Finding Aids:
Table of CFR Titles and
Alphabetical List of Ag
List of CFR Sections

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(4) Argonne National Laboratory schedule of charges for irradiation services at its irradiation facilities.

(5) Brookhaven National Laboratory schedule of prices and charges for irradiation services and radioisotopes.

(Secs. 152, 161, 68 Stat. 944, 948, as amended; 42 U.S.C. 2182, 2201) [41 FR 56784, Dec. 30, 1976]

§ 783.2 Limitations.

(a) Except with regard to the use of the Gamma facility at the Idaho National Engineering Laboratory, nothing contained in this part shall be deemed to waive any rights in inventions or discoveries where a person or a group of persons acting on behalf of the person requesting the irradiation service works at the ERDA facility in connection with the irradiation service. In such event, special arrangements are made.

(b) Nothing contained in this part shall be construed to affect the provisions of any written agreement to which ERDA has or may become a party.

(Secs. 152, 161, 68 Stat. 944, 948, as amended; 42 U.S.C. 2182, 2201) [41 FR 56784, Dec. 30, 1976]

PART 790—GEOTHERMAL ENERGY RESEARCH, DEVELOPMENT, DEMONSTRATION AND PRODUCTION

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Authority: Sec. 105(a) of the Energy Reorganization Act of 1974, Pub. L. 93-415, Title II of the Geothermal Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93-410; E.O. 11834 dated January 1, 1975.

Source: 41 FR 21433, May 26, 1976, and otherwise noted.

Subpart A—General Provisions

§ 790.1 Purpose.

The purpose of this regulation is to set forth policies and procedures under which lenders may obtain a Federal guaranty on loans related to the commercial development of practicable means to produce, with environmentally acceptable processes, useful 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 Administrator of the Energy Research and Development Administration (ERDA), in the exercise of reasonable judgment, to minimize a lender's financial risk that is associated with the introduction of new geothermal resources and technology; and, (b) to develop normal borrower-lender relationships which will in time encourage the flow of credit so as to assist in the development of geothermal resources without the need for Federal assistance.

§ 790.3 Effective date.

This regulation is effective June 28, 1976.

§ 790.4 Eligible loans and priorities.

(a) The Administrator may enter into agreements to guaranty lenders against the loss of principal and accrued interest on loans made by such lenders to qual-

ified borrower shall be in of prior conditions for graph of criteria to be entered 1. Date the comm resources 2. Res respect to lization be limited to 3. App resource 4. De operation the demy duction of industry space has source 5. The of the Fed program first prior plication operation resulting energy from end prior to those signed by technical product components. To protect the the comm the Federal for will ap plications, tially prope expository leases. Who as describ will give those appl providing a guaranty preferential priority ap plications which the d rective regard to be paid vate utility owned and to A. L. lenders' re guaranty

fied borrowers. Any such agreements shall be made subject to the application of priorities and preferential considerations for guaranties as set forth in paragraph (b) of this section and subject to criteria in § 790.6. Such agreements can 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; or,

(4) Development, construction, and operation of equipment or facilities for the demonstration or commercial production of energy (e.g., electric power, industrial or agricultural processes, or space heating) from geothermal resources.

(b) In complying with the objectives of the Federal geothermal loan guaranty program, the Administrator will give first priority consideration to those applications for projects having a plan of operations which show promise of quickly resulting in the 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 or engage in the production of advanced technology components. Third priority will be given to projects that will demonstrate or exploit the commercial potential of new geothermal resource areas. The Administrator will give lower 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, the Administrator will give preferential consideration to those applications in which the lender is providing a portion of the loan for which a guaranty is not requested. Additional preferential consideration within each priority category will be given to those applications involving, (1) projects from which the Federal government will receive royalty payments, and (2) projects to be carried out by small public and private utilities and small independently owned and operated businesses.

(c) A loan application which meets a lender's standard without a Federal guaranty will be regarded by the Admin-

istrator as not eligible for a loan guaranty under this regulation. No loan shall be guaranteed if the income from such loan or the income from obligations issued by the holder of such loan is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1954. In addition, a project which is devoted exclusively to the extraction or production of geothermal by-products as defined in § 790.5(b), or is devoted exclusively to the desalination of geothermal brines will be regarded by the Administrator as not eligible for a Federal loan guaranty under this regulation.

§ 790.5 Definitions.

For purposes of this regulation:

(a) "Geothermal resources" means (1) all products of geothermal processes, embracing indigenous steam, geopressured 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 geopressured 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) "Administrator" means the Administrator of the U.S. Energy Research and Development Administration (ERDA) or a representative authorized by the Administrator;

(d) "Manager" means the Manager of ERDA's San Francisco Operations Office, 1333 Broadway, Oakland, California 94616, or a representative authorized by the Manager;

(e) "Lender" means any legal entity formed for the purpose of or engaged in the business of lending money and having the capability of servicing the loan. Examples of lenders include, but are not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banking organizations, institutional investors, partnerships, venture capital investment companies, trusts, individuals, or entities designated as trustees acting on behalf of bondholders or other lenders;

(f) "Qualified borrower" (hereinafter 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. Examples of borrowers include, but are not limited to, leaseholders, landowners, public and private electric utilities, reservoir developers, drillers, suppliers, component and equipment manufacturers, research and development firms, engineers, patent holders, and licensees;

(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 be capable of conversion into an equity relationship with the borrower;

(h) "Project" means an undertaking by the borrower which when completed will result in an identifiable product, system, major component or study for which a market potentially exists. Examples of a project include, but are not limited to, test and production 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 heat to serve as an energy source for nonelectric applications, such as crop drying and greenhousing;

(i) A "small public or private electric utility, including its affiliates", is, as provided in 13 CFR 121.3-10(d) (11), 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; and,

(j) A "small business, including its affiliates", is, as provided in 13 CFR 121.3-11(a), a concern which is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding \$9 million, does not have 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).

§ 790.6 Loan guaranty criteria.

In addition to meeting the requirements for eligibility set forth in § 790.4

(a), a guaranty may be made only if the following conditions are met as determined by the Administrator upon the written recommendation by the Manager:

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

(b) The loan is to be made to a qualified borrower;

(c) Except as provided in § 790.43, the guaranty as to principal shall apply only to so much of the principal amount of the loan as does not exceed 75 percent of the estimated aggregate cost of the project with respect to which the loan is made. However, there is no prohibition against the guaranty being equal to 100% of the loan to be made by the lender;

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

(e) 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;

(f) When the maximum permissible guaranty is requested as provided in paragraph (c) of this section, the lender has set forth those reasons it is unwilling to undertake a loan having less than the maximum permissible guaranty so as to permit the Manager to evaluate whether the preferential consideration provided in § 790.4(b) is applicable;

(g) The loan bears interest at a rate not to exceed an annual percent on the principal obligation outstanding as the Administrator determines, in consultation with the Secretary of the Treasury, to be reasonable, taking into account the range of interest rates and lending practices prevailing in the private sector for similar loans and risks by the United States. However, it is expected that the borrower and lender will negotiate a mutually acceptable interest rate that recognizes the benefits to the lender from a Federal guaranty;

(h) The terms of such loan require full repayment over a period of no more than thirty years, or no longer than the expected average useful life of any major

physical asset loan, which the Administrator

(i) The loan may be made with other Federal loan guaranties for the project;

(j) There shall be no payment of the guaranty by the qualified borrower, but there shall be no payment for the principal of the loan if the borrower is sufficient to pay the loan;

(k) The maximum amount of the loan for a project shall not exceed \$500,000;

(l) The guaranty shall not be made for any combination of any single project which exceeds \$500,000;

(m) The guaranty shall be made in sessions, or by the United States, its territories, possessions, or possessions;

(n) The guaranty shall be made and used in accordance with the processes and procedures of the Administrator;

(o) There shall be no guaranty as is provided in this section that the borrower shall complete the loan in the manner provided in this section;

(p) There shall be no guaranty for the financing of geophysical and geothermal exploration;

(q) The guaranty shall be available for the financing of or economic development of the guaranty provided in this section;

(r) Further information shall be provided in the following poses:

(i) That the borrower shall be a source of funds;

(ii) That the borrower shall be a project in a field of interest;

(iii) That the Federal guaranty will be used for the use of energy resources in such a way as to have a net benefit to the maximum extent possible;

physical asset to be financed by such loan, whichever is less, as determined by the Administrator.

(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 payment of interest and repayment of the guaranteed portion of the loan by the qualified borrower, such as evidence that there exists or will exist a market for the project's product or results that is sufficient to enable the borrower to repay the loan;

(k) The amount of a guaranty for any loan for a project does not exceed \$25,000,000;

(l) The total dollar amount of guaranties made under this regulation for any combination of outstanding loans to any single qualified borrower does not exceed \$50,000,000;

(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 and uses environmentally acceptable processes;

(o) There is sufficient evidence, such as is provided in a plan of operations, 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 on a timely basis any technical or economic information as specified in the guaranty agreement, and, subject to provisions in § 790.33 and § 790.20(b)(ii), further agrees to the use of such information for public dissemination purposes;

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

(s) There is satisfactory evidence that the borrower is capable of completing the project in an acceptable manner;

(t) The project, whether conducted on Federal, State-owned, or private land, will be carried out with full regard to the use of environmentally acceptable processes in such a manner as to mitigate adverse environmental impact to the maximum extent practicable;

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

(v) The terms and conditions set forth in the loan agreement are acceptable to the Administrator; and,

(w) The borrower and any non-guaranteed lender agree in writing that: (1) The terms and conditions set forth in a non-guaranteed loan agreement relating to the project shall be acceptable to the Administrator, and (2) the non-guaranteed loan shall be subordinate to the guaranteed loan.

§ 790.7 Interest assistance.

With respect to any loan guaranteed pursuant to this regulation, the Manager may enter into an interest assistance contract with the borrower to pay, and to pay the lender for and on behalf of the borrower the interest charges which become due and payable on the unpaid balance of any such loan if the Manager finds:

(a) That the borrower is unable to meet interest charges, and that it is in the public interest to permit the borrower to continue to pursue the purposes of the project, and that the probable net cost to the Federal government in paying such interest will be less than that which would result in the event of a default;

(b) The amount of such interest charges which the Manager is authorized to pay is no greater than the amount of interest which the borrower is obligated to pay under the loan agreement; and

(c) The borrower agrees to repayment of interest charges paid by the Federal government including the payment of interest on such charges at an annual rate to be set by the Manager in consultation with the Department of the Treasury and stated in the interest assistance contract, and to the payment of any deferred user charge provided in § 790.31(b).

§ 790.8 Default payment.

In the event of any default by a borrower in making a payment in accordance with the loan agreement with respect to any loan guaranteed pursuant to this regulation, and except as provided in § 790.7, the Administrator will, as provided in § 790.37, authorize the Manager to make payment of principal and accrued interest in accordance with the guaranty. Thereupon, the Attorney

General of the United States shall take such action as may be appropriate to recover the amounts of such payments (including any payment of interest under § 790.7) from such assets of the defaulting borrower as are associated with the project, (including patent and proprietary rights resulting from the project as provided in § 790.44) or from any other surety or security bond by or included in the terms of the guaranty. Any recovery achieved by the Attorney General which exceeds the amount paid to the lender in accordance with the guaranty agreement or interest assistance contract shall be returned to the borrower, unless the guaranty agreement provides otherwise.

§ 790.9 Period of guarantees and interest assistance.

No loan guaranty agreements will be made or interest 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. Interest assistance contracts in effect on September 3, 1984, will remain in effect thereafter until the contract term expires or the contract is terminated in accordance with its provisions.

§ 790.10 Information for Governors.

The Administrator will, as appropriate, meet with Governors of directly affected States, regional associations of Governors, or heads of State agencies and commissions responsible for energy or environmental matters 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; or
- (c) Evaluating plans to encourage growth in the geothermal industry.

Subpart E—Applications

§ 790.20 Filing.

(a) An application for a loan guaranty made under this regulation must be signed by the prospective borrower and lender or their authorized representatives and jointly submitted to the Manager who is responsible for processing

the application. Information regarding the filing of applications may be obtained from the Manager.

(b) (1) Prior to receipt of a guaranty 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 instructions, including the submission of supporting information as illustrated in § 790.21.

(2) Subject to requirements of law and this regulation, trade secrets, commercial and financial information, geological, geophysical and geographical information and data (including maps) concerning wells which the borrower makes available to ERDA during the preliminary discussion or at any other time throughout the duration of the project on a privileged or confidential basis, will be so treated by ERDA and will not be publicly disclosed without the prior written approval of the borrower. In order to assist ERDA in carrying out this provision, information deemed by the borrower or lender to fall within one of the foregoing categories shall be identified and appropriately marked by the borrower or the lender.

(c) A guaranty application may be submitted for a project that is divided into stages or milestones which are utilized as the basis for assessing the practicability of proceeding to a subsequent phase. However, in the event of failure to proceed to a subsequent phase, the Government's liability, under the guaranty agreement, will extend only to the amounts disbursed by the lender and approved by the Manager as provided in § 790.34.

§ 790.21 Supporting information.

(a) The lender and borrower shall provide information in support of the application such as prescribed by the Manager. The following items illustrate the range of information which may be needed, (dependent upon the type, complexity and cost of the project) so as to enable the Manager to prepare a recommendation for the Administrator's determination, as provided in § 790.6.

- (1) Full description of the scope, nature, extent and location of the proposed project;
- (2) A written affirmation by the lender supporting the necessity for a Federal loan guaranty;

(3) Evidence of the potential

(4) Evidence of ability to

(5) Interest lender;

(6) Period and the pay

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(8) Evidence of the loan

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Information regarding applications may be obtained from the Manager.

to receipt of a guaranty. The Manager is authorized to conduct preliminary discussions with lenders or borrowers wishing information or advice regarding a loan guaranty with filing instructions, and submission of supporting information as illustrated in § 790.21.

to requirements of law, trade secrets, confidential information, geological and geographical information, and data (including maps) which the borrower provides to ERDA during the preparation or at any other time in the duration of the project on a confidential basis, will be maintained by ERDA and will not be disclosed without the prior written consent of the borrower.

In order to carry out this provision, the Manager is deemed by the borrower to fall within one of the categories shall be identified and clearly marked by the borrower.

Any application may be for a project that is divided into milestones which are utilized for assessing the practicality of a subsequent phase, in the event of failure of a subsequent phase, the guaranty, under the guaranty will extend only to the extent provided by the lender and the Manager as provided in

ing information.

and borrower shall provide information in support of the application as prescribed by the Manager. The following items illustrate the information which may be required upon the type, complexity of the project) so as to enable the Administrator to prepare a recommendation as provided in § 790.6.

tion of the scope, nature, and location of the project.

Information by the lender is necessary for a Federal

(3) Evidence of the borrower's previous and current interest in exploiting the potential of geothermal resources;

(4) Evidence supporting the borrower's ability to complete the project;

(5) Interest rate to be charged by the lender;

(6) Period and amount of the loan and the percent of the project cost to be guaranteed;

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

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

(9) The borrower's plan to pay interest charges and repay the loan, including assumptions regarding marketability of the project's results or products;

(10) The aggregate amount of guaranty commitments and/or guaranteed loans outstanding made to the borrower under the provisions of this regulation;

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

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

(13) Information covering the management experience of each officer or key person in the borrower's organization who is to be associated with the project;

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

(15) A description of the project's technical and economic feasibility;

(16) 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;

(17) A copy of the loan agreement to be executed by the lender and borrower;

(18) A listing of assets associated or to be associated with the project, including

appropriate data as to the useful life of any physical asset, and any other security for the loan and guaranty agreement;

(19) A description of other Federal financial assistance (e.g., direct loans, guaranteed loans, grants, contracts) available or expected to be made available to the borrower in connection with the project;

(20) A description of the processes and methods the borrower plans to utilize so as to comply with § 790.23(c);

(21) Copies of all applications when filed, and approvals when issued by Federal, State and local government agencies, for permits and authorizations to conduct operations associated with the project;

(22) A description of the borrower's organization and a copy of the business certificate, partnership agreement or corporate charter, by laws, and appropriate authorizing resolutions;

(23) The lender's written assessment of all aspects of the borrower's loan application in sufficient detail as would be completed by any prudent lender considering a loan without a guaranty, together with copies of investigations from credit bureaus, references, bank inquiries, and professional organizations;

(24) Written assurance from guaranteed and, when appropriate to the project, non-guaranteed lenders that the loan amounts as well as terms and conditions imposed by such lenders will not be altered in any significant respect without approval of the Administrator;

(25) 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; and

(26) Evidence of consultation conducted by the borrower with appropriate agencies of any affected State regarding the proposed project.

(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 the filing of 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, by-laws, and appropriate authorizing resolutions;

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

(3) Descriptions covering the management experience of each officer or key person in the lender's organization who is or will be associated with the loan;

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

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

(c) The Manager shall consider the application and other relevant information and shall be responsible for: (i) determining whether the application is in compliance with this regulation; (ii) assessing and evaluating the financial, technical, environmental, management, and marketing aspects of the project; and, (iii) recommending to the Administrator 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. The Manager will provide the borrower and lender with a written statement setting forth the basis for the Administrator's nonapproval of an 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 of the project can be determined. It is expected that project costs will be accumulated 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 paid by the borrower 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, plats, 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, power plant equipment, and machinery;

(7) Taxes to be paid to Federal, State and local government agencies and other taxing authorities;

(8) Insurance and bonds of all types;

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

(10) Research and 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 by the borrower prior to approval of the guaranty agreement that are directly in connection with the project;

(15) Technical and socio-economic information dissemination 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 required by regulations and issuances by Federal, State and local government agencies; and,

(23) A contingency reserve.

(c) Costs which are not considered as project costs and are excluded from the guaranteed portion of the loan 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 paragraph (c) and commissions or power for obtaining assistance;

(6) Loan commitment fees and finder's fees;

(7) Expenses of the borrower;

(8) Normal expenses incurred after an initial period.

(9) Costs that are directly required to

(d) Independent of the Administrator cause to be performed or all cost elements in the estimated cost. The borrower records and submit the Manager's view. In carrying the Manager may federal agencies power to submit by an independent other competent

(e) When prior approval of the Administrator is provided in this section, are included aggregate project make available to the Manager and necessary to other costs if requested.

§ 790.23 Environ-

(a) For a project which is being considered, which an environmental negative determination by a responsible authority of the environment's determination and will be utilized by the Administrator in environmental case

(b) With respect to a project considered as a project for which paragraph (a) is not applicable, in accordance with 10 CFR, the potential effect of the project on the aquatic resource populations, and water quality resources in the will additional information relative to the project

incurred in connection with land acquisition;
 site improvements, site restoration and site abandonment costs, access roads and easements;
 drilling of exploration wells, geophysical, heat-flow wells, and test, production and reinjection wells;
 buildings, transmission lines, equipment, and machinery;
 expenses to be paid to Federal, State and local government agencies and other authorities;
 insurance and bonds of all types; engineering, geological, architectural and legal fees paid in connection with drilling, machinery selection, demobilization and installation;
 research and development necessary to complete the project;
 professional services and fees to obtain licenses and permits to prepare environmental reports;
 interest costs charged by the lender;
 interest payments to other lenders;
 costs incurred by the borrower prior to approval of the guaranty agreement which are directly in connection with the project;
 technical and socio-economic information dissemination costs;
 costs to provide safety and environmental protection equipment, facilities and services;
 travel and transportation costs; and
 bond financing costs and trustee fees for royalties and licenses;
 costs associated with acquiring technical and other technical data;
 financial and legal services costs;
 costs to comply with terms and conditions specified in the guaranty agreement or required by regulations and orders of Federal, State and local government agencies; and,
 a contingency reserve.
 Costs which are not considered as project costs and are excluded from the principal portion of the loan are illustrated below:
 company organizational expenses;
 parent corporation general and administrative expenses and other parent corporation assessments;
 dividends and profit sharing to directors, employees and officers;
 goodwill, franchises, or trade of other intangible 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 and finders' fees;

(7) Expenses not paid or incurred by the borrower;

(8) Normal operating expenses incurred after an initial period of start-up; and,

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

(d) Independently, or at the direction of the Administrator, the Manager may cause to be performed a review of any or all cost elements included by the borrower in the estimated aggregate project cost. The borrower 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 borrower 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 paragraph (b)(14) of this section, are included in the estimated aggregate project cost, the borrower will 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.

§ 790.23 Environmental considerations.

(a) For a proposed project being actively considered for a loan guaranty for which an environmental statement or negative determination has been prepared by a responsible Federal official, the environmental statement or negative determination and supporting assessment will be utilized by the Manager and the Administrator in considering the environmental consequences of the project.

(b) With respect to each project being considered actively for a loan guaranty for which paragraph (a) of this section is not applicable, the Manager, in accordance with 10 CFR Part 711, shall assess the potential effect of all phases of the project on the human environment, including but not limited to fish and other aquatic resources, wildlife habitat and populations, aesthetics, recreation, air and water quality, land use, and other resources in the area. This assessment will additionally consider, when appropriate to the project, the potential im-

act on the environment from the construction of power plants and transmission lines which may later be required but are not included in the project.

(1) To aid in the above assessment the Manager may request the views and recommendations of Federal, State, and local government agencies, environmental and industrial organizations, and others; and, when appropriate, may hold public hearings after giving due notice.

(2) If, as a result of the above assessment, the Manager determines that the proposed project will have a potentially significant effect on the quality of the human environment, final action on the guaranty application shall be held in abeyance until an environmental statement in accordance with section 102 (2)(c) of the National Environmental Policy Act of 1969 has been prepared and issued by the responsible Federal official.

(3) If the Manager determines that the proposed project will not have a potentially significant effect on the quality of the human environment, a negative determination shall be prepared by the Manager and submitted, together with the assessment, to the Administrator prior to final action on the guaranty application. The negative determination together with documentation supporting that determination shall be kept on file by the Manager. Environmental assessments and negative determinations prepared in compliance with this regulation shall be placed in ERDA Public Document Rooms.

(c) Each loan guaranty agreement shall include the following general terms and conditions for the protection of the environment:

(1) the borrower shall comply with all applicable Federal, State and local requirements with respect to the control of air, land, water, and noise pollution. In the absence of requirements, the Manager, after consultation with appropriate Federal, State, and local government agencies, may recommend requirements for the Administrator's consideration and the borrower shall comply with such requirements as are approved by the Administrator.

(2) The borrower, in addition to any other action required by Federal, State or local requirements, or requirements established by the Administrator, or conditions set forth in leases issued by an agency of the Federal government, shall take the following specific actions: (For purposes of this paragraph the ap-

appropriate agency official means the Manager for projects conducted on private or State-owned land, and the Head of a Federal agency for projects conducted on any land administered by any agency of the Federal government.)

(i) Conduct operations in such a manner as to minimize disturbance to vegetation, drainage channels and stream-banks, and employ such soil and resource conservation and protection measures as are deemed necessary by the appropriate agency official;

(ii) Remove or dispose of all waste generated in connection with the project in a manner acceptable to the appropriate agency official;

(iii) Take all reasonable precautions necessary to minimize to the maximum extent practicable land subsidence or seismic activity which could result from the project, including the taking of measures to monitor operations for land subsidence and seismic activity and, when requested by the appropriate agency official, make available records of all monitoring activities;

(iv) Take aesthetics into account in the planning, design, and construction of facilities;

(v) Employ such measures as are deemed necessary by the appropriate agency official to protect fish and wildlife and their habitat;

(vi) Conduct activities on known or suspected archeological, paleontological, or historical sites in accordance with specific instructions issued by the appropriate agency official;

(vii) Provide, in a timely manner, for the reasonable restoration of all disturbed lands, including the plugging of abandoned wells; and promptly employ corrective measures whenever adverse environmental effects exceed those expected; and,

(viii) Employ such other measures as are deemed necessary by the appropriate agency official to protect the quality of the human environment.

(d) For projects conducted on private or State-owned land:

(1) Assuring compliance with the requirements set forth in paragraph (b) of this section shall be the responsibility of the Manager, who may utilize experts from Federal agencies, National Laboratories or private firms, and shall have access to reports prepared by the borrower in compliance with requirements imposed by Federal, State and local government agencies.

(2) The borrower shall submit an annual report to the lender and the Manager giving a full account of actions taken to comply with the requirements set forth in paragraph (c) of this section.

(e) For projects to be conducted on any land administered by an agency of the Federal government:

(1) Assuring compliance with safety and operating procedures and environmental protection requirements shall be the responsibility of the appropriate Federal agency or a representative authorized by the Head of that agency.

(2) The borrower shall provide to the lender and the Manager a copy of each annual environmental compliance report prepared by the borrower in accordance with regulations issued by the appropriate Federal agency.

(f) Nothing in this regulation shall be construed to modify requirements imposed on the borrower or lender by Federal, State and local government agencies in connection with permits, licenses or other authorization to conduct or finance geothermal activities.

§ 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 acquisition 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. When the purchase of flood insurance is required, as finally determined by the Manager, such costs can be included by the borrower in the estimated aggregate project cost.

Subpart C—Servicing and Closing

§ 790.30 Loan servicing by lender.

Loan guaranty agreements approved in accordance with this regulation shall provide that:

(a) The lender shall exercise such care and diligence in the disbursement, servicing, and collection 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 the customary period of grace for the making of any payment of principal or

interest. However, a grace period may be granted to the borrower for the extension of time over a period of grace for the making of any payment in whole or in part in accordance with the agreement without the consent of the Manager.

(c) The lender shall provide to the borrower a copy of the loan agreement in writing with the following conditions:

(1) That the full amount of the loan is ready to be made, to the satisfaction of the lender, from the borrower's account as soon as the loan is commenced or is to be made;

(2) Monthly, or at other intervals, of the amount of the principal of each subsequent disbursement of the loan;

(3) Of any non-payment of principal or interest by the loan agreement, together with appropriate notification to the borrower;

(4) Of any failure to honor its commitment to the loan;

(5) Of any failure to comply with the terms and conditions of the loan agreement or of the loan;

(6) When the loan is to be repaid, the borrower may not be required to prepay or interest.

(d) In the event of a default by the borrower's indebtedness, the lender shall not do so without the consent of the Manager.

(e) If the guaranty is not provided, the loan shall be repaid by the borrower to the principal until such time as the project is completed and the obligation is satisfied.

(f) Lenders shall provide to the Manager periodic financial reports on the status of the loan guaranteed. The Manager shall, at the request of the agency, format the statements. How often the loan guaranty agreement shall be submitted to the Manager shall be determined by the Manager. The Manager shall be notified of the guaranty agreement and the status of the loan guaranteed. The Manager shall be notified of the guaranty agreement and the status of the loan guaranteed.

The borrower shall submit an annual report to the lender and the Manager providing a full account of actions taken to comply with the requirements set forth in paragraph (c) of this section. For projects to be conducted and administered by an agency of the Federal government:

Assuring compliance with safety operating procedures and environmental protection requirements shall be the responsibility of the appropriate agency or a representative authorized by the Head of that agency.

The borrower shall provide to the lender and the Manager a copy of each environmental compliance report required by the borrower in accordance with regulations issued by the appropriate agency.

Nothing in this regulation shall be construed to modify requirements imposed on the borrower or lender by Federal and local government agencies in connection with permits, licenses, or authorization to conduct or disseminate geothermal activities.

Mandatory purchase of flood insurance.

The Flood Disaster Protection Act of 1973 (Pub. L. 92-234) may require purchase of flood insurance by the borrower or lender in addition to receiving a guaranty for acquisition or construction in an identified flood plain area or in special flood hazards. Questions arising from borrowers or lenders regarding compliance with provisions of the Flood Disaster Protection Act and other provisions of the Federal Insurance Administration will be referred to the Manager. When the purchase of flood insurance is required, as finally determined by the Manager, such costs can be included in the estimated project cost.

Part C—Servicing and Closing

Loan servicing by lender.

Guaranty agreements approved in accordance with this regulation shall be subject to the following:

The lender shall exercise such care and diligence in the disbursement, servicing and collection of the loan as would be exercised by a reasonable and prudent person dealing with a loan without regard to the fact that the loan is guaranteed.

The loan agreement shall provide for a primary period of grace for the making of any payment of principal or

interest. However, the lender shall not grant to the borrower any further extension of time over and above any period of grace for the making of any payment in whole or in part under the loan agreement without the prior written consent of the Manager:

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

(1) That the first disbursement is ready to be made, together with evidence from the borrower that the project has commenced or is about to commence;

(2) Monthly, or at other agreed upon intervals, of the date and amount of each subsequent disbursement under the loan;

(3) Of any non-payment by the borrower of principal or interest as required by the loan agreement, if such non-payment is not cured within the grace period, 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 or guaranty agreement; or,

(6) When the lender believes that the borrower may not be able to meet any future scheduled payment of principal or interest.

(d) In the event the lender retains the option to accelerate payment of the borrower's indebtedness, the lender shall not do so without the prior written consent of the Manager.

(e) If the guaranty agreement so provides, the loan agreement will permit the borrower to defer payments of principal until such time that income from the project is sufficient to meet this obligation.

(f) Lenders will submit to the Manager periodic financial statements that report the status and condition of each loan guaranteed under this regulation. The Manager will prescribe the frequency, format and content of such statements. However, a report on each loan guaranty agreement entered into under this regulation shall, as a minimum, be submitted to the Manager annually on the anniversary date of the guaranty agreement. Reports will be furnished to the Manager until such time as the guaranteed portion of the loan or interest assistance is repaid.

§ 790.31 User charge.

(a) A user charge will be collected annually from the lender imposed on the guaranteed portion of the loan and computed at a rate to be set forth in the guaranty agreement. The rate shall be imposed on the anticipated average amount of the guaranteed portion of the loan that is estimated to be outstanding during the year. The user charge may be passed to the borrower by the lender and in such instances may be included in the project cost.

(b) At the time the guaranty agreement is closed, as set forth in § 790.45(d), the lender shall present to the Manager payment of the first year's user charge. Subsequent payments of the charge will be made by the lender on the anniversary date of closing. If interest assistance is in effect, payments of this charge, if passed by the lender to the borrower, will be deferred for the term of the interest assistance contract.

(c) The Administrator annually will evaluate whether the user charge rate being imposed is sufficient to cover anticipated administrative, default and interest assistance costs and, when appropriate, establish a revised rate 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 (hereinafter referred to as the Fund), which is available to the Administrator in carrying out the loan guaranty and interest assistance program contemplated by this regulation, including the payment of administrative expenses incurred in connection therewith.

(b) Appropriations to the Fund that are made available through legislation, or repayments made by borrowers in accordance with terms and conditions in interest assistance contracts, or amounts returned to the United States through recoveries by the U.S. Attorney General, as provided in § 790.3, and not disbursed in accordance therewith, shall, except as otherwise provided by law, be available to the Administrator for the payment to lenders of principal and interest on guaranty agreements and interest assistance contracts made in accordance with this regulation. In addition, balances in the Fund may be used for necessary administrative expenses incurred by ERDA or

other Federal agencies acting pursuant to ERDA direction in carrying out the provisions of this regulation.

(c) 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 Fund.

(d) In the event that interest assistance payments and default payments exhaust balances in the Fund, the Administrator will promptly seek to obtain appropriations as are authorized.

(e) Moneys in the Fund not needed for current operations may, with the approval of the Secretary of the Treasury, be invested in bonds or other obligations of, or guarantees by, the United States.

(f) 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 independently owned and operated businesses, as defined in § 790.5. The Administrator, at his discretion, may adjust the allocation reserved for small concerns. To the extent that guarantees on loans to qualified small concerns are not issued within six months following the beginning of each fiscal year, the uncommitted allocation of loan guarantees for small concerns, at the discretion of the Administrator, may become available on an unrestricted basis.

§ 790.33 Project monitoring.

The guaranty agreement shall provide that employees and representatives of ERDA shall, with the Manager's approval, have access to the project site. The lender, to the extent lawful and within its control, and borrower will assure availability 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.

Unless otherwise provided in the guaranty agreement, the lender shall not make any disbursement on the loan until:

- (a) It has followed notification requirements as set forth in § 790.30(c) (1) and (2) and has received written notice

from the Manager that disbursement is approved; and,

- (b) It has received from the borrower satisfactory documentary evidence, as provided in § 790.35, that funds requested will be used to pay the borrower's costs incurred or to be incurred for the project.

§ 790.35 Satisfactory documentary evidence.

The borrower shall furnish to the lender a written statement in support of each request by the borrower for loan disbursements, setting forth in such detail as the lender or Manager may require the purposes for which disbursement is requested and an attestation that such disbursements will be used only for such purposes. Signature on the requesting document shall be made by a person authorized to order the expenditure of the borrower's funds.

§ 790.36 Withdrawal of guaranty.

(a) The Administrator, may, upon the written recommendation of the Manager terminate the guaranty by written notice to the lender and the borrower if the Manager finds that:

- (1) Initiation of activity on the project has not occurred within the period of time set forth in the guaranty agreement. Within sixty days after termination under this circumstance, the Manager shall reimburse to the lender the full amount of the user charge paid by the lender if the charge has not been passed to the borrower;

(2) There is non-compliance on the part of the borrower or the lender with material terms and conditions set forth in either the loan agreement or the guaranty agreement, other than those concerning initiation of activity as referred to in paragraph (a) (1) of this section; or

- (3) There is failure by the borrower to acquire capital from intended sources, as provided in § 790.21(a) (16), and the borrower is unable to acquire alternate sources within a reasonable time as may be approved by the Manager.

(b) If the borrower fails to acquire capital from intended or alternate sources, or fails to comply with material terms and conditions set forth in the loan or guaranty agreement, the Manager shall notify the borrower and the lender that the guaranty may be reduced to the amount that has been disbursed by the lender as of the date of the notice. Disbursements made by the lender after

such notice covered by a

(c) If the any material in the guaranty and the Manager term. has a as set forth borrower and action. The lender shall be responsible for the provisions of the guaranty. Upon the the borrower shall be responsible for the unpaid interest on the

§ 790.37

(a) If the payment of the amount of the required in the guaranty shall be made by the lender for the guaranty under in paragraph section.

(b) The the guaranty whether it shall be approved and the Manager's approval and the Manager shall be notified of the termination of the guaranty.

(c) The non-compliance with the terms and conditions of the loan or guaranty agreement shall be notified to the borrower and the lender within a reasonable time as may be approved by the Manager.

Manager that disbursement is ; and,

has received from the borrower any documentary evidence, as in § 790.35, that funds requested to pay the borrower's costs or to be incurred for the project.

Satisfactory documentary evidence.

Borrower shall furnish to the written statement in support request by the borrower for loan disbursements, setting forth in such detail the lender or Manager may require for purposes for which disbursements requested and an attestation that disbursements will be used only for such purposes. Signature on the request shall be made by a person authorized to order the expenditure of the borrower's funds.

Withdrawal of guaranty.

The Administrator, may, upon the recommendation of the Manager, terminate the guaranty by written notice to the lender and the borrower if the Administrator finds that:

(1) There is a cessation of activity on the project which has occurred within the period of time specified in the guaranty agreement; or

(2) Sixty days after termination under the above circumstance, the Manager shall require the lender to reimburse the full amount of principal and interest charge paid by the lender if the same has not been passed to the borrower; or

(3) There is non-compliance on the part of the borrower or the lender with the terms and conditions set forth in the loan agreement or the guaranty agreement, other than those conditions of activity as referred to in paragraph (a) (1) of this section; or

(4) There is failure by the borrower to provide capital from intended sources as provided in § 790.21(a)(16), and the lender is unable to acquire alternate sources within a reasonable time as may be determined by the Manager.

(5) The borrower fails to acquire funds from intended or alternate sources or fails to comply with material conditions set forth in the guaranty agreement, the Manager shall notify the borrower and the lender that the guaranty may be reduced in amount that has been disbursed or as of the date of the notice. Disbursements made by the lender after

such notification is received will not be covered by a guaranty.

(c) If the lender fails to comply with any material term or condition set forth in the guaranty or loan agreement, the guaranty may be terminated. Notice of the Manager's finding that a material term has not been complied with shall be served by the Manager upon 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 the provisions in this regulation. If the borrower obtains a substitute lender satisfactory to the Administrator, a new guaranty agreement will be negotiated. Upon issuance of the new guaranty to the substitute lender, the original lender shall be reimbursed by the borrower for unpaid principal outstanding and accrued interest.

§ 790.37 Default and demand.

(a) If the borrower defaults in making payment of principal or interest within the time period allowed in § 790.30(c)

(3) and the lender has complied with the requirements placed on it as set forth in §§ 790.30 and 790.34, the lender may make demand in writing upon the Manager for payment pursuant to the guaranty, subject to the conditions described in paragraphs (b), (c) and (d) of this section.

(b) The Manager shall, pursuant to the provisions of § 790.7, determine whether an interest assistance contract shall be executed. In the event that interest assistance is not warranted, the Manager shall so notify the Administrator and the lender. The lender shall make available without delay such documents and certifications as the Manager may reasonably require evidencing the lender's compliance with notification provisions of the guaranty agreement.

(c) Upon default by the borrower and notification by the lender, and to the extent that sufficient reserves exist in the Geothermal Resources Development Fund: (i) upon approval of the Administrator, the Manager shall, within sixty days after receipt of such documents, pay to the lender on a proportionate basis or in full, whichever the guaranty agreement provides, the guaranteed amount of unpaid principal and accrued interest outstanding at the date of default; and (ii) during the period beginning from receipt of such documents

and until payment is made by the Manager, interest payable by the United States will accrue on the guaranteed debt at a rate to be determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding short-term Treasury securities.

(d) The lender shall, concurrently with payment in full of all amounts guaranteed by the United States, assign to the United States and transfer and deliver to the Manager the loan documents, together with all collateral documents evidencing any and all security for and guarantees of the loan then held by the lender as set forth in the loan or guaranty agreement.

§ 790.38 Preservation of collateral.

Upon default by the borrower, the holder of collateral associated with the project shall take actions such as the Manager may reasonably require to provide for the care, preservation, and maintenance of such collateral so as to achieve maximum recovery upon liquidation of collateral, security and guarantees for the loan. Except as provided in §§ 790.37 and 790.40, the lender shall not waive or relinquish, without the consent of the Manager, any collateral or guaranty for the loan to which the Government would be subrogated upon payment under the guaranty agreement to the lender.

§ 790.39 Treatment of payments.

When the lender holds a guaranteed and non-guaranteed portion of a loan, payments of principal made by the borrower in accordance with the loan agreement 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 incontestability.

(a) Except as may be required by law, the lender may assign to another lender rights and obligations under the loan or guaranty agreement only with the prior written consent of the Administrator.

(b) The lender may provide other lenders with participating shares in the loan without the prior consent of the Administrator. Written notice shall be given by the lender to the Manager and the borrower when participating shares are so provided. However, the original lender shall continue to be responsible for and perform the provisions of the guaranty agreement pertaining to the lender,

unless the Administrator approves a substitute lender.

(c) The guaranty agreement shall be conclusive evidence that the guaranty and the underlying loan are in compliance with the provisions of Pub. L. 93-410 and this regulation, and that such loan has been approved and is legal as to principal and interest and other terms. Such a guaranty shall be valid and incontestable by the Government, except for fraud or misrepresentation by the holder of the obligation.

§ 790.41 Survival of guaranty agreement.

The guaranty agreement shall be binding upon the lender, the borrower and the Administrator and upon their successors and assigns and shall survive payment by the United States. No delay or failure of the Administrator or the Manager in the exercise of any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof; and no action taken or omitted by the Administrator or the Manager shall be deemed a waiver of any such right or remedy.

§ 790.42 Security with respect to borrower's assets.

Each loan guaranteed under this regulation will be secured by liens or assignments of rights in assets associated with the project, or such other security specified in the guaranty agreement as may be reasonably required to protect the interests of the United States. Upon default by the borrower, as set forth in § 790.8, the Attorney General will seek recovery from the assets of the borrower that are associated with the project or specified in the guaranty agreement.

§ 790.43 Other Federal assistance.

(a) Nothing in this regulation shall be interpreted to deny or limit the borrower's right to seek and obtain other Federal financial assistance (e.g., contracts, grants, direct loans or guaranteed loans). However, the total amount of Federal financial assistance, including guarantees made under this regulation, obtained by the borrower for the project, shall not exceed 75 percent of the estimated aggregate cost of the project to be undertaken by the borrower.

(b) After closing of the loan guaranty agreement, the borrower will not undertake any work in connection with the project (by contract or grant) for a Fed-

eral agency without the Manager's written finding that performance of the work will not adversely affect the borrower's ability to comply with pertinent terms and conditions in the loan and guaranty agreement.

§ 790.44 Patent and proprietary rights.

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

(b) The guaranty agreement may provide that patents or other proprietary intellectual property rights utilized in or resulting from the project, which are owned or controlled by the borrower, shall be made available to other domestic parties upon reasonable terms and conditions which protect the confidentiality of information, if such action is determined by the Administrator to be in the public interest. This requirement will not be needed 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, the requirements for making patents and other proprietary intellectual property available to other domestic parties shall normally be included in the guaranty agreement unless the Administrator determines, upon the recommendation of the Manager, that such implementation would either seriously impair the borrower's ability to conduct the project, seriously impair the borrower's ability to maintain a marketplace posture, or be inconsistent with the borrower's pre-existing contractual obligations. The Administrator'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.

The major activities leading to the closing of the guaranty agreement include the following:

(a) When an approved guaranty has been approved by the Administrator, the Manager, the lender and the borrower, they shall provide them with a signed guaranty agreement.

(b) A preclosing agreement shall be arranged by the Manager or borrower requests terms and conditions of the guaranty agreement.

(c) Requests by the borrower for modification of conditions set forth in the agreement shall be by the Manager, supported by data and facts and requests.

(d) Immediately after terms and conditions are arranged with the borrower for the preparation of necessary documents, the date for execution of the agreement and payment of

§ 790.46 Suspension, cancellation of operation on Federal loan the Secretary of the

(a) The Manager (supervisor) as defined in when a loan guaranty involving a Federal loan for future coordination guaranty program and tion.

(b) Under regulation Department of Interior may, as provided in 43 CFR 270.17, apply operations or production a producing geothermal relief from any drilling requirements of such a loan guaranty has been in regulation for a project by a qualified borrower under the above cited regulation shall submit application to the Manager a statement setting information showing suspension on the borrower comply with terms and conditions in the loan agreement, notify the borrower when approval of the cause default by the in cases where potential safety or reservoir damage the borrower shall

without the Manager's writing that performance of the work adversely affect the borrower's compliance with pertinent terms and conditions in the loan and guaranty agreement.

Patent and proprietary rights. Patents and other proprietary rights relating to the borrower and remaining on the project will remain with the borrower, except as such rights shall, in case of default, be treated as property in accordance with terms and conditions in the guaranty agreement.

A guaranty agreement may protect patents or other proprietary or property rights utilized in or from the project, which are controlled by the borrower, made available to other domestic parties on reasonable terms and conditions which protect the confidentiality of the information. If such action is determined by the Administrator to be in the best interest, this requirement will not apply where the principal purpose of the loan to be guaranteed is to utilize available technology to determine and evaluate a new geothermal resource, or the acquisition of rights in geothermal resources.

Where the principal purpose of the loan is research and development with respect to extraction and utilization of geothermal resources, or for the development or construction of new and unique facilities, the requirements for protection of patents and other proprietary rights available to other parties shall normally be in accordance with the guaranty agreement unless the Administrator determines, upon the recommendation of the Manager, that such protection would either seriously impair the borrower's ability to carry out the project, seriously impair the borrower's ability to maintain a market for the product, or be inconsistent with the terms of any pre-existing contractual obligations. The Administrator's determination on this matter shall include consideration of whether attainment of the principal purpose of the geothermal loan guaranty, as set forth in § 790.2, will be materially affected by this requirement.

Closing.

Activities leading to the closing of the guaranty agreement include the following:

(a) When an application for a loan guaranty has been approved by the Administrator, the Manager will so notify the lender and the borrower and provide them with a copy of the proposed guaranty agreement.

(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 guaranty agreement.

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

(d) Immediately after agreement to the terms and conditions, 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 user charge.

§ 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 the 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 agreement. The Manager will notify the borrower in those situations when approval of the 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.

(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 3009.5-5.1) 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 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 Administrator, 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.

(e) If default is likely to occur as a result of termination or cancellation of a lease, the Manager shall request the Supervisor or the Authorized Officer to rescind the lessee's privilege of removing assets from the premises, as provided in 43 CFR 3244.5.

§ 790.47 Appeals.

All decisions by the Manager relating to disputes arising under a guaranty agreement or loan agreement made un-

der and entered into pursuant to this regulation shall be in writing. The borrower or lender, as applicable, may request the Manager to reconsider any such decision. If not satisfied with the final decision made by the Manager, the borrower or lender, upon receipt of such written decision, may appeal the decision within 30 days, in writing, to the Chairman, Board of Contract Appeals (EBCA), Energy Research and Development Administration, 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 Agency.

PART 795—SAFEGUARDING OF RESTRICTED DATA

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AUTHORITY: Sec. 1611, 68 Stat. 948, 42 U.S.C. 2201.

SOURCE: 41 FR 56785, Dec. 30, 1976, unless otherwise noted.

GENERAL PROVISIONS

§ 795.1 Purpose.

The regulations in this part establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an Access Permit. This part does not apply to Top Secret Restricted Data.

§ 795.2 Scope.

The regulations in this part apply to all persons who receive access to Restricted Data under an Access Permit issued pursuant to the regulations in Part 725 of this chapter.

§ 795.3 Definitions.

As used in this part, (a) "Administrator" means the Administrator of Energy Research and Development or his designee.

(b) "Access authorization" means an administrative determination by ERDA that an employee or an ERDA contractor, an employee of a contractor of another Federal agency, or an employee of an Access Permittee is eligible for access to Restricted Data;

(c) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto;

(d) "ERDA" or "Administration" means the United States Energy Research and Development Administration or its duly authorized representatives;

(e) "Document" means any piece of recorded information regardless of its physical form or characteristics;

(f) "DOD" means the Department of Defense;

(g) "(S) access authorization" means a determination by ERDA that an individual is eligible for access to Confidential Restricted Data under an Access Permit;

(h) "NASA" means the National Aeronautics and Space Administration;

(i) "Permittee" means the holder of an Access Permit issued pursuant to the regulations in Part 725 of this chapter;

(j) "Person" means (1) any individual, corporation, partnership, firm association, trust, estate, public or private institution, group, Government agency other than ERDA, any State or any political

subdivision of, or within a State, or any legal successor or agency of the fo

(k) "Q(X)" means a determination that an individual is eligible for an Access Permit

(l) "Restricted" concerning (1) declassification of atomic production of spe or (3) the use of sp in the production of include data de from the Restricted pursuant to section 1-

(m) "Security" means a specifically defined space subject to special control;

(n) "Security" means an administrative de that an employee of a Federal agency is Restricted Data of and

(o) "United States" means geographical territories and Possessions, the Canal Zone and

(p) "United States" means geographical territories and Possessions, the Canal Zone and

§ 795.4 Common

Communication (ing, i.e., petition) should be addressed to the Administrator for National Energy Research and Administration, Washington. Other communications regarding regulations in this part should be addressed to the U.S. Energy Research and Development Administration's Office in Appendix "B" administering Access Permit in geographical areas

§ 795.5 Submission of Access Permit

No Permittee shall be issued Restricted Data until he has submitted to ERDA his procedures for safeguarding Restricted Data and a statement of his employment. ERDA may have determined that his procedures for safeguarding Restricted Data are in compliance with the