

e-mail address: [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov). For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562-9117; e-mail address: [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

Dated: September 26, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### 43 CFR Part 403

#### RIN 1006-AA53

#### Bureau of Reclamation Loan Guarantees

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Reclamation (Reclamation) proposes this rule establishing eligibility criteria and program requirements for loan guarantees authorized by the Twenty-first Century Water Works Act (Title II of Pub. L. 109-451; 43 U.S.C. 2421-2434) (Act). This rule is intended to define for potential participants how the loan guarantees authorized by the Act will be administered. The Act authorizes the Secretary of the Interior (Secretary) to make loan guarantees for three categories of projects:

Category (A) projects are rural water supply projects as defined in section 102(9) of the Reclamation Rural Water Supply Act of 2006 (Title I of Pub. L. 109-451; 43 U.S.C. 2401-2409) (Rural Water Supply Act of 2006);

A category (B) project is an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility that is authorized by Federal reclamation laws and constructed by the United States under such law; or in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

A category (C) project is an improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary improves water management; and fulfills other Federal goals.

For purposes of this rule, these will be referred to as category (A), (B), or (C)

projects. The Act provides that, subject to the availability of appropriations, the Secretary of the Interior may provide loan guarantees for eligible projects. The Act requires the Secretary to develop criteria for determining the eligibility of a project for financial assistance, and to publish them in the **Federal Register**.

The intent of this rulemaking is to meet this requirement, as well as to define for potential participants how the loan guarantee will be administered. Reclamation will administer the program. Reclamation will take into account the comments on this rule in developing final regulations. Reclamation recognizes that the rule will be modified in the future to more specifically address category (A) projects and to address modifications in administration as a result of experience gained through the first requests.

**DATES:** Submit comments on the rule by November 5, 2008. The Office of Management and Budget has up to 60 days to approve the information collection in this rule, but may respond after 30 days; therefore public comment on the information collection must be received on or before November 5, 2008. Reclamation plans to hold informational meetings on the proposed rule and program.

**ADDRESSES:** You may submit comments on this rule, identified by the number 1006-AA53, by one of the following methods:

—*Use of the Federal rulemaking Web site:* <http://www.regulations.gov>. Search on docket identification number BOR-2008-0005 when submitting comments on this rule. Follow the instructions for submitting comments.

—*By mail to:* Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Building 67, Denver CO 80225, Attention: Randy Christopherson, Mail Code 84-55000. Please include the number 1006-AA53 in your correspondence.

Please submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395-6566, or e-mail to [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov). A copy of your comments should also be directed to the Bureau of Reclamation, attention Randy Christopherson at the contact information.

You can obtain copies of the information collection forms by contacting us as specified in the **FOR FURTHER INFORMATION CONTACT** section.

#### FOR FURTHER INFORMATION CONTACT:

Randy Christopherson, Bureau of Reclamation, P.O. Box 25007, Mail Code: 84-55000, Denver, CO 80225. Telephone: (303) 445-2729. E-mail: [rchristopherson@do.usbr.gov](mailto:rchristopherson@do.usbr.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Act, enacted as Title II of Public Law 109-451 on December 22, 2006, authorizes the Secretary to issue loan guarantees to assist non-federal borrowers in financing (A) rural water supply projects; (B) extraordinary maintenance and rehabilitation of Reclamation project facilities; and (C) improvements to infrastructure directly related to a Reclamation project. For purposes of these loan guarantees, the Act defines the authorized non-federal borrower as (a) a State (including a department, agency, or political subdivision of a State); or (b) a conservancy district, irrigation district, canal company, water users' association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States.

Authority and responsibility for implementing the provisions of the Act are delegated to Reclamation. Reclamation's rulemaking will establish the eligibility criteria and program requirements for loan guarantees authorized by the Act. Reclamation expects to supplement these rules in the future with eligibility criteria and program requirements specific to those projects described in the Rural Water Supply Act of 2006 that are also deemed eligible for loan guarantees in accordance with section 202(6)(A). Section 202(6)(A) provides authority to issue loan guarantees for rural water supply programs (category A projects). The Rural Water Supply Act of 2006 defines the term rural water supply project to include incidental noncommercial livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre, and projects to improve rural water infrastructure. Rural water projects must receive approval from the Congress prior to construction and are subject to the availability of appropriations. Accordingly, Reclamation expects to target initial solicitations for guaranteed loans pursuant to the Act on Category B and Category C projects and on assistance for operation and maintenance rather than assistance with new construction.

### Discussion of Proposed Rule

Section 203 of the Act requires the Secretary to develop criteria for determining the eligibility of a project for financial assistance, and to publish them in the **Federal Register**. The intent of this rule is to provide program requirements and eligibility criteria for both the non-federal borrower and lenders. The eligibility criteria must include (1) the lender's submission of an application to the Secretary; (2) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment; (3) demonstration by the non-federal borrower of its ability to repay the project financing from user fees or other dedicated revenue sources; (4) demonstration by the non-federal borrower of its ability to pay all operations, maintenance, and replacement costs of the project facilities; and (5) other criteria as the Secretary determines to be appropriate. Section 403.7 of this rule provides generally the requirements regarding what information must be included in an application and section 403.10 provides the criteria on which Reclamation will evaluate a non-federal borrower's application. Section 403.11 identifies the prioritization criteria that Reclamation will use to determine which loan guarantee applications will be selected to participate in the loan guarantee program.

We invite you to comment on all the requirements set forth in this rule, particularly regarding the appropriate requirements to provide protections to the financial interests of the United States. In addition, an information collection package has been prepared. The application for a loan guarantee identifies in more detail the supporting documentation that must accompany it, including: the current and previous 2 years financial and income statements; the operating budget for the current operating cycle, a financial feasibility analysis and projected budgets, including schedule of all current installment debt; preliminary project plans and detailed cost estimates; pro-forma cashflows; the proposed loan amortization schedule and documents outlining proposed terms and conditions of the debt to be guaranteed; the non-federal borrower's proposed environmental compliance actions; description of any debt; the lender's credit evaluation; a description of any security available for the loan; authorizing resolutions of certificates; and any other documents and

information the Secretary may request, including all documents and information relied upon by the lender in evaluating the non-federal borrower's initial loan request. The Act specifies eligibility criteria that must be included in subsection 203(a)(2). Section 203(b) of the Act, authorizes the Secretary to waive any of the criteria in subsection 203(a)(2) that the Secretary determines to be duplicative or unnecessary because of an action already taken by the United States. Reclamation would waive such criteria only in cases where the criteria have already been demonstrated to be satisfied.

Consistent with statutory requirement, demonstration of a borrowers' ability to repay the debt and continue operations and maintenance of its facility is a high priority of the loan guarantee program and must be demonstrated to the satisfaction of the Secretary. Reclamation will adopt policies to further establish guidance to ensure that borrowers and lenders use their best efforts to ensure the success of guaranteed loans. Reclamation will only offer loan guarantees to eligible projects that demonstrate, to the satisfaction of the Secretary, the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment; the ability of the borrower to repay all project financing; and pay all operations, maintenance, and replacement costs of the project facilities.

The statute explicitly defines the scope of lenders that are eligible to participate in the program. This is addressed in section 403.37 of this rule. A prospective lender must submit proof that it is eligible pursuant to the statute and meet the requirements as set out in this rule. A lender that meets the requirements and wishes to participate in the program must execute an agreement with Reclamation and thereupon will be considered an approved lender for a period of 2 years. The requirements, as set out in §§ 403.37, 403.38, and 403.39 of this rule, are intended to ensure that the lender has the appropriate experience and expertise to meet its fiduciary obligations in connection with the debt guaranteed pursuant to the Act. It is intended that lenders, who will bear at least 20 percent of the risk of the guaranteed loan, will exercise a high level of care and diligence in the underwriting and due diligence of the loans. As described in Section 403.39, we are proposing to require that lenders provide Reclamation periodic financial reports on the status and condition of

the loan, consistent with the terms of the Lender's Agreement; to service the loan consistent with the regulation and the Lender's Agreement and notify Reclamation promptly if it becomes aware of any problems or irregularities concerning the project or the ability of the borrower to make payment on the loan. We invite you to comment on the proposed lender eligibility criteria and requirements. We are specifically interested in how the criteria and requirements would be applied should the lender fall from eligibility after the loan has been originated. Comments are also invited on the potential additional efficiency or productivity benefits that may be realized by the improvement, repair, or replacement of the infrastructure, facilities, or asset.

The Act defines the term "project" to include "an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of a facility that is authorized by Federal reclamation law and constructed by the United States under such law; or in connection with which there is a repayment or water service contract executed by the United States" (Category B). The statute does not define the phrase "extraordinary operation and maintenance activity." In section 403.2, we propose to define "extraordinary operation and maintenance activity as major, non-recurring maintenance to Reclamation-owned or operated facilities, or facility components, that is intended to ensure the continued safe, dependable, and reliable delivery of authorized reclamation project benefits; and greater than 10 percent of the borrower's annual O & M budget for the facility, or greater than \$100,000.

Reclamation developed this definition during its *Managing for Excellence* efforts. The definition, developed as part of the public process associated with these efforts, was vetted both within Reclamation and with its water users, and it has been adopted in this rule. We request comment on this definition, the percentage and dollar thresholds, and the application and use of the definition within the proposed program.

**Project Costs.** In section 403.2, we propose to define project costs as the expected financial obligations which may be incurred for the development and support of the various features of an eligible project, as specified in § 403.50. The key elements of estimating eligible project costs are detailed in existing Reclamation policies. Section 204 of the Act provides that the Secretary shall not issue loan guarantees that exceed 90 percent of the cost of the project, as estimated at the time the loan guarantee

is issued. Also, section 403.31 of this rule provides that the United States will guarantee up to 80 percent of eligible losses on a guaranteed loan, including principal outstanding and interest accrued as of the time of default by a borrower consistent with Federal credit policies under OMB circular A-129. Section 403.50 of this rule identifies the type of project costs that will be considered eligible to be included under a loan guarantee and which costs will not be considered eligible costs.

**Defaults.** Consistent with section 205 of the Act, we are proposing in Subpart F the options and processes that may be available if a borrower defaults on an obligation. Section 205 of the Act provides that, if a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand claim payment from the Secretary per the terms of the Loan Note Guarantee Agreement. Section 403.66 of this rule prescribes actions and timelines for default proceedings, reflecting requirements both for default proceedings against loans for which collateral is pledged and against those for which it is not. The timeline and proceedings are expected to be shorter where there is no collateral, since liquidation is not a factor.

**Interest Rate.** Section 204 of the Act provides that an obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks. In section 403.52 of this rule, we propose to require loans to bear fixed interest at a rate or rates negotiated between the borrower and the lender. However, rates charged should be similar to rates customarily charged to borrowers in the ordinary course of business. Interest rates are subject to Secretarial review and approval to determine appropriateness. Reclamation will consult with the Department of Treasury on appropriate interest rates.

**Term of Loan.** A loan guaranteed under the Act must provide for complete amortization within 40 years. Section 403.48 of this rule recognizes that lenders may offer shorter terms. Reclamation will not approve a loan guarantee that exceeds the financial capability of the borrower, or for a term that exceeds the useful life of the project.

**Nonsubordination and Superior Rights.** Consistent with section 205 of the Act, we propose in section 403.56 of this rule that no loan guaranteed under the Act shall be subordinated to other financing. We further propose that the lender must obtain a position of parity

with regard to non-collateralized obligations of the borrower. This means that in the event of a default, all non-secured lenders bear the risk of loss on a proportionate basis. Further, the non-guaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion. Also, section 205(b)(2) of the Act states that the rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

**Prepayment and refinancing.** The Act allows for prepayment and refinancing of the terms of a loan guarantee subject to the consent of the Secretary. Section 403.53 of this rule recognizes that prepayment and refinancing terms of a loan may be negotiated between the non-federal borrower and the lender, subject to the Secretary's consent as part of the overall approval of the loan to be guaranteed. Any changes to such terms must also be approved by the Secretary, and to the extent such changes were not captured in the original cost estimate for the loan guarantee, such approval would be subject to the availability of appropriations, in addition to all other applicable statutory and regulatory requirements.

**Full Faith and Credit.** Consistent with section 211 of the Act, we propose in section 403.3 of this rule to pledge the full faith and credit of the United States to the payment of all guarantees issued, with respect to principal and interest. Section 403.3 further proposes that the full faith and credit of the United States is not contestable except in the case of fraud or misrepresentation of which the lender has actual knowledge, participates in, or condones.

**Interagency coordination and cooperation.** Section 209 of the Act requires the Secretary to consult with the Secretary of Agriculture prior to implementing a loan guarantee program. Reclamation has been working closely with the Department of Agriculture, and has gained valuable information on carrying out such programs. Section 209 also requires that a memorandum of agreement will be entered providing for the Department of Agriculture to carry out financial appraisal functions and loan guarantee administration activities. Both Departments are working toward development of this agreement. It is not the intent that this agreement will place any undue burdens on the implementation of the program; rather, Reclamation will be afforded the experience and help of the Department of Agriculture, which has extensive experience in issuing loan guarantees.

**Termination of Authority.** Section 215 of the Act provides that the Secretary's authority to issue loan guarantees terminates 10 years after the date of enactment of the Act, which will be December 2016. However, the termination of authority shall have no effect on any loans already guaranteed or on the administration of any loan guaranteed prior to the date of the termination.

**Duplicative Assistance.** With the exception of Rural Water projects authorized under Title I of Public Law 109-451, loan guarantees under this program cannot be paired with other Federal assistance for the same project.

## II. Procedural Requirement

### 1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

The Office of Management and Budget (OMB) has determined that this rule is a significant rule and has reviewed it under the requirements of E.O. 12866.

The loan guarantee program addressed by this rule will facilitate the financing of extraordinary maintenance and rehabilitation needs of Reclamation projects and improvements to facilities directly associated with them. Beneficiaries already have financial responsibility for these costs, but often have significant difficulty meeting these responsibilities when the expenses are of an extraordinary nature. Facilitating the financing of these extraordinary expenditures is a tool that may help to ensure the continued benefits currently being generated by Reclamation projects throughout the western United States.

In implementing this rule, we plan to use application forms very similar to those currently used by the U.S. Department of Agriculture (USDA) for its Rural Development Loan Guarantee Program (USDA Program). Review and approval for the use of these forms is taking place concurrently with the development of this rule. However, the facilities being repaired or rehabilitated with financing assistance under our proposed loan guarantee program likely will not be the same types of facilities whose construction is financed by the USDA Program. Reclamation has consulted with USDA regarding the details of USDA's related programs, and will continue to do so. These consultations will likely result in USDA providing some assistance in the administration of our programs under Titles I and II of Public Law 109-451.

### 2. Regulatory Flexibility Act

The Department of the Interior (Interior) certifies that this action will not have a significant economic effect

on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The entities eligible for loan guarantees under this program may include small entities defined in the Regulatory Flexibility Act. However, this rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule and does not mandate participation. Therefore, we have determined that the rule will not have a significant economic impact on a substantial number of small entities.

### 3. *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMR Act) (2 U.S.C. 1531 *et seq.*) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in an agency rule that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The UMR Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect those small governments.

The term Federal mandate is defined in the UMR Act to mean a Federal intergovernmental mandate or a Federal private sector mandate. Although this rule will impose certain requirements on non-Federal governmental and private sector applicants for loan guarantees, the UMR Act's definitions of the terms "Federal intergovernmental mandate" and "Federal private sector mandate" exclude, among other things, any provision in legislation, statute, or regulation that is a condition of Federal assistance or a duty arising from participation in a voluntary program (2 U.S.C. 658(5) and (7), respectively).

This rule does not impose an unfunded mandate or a requirement to expend monies on the part of State, local, or tribal governments or communities, or the private sector. Requests from any of these entities for loan guarantees under the proposed rules are strictly voluntary. Reclamation is not imposing a duty, requirement, or mandate on State, local, or tribal governments or communities, or the private sector to request such financing assistance. Thus this rule falls under the exceptions in the definitions of "Federal

intergovernmental mandate" and "Federal private sector mandate" for requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. Therefore, the Act does not apply to this rulemaking and a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

### 4. *Takings (E.O. 12630 and E.O. 13406)*

Under the criteria in E.O. 12630 and E.O. 13406, this rule does not have any significant takings implications. This rule sets forth the requirements for requesting and obtaining loan guarantees from Reclamation to assist in financing eligible projects for which Reclamation project beneficiaries are already financially responsible. While some of the project beneficiaries' property may be pledged as collateral for the loans to be guaranteed, the property would only be transferred from the owner if default occurs and such a situation would not constitute a taking. A Takings Implication Assessment is therefore not required.

### 5. *Federalism (E.O. 13132)*

Under the criteria in E.O. 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

### 6. *Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system;
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

### 7. *Consultation with Indian Tribes (E.O. 13175)*

Under the criteria of E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on Federally recognized Indian tribes. While many tribal entities may be eligible to apply for loan guarantees from Reclamation

under this rule, such application is strictly voluntary.

### 8. *Paperwork Reduction Act*

This rule would require applicants to provide information that will enable Reclamation to determine eligibility for the program and creditworthiness. The information will also be necessary to evaluate the merits of applications and effectively administer any guaranteed loans. The rule also proposes to require that lenders submit information to allow Reclamation to determine their eligibility for participation and to submit reports and other information related to loan guarantees and the borrower. Reclamation plans to use several forms very similar to those currently used for various USDA Programs. The purpose of the forms will be to obtain relevant financial information including income and expenses, collateral assets, previous credit history, and current loan status. Following are further details regarding the information collection:

*Title:* Reclamation Loan Guarantees  
43 CFR Part 403.

*OMB No.* 1006-NEW.

*Frequency:* One-time voluntary application.

*Respondents for loan applications and participating lenders:* Eligible entities (described in § 403.4 of the rule) that desire to obtain a private loan guaranteed by Reclamation and eligible lenders (described in § 403.37) that wish to participate in the loan guarantee program.

*Estimated Total Number of Respondents:* 76.

*Estimated Number of Responses per Respondent:* 1.2.

*Estimated Total Annual Burden on Respondents, including form and non-form requirements:* 737 hours.

*Comments are Invited on:*

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, usefulness, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on respondents.

As part of our continuing effort to reduce paperwork and respondent burdens, Reclamation invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit

your comments directly to the Office of Information and Regulatory Affairs, OMB. You should provide Reclamation with a copy of your comments so that we can summarize all written comments and address them in the final rule preamble. Refer to the **ADDRESSES** section for instructions on submitting comments. You may obtain a copy of the supporting statement for this new collection of information by contacting Reclamation's Information Collection Clearance Officer at (303) 445-2055.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves this collection of information and assigns an OMB control number and the regulation becomes effective, you are not required to respond. The OMB is required to make a decision concerning the collection of information of this proposed regulation between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by November 5, 2008. This does not affect the deadline for the public to comment to Reclamation on the proposed regulation. OMB has up to 60 days to approve the information collection in this rule, but may respond after 30 days; therefore public comment on the information collection must be received on or before November 5, 2008.

#### 9. National Environmental Policy Act of 1969 (NEPA)

This document has been reviewed in accordance with the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR Parts 1500-1508). Reclamation has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required. Loan applications will be reviewed individually to determine compliance with NEPA.

#### 10. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

#### 11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211, in that it is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. While loan guarantees will more commonly be extended to water supply facilities, any extension of the guarantees to power production facilities would have the same beneficial effects of credit assistance. No adverse effects on these facilities could result from the proposed rule. A Statement of Energy Effects is therefore not required.

#### 12. Clarity of This Regulation

We are required by E.O. 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe we have not met these requirements, please send comments to Reclamation as instructed in the **ADDRESSES** section. Please make your comments as specific as possible, referring to specific sections and how they could be improved. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

#### 13. Public Comments

Reclamation believes a 30 day public comment period is appropriate. The Loan Guarantee rule may provide a helpful financial tool to help accomplish Reclamation's goals. Reclamation has encouraged public participation through public meetings and has incorporated into the proposed rule public input from these meetings. The public was involved in developing the framework documents which were utilized in preparing the rule. Reclamation specifically addressed the Loan Guarantee program during public meetings held in Salt Lake City, UT on September 19 and 20, 2006 and received valuable feedback. Considering that those interested in the proposed rule are already aware of the framework and have had opportunity to provide input through these public meetings, Reclamation believes 30 days provides sufficient time to provide additional input on the proposal.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### List of Subjects in 43 CFR Part 403

Loan guarantee, Water supply.

Dated: September 29, 2008.

**Kameran L. Onley,**

*Acting Assistant Secretary—Water and Science.*

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 403 to Title 43 of the Code of Federal Regulations as follows:

### PART 403—RECLAMATION LOAN GUARANTEES

#### Subpart A—Loan Guarantee Program Overview

Sec.

- 403.1 What is the purpose of the program?
- 403.2 What terms are used in this part?
- 403.3 Are loan guarantees supported by the full faith and credit of the United States?
- 403.4 Who is eligible for a loan guarantee?
- 403.5 What can I finance under the program?
- 403.6 How do I obtain a loan guarantee?
- 403.7 What must be included in an application package?
- 403.8 [Reserved]
- 403.9 What are the criteria for program eligibility?
- 403.10 How will Reclamation evaluate my application?
- 403.11 What criteria will be used to prioritize loan requests?
- 403.12–403.15 [Reserved]
- 403.16 What permits must I obtain?
- 403.17 Where can I get more information about loan guarantees?
- 403.18 Does this rule contain an information collection that requires approval by OMB?
- 403.19 [Reserved]

#### Subpart B—Borrower Roles and Responsibilities

- 403.20 As a borrower, what is my role in the loan guarantee program?
- 403.21 What is my role in preparation of environmental compliance documents?
- 403.22 What is my role in preparing plans and specifications for the project?
- 403.23–403.24 [Reserved]
- 403.25 What are the application and contractual requirements if I apply for a guaranteed loan as a Joint Powers Authority (JPA)?
- 403.26–403.28 [Reserved]

#### Subpart C—Reclamation Roles and Responsibilities

- 403.29 What is Reclamation's role in the loan guarantee program?
- 403.30 What information will Reclamation maintain on the lender?

- 403.31 How much of the loan will Reclamation guarantee?
- 403.32 What is Reclamation's role in preparation of NEPA and other environmental compliance documents?
- 403.33 Can Reclamation make exceptions to requirements in this rule?
- 403.34–403.36 [Reserved]

#### Subpart D—Lender Criteria and Responsibilities

- 403.37 Which lenders are eligible to participate in the program?
- 403.38 What other requirements must a lender meet to participate in the program?
- 403.39 What is the lender's role in the program?
- 403.40 Can the lender cancel or modify a Conditional Commitment for Guarantee, or transfer it to another lender?
- 403.41 Can a lender sell or transfer the Loan Note Guarantee Agreement to another lender?
- 403.42 Can a lender sell the debt obligation in a secondary market?
- 403.43 What fees and costs is the lender responsible for?
- 403.44 Can Reclamation guarantee bonds sold to finance eligible projects?
- 403.45–403.46 [Reserved]

#### Subpart E—Guaranteed Loan Terms and Details

- 403.47 What conditions must be met before a Loan Note Guarantee Agreement is issued?
- 403.48 What is the maximum term I can obtain on a guaranteed loan?
- 403.49 Is there a limit on the size of a guaranteed loan?
- 403.50 What project costs are eligible to be covered by my guaranteed loan?
- 403.51 What if my project cost exceeds the estimated loan guarantee amount?
- 403.52 What interest rates and charges apply to my guaranteed loan?
- 403.53 Can I prepay or refinance a guaranteed loan?
- 403.54 When can an entity begin actual "on the ground" work on the project to be financed?
- 403.55 [Reserved]
- 403.56 Can the repayment of a loan guarantee be subordinated to any other financing?
- 403.57 Under what conditions would the United States not pay the guaranteed portion of a loan?
- 403.58 Will the requirements of the Reclamation Reform Act of 1982 apply?
- 403.59–403.62 [Reserved]

#### Subpart F—Default Actions and Termination

- 403.63 What options do I have if I have problems repaying the guaranteed loan?
- 403.64 How can Reclamation help me if I can't resolve repayment problems with my lender?
- 403.65 What happens if I still can't make my payments after working with the lender and Reclamation?
- 403.66 What are the actions and timelines associated with default proceedings?
- 403.67 What is the process for liquidation where collateral has been pledged?

- 403.68 What is the timeline for filing a Final Report of Loss?
- 403.69 [Reserved]
- 403.70 What interest does the lender have in the guaranteed loan after Reclamation makes a loss payment?
- 403.71 What will Reclamation do if a borrower defaults?
- 403.72 When does the Loan Note Guarantee Agreement terminate?
- 403.73 What happens if the non-Federal party breaches the existing Loan Note Guarantee Agreement?

**Authority:** Pub. L. 109–451, 120 Stat. 3345 (43 U.S.C. 2401 *et seq.*).

#### Subpart A—Loan Guarantee Program Overview

##### § 403.1 What is the purpose of the program?

(a) The purpose of the loan guarantee program is to provide Federal assistance to eligible non-Federal borrowers for eligible projects defined as follows:

- (1) A rural water supply project;
  - (2) An extraordinary operation and maintenance (O&M) activity for, or the rehabilitation or replacement of, a facility—
    - (i) That is authorized by Federal reclamation law and constructed by the United States under such law; or
    - (ii) In connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or
  - (3) An improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary—
    - (i) Improves water management; and
    - (ii) Fulfills other Federal goals.
- (b) The program does not include loans for routine O&M work.

##### § 403.2 What terms are used in this part?

The following definitions apply for terms used in this part:

*Applicant* means a non-Federal entity meeting the criteria in § 403.4 that seeks to obtain a Reclamation-guaranteed loan for a project meeting the criteria in § 403.5. The applicant is often referred to as "you" in this part.

*Borrower* means an Applicant who has entered into a Loan Note Guarantee Agreement with an eligible lender and Reclamation.

*Collateral* means non-Federal property of value pledged as security for satisfaction of the debt.

*Conditional Commitment for Guarantee* means a document issued by Reclamation and accepted by the Applicant and the lender, with the understanding of the parties that if the Applicant thereafter satisfies all specified and precedent funding obligations and all other contractual,

statutory and regulatory requirements, or other requirements specified in the document, DOI, the Applicant, and the lender may execute a Loan Note Guarantee Agreement: Provided that the Secretary may terminate a Conditional Commitment for Guarantee for any reason at any time prior to the execution of the Loan Note Guarantee Agreement. The Conditional Commitment is non-binding. Reclamation will only offer Conditional Commitments for Guarantee to the extent appropriations are available to support the loan guarantee.

*Extraordinary operation and maintenance* means major, non-recurring maintenance to Reclamation-owned or operated facilities, or facility components, that is:

(1) Intended to ensure the continued safe, dependable, and reliable delivery of authorized Reclamation project benefits; and

(2) Greater than 10 percent of the borrower's annual O&M budget for the facility, or greater than \$100,000.

*Financial capability to repay loan* means the borrower's ability to repay the loan as determined by the Secretary. Factors determining a borrower's financial capability may include, but are not limited to: Expenses as a ratio to income, amount of current debts/liabilities, projected revenues, including user fees or other dedicated revenue sources available to repay the guaranteed loan, the ability of Reclamation project beneficiaries to meet all operations, maintenance, and rehabilitation costs of the subject facilities and previous record of repaying obligations.

*Improvement to Water Infrastructure* means a valuable addition made to property, or an enhancement of its condition, including modernization, upgrades or other enhancements meant to conserve water, increase water use efficiency, or enhance water management, and does not include routine maintenance.

*Joint Financing* means a situation where two or more lenders (or any combination of lenders and other non-Federal financial sources) make separate, relatively contemporaneous loans or grants to supply the funds required by one borrower.

*Joint Powers Authority (JPA)* means a regional agency that:

(1) Represents two or more local entities (e.g., Reclamation repayment or water service contractors); and

(2) Exercises common powers as authorized by the State in which the local entities operate (some States may refer to such regional agencies by another name).

*Lender* means a non-Federal lending institution meeting the criteria in § 403.40 that has an agreement with Reclamation to participate in the loan guarantee program. The lender requests a loan guarantee from Reclamation and then works directly with the borrower to originate and service the loan.

*Lender's Agreement* means the signed agreement between Reclamation and the lender providing proof of the lender's eligibility to participate in the loan guarantee program, and containing the lender's responsibilities as defined in subpart D of this part. The Lender's Agreement is a single document that is valid for two years, as indicated in § 403.38. Only one Lender's Agreement will be required for each eligible lender.

*Loan Guarantee* means any guarantee, insurance, or other pledge by Reclamation to pay all or part of the principal of and interest on a loan or other debt obligation of a non-Federal borrower to a lender.

*Loan Guarantee Closing Report* means the Reclamation form prepared at the time a Loan Note Guarantee Agreement is issued and upon payment of guaranteed loan fees, or when the terms or conditions of the loan guarantee change, such as the assumption or assignment of guaranteed loans. This form must accompany all loan guarantee fee payments. The lender delivers this form and applicable fee to Reclamation.

*Loan Note Guarantee Agreement* means a written agreement that, when entered into by Reclamation, a borrower, and an eligible lender, pursuant to the Act, establishes the obligation of Reclamation to guarantee the payment of all or a portion of the principal and interest on specified guaranteed obligations of a borrower to eligible lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement.

*Project* means:

(1) A rural water supply project (as defined in section 102(9) of Title I of Public Law 109–451);

(2) An extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility—

(i) That is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) In connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

(3) An improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary—

(i) Improves water management; and  
(ii) Fulfills other Federal goals.

*Project Costs* means the expected financial obligations which may be incurred for the development and support of the various features of an eligible project, as specified in § 403.50. The key elements of estimating eligible project costs are detailed in existing Reclamation policy. Project costs do not include costs for the items set forth in § 403.50(b).

*Reclamation* means the Bureau of Reclamation, also referred to in this part as “us” and “we.”

*Reclamation Project* means a geographically-defined system of structures specifically authorized by Congress, such as the Central Arizona Project or the Central Valley Project.

*Rehabilitation and Replacement* means the processes of renovating a facility or system where performance is failing to meet the original criteria and needs of the Reclamation Project. This process is generally significant in terms of magnitude of work involved and related costs and, thus, also may benefit from the use of the loan guarantee program. Replacements are typically related to items with a defined service life. Examples of this could include the replacement of a dam gate or valve that has met or exceeded its expected service life, replacements of a reach of canal lining, or other work beyond the capability of the borrower to finance from annual O&M budgets or reserve funds.

*Report of Loss* means the Reclamation form used by lenders when reporting a loss on a Reclamation guaranteed loan.

*Reserved Works* means facilities owned, operated, and maintained by Reclamation, O&M costs of which may be paid in part by authorized Reclamation Project entities.

*Routine Operation and Maintenance* means recurring operation and maintenance activities such as minor repairs and replacement of parts and structural components, and other day-to-day activities needed to preserve a facility so that it continues to provide acceptable services and achieves its expected life. It excludes extraordinary operation and maintenance, rehabilitation, and replacement.

*Transferred Works* means facilities for which the management, funding (full or partial), and operation and maintenance has been transferred to one or more of the Reclamation Project beneficiaries. Reclamation still maintains ownership of the facilities.

#### **§ 403.3 Are loan guarantees supported by the full faith and credit of the United States?**

Yes. The full faith and credit of the United States is pledged to the payment of all guarantees issued under this

regulation with respect to principal and interest. Issuance of a Loan Note Guarantee Agreement constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation of which the lender has actual knowledge, participates in, or condones. Some exceptions may apply in cases where the lender does not perform reasonable and customary servicing of the loan, as described in § 403.60.

#### **§ 403.4 Who is eligible for a loan guarantee?**

To be eligible for a loan guarantee under this part, an entity must be either:

(a) A State (including department, agency, or political subdivision of a State); or

(b) A conservancy district, irrigation district, canal company, water users association, Indian tribe, an agency created by interstate compact or any other entity that has the capacity to contract with the United States under Federal reclamation law (e.g., a rural water association or a JPA).

#### **§ 403.5 What can I finance under the program?**

You can finance project costs as described in § 403.50(a) for any of the types of work listed in paragraphs (a), (b), or (c) of this section.

(a) Construction of projects determined to be eligible under Title I of Public Law 109–451, The Rural Water Supply Act of 2006.

(b) Extraordinary operation and maintenance for, or the rehabilitation or replacement of, a facility that:

(1) Is authorized by Federal reclamation law and constructed by the United States under that law; or

(2) Has in place a repayment or water service contract under Federal reclamation law. In addition to facilities where Reclamation holds title, this would include facilities constructed and operated by the U.S. Army Corps of Engineers, where irrigation water users contract with Reclamation for use of the water from the facilities and pay some portion of the O&M costs associated with those facilities.

(c) Improvements to water infrastructure directly associated with a Reclamation project. If you have existing facilities that are physically connected to or receive water directly from a Reclamation project, improvements to those facilities may qualify for financing under the program. Decisions on which facilities qualify under this section will be made on a case-by-case basis.



**§ 403.6 How do I obtain a loan guarantee?**

(a) After receiving appropriations for the loan guarantee program, we will issue solicitations to invite the submission of Applications for loan guarantees for eligible projects. We will issue a solicitation before proceeding with other steps in the loan guarantee process, including issuance of a loan guarantee. Each solicitation may include programmatic, technical, financial and other factors we will use to evaluate applications and such other information as we may deem appropriate.

(b) To obtain a loan guarantee under this rule, a proposed project must meet the eligibility criteria described in § 403.5 as well as any other criteria that may be identified in the solicitation.

(c) We recommend that you visit several qualified lenders to discuss the planned work, qualifications for a guaranteed loan, conditions or terms of a loan, etc. See § 403.37 for descriptions of eligible lending institutions. Once you determine which lending institution to use, you will work directly with the lender to secure its approval of your loan request based on its own financial analysis.

(d) Following a lender's approval of your loan request, you and the lender must prepare an application package to submit to us, as detailed in § 403.7, to request consideration for a loan guarantee. You and the lender may meet with us at this point in the process to discuss the requirements of the application package.

(e) When we receive your application, we will review it based on the criteria in § 403.10, and notify you and the lender whether we require additional information or the application has been denied. After completion of our review and evaluation, Reclamation may offer a conditional commitment for guarantee.

(f) You and the lender complete and sign the Acceptance of Conditions and return a copy to us. You will then continue to work with the lender to meet the conditions set forth in the Conditional Commitment for Guarantee.

(g) Once terms and conditions of the Conditional Commitment (such as NEPA compliance; necessary local, State, tribal, or Federal permits; and district election to approve indebtedness, if applicable), and any other applicable statutory, regulatory, and budgetary requirements are met, and the Secretary determines that the loan merits a guarantee, Reclamation, you, and the lender will sign the Loan Note Guarantee Agreement.

**§ 403.7 What must be included in an application package?**

An application package must contain the following:

(a) Application for Loan Guarantee on Form 7-2580;

(b) Proposed loan agreement between you and the lender;

(c) A report containing an analysis of the potential environmental impacts of the project. The report should be pursuant to the National Environmental Policy Act and in accordance with appropriate Reclamation standards.

(d) Preliminary architectural and/or engineering report, including financial feasibility analysis (as appropriate);

(e) Project cost estimates as described in § 403.50;

(f) Appraisal reports for real property serving as collateral, consistent with the Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Standards Board of the Appraisal Foundation and conducted by a state licensed or certified appraiser;

(g) Credit reports;

(h) Pro-forma cashflows;

(i) A loan schedule and documentation outlining the terms and conditions of the loan to be guaranteed;

(j) The lender's credit analysis which shall include an analysis demonstrating that at the time of the application, there is reasonable prospect that the Borrower will be able to repay the guaranteed obligation (including interest) from user fees or other dedicated revenue sources, as well as an analysis demonstrating that the borrower has the ability to pay all operation, maintenance, and rehabilitation costs of the project facilities;

(k) A full description of all security features (such as any project or non-project assets pledged as collateral to the obligation) that would ensure repayment;

(l) Proposed timeline for work accomplishment; and

(m) Any additional information required, as determined by Reclamation, including other information relied upon by the lender in approving the borrower's initial loan request.

**§ 403.8 [Reserved]****§ 403.9 What are the criteria for program eligibility?**

Section 403.4 defines who is eligible for a loan guarantee. In addition to meeting the entity eligibility criteria, a proposal must:

(a) Meet acceptable engineering, financial, public health, and environmental standards;

(b) Be for extraordinary repair, rehabilitation, replacement or

betterment to facilities owned by Reclamation, or for facilities which are associated with a repayment or water service contract executed by the United States under Federal Reclamation law;

(c) Be for improvements to water infrastructure directly associated with a Reclamation project;

(d) Be prepared or reviewed by a certified professional engineer;

(e) Have been reviewed by a financial institution for financial feasibility, and a letter of intent regarding the issuance of sufficient loan financing accompanies the proposal;

(f) Be accompanied by appropriate documentation prepared pursuant to the National Environmental Policy Act and in accordance with appropriate Reclamation standards;

(g) Demonstrate approval, as appropriate, of any party necessary for the borrower to enter into a Loan Note Guarantee Agreement;

(h) Demonstrate to the satisfaction of the Secretary the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

(i) Demonstrate to the satisfaction of the Secretary that the borrower has the ability to repay the project financing from user fees or other dedicated revenue sources;

(j) Demonstrate to the satisfaction of the Secretary that the borrower has the ability to pay all operation, maintenance, and rehabilitation costs of the project facilities;

(k) Describe the borrower's efforts to obtain alternative financing for the proposed project;

(l) Demonstrate that the borrower's proposed activities will be well managed, have clear deliverables, will be accomplished on schedule and within budget; and

(m) Describe how these planned activities will ensure the continued safe, dependable, and reliable delivery of authorized project benefits.

**§ 403.10 How will Reclamation evaluate my application?**

(a) In addition to the amount of funds available to use for loan guarantees, we will consider many different factors in evaluating your loan guarantee application and in determining whether to issue a Conditional Commitment for Guarantee and ultimately a Loan Note Guarantee Agreement. For projects described in §§ 403.5(b) and 403.5(c), the factors include, but are not limited to, the information provided pursuant to § 403.7 above, as well as:

(1) Engineering need;

(2) Your historical diligence and effectiveness in performance of O&M,



and demonstration of financial capability to meet routine O&M expenditures;

(3) Efficiency opportunities;  
(4) Environmental effects/impacts;  
(5) Range of alternatives considered (including a comparison of major rehabilitation or repair versus replacement of the affected facilities, if replacement is an appropriate alternative)); and

(6) Your financial capability to repay the guaranteed loan, assessed on the basis of:

(i) Outstanding debts and all other financial obligations;  
(ii) Amount of loan, rates, and terms;  
(iii) Past performance in repaying loans or other debts;  
(iv) Collateral/equity as appropriate;  
(v) Financial backing or support from local, State, or other non-Federal entities; and

(vi) Availability of reliable revenue sources, such as user fees and ad valorem taxes.

(b) While we do not expect to do so, we may waive certain criteria consistent with Title II of Public Law 109-451 section 203(b) that we determine to be duplicative or rendered unnecessary because of an action already taken by the United States.

(c) For projects described in § 403.5(a), a determination of eligibility under Title I of Public Law 109-451 will establish eligibility for participation in the loan guarantee program. Additional eligibility criteria and program requirements for such projects will be published in the future as supplements to this part.

(d) As a part of our evaluation of your loan application, we will use any additional information that we deem appropriate to verify the data included in your loan guarantee application in order to:

(1) Determine the eligibility of a project;  
(2) Establish a priority ranking of all eligible projects; and  
(3) Determine which projects we will offer a Conditional Commitment for Guarantee.

(e) If your application fails to meet the requirements of paragraph (a) of this section, we will notify you of the criteria we deem to be deficient and may take one or more of the following actions:

(1) Request additional information to correct identified deficiencies;  
(2) Request one or more meetings with you to address deficiencies;  
(3) Return the application and request that you address identified deficiencies; or  
(4) Eliminate your application from further review.

(f) You may modify your application to correct deficiencies identified in paragraph (e) of this section and, in the case of paragraph (e)(3) of this section, resubmit your application to us for re-evaluation if allowed under the terms of the solicitation. We will not complete our evaluation of an application until all identified deficiencies are resolved and resubmission of the application does not impose any obligation or requirement for us to offer a Conditional Commitment for Guarantee or a Loan Note Guarantee Agreement.

(g) Any form of response or communication from us, or lack thereof, regarding your loan guarantee application shall not impose any obligation on us to issue a Conditional Commitment for Guarantee.

#### **§ 403.11 What criteria will be used to prioritize loan requests?**

Applicants will be evaluated against other applicants and greater weight will be given to applicants with the greatest engineering need. After meeting the program eligibility criteria provided in § 403.9, loan guarantee proposals will be prioritized based on the following criteria. Applicants will be evaluated against other applicants and greater weight will be given to applicants with the greatest engineering need and any other factors that may be identified in the solicitation, including those noted below.

(a) Engineering Need. (1) For category (B) and (C) projects, a major factor in prioritization of eligible applicants will be the extent to which engineering analysis demonstrates that the facilities face existing or potential conditions that would severely impair their performance (e.g., significant reduction of service delivery or reliability). The analysis can be provided by the applicant, a consultant to the applicant, or by Reclamation, in the case of facilities operated and maintained by Reclamation for which the applicant is required to share in the O&M costs. The analysis should cite:

(i) The time frame over which the impairment could reasonably be expected;  
(ii) The consequences of impairment; and  
(iii) Risk factors that could be mitigated if the project is undertaken.

(2) For Category (B) projects, proposals should cite findings from Reclamation's Review of Operation and Maintenance (RO&M) Program and Facility Review reports as support for the maintenance or rehabilitation need.

(b) History of Operations and Maintenance. For Category (B) projects, the proposal will document the history

of O&M activities by the applicant, supported by Reclamation's RO&M and Facility Review reports. An evaluation will be made as to the applicant's diligence in operating and maintaining the assets entrusted to them by Reclamation. For all other projects with existing history, evaluation will be made based on information provided in the application and any other available information sources.

(c) Efficiency Opportunities. Engineering analysis demonstrates that there is a significant opportunity to substantially reduce future routine O&M costs associated with the facility and/or conserve or more efficiently manage the water that would be otherwise lost to seepage, evaporation, or other factors which directly result from facility deterioration due to age or use. The expected amount of O&M cost reduction or water saved will be one of the prioritization considerations.

(d) Financial Strength/Need/Feasibility. The overall financial strength of the proposed project, including the borrower's capacity to repay the loan and meet all other obligations (beyond demonstration to the satisfaction of the Secretary of the capacity to repay the loan and other financial eligibility requirements) will be considered in the prioritization as well. The proposal will also demonstrate the portion of the work to be funded by private sources, as well as any contribution expected from any non-Federal governmental agency. The proposal must demonstrate that it is infeasible for the applicant to finance the project using its current resources (e.g., reserve funds, tax base, etc.).

(e) Environmental Effects. The potential for the proposed project to further reduce existing negative environmental effects or to provide environmental benefits.

(f) Alternatives Considered. The proposal will document alternatives to the anticipated proposed work, including the "no action" alternative, the estimated costs for such alternatives, and reasons those alternatives were not selected. The extent to which all viable alternatives have been considered will also be taken into account in the prioritization process.

(g) Best Management Practices. The proposal demonstrates that the borrower's proposed activities have clear deliverables, can reasonably be expected to be accomplished on schedule, within budget, and have tangible performance targets.

**§§ 403.12–403.15 [Reserved]****§ 403.16 What permits must I obtain?**

Environmental compliance processes and other permits are required by law, and your project schedule and budget must account for this activity. You should consult with your local Reclamation office regarding details on the environmental compliance and permitting process. The following provides examples of permits and approvals often required:

(a) Federal—NEPA, Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act compliance, and Clean Water Act permits (401, 402, 404 permits);

(b) State—rights-of-way, water use, mineral use permits, and State environmental compliance;

(c) Tribal—rights-of-way, water use, cultural resources, mineral use permits, etc.; and

(d) Local/private—rights-of-way, water use, mineral use permits, and road use permits.

**§ 403.17 Where can I get more information about loan guarantees?**

You may contact your nearest Reclamation office for more information or assistance. Contact information may be found at <http://www.usbr.gov>.

**§ 403.18 Does this rule contain an information collection that requires approval by OMB?**

Yes. It does contain an information collection that is approved by OMB, under Control Number 1006-XXXX. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**403.19 [Reserved]****Subpart B—Borrower Roles and Responsibilities****§ 403.20 As a borrower, what is my role in the loan guarantee program?**

As the borrower, you are the initiator of the loan guarantee process. You must do all of the following:

(a) Apply for participation in the loan guarantee program;

(b) Work with the lender for approval and conditions/terms of the loan;

(c) Work with both the lender and us throughout the process and life of the loan;

(d) Be financially responsible to repay the money borrowed under this program;

(e) Be responsible for obtaining all necessary approvals, permits, or other conditions necessary for the project, and

ensuring all contractual and other requirements related to the project, the facility, and the loan guarantee are met; and

(f) Be responsible for ensuring all required documents are completed and submitted as required in order to complete your project.

**§ 403.21 What is my role in preparation of environmental compliance documents?**

(a) NEPA and other documents may be prepared by Reclamation, by you, or by a consultant employed by you and approved by Reclamation. You will work with your local Reclamation office to decide who will prepare these documents. Regardless of who prepares the NEPA documents, we must independently evaluate them for sufficiency before final approval. We will work closely with you and any consultant involved.

(b) If the NEPA document is an Environmental Impact Statement, Reclamation must select, alone or in cooperation with you, any NEPA contractor before they begin work on the document.

(c) We will allocate all costs associated with NEPA and other forms of required environmental compliance among the authorized purposes benefiting from the project for which the loan guarantee is being sought, and you will be responsible for your allocated share of those costs.

**§ 403.22 What is my role in preparing plans and specifications for the project?**

If your project meets the descriptions in §§ 403.5(b) and 403.5(c), you may request that we prepare the plans and specifications, you may hire a consultant to prepare them, or you may prepare them yourself. Regardless of who prepares the documents, we must review and approve them. Reclamation must be consulted on any subsequent changes to determine if further approval is required. You must pay us for all appropriate allocated costs incurred in this review and approval. If you ask us to prepare these documents, you must also pay our costs for the preparation.

**§§ 403.23–403.24 [Reserved]****§ 403.25 What are the application and contractual requirements if I apply for a guaranteed loan as a Joint Powers Authority (JPA)?**

If you are a JPA, you must meet all of the requirements of this section.

(a) Your application must:

(1) Identify each of the participating local water entities responsible to your JPA for revenues to repay the guaranteed loan;

(2) Identify each participating entity's authority to act on behalf of its water

users or other constituents relative to the proposed obligation; and

(3) Identify the authorities through which the participating entities will assess and collect revenues necessary to repay through the JPA its share of the proposed loan obligation.

(b) You must supply required financial information for each local entity.

(c) You must determine the allocation of the loan obligation among the various entities of your JPA.

(d) The participating entities must formally acknowledge their respective portions of the loan obligation and must sign all applicable loan agreements.

**§§ 403.26–403.28 [Reserved]****Subpart C—Reclamation Roles and Responsibilities****§ 403.29 What is Reclamation's role in the loan guarantee program?**

Reclamation has general oversight and administers the loan guarantee program. In these capacities we:

(a) Issue solicitations for loan guarantee applications, as described in § 403.6(a);

(b) Work with you and the lender when you submit your request for a loan guarantee;

(c) Review all applications received and determine who will receive loan guarantees and for how much;

(d) Ensure appropriate completion of the project in accordance with plans and specifications; and

(e) Manage and ensure proper oversight of the overall loan guarantee program.

**§ 403.30 What information will Reclamation maintain on the lender?**

We will maintain an operational file on each lender. This file will contain, among other things:

(a) Information on the guaranteed loans originated and serviced by the lender;

(b) Any correspondence between us and the lender;

(c) Any Conditional Commitments for Guarantee;

(d) The Lender's Agreement;

(e) Any Loan Note Guarantee Agreements issued to the lender; and

(f) Any Loan Guarantee Closing Report prepared for each loan.

**§ 403.31 How much of the loan will Reclamation guarantee?**

We will guarantee up to 80 percent of the principal and up to 90 days accrued interest from the first missed payment for eligible losses, as set forth in Subpart F and in the Lender's Agreement. This guarantee is backed by the full faith and

credit of the United States, provided the lender does not demonstrate negligence in loan origination and servicing.

**§ 403.32 What is Reclamation's role in preparation of NEPA and other environmental compliance documents?**

We will determine the appropriate level of NEPA documentation for each project. The NEPA documentation may be prepared by Reclamation, by you, or by a consultant employed by you and approved by us. We will work with you to decide who can best prepare the documentation. Regardless of who prepares the NEPA documents, we must independently evaluate them for sufficiency before final approval.

**§ 403.33 Can Reclamation make exceptions to requirements in this rule?**

Yes. The Secretary may waive any of the eligibility criteria that he/she determines to be duplicative or rendered unnecessary because of an action already taken by the United States. Waivers will only be considered to the extent that the criteria have been demonstrated to be satisfied.

**§§ 403.34–403.36 [Reserved]**

**Subpart D—Lender Criteria and Responsibilities**

**§ 403.37 Which lenders are eligible to participate in the program?**

(a) An eligible lender is:

(1) Any non-Federal qualified institutional buyer (as defined in 17 CFR 230.144A(a), or any successor regulation, known as Rule 144A(a) of the Securities and Exchange Commission); or

(2) Any clean renewable energy bond lender (as defined in section 54(j)(2) of the Internal Revenue Code of 1986 (as in effect on the date of enactment of Public Law 109–451)).

(b) [Reserved]

**§ 403.38 What other requirements must a lender meet to participate in the program?**

A lender wishing to participate in the loan guarantee program must submit proof to us that they are an eligible lender under § 403.37 and that they meet the requirements of this section prior to submitting an application package as described in § 403.7. Once a lender has executed a Lender's Agreement with us, they will be considered an approved lender for a period of two years provided that there is no adverse event that would affect the status of the lender, such as those listed in § 403.39(c), and need not resubmit proof of eligibility for each subsequent guaranteed loan application. At the end of this two-year period or upon information that the lender may no

longer meet current eligibility criteria, we will re-evaluate the lender's eligibility under the program.

(a) If the lender has losses or deficiencies in processing and servicing any federally guaranteed loans, they must not be above a level that indicates an inability to properly process and service a loan guaranteed by Reclamation. We may consult with other Federal agencies to determine if previous problems, as evidenced in monitoring reports, excessive loss claims, or denial of loss claims, should be considered in this determination.

(b) The lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency listed below. Examination will normally include a review of the lender's asset quality, management practices, financial condition, and compliance with applicable laws and regulations. Regulating agencies may include:

- (1) Federal Deposit Insurance Corporation (FDIC);
  - (2) Office of Comptroller of the Currency;
  - (3) Office of Thrift Supervision;
  - (4) Federal Reserve Bank;
  - (5) Farm Credit Administration (FCA);
  - (6) National Credit Union Administration; and
  - (7) State banking Commissions.
- (c) The lender and its principal officers and staff must demonstrate capability to fulfill guaranteed loan servicing responsibilities.

(d) If the lender is regulated only by a State regulatory agency, and not a Federal regulatory agency, then it must also meet the following financial and capital requirements:

- (1) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 2 percent of loans outstanding and historic losses not exceeding 1 percent of dollars loaned;
- (2) Have tangible balance sheet equity of at least eight percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender; and
- (3) The lender, its officers, or agents must not be debarred or suspended from participation in government contracts or programs and must not be delinquent on a Federal Government debt.

**§ 403.39 What is the lender's role in the program?**

The lender must evaluate and administer the guaranteed loans as required by paragraph (a) of this section

and notify us of changes in status, as required by paragraph (b) of this section.

(a) The lender is responsible for all of the following:

(1) Determining whether the loan guarantee applicants meet the general eligibility requirements for a loan guarantee, from its perspective;

(2) Performing underwriting, due diligence, and evaluating the creditworthiness of the project consistent with the lender's standard lending policies and considering all relevant information;

(3) Determining if the proposed borrower is delinquent on any debt (if the borrower is delinquent on any debt, processing of the application may continue only with our written approval);

(4) Disclosing to Reclamation any business or ownership relationships between principals of the lender and borrower where the lender's officers, stockholders, directors, or partners, or the borrower, its officers, stockholders, directors, or partners own, or have management responsibilities in each other (this does not necessarily preclude such relationships);

(5) Originating and servicing all Reclamation guaranteed loans in its portfolio in accordance with the Lender's Agreement, including all of the requirements of paragraph (b) of this section;

(6) Assessing late charges of any kind including default charges and default interest in accordance with the terms and conditions approved by Reclamation under the Loan Note Guarantee Agreement (**Note:** None of these will be covered by the guarantee);

(7) Notifying us of any actions taken to cure a guaranteed loan experiencing repayment difficulties as discussed in § 403.63;

(8) Allowing us to inspect and make copies of any of the records of the lender pertaining to the guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and Reclamation agree upon;

(9) Obtaining written approval from us before making any new loans to, or additional expenditures on behalf of, the borrower, which approval is subject to our discretion;

(10) Protecting the guaranteed loan debt and any collateral securing it in bankruptcy proceedings;

(11) Advising Reclamation promptly and in writing of any changes or conditions of the loan that may result in delinquency, inability to pay, or default by the borrower; and

(12) Advising Reclamation promptly and in writing of any financial problems

or circumstances that the non-Federal entity may have that would cause them to be delinquent in repayment of an existing obligation.

(b) For purposes of paragraph (a) (4) of this section, originating and servicing guaranteed loans includes all of the following:

(1) Servicing the entire loan in accordance with the Lender's Agreement. The un-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan;

(2) Taking all servicing actions that a prudent lender would perform in servicing a portfolio of loans that are not guaranteed, including, but not limited to, collecting payments, obtaining compliance with the covenants and provisions in the note, loan agreement, security instrument, or any supplemental agreements, verifying the payment of taxes and insurance premiums as appropriate, maintaining necessary liens on any collateral, and notifying Reclamation of any violation of the loan agreement with the borrower within 30 days of such violation;

(3) Obtaining financial statements required by the Lender's Agreement, analyzing these statements, and providing the statements, along with the lender's analysis of the financial conditions of the borrower and supporting documentation, to us within 120 days of the end of the borrowers fiscal year;

(4) When applicable, requiring audits of the borrower in accordance with Office of Management and Budget circulars, available from the Reclamation contacts listed in § 403.17;

(5) Reporting monthly data on a quarterly basis to Reclamation the outstanding principal and interest balance on each guaranteed loan in its portfolio, and other information as specified in the Lender's Agreement; and

(6) Servicing delinquent loans in accordance with the Lender's Agreement and reasonable and prudent lending standards, to include monthly reporting to us on the status of delinquent loans; and

(7) Inspecting any collateral as often as necessary to ensure the proper maintenance of its value.

(c) The lender must immediately notify us in writing if it:

(1) Becomes insolvent;

(2) Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(3) Has taken any action to cease operations, or to discontinue servicing its portfolio guaranteed by Reclamation;

(4) Intends to sell the guaranteed loan to another entity;

(5) Changes its name, location, address, tax identification number, or corporate structure;

(6) Is or has been debarred, suspended, or sanctioned in connection with its participation in any Federal loan guarantee program; or is or has been debarred, suspended, or sanctioned by any Federal or State licensing or certification authority.

**§ 403.40 Can the lender cancel or modify a Conditional Commitment for Guarantee, or transfer it to another lender?**

(a) Once the Conditional Commitment for Guarantee is issued and accepted, no modifications may be made as to the scope and overall concept of the project or the project purpose, use of the proceeds, or other significant terms and conditions.

(b) Before issuance of the Loan Note Guarantee Agreement, Reclamation may approve the transfer of the Conditional Commitment for Guarantee to a new eligible lender, provided that:

(1) The former lender states in writing why it does not wish to continue to be the lender for the project;

(2) No substantive changes in ownership or control of the borrower have occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project have occurred;

(4) No substantive changes in the loan agreement with the borrower or the Conditional Commitment for Guarantee are required;

(5) The new lender is acceptable to Reclamation, and has a current Lender's Agreement, or will have a Lender's Agreement in place prior to the sale; and

(6) Such a transfer meets all other statutory, regulatory, and other requirements.

**§ 403.41 Can a lender sell or transfer the Loan Note Guarantee Agreement to another lender?**

A lender can sell or transfer a guaranteed loan to another lender if all of the requirements of this section are met.

(a) We must approve the sale or transfer in writing by executing a modification of the guarantee to identify the new lender and the amount of debt at the time of the substitution. Any change must meet all applicable statutory, regulatory, and budgetary requirements for approval.

(b) The new lender must agree in writing to:

(1) Assume all servicing and other responsibilities of the original lender and to acquire both the guaranteed and non-guaranteed portions of the loan;

(2) Execute a Lender's Agreement if one is not in effect; and

(3) Give the borrower written notice of the substitution.

(c) The original lender must obtain written concurrence from the borrower if the rate or terms are changed (and such changes have been approved).

(d) The original lender must assign its promissory note, lien instruments, loan agreements, and other documents to the new lender.

**§ 403.42 Can a lender sell the debt obligation in a secondary market?**

A lender can sell the debt obligation in a secondary market (for example, as a participation). However, the lender must:

(a) Notify us of the sale, and the associated holder information;

(b) Sell both the guaranteed and the non-guaranteed portions of the loan together proportionally; and

(c) Continue to service the loan.

**§ 403.43 What fees and costs is the lender responsible for?**

The lender is responsible for:

(a) Paying a loan guarantee fee of 1 percent to Reclamation; and

(b) At least 20 percent of the outstanding loan amount, if the borrower defaults on the loan.

(c) The lender's own costs associated with the loan guarantee program, including underwriting, servicing, and liquidation of a loan, including any legal or other costs.

**§ 403.44 Can Reclamation guarantee bonds sold to finance eligible projects?**

No. Reclamation cannot guarantee bonds. Bond issuers do not qualify as eligible lenders under § 403.37.

**§§ 403.45–403.46 [Reserved]**

**Subpart E—Guaranteed Loan Terms and Details**

**§ 403.47 What conditions must be met before a Loan Note Guarantee Agreement is issued?**

The Loan Note Guarantee Agreement may be issued only after the following have occurred:

(a) All terms of the Conditional Commitment for Guarantee have been met, to the satisfaction of Reclamation;

(b) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved by Reclamation in writing;

(c) The lender certifies that there have been no substantive adverse changes in the borrower's financial condition or any other adverse change in the borrower during the period of time from the issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee Agreement;

(d) Land access and all necessary permits are obtained;

(e) Environmental compliance has been completed and approved by Reclamation;

(f) Federal funds are available;

(g) Reclamation has approved final plans and specifications;

(h) All applicable security, safety, and health issues are resolved;

(i) The lender has executed the Lender's Agreement with us, paid the appropriate guarantee fee, and a Loan Guarantee Closing Report has been completed;

(j) All other applicable statutory, regulatory, and budgetary requirements have been met;

(k) Reclamation, in consultation with other Federal agencies determines that the project is consistent with all applicable Federal and United States Treasury policies and is in the best interest of the Federal government; and

(l) The Secretary has approved the loan for a Loan Note Guarantee Agreement.

**§ 403.48 What is the maximum term I can obtain on a guaranteed loan?**

A loan guarantee must provide for complete amortization of the loan within the useful life of the project, but not more than 40 years. Lenders may offer shorter terms.

**§ 403.49 Is there a limit on the size of a guaranteed loan?**

Public Law 109–451 limits the size of the loan to 90 percent of eligible project costs. Reclamation would only guarantee up to 80% of that total loan amount.

**§ 403.50 What project costs are eligible to be covered by my guaranteed loan?**

Before issuing a Loan Note Guarantee Agreement, we will determine the adequacy and appropriateness of estimated Project Costs for the project that is the subject of the agreement. In order for us to make that determination, the application must include an estimate of project costs that complies with applicable Reclamation policy. Among other things, you must calculate the sum of necessary, reasonable and customary costs that you have paid and expect to pay, which are directly related to the project, including costs for escalation and contingencies, to estimate the total Project Costs. All

estimated costs must be clearly described and documented in your application for a loan guarantee.

(a) Project Costs may include, but are not limited to:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with rehabilitating or replacing the facility; including materials, labor, services, travel and transportation for facility design, construction, and startup;

(3) Costs of equipment purchases;

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

(5) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) Costs of necessary and appropriate insurance and bonds of all types;

(7) Contract costs and non-contract costs, including appropriate contingencies, allowances for procurement strategies, and cost escalation estimates;

(8) Capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction; and

(9) Other necessary and reasonable costs.

(b) Project Costs do not include:

(1) Fees and commissions charged to borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-project-related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Costs that are excessive or are not directly required to carry out the project, as determined by us, including but not limited to the cost of hedging instruments; and

(4) Operating costs.

**§ 403.51 What if my project cost exceeds the estimated loan amount?**

If a project satisfies the criteria in §§ 403.5(b) or 403.5(c), and costs exceed the estimated, then:

(a) If your project cost estimate increases after we issue a Conditional Commitment for Guarantee, but before we enter into the Loan Note Guarantee Agreement, you will be required to

notify us of the increase and justify the increase to us. We will then determine how such changes would affect any applicable statutory, regulatory, and budgetary requirements, and whether to re-evaluate the revised project to receive a loan guarantee, or reject your revised application. If we determine that we can re-evaluate your project, we may require you to make arrangements for additional funds or financing which are agreeable to us and the lender.

(b) If your actual project costs exceed the amount specified in the Loan Note Guarantee Agreement, you will notify us and we will consult with you regarding such cost increases to determine what course of action to take, including requiring you to obtain additional funds to finish the project in a manner satisfactory to us and the lender.

(c) Any additional funding or financing must be consistent with Public Law 109–451, all requirements of this part, and any other statutory, regulatory, or budgetary requirements necessary for Reclamation approval.

**§ 403.52 What interest rates and charges apply to my guaranteed loan?**

(a) Your loan will bear interest at a rate or rates negotiated between you and the lender. They must be fixed rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to our review and approval. We will determine if the rate is reasonable after consultation with the Treasury Department, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government.

(b) Any change in the interest rate between the date of issuance of the Conditional Commitment for Guarantee and before the issuance of the Loan Note Guarantee Agreement must be approved by us.

**§ 403.53 Can I prepay or refinance a guaranteed loan?**

You must negotiate any prepayment or refinancing terms on a loan guarantee with the lender, subject to our consent. All applicable statutory, regulatory, and budgetary requirements must be met for Reclamation consent.

**§ 403.54 When can an entity begin actual "on the ground" work on the project to be financed?**

(a) An entity can begin actual work on the facilities or components upon issuance of the Loan Note Guarantee Agreement.

(b) Any work done by a water user entity more than 90 days before a Loan

Note Guarantee Agreement is issued may not be included in the eligible project costs. In addition, any work initiated by a water user entity 90 or fewer days prior to our issuing a Loan Note Guarantee Agreement may or may not be included in the eligible project costs and would be done at the risk of not receiving the loan guarantee, even though such work may have been approved by us and included in the Conditional Commitment for Guarantee.

**§ 403.55 [Reserved]**

**§ 403.56 Can the repayment of a guaranteed loan be subordinated to any other financing?**

No. We will only guarantee a loan under this part subject to the condition that the obligation is not subordinate to other financing. In addition:

(a) For projects without pledged collateral, the loan must be superior to any other financing for the project (as approved by Reclamation) and on a position of parity with regard to other non-collateralized obligations of the borrower; i.e., in the event of a default, all non-secured lenders are affected on a proportionate basis.

(b) For all other eligible projects, the loan must be fully secured through project facilities pledged as collateral for the loan and there shall be no other liens on such collateral. Consistent with the requirements of the Act, the rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) Where joint financing of a project occurs, the loan for which a guarantee is sought from Reclamation must have at least a parity position with the other lender(s), such that in the event of default, each lender will be affected in proportion to the share of financing it provides.

(d) The non-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

**§ 403.57 Under what conditions would the United States not pay the guaranteed portion of a loan?**

(a) The Loan Note Guarantee Agreement will not be enforceable by

the lender to the extent that any loss is a result of fraud, violation of usury laws, negligent servicing, or failure to obtain any security designated in the Lender's Agreement, regardless of when Reclamation acquires knowledge of any of the foregoing.

(b) For purposes of this provision, negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a reasonably timely manner, or acting significantly contrary to the manner in which a reasonable and prudent lender would act up to the time of loan maturity, or until a final loss is paid.

(c) Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by Reclamation in the Conditional Commitment for Guarantee and Loan Note Guarantee Agreement. Reclamation will review all loss claims, and claims may be denied, for example, in cases where the lender does not perform reasonable and customary servicing of the loan or claims include amounts not covered under the terms of the Loan Note Guarantee Agreement.

**§ 403.58 Will the requirements of the Reclamation Reform Act of 1982 apply?**

No. The loan to be guaranteed is between the borrower and a private lending institution and therefore does not meet the definition of a contract as provided in Section 202(1) of the Reclamation Reform Act of 1982.

**§§ 403.59–403.62 [Reserved]**

**Subpart F—Default Actions and Termination.**

**§ 403.63 What options do I have if I have problems repaying the guaranteed loan?**

If you have problems paying your loan, contact Reclamation and your lender for consideration of possible options.

**§ 403.64 How can Reclamation help me if I can't resolve repayment problems with my lender?**

If you cannot resolve repayment problems with your lender, Reclamation

may, before default, enter into an agreement with your lender to pay the principal and interest payment you currently owe the lender. Although we do not anticipate having sufficient funds or justification to exercise this option, we may consider this option if all of the following conditions are met:

(a) The non-Federal borrower is unable to meet the payment and is not in default;

(b) We determine that it is in the public interest that you be permitted to continue your project, and that the probable net benefit to the Federal Government in making such payment on your behalf is greater than that which would result if your guaranteed loan defaulted;

(c) We have sufficient funds specifically appropriated and available for this purpose;

(d) The payment authorized is not greater than the amount of principal and interest that you are obligated to pay under the terms of the Loan Note Guarantee Agreement;

(e) You agree to execute all written agreements required by us for such purpose and reimburse us for the payment we make on terms and conditions satisfactory to us; and

(f) You will, and are financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due and on other debt obligations of the project.

**§ 403.65 What happens if I still can't make my payments after working with the lender and Reclamation?**

If you cannot make payments after working with the lender and with Reclamation under § 403.63, then the lender may start default proceedings.

**§ 403.66 What are the actions and timelines associated with default proceedings?**

The lender will notify us when your loan payment is 30 days past due. If the payment becomes 60 days past due, the lender will meet with you and us to discuss default proceedings and potential resolution of the problem. The timeframe for default proceedings are shown in the following table:

Action in the default process	Timeframe (days from pmt due date)	
	Collateral pledged	No collateral pledged
Lender notifies Reclamation that loan is past due .....	30	30
Lender meets with Reclamation and borrower to discuss default proceedings and potential resolution of the problem .....	60	60
Reclamation, Borrower, and lender seek possible cures .....	75	75

Action in the default process	Timeframe (days from pmt due date)	
	Collateral pledged	No collateral pledged
Reclamation and lender determine whether a cure is possible. If no cure can be found, the loan is in default and any collateral pledged for the loan becomes eligible for liquidation .....	90	90
Lender submits a proposed method of liquidation in writing .....	120	N/A
Reclamation informs lender if liquidation plan is approved .....	150	N/A
Lender files an estimated loss claim if liquidation will exceed 90 days .....	180	N/A
Lender files final Report of Loss .....	210	120
Reclamation makes loss payment .....	270	180

#### **§ 403.67 What is the process for liquidation of pledged collateral?**

(a) Any of the following factors may lead to a decision to liquidate:

(1) The loan has been delinquent 90 days;

(2) Delaying liquidation will jeopardize recovery of the loan collateral; or

(3) Borrower or lender has been uncooperative in resolving the default;

(b) The lender must, within 30 days after a decision to liquidate, submit to Reclamation in writing a proposed method of liquidation. Reclamation will not make any payments for estimated or actual losses prior to final Report of Loss.

(c) Within 30 days after receiving the liquidation plan, we will inform the lender in writing whether we concur.

(d) The lender will discontinue interest accrual at the point of default, or 90 days after the first payment was missed, whichever is earlier.

(e) When the lender conducts the liquidation, it must account for funds during the period of liquidation and will provide us with reports at least quarterly on the progress of the liquidation. Only expenses authorized by Chapter 9 plans or Chapter 11 reorganizations, or Chapters 11 or 7 liquidations (United States Bankruptcy Code) may be deducted from collateral proceeds, if any.

#### **§ 403.68 What is the timeline for filing a Final Report of Loss?**

Within 30 days after liquidation of all collateral, the lender must prepare a final Report of Loss and submit it to us. We will not guarantee interest beyond the point of borrower default. We will pay the approved loss payment within 60 days after reviewing the final Report of Loss and accounting of the collateral.

#### **§ 403.69 [Reserved]**

#### **§ 403.70 What interest does the lender have in the guaranteed loan after Reclamation makes a loss payment?**

When we receive a final Report of Loss and pay the loss claim, we are immediately subrogated to the lender in

all rights with respect to the guaranteed loan. The lender must sign and deliver to Reclamation an assignment of any rights it may have had with respect to the guaranteed loan.

#### **§ 403.71 What will Reclamation do if a borrower defaults?**

If a borrower defaults, we are required to notify the Attorney General. The Attorney General will take appropriate action to recover the unpaid principal and interest due from assets of the defaulting non-Federal borrower associated with the obligation, or any other collateral pledged to secure the obligation.

#### **§ 403.72 When does the Loan Note Guarantee Agreement terminate?**

A Loan Note Guarantee Agreement under this part will terminate automatically upon:

(a) Full Repayment of the guaranteed loan;

(b) Full Payment of any loss obligation or negotiated loss settlement as described in the Lender's Agreement; or

(c) Written request from the lender to Reclamation, upon return of the Loan Note Guarantee Agreement to Reclamation.

#### **§ 403.73 What happens if the non-Federal party breaches the existing Loan Note Guarantee Agreement?**

The Federal Government reserves the right to prosecute both the borrower and the lender to the fullest extent possible under existing laws until full recompense has been made and the conditions of the Loan Note Guarantee Agreement have been fulfilled. In addition, if a Loan Note Guarantee Agreement is breached, the Borrower will no longer be eligible to receive a Federally-guaranteed loan for any of its future activities or projects, and may not be eligible for other Federal assistance. Furthermore, any lender in breach of a Loan Note Guarantee Agreement will be responsible for paying any additional fees as determined necessary to the Federal Government and will not be allowed to hold a Federal Government

note until the United States Treasury has been paid in full.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 697**

[Docket No. 070717357-7593-02]

RIN 0648-AV77

### **Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes new Federal American lobster (*Homarus americanus*) regulations that would implement a mandatory Federal lobster dealer electronic reporting requirement, changes to the maximum carapace length regulations for several lobster conservation management areas (LCMAs/Areas), and a modification of the v-notch definition in certain LCMAs. This action responds to the recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). Implementation of a mandatory Federal lobster dealer reporting requirement would be consistent with the recommendations for Federal action by the Commission in Addendum X to Amendment 3 of the ISFMP and would assist in providing a more comprehensive and consistent coastwide accounting of lobster harvest data to facilitate stock assessment and fishery management. Additionally, this action intends to implement new and revise existing Federal lobster