Signed in Washington, DC, on May 19, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 460 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 460—ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

■ 1. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 17071; 42 U.S.C. 7101 *et seq.*

■ 2. Revise § 460.1 to read as follows:

§ 460.1 Scope.

This subpart establishes energy conservation standards for manufactured homes as manufactured at the factory, prior to distribution in commerce for sale or installation in the field. Manufacturers must apply the requirements of this part to a manufactured home subject to § 460.4(b) that is manufactured on or after 60 days after publication of final enforcement procedures for this part. DOE will amend this section to include the specific compliance date, once known. Manufacturers must apply the requirements of this part to a manufactured home subject to § 460.4(c) that is manufactured on or after July 1, 2025.

Subpart D—[Added and Reserved]

■ 3. Add reserved subpart D.

[FR Doc. 2023–11043 Filed 5–26–23; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB59

Loan Guarantees for Clean Energy Projects

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Energy (''DOE'') issues this interim final rule (''IFR'') amending the regulations implementing the loan guarantee provisions in Title XVII of the Energy Policy Act of 2005 (''Title XVII'') to implement provisions of the Inflation Reduction Act of 2022 (''IRA'') that expand or modify the authorities applicable to the Title XVII Loan Guarantee Program. Specifically, this IFR: establishes regulations necessary to implement the Energy Implementation Reinvestment (''EIR'') Program and other categories of projects authorized by the IRA for Title XVII loan guarantees; revises provisions directly related to DOE's implementation of the Title XVII Loan Guarantee Program as expanded by the IRA; amends provisions to conform with the broader changes to the Title XVII Loan Guarantee Program; and revises certain sections for clarity and organization. DOE is issuing an IFR due to the urgency to implement an additional potential $290 billion of loan authority for loan guarantees prior to the loan guarantee authority expiration in 2026 and to provide the opportunity for all eligible projects to seek loan guarantees under the new IRA provisions. The amendments in this IFR also facilitate the increased volume of applications resulting from the new authorities and funding in the IRA and provide efficiencies in the loan processing.

DATES: This IFR is effective May 30, 2023. DOE will accept comments, data, and information regarding this IFR no later than July 31, 2023.

ADDRESSES: Interested persons may submit comments, identified by RIN 1901–AB59, by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

Electronic Mail (*Email): LPO.IFR@hq.doe.gov.* Include the RIN 1901–AB59 in the subject line of the message.

Postal Mail: Loan Programs Office, Attn: LPO Legal Department, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121. Please submit one signed original paper copy. Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

Hand Delivery/Courier: U.S. Department of Energy, Room 4B–122, 1000 Independence Avenue SW, Washington, DC 20585.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document, *Public Participation.*

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents and materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The docket web page can be found at the *www.regulations.gov* web page associated with RIN 1901–AB59. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section IV of this document, *Public Participation,* for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Westhoff, Attorney-Adviser, Loan Programs Office, email: *LPO.IFR@hq.doe.gov,* or phone: (240) 220–4994.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Inflation Reduction Act

The Inflation Reduction Act of 2022 (''IRA'') [1] makes the single largest investment in climate and energy in American history, enabling the United States to tackle the climate crisis, advancing environmental justice, securing the nation's position as a world

[1] Public Law 117–169 (2022).

leader in domestic clean energy manufacturing, and putting the United States on a pathway to achieving the President's climate goals, including a net-zero economy by 2050. Within its energy and climate provisions, the IRA appropriates approximately $8.6 billion in credit subsidy and provides loan authority of up to $290 billion in total principal total for the Department of Energy's (''DOE'') Loan Programs Office (''LPO'') programs administered under Title XVII of the Energy Policy Act of 2005 (''Title XVII'').[2] The IRA provisions increase the authority to guarantee loans under section 1703 of Title XVII (''section 1703'') [3] by $40 billion in total principal. The IRA also added a new loan guarantee program, the Energy Infrastructure Reinvestment (''EIR'') Program, under section 1706 of Title XVII (''section 1706''),[4] to help retool, repower, repurpose, or replace energy infrastructure that has ceased operations or to enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases. The IRA authorizes the Secretary of Energy (''Secretary'') to guarantee loans up to a total principal amount of $250 billion for the EIR Program. The Infrastructure Investment and Jobs Act (''IIJA'') amended Title XVII to authorize the Secretary to issue loan guarantees for new categories of projects under section 1703, including projects involving critical minerals processing, manufacturing, or recycling, as well as projects that do not fulfill the innovation requirement but are receiving financial support or credit enhancements from a State energy financing institution.[5] The loan authority and appropriations for section 1703 projects contained in the IRA enabled the Secretary to offer loan guarantees for these types of projects for the first time, as the IIJA provisions prohibited the use of previously appropriated funds for those types of loan guarantees.[6]

The loan authority and related appropriations for the credit subsidy costs of loan guarantees under sections 1703 and 1706 made available under the IRA are available through September 30, 2026. In order to fully implement the Title XVII Loan Guarantee Program as modified by the IRA and IIJA in a timely manner, DOE is revising 10 CFR part 609 (''part 609'') through this interim final rule (''IFR''). The IFR facilitates the submission of applications to DOE for the broader array of projects eligible for Title XVII loan guarantees following the enactment of the IRA and improves the application process for parties considering applying for loan guarantees.[7] The impact of the IRA on the interest in DOE's loan programs, including the Title XVII program, has been substantial. DOE has seen an increase from 61 to 111 active applications for loans and loan guarantees to the Loan Programs Office for Title XVII loan guarantees from August 1, 2022, through April 30, 2023, representing an increase in approximately $30.1 billion of new loan requests.[8]

B. Part 609 Background

Title XVII, as amended, provides the Secretary the authority to issue loan guarantees for certain eligible projects, including innovative clean energy projects and energy infrastructure reinvestment projects.[9] DOE has administered the Title XVII Loan Guarantee Program pursuant to its regulations set forth at part 609, as required by the authorizing statute.[10] DOE has historically provided additional guidance to applicants and established requirements applicable to the Title XVII Loan Guarantee Program in the solicitations for loan guarantee applications, which are issued and updated from time to time. Part 609 sets forth the policies and procedures that DOE uses for the application process, which includes receiving, evaluating, and approving applications for loan guarantees to support eligible projects under Title XVII.[11] Part 609 applies to all applications, conditional commitments, and loan guarantee agreements under the Title XVII Loan Guarantee Program and provides specific guidance to program applicants regarding eligibility for the program, the loan guarantee application process and requirements, criteria for DOE's evaluation of applications, and the process for negotiation and execution of a loan guarantee agreement term sheet, conditional commitment, and loan guarantee agreement. Part 609 also describes the terms applicable to the loan guarantee.

Following DOE's issuance of initial guidelines and an initial solicitation for pre-applications for the program in 2006, DOE promulgated the original part 609 to implement and issue loan guarantees under the program in 2007.[12] In 2009, DOE amended part 609 to accommodate additional flexibility regarding liens and other collateral utilized for securing guaranteed loans.[13] DOE subsequently amended part 609 in 2011 to address the submission and treatment of trade secrets and other privileged commercial or financial information [14] and in 2012 to incorporate certain statutory changes to section 1702 of Title XVII [15] related to payment of credit subsidy costs.[16] In 2016, DOE promulgated additional amendments to part 609 to provide increased clarity and transparency, reduce paperwork, and provide a more workable interpretation of certain statutory provisions in light of DOE's experience with operation of the Title XVII program.[17] These amendments included removing a pre-application process and adopting a Part I and Part II application process, clarifying certain application limitations on technologies and locations, implementing the Risk-Based Charge, and a number of additional changes. In 2021, DOE amended part 609 to incorporate directives from Executive Order 13953 to clarify the eligibility of projects related to ''Critical Minerals,'' ''Critical Minerals Production,'' and related activities.[18]

II. Discussion

This IFR establishes regulations necessary to implement the EIR Program

[2] Public Law 109–58, title XVII (2005), as amended; 42 U.S.C. 16511 *et seq.*

[3] 42 U.S.C. 16513.

[4] 42 U.S.C. 16517, as added by Public Law 117–169, sec. 50144(c) (2022).

[5] Public Law 117–169, sec. 50141 (2022). See also section II.A.1 of this document, *Section 1703 Clean Energy Projects.*

[6] DOE notes that this prohibition was eliminated by the amendments to the IIJA set forth in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

[7] On June 1, 2022, prior to passage of the IRA, DOE issued a request for information (''RFI'') seeking comments from all interested parties regarding the implementation of the Energy Act of 2020 (Pub. L. 116–260, Div. Z (2020)) and the Infrastructure Investment and Jobs Act (''IIJA''; Pub. L. 117–58 (2021)), as well as other Title XVII program improvements. 87 FR 33141 (June 1, 2022); comment period extended through 87 FR 39081 (June 30, 2022). Aspects of this IFR address some of the topics covered in the RFI regarding implementation of Energy Act of 2020 and IIJA as those topics relate to amendments made by the IRA to the Title XVII program. DOE considered comments received on the June 1, 2022 RFI in addressing those topics in this IFR. Topics in the RFI, Energy Act of 2020, or IIJA not addressed by this IFR may be addressed by DOE in updated guidance of the Title XVII program, or in a subsequent rulemaking action. DOE will consider the comments received on the June 1, 2022 RFI in any future action.

[8] Source: *https://www.energy.gov/lpo/monthly-application-activity-report.*

[9] Public Law 109–58, title XVII (2005), as amended; 42 U.S.C. 16511 *et seq.*

[10] 42 U.S.C. 16515(b), (d).

[11] Public Law 109–58, title XVII (2005), as amended; 42 U.S.C. 16511 *et seq.*

[12] 72 FR 60116 (October 23, 2007).

[13] 74 FR 63544 (December 4, 2009).

[14] 76 FR 26579 (May 9, 2011).

[15] 42 U.S.C. 16512.

[16] 77 FR 29853 (May 21, 2012).

[17] 81 FR 90699 (December 15, 2016).

[18] 86 FR 3747 (Jan. 15, 2021).

authorized under section 1706 and other categories of projects made eligible for Title XVII loan guarantees by the IRA and revises provisions directly related to DOE's implementation of the Title XVII Loan Guarantee Program as expanded by the IRA and IIJA. The IFR retains those provisions of part 609 that are not impacted by DOE's plans for implementing the expanded Title XVII Loan Guarantee Program, which remain in full force and effect. In addition, the IFR makes other associated amendments to conform with the broader changes to part 609 to address the IRA, IIJA, and Energy Act of 2020 amendments.

Through publication of this IFR, DOE is also providing a comment period until July 31, 2023. Comments submitted during this period will be reviewed, and a final rule, responding to those comments as well as reflecting the experience DOE gains in implementing this IFR, will be issued at a later date.

A. Expansion of Eligible Projects

1. Section 1703 Clean Energy Projects

Under section 1703, DOE is authorized to support innovative energy projects that fall into one or more of the 13 categories specified in section 1703(b). With additional authority to guarantee up to a total principal amount of $40 billion provided by the IRA, DOE is ensuring that part 609 explicitly describes all categories of statutorily eligible projects to provide certainty to potential loan guarantee applicants regarding their ability to access the program. In the IFR, DOE provides that eligible projects under section 1703 include both innovative energy projects and innovative supply chain projects. (*See* 10 CFR 609.3(b), (c)). DOE has determined that supply chain projects that manufacture a product with an end-use set forth in section 1703(b) of Title XVII and that either (i) deploy a New or Significantly Improved Technology in the manufacturing process; or (ii) manufacture a product that represents a New or Significantly Improved Technology satisfy Title XVII's innovation requirement, as those projects deploy innovation within the scope of the DOE-funded project. In addition, the IFR includes eligibility requirements for projects seeking loan guarantees under section 1703 that receive financial support or credit enhancements from State energy financing institutions, providing that such projects are not required to satisfy Title XVII's innovation requirement in order to be determined eligible under the program.[19] (*See* 10 CFR 609.3(d)). The IIJA amended Title XVII to allow the issuance of loan guarantees to projects receiving this type of support from State energy financing institutions.[20] However, the IIJA also provided that DOE could not utilize amounts appropriated prior to the enactment of the IIJA for the cost of loan guarantees receiving support from State energy financing institutions, meaning that the IRA loan authority provided DOE with its first opportunity to offer loan guarantees to this type of project.[21]

Finally, the IRA enabled DOE to offer loan guarantees to projects that increase the domestically produced supply of critical minerals [22] by providing appropriations and loan authority for such projects. Similar to the State energy financing institution IIJA amendment, the IIJA's addition of critical minerals projects to the categories of projects eligible for Title XVII loan guarantees was coupled with a prohibition on the use of previously appropriated funds and commitment authority for those projects.[23] The enactment of the IRA and its authorization of additional Title XVII loan guarantee authority and appropriations allowed DOE to support critical minerals projects under Title XVII for the first time.

2. Energy Infrastructure Reinvestment Program

The IRA creates the new EIR Program under section 1706 to guarantee loans to projects that retool, repower, repurpose, or replace energy infrastructure that has ceased operations, or enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases. The IRA appropriates $5 billion through September 30, 2026, to carry out the EIR Program, with a limitation on commitments to guarantee loans the total principal amount of which is not greater than $250 billion.[24]

Potential projects could include repurposing shuttered fossil energy facilities for clean energy production, retooling infrastructure from power plants that have ceased operations for new clean energy uses, or updating operating energy infrastructure with emissions control technologies, including carbon capture, utilization, and storage (''CCUS''). EIR could also support the transition of an oil or gas pipeline or refinery into a clean energy project, such as clean hydrogen or carbon dioxide transportation infrastructure. While the EIR Program does not have the same requirements as section 1703 loan guarantees with respect to projects utilizing innovative technology, all EIR projects are required to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases.

Since the passage of the IRA, DOE has engaged in significant stakeholder outreach, participating in over 11 listening sessions regarding EIR that have convened over 75 organizations and over 162 participants. A repeated comment received in the listening sessions is the need for DOE to provide additional clarity regarding the eligibility requirements and application process for EIR projects, including through updates to part 609.

The IFR includes provisions expanding the rule to describe the eligibility requirements for Title XVII loan guarantees for the categories of projects described in section 1706 and includes such projects as ''Eligible Projects'' for the purposes of the Title XVII Loan Guarantee Program. (*See* 10 CFR 609.3(e)).

B. Approach to Title XVII Applications and Program Guidance

The cumulative effect of the amendments to the Title XVII Loan Guarantee Program enacted through the IRA and provision of appropriations and loan authority under the IRA for categories of projects added by the Energy Act of 2020 and the IIJA is to materially expand the types of projects eligible for loan guarantees from DOE under Title XVII. The additional $40 billion of loan guarantee commitment authority for section 1703 projects is not allocated to specific technology categories as certain pre-IRA loan authority was, meaning that the program no longer needs to adopt technology-specific solicitations. The ability to support EIR projects, critical minerals projects, and State energy financing institution projects opens the door to a wide range of new project characteristics, and expands Title XVII to support both innovative and non-innovative projects. The prior version of part 609 and the solicitations for applications to the program contemplated relatively uniform, large scale infrastructure projects, such as utility scale power generation projects. However, both the changes to Title XVII

[19] 42 U.S.C. 16512(r), as added by Public Law 117–58, sec. 40401(c)(2)(C) (2021).

[20] See Public Law 117–58, sec. 40401(c) (2021).

[21] 42 U.S.C. 16512(r)(3), as added by Public Law 117–58, sec. 40401(c)(2)(C) (2021), and repealed by Public Law 117–328, div. D, tit. III, sec. 308 (2022).

[22] See 42 U.S.C. 16513(b)(13), added by the IIJA (Pub. L. 117–58, sec. 40401(a)(2)(A) (2021)).

[23] Public Law 117–58, sec. 40401(a)(2)(B), (C) (2021), repealed by Public Law 117–328, div. D, tit. III, sec. 308 (2022).

[24] Public Law 117–169, sec. 50144(a), (c) (2022).

resulting from recently enacted legislation and the rapidly evolving and advancing technologies in the United States energy sector require that DOE be able to support a more diverse set of clean energy projects. A single set of application requirements and factors for evaluating such projects impedes DOE's objectives of properly evaluating such diverse sets of potential projects and ensuring that the Title XVII Loan Guarantee Program is accessible to all potentially eligible projects. In addition, DOE expects that the additional loan authority granted by the IRA will result in a significant increase in the volume of applications submitted to the Title XVII Loan Guarantee Program, escalating the need for part 609 to provide clear direction with respect to eligibility and the administration of the program.

With the IFR, DOE removes from the Code of Federal Regulations the specific minimum application requirements applicable to potential applicants to the Title XVII program as well as eliminates from the regulation the detailed evaluation criteria applicable to DOE's review of Title XVII loan guarantee applications. DOE will subsequently issue guidance for the Title XVII Loan Guarantee Program, which will include the information historically set forth in the specific solicitations issued in connection with the program. DOE expects that these changes to the Title XVII Loan Guarantee Program will significantly improve the ability of applicants and potential applicants to understand the program requirements as they apply to specific categories of eligible projects and to navigate the Title XVII Loan Guarantee Program more efficiently. The IFR is a critical foundation allowing DOE to finalize comprehensive materials for potential applicants, improving access to, and administration of, this important program.

DOE will also capture and make public many of the recommendations made with respect to DOE's administration of the Title XVII Loan Guarantee Program in the course of the 2022 request for information.[25] This will include additional guidance regarding how DOE addresses matters pertaining to Justice40 [26] objectives, supporting the domestic clean energy supply chain, and addressing community, environmental, and labor matters with respect to the program.

C. Conditional Commitments & Credit Subsidy Cost

In the IFR, DOE specifies that it will obligate the credit subsidy cost of a loan guarantee at the time of Conditional Commitment, rather than its current practice of obligating credit subsidy cost at financial close of the Loan Guarantee Agreement. Under the prior version of part 609, the Secretary was authorized to terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement. This program modification represents an alignment of the Title XVII Loan Guarantee Program with other federal lending programs pursuant to the Federal Credit Reform Act of 1990. The impact of this change is to structure the Title XVII Loan Guarantee Program such that Conditional Commitments utilizing the loan authority and appropriations for the cost of loan guarantees provided by the IRA must be entered into prior to September 30, 2026, which represents the end of availability of these funds under the IRA. While not likely in the next several years, if appropriated funds are not available for the Secretary to pay credit subsidy costs at the time of Conditional Commitment, such costs may instead paid by the borrower.[27] In such a case, subject to the terms agreed upon as part of Conditional Commitment, the borrower-paid credit subsidy costs may be refunded if the parties do not close on a Loan Guarantee Agreement or if subsequent changes warrant a downward adjustment of the credit subsidy cost calculation.

D. Fees

In connection with the expected increase in the number of loan guarantee applications following the passage of the IRA, DOE has assessed the types and amounts of fees it expects to collect in connection with the administration of the Title XVII Loan Guarantee Program. In the IFR, DOE describes the categories of fees it will collect at the financial closing of a Title XVII loan guarantee and the other fees and charges it may collect from a Borrower after the issuance of a loan guarantee to provide additional clarity to the public with respect to fees associated with the program.

DOE has also determined it will no longer assess application fees in connection with the program. The Energy Act of 2020 amendments provide that a fee for the guarantee sufficient to cover the applicable administrative expenses of the Title XVII Loan Guarantee Program may be charged on or after financial close.[28] Historically, the application fee combined with the facility fee served to reimburse the federal government for the costs of administering the loan guarantee program. However, DOE believes it may be confusing to potential applicants to charge an ''application fee'' at financial closing of a loan guarantee. DOE has assessed the adequacy of the facility fee and has determined that it is sufficient to cover the applicable administrative expenses of the Title XVII Loan Guarantee Program without requiring a separate application fee. In the IFR, DOE confirms that it will charge the facility fee only at the financial closing of a loan guarantee, rather than charging a portion of the facility fee at conditional commitment in accordance with the Energy Act of 2020 amendments.

E. Transaction Costs

In the IFR, DOE confirms that the third-party advisor costs of DOE as loan guarantor represent the transaction costs associated with providing financing to the applicable project. For each of the categories of projects DOE has determined to be eligible under Title XVII, including those expanded categories allowed by the passage of the IRA, the financing of the relevant project will require the engagement by the applicant, any eligible lender, and DOE of third-party advisors to assist in the structuring and negotiation of the project's financing. The costs of such third-party advisors are directly attributable to the review, processing, closing and management of specific loan transactions and vary significantly in relation to the maturity and organization of the applicant and the complexity of the proposed project, among other factors. Third-party advisor costs are financing costs that may be included in the overall amount of Project Costs for an Eligible Project receiving a Title XVII loan guarantee. The services provided by third-party advisors directly support the financing and potential deployment of the project that is being proposed by an applicant and thus are appropriately borne by the applicant. This arrangement is customary in project finance.

DOE has confirmed that the costs associated with third-party advisors are easily distinguished from the administrative expenses associated with administering the Title XVII Loan

[25] See footnote 7, *supra.*

[26] See Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad,'' sec. 223, 86 FR 7619, 7631–7632 (February 1, 2021). See also *https://www.energy.gov/diversity/justice40-initiative.*

[27] 42 U.S.C. 16512(b).

[28] 42 U.S.C. 16512(h)(1), as amended by Public Law 116–260, sec. 9010(a)(3) (2020).

Guarantee Program, which includes payroll, expenses associated with third-party contractors and consultants that have been engaged by DOE in support of administering the Title XVII Loan Guarantee Program, and other overhead costs of LPO, which are incurred irrespective of the volume or complexity of loan guarantee applications. Transaction costs also exclude credit subsidy cost amounts.

Under the IFR, Transaction Costs are defined in § 609.2, and the method for the payment of these Transaction Costs as an element of Project Costs is retained within the rule in § 609.11.

F. Project Costs

In the IFR, DOE specifies that environmental remediation costs constitute eligible Project Costs for Energy Infrastructure Reinvestment Projects, as specified in the IRA. In addition, the definition of Project Costs in § 609.10 is modified to provide that in DOE's discretion, the costs of refinancing outstanding indebtedness that is directly associated with the Eligible Project may be included.

III. Section-by-Section Analysis

The amendments in this IFR redesignate and add additional sections to 10 CFR part 609 for organization and clarity and to conform to the IRA provisions. The following table displays the changes as follows:

SUMMARY TABLE OF SECTION ADDITIONS, REVISIONS, AND REDESIGNATIONS

Section	Former title	Action	New title
§ 609.1	Purpose and scope	Revised	N/A.
§ 609.2	Definitions and interpretation	Revised	Definitions.
§ 609.3	Solicitations	New section added; redesignated as § 609.19 and revised.	Title XVII eligible projects.
§ 609.4	Submission of applications	Revised	N/A.
§ 609.5	Programmatic, technical, and financial evaluation of applications.	Revised	Evaluation of applications.
§ 609.6	Term sheets and conditional commitments.	Revised	N/A.
§ 609.7	Closing on the loan guarantee agreement.	Revised	N/A.
§ 609.8	Loan guarantee agreement	Revised	N/A.
§ 609.9	Lender servicing requirements	Revised	N/A.
§ 609.10	Project costs	Revised	N/A.
§ 609.11	Fees and charges	New section added, redesignated as § 609.13 and revised.	Transaction costs.
§ 609.12	Full faith and credit and incontestability	New section added, redesignated as § 609.14 and revised.	Credit ratings.
§ 609.13	Default, demand, payment, and foreclosure on collateral.	Redesignated as § 609.15 and revised	Fees and charges.
§ 609.14	Preservation of collateral	Redesignated as § 609.16 and revised	Full faith and credit and incontestability.
§ 609.15	Audit and access to records	Redesignated as § 609.17 and revised	Default, demand, payment, and foreclosure on collateral.
§ 609.16	Deviations	Redesignated as § 609.18 and revised	Preservation of collateral.
§ 609.17	N/A	§ 609.15 redesignated as § 609.17 and revised.	Audit and access to records.
§ 609.18	N/A	§ 609.16 redesignated as § 609.18 and revised.	Deviations.
§ 609.19	N/A	§ 609.3 redesignated as § 609.19 and revised.	Title XVII loan guarantee program guidance.

Provided below is a section-by-section analysis of the changes made by this IFR.

Title

The title of part 609 is revised from ''Loan Guarantees for Projects That Employ Innovative Technologies'' to ''Loan Guarantees for Clean Energy Projects,'' reflecting the expansion of Title XVII eligibility beyond projects that employ or deploy a New or Significantly Improved Technology.

§ 609.1

Part 609 prescribes policies and procedures for receiving, evaluating, and approving applications for loan guarantees. DOE is revising § 609.1(a) and (c) for clarity and updated legal references. DOE is also deleting § 609.1(d) because critical minerals projects are now specifically eligible and authorized for loan guarantees under section 1703(b).

§ 609.2

Section 609.2 is revised to incorporate definitions associated with the IRA and to make changes conforming to the remainder of revisions set forth in the IFR. DOE is adding the following definitions: ''Energy Infrastructure'', ''Energy Infrastructure Reinvestment Project'', ''Innovative Energy Project'', ''Innovative Supply Chain Project'', ''Maintenance Fee'', ''Reasonable Prospect of Repayment'', ''State'', ''State Energy Financing Institution'', ''State Energy Financing Institution Project'', ''Title XVII'', ''Title XVII Loan Guarantee Program'', and ''Transaction Costs''. DOE is revising the following definitions: ''Administrative Cost of a Loan Guarantee'', ''Applicant'', ''Application'', ''Borrower'', ''Commercial Technology'', ''Conditional Commitment'', ''Credit Subsidy Cost'', ''Davis-Bacon Act'', ''Eligible Lender'', ''Eligible Project'', ''Energy Infrastructure'', ''Equity'', ''Facility Fee'', ''Guaranteed Obligation'', ''Holder'', ''New or Significantly Improved Technology'', ''Project Costs'', ''Project Sponsor'', and ''Term Sheet''. The following definitions are deleted: ''Act'', ''Application Fee'', ''Preliminary Term Sheet'', and ''Solicitation''.

The interpretations in § 609.2(b) are deleted. These interpretations are not statutorily required and do not add or

reduce obligations, burdens, prohibitions, or restrictions. Given that DOE's understanding of how the implementation of the IRA-related provisions will be evolving and DOE's processing of higher volume applications may require further guidance, DOE will be issuing guidance at a future date. This will allow DOE to modify the guidance more quickly to ensure efficient processing of loan applications.

§ 609.3

Section 609.3, ''Solicitations,'' is redesignated and revised as § 609.19, ''Title XVII loan guarantee program guidance,'' to change the method for publishing invitations for applications for loan guarantees from a solicitation-based application process to a standing invitation published through DOE's Title XVII Loan Guarantee Program website; and to make conforming and clarifying changes.

DOE is adding a new § 609.3, ''Title XVII eligible projects,'' to distinguish and describe the expanded categories of eligible projects under Title XVII, as amended and authorized by the IRA and the IIJA. The new § 609.3 further defines these ''Eligible Project'' categories under Title XVII, including ''Innovative Energy Project'', ''Innovative Supply Chain Project'', ''State Energy Financing Institution Project'', and ''Energy Infrastructure Reinvestment Project''.

§ 609.4

Section 609.4, ''Submission of applications,'' is revised to incorporate the application references for the categories of projects made eligible for loan guarantees under the IRA and IIJA; to consolidate provisions regarding additional information, including credit assessment and credit rating requirements (moving language formerly at § 609.4(d)(22) and (e) to § 609.12; see also § 609.5(a)); to remove provisions related to the application fee that DOE will no longer assess; to delete other specific minimum application requirements previously set forth in the section; to reduce the period of time after which DOE may reject an incomplete application from four to two years; to further describe DOE's obligation to provide responses to applicant inquiries regarding the status of applications; and to make conforming and clarifying changes.

§ 609.5

Section 609.5, ''Programmatic, technical, and financial evaluation of applications,'' is revised to be titled ''Evaluation of applications''; to identify the application evaluation criteria applicable to specific categories of eligible projects; to add failure to meet ''know your customer'' requirements as a basis for application denial; to eliminate certain specific application evaluation criteria from the rule; and to make conforming and clarifying changes.

§ 609.6

Section 609.6, ''Term Sheets and conditional commitments,'' is revised to reduce the period of time for the negotiation of a term sheet from four years to two years; to remove references to fees payable in connection with the term sheet; to reflect the obligation of the credit subsidy cost at conditional commitment rather than loan guarantee closing; and to make conforming and clarifying changes.

§ 609.7

Section 609.7, ''Closing on the loan guarantee agreement,'' is revised to reflect the obligation of the credit subsidy cost at conditional commitment rather than loan guarantee closing (moving language formerly at § 609.7(b)(1) and (3) to § 609.6); to move the applicant requirements regarding credit ratings to a single section of the rule (moving language formerly at § 609.7(b)(9) to § 609.12); to add an explicit requirement, consistent with existing law, that review under the National Environmental Policy Act of 1969 (NEPA) be completed prior to closing; and to make conforming and clarifying changes.

§ 609.8

Section 609.8, ''Loan guarantee agreement,'' is revised to clarify certain terms applicable to all Title XVII loan guarantee agreements; to reflect the differing repayment terms for certain categories of Eligible Projects; and to make conforming and clarifying changes.

§ 609.9

Section 609.9, ''Lender servicing requirements,'' is revised for clarity.

§ 609.10

Section 609.10, ''Project costs,'' is revised to include all provisions of the rule pertaining to project costs in a single section of the rule; to incorporate the defined term ''Transaction Costs''; to specifically include interconnection costs; to include, in DOE's discretion, the costs of refinancing outstanding indebtedness relating to the Eligible Project; to include environmental remediation costs of Energy Infrastructure Reinvestment Projects as provided by the IRA; to include, in DOE's discretion with respect to projects consisting of distributed energy resources, the costs incurred by the end-user of each distributed energy resource pursuant to contractual arrangements with the Project Sponsor. to refer to cost information and criteria published in guidance on the Title XVII Loan Guarantee Program website; and to make conforming and clarifying changes.

§ 609.11

Section 609.11, ''Fees and Charges,'' is redesignated in part and revised as § 609.13. This IFR adds a new § 609.11, ''Transaction Costs,'' to reflect in a single rule provision all requirements applicable to the arrangements for third-party advisors, including retaining substantial portions of the latter part of the prior § 609.11 (former paragraphs (f)-(h)).

§ 609.12

Section 609.12, ''Full faith and credit and incontestability,'' is redesignated as § 609.14 and a new § 609.12, ''Credit Ratings,'' is added to reflect and further specify in a single rule provision all requirements regarding the submission of credit assessments or credit ratings in connection with an application for a loan guarantee. As discussed above, § 609.12 under this IFR incorporates certain provisions related to credit rating that had been in prior § 609.4 and 609.7. Based upon DOE's experience administering the Title XVII Loan Guarantee Program for over 15 years, credit assessments and credit ratings are no longer required by regulation simply because Project Costs exceed a certain threshold, but the Secretary retains the authority and discretion to require a credit assessment or credit rating for any project.

§§ 609.13–609.19

Sections 609.13–609.16 have been redesignated, and §§ 609.17–609.19 have been added, due to the changes described previously. The redesignated § 609.18, ''Deviations,'' has been amended to remove unnecessary specificity regarding the Secretary's discretion over charging and collection of fees. DOE has also made minor revisions to §§ 609.13–609.18 for clarity and organization. Redesignated § 609.19, ''Title XVII loan guarantee program guidance,'' is described in further detail previously, under the analysis of § 609.3.

IV. Public Participation

DOE will accept comments, data, and information regarding this IFR on or before the date provided in the **DATES**

section at the beginning of this IFR. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information the disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption. If possible, documents should carry the electronic signature of the author.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that they believe to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' that deletes the information believed to be confidential. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and will treat it according to its determination. It is DOE's policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

V. Regulatory and Notices Analysis

A. Executive Order 12866

This IFR has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (''OIRA'') of the Office of Management and Budget (''OMB'').

B. Administrative Procedure Act

Section 553(a)(2) of the Administrative Procedure Act (''APA'') exempts from the APA's notice and comment procedures rulemakings that involve matters relating to public property, loans, grants, benefits, or contracts. As a rulemaking relating to the issuance of loans, DOE has determined that a notice of proposed rulemaking (and comment thereon) is not required for the amendments to part 609 in this IFR.[29]

Moreover, section 553(b)(3)(B) of the APA (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

DOE has determined that prior notice and comment are contrary to the public interest given the ambitious timeline Congress has imposed on DOE for guaranteeing loans up to a total principal amount of $290 billion prior to the loan guarantee authority expiration in 2026 and to provide the opportunity for all eligible projects to seek loan guarantees under the new IRA provisions. Given the short award period, it is imperative that DOE put the IFR provisions in place concurrent with solicitation of comment to process the influx of applications that DOE has already received in response to the passage of the IRA and to best advise stakeholders on how to obtain loan funding. Specifically, DOE has seen an increase in active applications from 61 to 111 active applications to the Loan Programs Office for Title XVII loan guarantees from August 1, 2022 through April 30, 2023, representing an increase of approximately $30.1 billion in new Title XVII financing requests. Making the amendments in this IFR effective immediately helps facilitate the increased volume of applications resulting from the new authorities and funding in the IRA and IIJA and provide efficiencies in the loan processing. DOE anticipates the number of new active

[29] DOE has historically used notice and comment procedures for Title XVII Loan Guarantee Program rulemakings, but notes that this exemption is nonetheless available under the APA.

applications to continue to increase. In addition, with respect to specific stakeholder engagement regarding the new Energy Infrastructure Reinvestment program added by the IRA, DOE has held over a dozen stakeholder listening sessions where participants have requested additional information regarding program requirements and implementation. Thus, DOE believes that there is good cause that it is in the public interest to implement provisions in line with the IRA in an expeditious manner prior to notice and comment.

As noted previously, DOE is concurrently accepting comments on this IFR. DOE is committed to considering all comments received in response to this IFR and promptly publishing a final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990).

This IFR updates part 609. As noted in prior part 609 rulemaking actions, DOE is not obligated to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking for rules related to loans under the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

D. Paperwork Reduction Act of 1995

Information collection requirements for the DOE regulations at 10 CFR part 609 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedure implementing that Act (5 CFR 1320.1 *et seq.*) are under OMB Control Number 1910–5134. On February 28, 2023, OMB approved a three-year extension of the information collection request previously approved under OMB Control Number 1910–5134. Because the information requested of applicants under the IFR and the Title 17 Program Guidance is materially the same as that collected under the current Title XVII Solicitations, and burdens and costs are the same, the Title 17 Program Guidance will utilize the same ICR authority as currently utilized for Title XVII applications. DOE is submitting a revision to its information collection request under OMB Control Number 1910–5134 in connection with this IFR. The revision adds the ''Program Guidance for Title 17 Clean Energy Financing Program'' as a collection instrument under the control number. The revision also explains the public reporting burden associated with the information collection under the Program Guidance for Title 17 Clean Energy Financing Program.

LPO uses the information an Applicant provides to determine whether the project proposed by the Applicant meets the eligibility and other legal requirements of the applicable Loan Guarantee Program. In addition, the information collected through the ICR assists the Department to meet its public transparency and accountability obligations, such as requirements and requests to deliver timely information on Title XVII Program and TELGP activities to OMB, Congress, and the public.

Public reporting burden for the requirements in this IFR is estimated to average 146.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses are expected to be collected electronically. The public reporting burden anticipates that there will be 89 respondents to the information collection request annually. The burden estimate reflects an increase of 14 hours per response compared to the prior burden estimate. This increase results from the inclusion of information regarding an applicant's Community Benefits Plan in the information collection request. All Title XVII project applicants are required to submit a Community Benefits Plan with Part II of their application. To support the goal of building a clean and equitable energy economy, DOE projects are expected to (1) support meaningful community and labor engagement; (2) invest in America's workforce; (3) advance diversity, equity, inclusion, and accessibility; and (4) contribute to the President's goal that 40% of the overall project benefits flow to Disadvantaged Communities (DACs) (the Justice40 Initiative). The Justice40 Initiative aims to ensure that 40% of overall benefits of clean energy investment flow to disadvantaged communities, which can be identified by the Climate and Economic Justice Screening Tool.[30] A Community Benefits Plan for an LPO application does not need to entail extraordinary additional requirements beyond the normal course of project development activities. The Community Benefits Plan should be approximately 3–8 pages in length, and written in an executive summary format to identify project benefits described elsewhere in the application.

The revised recordkeeping and reporting requirements associated with this rulemaking are not mandatory until the information collection is approved by OMB.

Notwithstanding any other provision of law, a person is not required to respond to, and will not be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. Applying for benefits under Title XVII is voluntary.

E. National Environmental Policy Act of 1969

Pursuant to NEPA, DOE has analyzed this IFR in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this IFR qualifies for categorical exclusion under 10 CFR part 1021, subpart D appendix A5 as a rulemaking that amends an existing rule or regulation (*i.e.,* part 609) without changing the environmental effect of that rule. Therefore, DOE has determined that this IFR is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

F. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general

[30] Additional information can be found here: *https://www.energy.gov/diversity/justice40-initiative; https://www.whitehouse.gov/environmentaljustice/justice40/; https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5; https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf.*

standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires, in pertinent part, that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' [31] imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations.[32]

DOE has examined this IFR and has determined that it will not preempt State law and will not have a substantial direct effect 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. Accordingly, no further action is required by Executive Order 13132.

H. Executive Order 13175

Under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' [33] DOE may not issue a discretionary rule that has ''Tribal'' implications and imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that this IFR will not have such effects and has concluded that Executive Order 13175 does not apply to this IFR.

I. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') [34] requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a) and (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA.[35] DOE examined this IFR according to UMRA and its statement of policy and has determined that the IFR contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector. The IFR establishes only requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. Accordingly, no further assessment or analysis is required under UMRA.

J. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 [36] requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This IFR will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 [37] provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, ''Improving Implementation of the Information Quality Act'' (April 24, 2019), DOE published updated guidelines which are available at: *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.*

DOE has reviewed this IFR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' [38] requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For

[31] 64 FR 43255 (August 4, 1999).

[32] 65 FR 13735 (March 14, 2000).

[33] 65 FR 67249, (November 9, 2000).

[34] Public Law 104–4 (1995).

[35] 62 FR 12820 (March 18, 1997); also available at *www.energy.gov/gc/office-general-counsel.*

[36] Public Law 105–277 (1998); 5 U.S.C. 601 note.

[37] Public Law 106–554 (2000); 44 U.S.C. 3516 note.

[38] 66 FR 28355 (May 22, 2001).

any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

M. Congressional Review Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2). In accordance with 5 U.S.C. 808(2), this IFR will be effective upon publication based upon DOE's finding of good cause that prior notice and public procedure thereon are contrary to the public interest. See section V.B of this document, *Administrative Procedure Act.*

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Interim final rule; request for comments.

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on May 19, 2023, by Robert Marcum, Deputy Director, Loan Programs Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 19, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

■ For the reasons stated in the preamble, DOE revises part 609 of chapter II of title 10 of the Code of Federal Regulations to read as follows:

PART 609—LOAN GUARANTEES FOR CLEAN ENERGY PROJECTS

Sec.

Authority: 42 U.S.C. 7254, 16511–16517.

§ 609.1 Purpose and scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and approving applications for loan guarantees to support Eligible Projects under Title XVII, including sections 1703 and 1706, of the Energy Policy Act of 2005.

(b) This part applies to all Applications, Conditional Commitments, and Loan Guarantee Agreements.

(c) Section 600.22 of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 609.2 Definitions.

When used in this part the following words have the following meanings.

Administrative Cost of a Loan Guarantee means

(1) The total of all administrative expenses that DOE incurs during:

(i) The evaluation of an Application for a Guarantee;

(ii) The negotiation and offer of a Term Sheet;

(iii) The negotiation of a Loan Guarantee Agreement and related documents, including the issuance of a Guarantee; and

(iv) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

(2) The Administrative Cost of a Loan Guarantee does not include Transaction Costs.

Applicant means a prospective Borrower, Project Sponsor, or Eligible Lender that submits an Application to DOE.

Application means a submission of written materials to DOE completed in accordance with the applicable requirements published by DOE in guidance on the Title XVII website.

Attorney General means the Attorney General of the United States.

Borrower means any Person that enters into a Loan Guarantee Agreement with DOE and issues or otherwise becomes obligated for the Guaranteed Obligations.

Cargo Preference Act means the Cargo Preference Act of 1954, 46 U.S.C. 55305, as amended.

Commercial Technology means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is offered by DOE. A technology is in general use if it is being used in three or more facilities that are in commercial operation in the United States for the same general purpose as the proposed project, and has been used in each such facility for a period of at least five years. The five-year period for each facility shall start on the in-service date of the facility employing that particular technology or, in the case of a retrofit of a facility to employ a particular technology, the date the facility resumes commercial operation following completion and testing of the retrofit. For purposes of this section, facilities considered to be in commercial operation for five years include projects that have been the recipients of a loan guarantee from DOE under this part whether or not commercial operations have commenced.

Conditional Commitment means a Term Sheet offered by DOE and accepted by the offeree of the Term Sheet, all in accordance with § 609.6.

Contracting Officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

Credit Subsidy Cost has the same meaning as ''cost of a loan guarantee'' in section 502(5)(C) of the Federal Credit Reform Act of 1990.

Davis-Bacon Act means the statute referenced in section 1702(k) of Title XVII.

DOE means the United States Department of Energy.

Eligible Lender means:

(1) Any Person formed for the purpose of, or engaged in the business of, lending money, including State Energy Financing Institutions, financial

institutions, and trusts or other entities designated as trustees or agents acting on behalf of institutional investors, bondholders, or other lenders that, as determined by DOE in each case, is:

(i) Not debarred or suspended from participation in a Federal Government contract or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR part 180);

(ii) Not delinquent on any Federal debt or loan;

(iii) Legally authorized and empowered to enter into loan guarantee transactions authorized by Title XVII and this part;

(iv) Able to demonstrate experience in originating and servicing loans for commercial projects similar in size and scope to the Eligible Project, or able to procure such experience through contracts acceptable to DOE; and

(v) Able to demonstrate experience as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience, or able to procure such experience through contracts acceptable to DOE; or

(2) The Federal Financing Bank.

Eligible Project has the meaning set forth in § 609.3.

Energy Infrastructure means a facility, and associated equipment, used for:

(1) The generation or transmission of electric energy; or

(2) The production, processing, and delivery of fossil fuels, fuels derived from petroleum, or petrochemical feedstocks.

Energy Infrastructure Reinvestment Project has the meaning set forth in § 609.3.

Equity means cash, and at DOE's sole discretion and subject to DOE's sole determination of value, in-kind contributions and property, in each case contributed to the permanent capital stock (or equivalent) of the Borrower or the Eligible Project by the shareholders or other owners of the Borrower or the Eligible Project. In-kind contributions may not include services, but may include physical and/or intellectual property. Equity does not include proceeds from the non-guaranteed portion of a Guaranteed Obligation, proceeds from any other non-guaranteed loan or obligation of the Borrower, or the value of any Federal, State, or local government assistance or support or any cost-share requirements under a Federal award.

Facility Fee means the fee, to be paid in the amount and in the manner provided in the Term Sheet, to cover the Administrative Cost of a Loan Guarantee for the period from the Application through issuance of the Guarantee.

Federal Financing Bank means an instrumentality of the United States Government created by the Federal Financing Bank Act of 1973, under the general supervision of the Secretary of the Treasury.

Guarantee means the undertaking of the United States of America, acting through the Secretary pursuant to Title XVII, to pay in accordance with the terms thereof, principal and interest of a Guaranteed Obligation.

Guaranteed Obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to Title XVII.

Holder means any Person that holds a promissory note made by the Borrower evidencing the Guaranteed Obligation (or his or her designee or agent).

Innovative Energy Project has the meaning set forth in § 609.3.

Innovative Supply Chain Project has the meaning set forth in § 609.3.

Intercreditor Agreement means any agreement or instrument (or amendment or modification thereof) among DOE and one or more other Persons providing financing or other credit arrangements to the Borrower (or an Eligible Project) or that otherwise provides for rights of DOE in respect of a Borrower or in respect of an Eligible Project, in each case in form and substance satisfactory to DOE.

Loan Agreement means a written agreement between a Borrower and an Eligible Lender containing the terms and conditions under which the Eligible Lender will make a loan or loans to the Borrower for an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into by DOE and a Borrower, and, if applicable, an Eligible Lender, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal of, and interest on, specified Guaranteed Obligations, subject to the terms and conditions specified in the Loan Guarantee Agreement.

Maintenance Fee means the fee, to be paid in the amount and manner provided in the Term Sheet, to cover the Administrative Cost of a Loan Guarantee, other than extraordinary expenses, incurred in servicing and monitoring a Loan Guarantee Agreement after the issuance of the Guarantee.

New or Significantly Improved Technology means

(1) A technology, or a defined suite of technologies, concerned with the production, storage, consumption, or transportation of energy, including of associated critical minerals and other components or other eligible energy-related project categories under section 1703(b) of Title XVII, and that is not a Commercial Technology, and that either:

(i) Has only recently been developed, discovered, or learned; or

(ii) Involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

(2) If regional variation significantly affects the deployment of a technology, such technology may still be considered ''New or Significantly Improved Technology'' if no more than 6 projects employ the same or similar technology as another project, provided no more than 2 projects that use the same or a similar technology are located in the same region of the United States.

OMB means the Office of Management and Budget in the Executive Office of the President.

Person means any natural person or any legally constituted entity, including a state or local government, tribe, corporation, company, voluntary association, partnership, limited liability company, joint venture, and trust.

Project Costs mean those costs, including escalation and contingencies, that are expended or accrued by a Borrower and are necessary, reasonable, customary, and directly related to the design, engineering, financing, construction, startup, commissioning, and shakedown of an Eligible Project, as specified in § 609.10. Project Costs do not include costs for the items set forth in § 609.10(d).

Project Sponsor means any Person that assumes substantial responsibility for the development, financing, and structuring of an Eligible Project and owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project or the Borrower.

Reasonable Prospect of Repayment has the meaning set forth in 42 U.S.C. 16512(d)(1)(B).

Risk-Based Charge means a charge that, together with the principal and interest on the Guaranteed Obligation, or at such other times as DOE may determine, is payable on specified dates during the term of a Guaranteed Obligation.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

State means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

State Energy Financing Institution means

(1) A quasi-independent entity or an entity within a State agency or financing authority established by a State:

(i) To provide financing support or credit enhancements, including loan guarantees and loan loss reserves, for Eligible Projects; and

(ii) To create liquid markets for eligible projects, including warehousing and securitization, or take other steps to reduce financial barriers to the deployment of existing and new Eligible Projects.

(2) The term ''State Energy Financing Institution'' includes an entity or organization established by an Indian Tribal entity or an Alaska Native Corporation to achieve the purposes described in paragraphs (1)(i) and (ii) of this definition.

State Energy Financing Institution Project has the meaning set forth in § 609.3.

Term Sheet means a written offer for the issuance of a loan guarantee, executed by the Secretary (or a DOE official authorized by the Secretary to execute such offer), delivered to the Applicant, that sets forth the detailed terms and conditions under which DOE and the Applicant will execute a Loan Guarantee Agreement.

Title XVII means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16517), as amended.

Title XVII Loan Guarantee Program means the program administered by DOE pursuant to Title XVII, regulations under this part, DOE guidance and policy documents, and other applicable laws and requirements.

Transaction Costs mean:

(1)(i) Out-of-pocket costs of financial, legal, and other professional services associated with the financing of an Eligible Project, including services necessary to obtain required licenses and permits, prepare environmental reports and data, conduct legal and technical due diligence, develop and audit a financial model, negotiate the terms and provisions of project contracts and financing documents, including those costs associated with the advisors to DOE and any other Eligible Lender; and

(ii) Costs of issuing Eligible Project debt, such as commitment fees, upfront fees, and other applicable financing fees, costs and expenses imposed by Eligible Lenders.

(2) Transaction Costs do not include the Administrative Cost of a Loan Guarantee or Credit Subsidy Costs.

United States means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States of America.

§ 609.3 Title XVII eligible projects.

(a)(1) DOE is authorized to provide loan Guarantees for certain categories of projects under Title XVII including:

(i) Innovative Energy Projects under section 1703 of Title XVII;

(ii) Innovative Supply Chain Projects under section 1703 of Title XVII;

(iii) State Energy Financing Institution Projects under section 1703 of Title XVII; and

(iv) Energy Infrastructure Reinvestment Projects under section 1706 of Title XVII.

(2) A Project meeting the applicable eligibility requirements set forth herein constitutes an ''Eligible Project'' under Title XVII.

(b) An eligible Innovative Energy Project is a project that:

(1) Falls within a category set forth in section 1703(b) of Title XVII;

(2) Is located in the United States;

(3) Is at one location, except that the project may be located at two or more locations if the project is comprised of installations or facilities employing a single New or Significantly Improved Technology that is deployed pursuant to an integrated and comprehensive business plan. An Innovative Energy Project located in more than one location is a single Eligible Project;

(4) Deploys a New or Significantly Improved Technology; and

(5) Avoids, reduces, utilizes, or sequesters air pollutants or anthropogenic emissions of greenhouse gases.

(c) An eligible Innovative Supply Chain Project is a project that:

(1) Manufactures a product with an end-use set forth in section 1703(b) of Title XVII;

(2) Is located in the United States;

(3) Is at one location, except that the project may be located at two or more locations if the project is comprised of installations or facilities employing a single New or Significantly Improved Technology that is deployed pursuant to an integrated and comprehensive business plan. An Innovative Supply Chain Project located in more than one location is a single Eligible Project;

(4) Either:

(i) Deploys a New or Significantly Improved Technology in the manufacturing process; or

(ii) Manufactures a product that represents a New or Significantly Improved Technology; and

(5) Avoids, reduces, utilizes, or sequesters air pollutants or anthropogenic emissions of greenhouse gases through:

(i) The relevant manufacturing process of the relevant product; or

(ii) The end-use of the component on a full life-cycle basis.

(d) An eligible State Energy Financing Institution Project is a project that:

(1) Falls within a category set forth in section 1703(b) of Title XVII;

(2) Is located at one or more locations in the United States;

(3) Avoids, reduces, utilizes, or sequesters air pollutants or anthropogenic emissions of greenhouse gases;

(4) Receives financial support or credit enhancements from a State Energy Financing Institution; and

(5) May include a partnership between one or more State Energy Financing Institutions and private entities, Tribal entities, or Alaska Native corporations in carrying out the project.

(e) An eligible Energy Infrastructure Reinvestment Project is a project that:

(1) Is located in the United States;

(2) Either:

(i) Enables operating Energy Infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases; or

(ii) Retools, repowers, repurposes, or replaces Energy Infrastructure that has ceased operations; provided that if such project involves electricity generation through the use of fossil fuels, such project shall be required to have controls or technologies to avoid, reduce, utilize, or sequester air pollutants and anthropogenic emissions of greenhouse gases; and

(3) May include the remediation of environmental damage associated with Energy Infrastructure.

§ 609.4 Submission of applications.

(a) DOE may direct that Applications be submitted in more than one part; provided, that the parts of such Application, taken as a whole, contain such information published by DOE in guidance on the Title XVII Loan Guarantee Program website pursuant to § 609.19. In such event, subsequent parts of an Application may be filed only after DOE invites an Applicant to make an additional submission. If DOE directs that Applications be submitted in more than one part, the initial part of

an Application shall contain information sufficient for DOE to determine that the project proposed by an Applicant will be, or may reasonably become, an Eligible Project, and to evaluate such project's readiness to proceed. If there have been any material amendments, modifications, or additions made to the information previously submitted by an Applicant, the Applicant shall provide a detailed description thereof, including any changes in the proposed project's financing structure or other terms, promptly upon request by DOE.

(b) An Applicant may submit Applications for multiple proposed projects and for projects using different technologies; provided that an Applicant for an Innovative Energy Project or Innovative Supply Chain Project may not submit an Application or Applications for multiple Innovative Energy Projects or multiple Innovative Supply Chain Projects using the same technology. For purposes of this paragraph (b), the term ''Applicant'' shall include the Project Sponsor and any subsidiaries or affiliates of the Project Sponsor.

(c) DOE has no obligation to evaluate an Application that is not complete, and may proceed with such evaluation, or a partial evaluation, only in its discretion. DOE will not design an Eligible Project for Applicants, but may respond, in its discretion, in general terms to specific proposals. DOE's response to questions from potential Applicants are pre-decisional and preliminary in nature.

(d) Unless an Applicant requests an extension and such an extension is granted by DOE in its discretion, an Application may be rejected if it is not complete within two years from the date of submission (or date of submission of the first part thereof, in the case of Applications made in more than one part).

(e) DOE shall respond, in writing, to any inquiry by an Applicant about the status of its Application within ten (10) days of receipt of such request. If an Application has been pending before DOE for 180 days or more, such response shall include:

(1) A description of the current status of review of the Application;

(2) A summary of any factors that are delaying a final decision on the Application, a list of what items are required in order to reach a final decision, citations to authorities stating the reasons why such items are required, and a list of actions the Applicant can take to expedite the process; and

(3) An estimate of when a final decision on the Application will be made.

§ 609.5 Evaluation of applications.

(a) Applications will be considered in a merit-based review process, considering such factors determined and published by DOE in guidance on its Title XVII Loan Guarantee Program website pursuant to § 609.19. At any time, DOE may request additional information or supporting documentation from an Applicant.

(b) Applications will be denied if:

(1) The proposed project is not an Eligible Project;

(2) With respect to applications for Innovative Energy Projects and Innovative Supply Chain Projects, the applicable technology is not ready to be deployed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the Application, does not have the potential to be deployed in other commercial projects in the United States, or is not or will not be available for further commercial use in the United States;

(3) The Person proposed to issue the loan or purchase other debt obligations constituting the Guaranteed Obligations is not an Eligible Lender;

(4) The proposed project is for demonstration, research, or development;

(5) Significant Equity for the proposed project will not be provided by the date of issuance of the Guaranteed Obligations, or such later time as DOE in its discretion may determine;

(6) The proposed project does not present a Reasonable Prospect of Repayment of the Guaranteed Obligations;

(7) With respect to applications for Energy Infrastructure Reinvestment Projects such application fails to include an analysis of how the proposed project will engage with and affect associated communities or, where the Applicant is an electric utility, an assurance that Applicant will pass on the financial benefit from the Guarantee to the customers of, or associated communities served by, the electric utility; or

(8) The Applicant or Project Sponsor does not satisfy DOE's ''know your customer'' requirements.

(c) If an Application has not been denied pursuant to paragraph (b) of this section, DOE will evaluate the proposed project based on the criteria published by DOE in guidance on its Title XVII Loan Guarantee Program website pursuant to § 609.19.

(d) After DOE completes its review and evaluation of a proposed project, DOE will notify the Applicant in writing of its determination whether to proceed with due diligence and negotiation of a Term Sheet. DOE will proceed only if it determines that the proposed project is highly qualified and suitable for a Guarantee. Upon written confirmation from the Applicant that it desires to proceed, DOE and the Applicant will commence negotiations.

(e) DOE shall provide all Applicants with a reasonable opportunity to correct or amend any Application in order to meet the criteria set forth in this part or any other conditions required by DOE, prior to any denial of such Application. A determination by DOE not to proceed with a proposed project shall be final and non-appealable, but shall not prejudice the Applicant or other affected Persons from applying for a Guarantee in respect of a different proposed project pursuant to another, separate Application. Prior to DOE's denial of any Application, DOE shall advise the Applicant in writing, not less than ten (10) business days prior to the effective date of such denial. If an Application could be amended or corrected such that DOE would determine that the project is highly qualified and suitable for a Guarantee, DOE may set forth the reasons for such proposed denial along with a list of items that may be corrected or amended by the Applicant. If requested by any Applicant, DOE shall meet with such Applicant in order to address questions or concerns raised by the Applicant.

§ 609.6 Term sheets and conditional commitments.

(a) DOE, after negotiation of a Term Sheet with an Applicant, may offer such Term Sheet to an Applicant or such other Person that is an affiliate of the Applicant and that is acceptable to DOE. DOE's offer of a Term Sheet shall be in writing and signed by the Contracting Officer. DOE's negotiation of a Term Sheet imposes no obligation on the Secretary to offer a Term Sheet to the Applicant.

(b) DOE shall terminate its negotiations of a Term Sheet if it has not offered a Term Sheet in respect of an Eligible Project within two years after the date of the written notification set forth in § 609.5(d), unless extended in writing by DOE.

(c) If and when the offeree specified in a Term Sheet satisfies all terms and conditions for acceptance of the Term Sheet, including written acceptance thereof, the Term Sheet shall become a Conditional Commitment. Each Conditional Commitment shall include

an expiration date no more than two years from the date it is issued, unless extended in writing in the discretion of the Contracting Officer. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement. If applicable, the Conditional Commitment shall include the terms and conditions pursuant to which any Credit Subsidy Cost payment made by the Borrower to the Secretary is subject to refund to the Borrower in the event that the closing date of the Loan Guarantee Agreement does not occur.

(d) Prior to or on the date of the Conditional Commitment, DOE will ensure that:

(1) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the Guarantee;

(2) One of the following has occurred:

(i) Appropriated funds for the Credit Subsidy Cost are available;

(ii) The Secretary has received from the Borrower payment in full for the Credit Subsidy Cost and deposited the payment into the Treasury; or

(iii) A combination of one or more appropriations under paragraph (d)(2)(i) of this section and one or more payments from the Borrower under paragraph (d)(2)(ii) of this section has been made that is equal to the Credit Subsidy Cost; and

(3) The Department of the Treasury has been consulted as to the proposed terms and conditions of the Loan Guarantee Agreement.

(e) If, subsequent to execution of a Conditional Commitment, the financing arrangements of the Borrower, or in respect of an Eligible Project, change from those described in the Conditional Commitment, the Applicant shall promptly provide updated financing information in writing to DOE. All such updated information shall be deemed to be information submitted in connection with an Application. Based on such updated information, DOE may take one or more of the following actions:

(1) Determine that such changes are not material to the Borrower, the Eligible Project or DOE;

(2) Amend the Conditional Commitment accordingly, including by re-calculating the Credit Subsidy Cost in accordance with § 609.6(d);

(3) Postpone the expected closing date of the associated Loan Guarantee Agreement; or

(4) Terminate the Conditional Commitment.

§ 609.7 Closing on the loan guarantee agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of a Loan Guarantee Agreement.

(b) Prior to or on the closing date of a Loan Guarantee Agreement DOE will ensure that:

(1) Pursuant to section 1702(h) of Title XVII, DOE will receive from the Applicant the Facility Fee referred to in § 609.13(b) on the closing date;

(2) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement.

(2) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States;

(3) Each holder of the Guaranteed Obligations is an Eligible Lender, and the servicer of the Guaranteed Obligations meets the servicing performance requirements of § 609.9(b);

(4) DOE has determined the principal amount of the Guaranteed Obligations expected to be issued in respect of the Eligible Project, as estimated at the time of issuance, will not exceed 80 percent of the Project Costs of the Eligible Project;

(5) DOE has completed all necessary reviews under the National Environmental Policy Act of 1969; and

(6) All conditions precedent specified in the Conditional Commitment are either satisfied or waived in writing by the Contracting Officer. If the counterparty to the Conditional Commitment has not satisfied all such terms and conditions on or prior to the closing date of the Loan Guarantee Agreement, DOE may, in its discretion, set a new closing date, or terminate the Conditional Commitment.

§ 609.8 Loan guarantee agreement.

(a) Only a Loan Guarantee Agreement executed by the Contracting Officer can obligate DOE to issue a Guarantee in respect of Guaranteed Obligations. DOE is not bound by oral representations.

(b) Each Loan Guarantee Agreement shall contain the following requirements and conditions, and shall not be executed until the Contracting Officer determines that the following requirements and conditions are satisfied:

(1) The Federal Financing Bank shall be the only Eligible Lender in transactions where DOE guarantees 100 percent (but not less than 100 percent) of the principal and interest of the Guaranteed Obligations issued under a Loan Guarantee Agreement. Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market.

(2) The Borrower shall be obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other debt of a Borrower over a period not to exceed:

(i) In the case of an Innovative Energy Project, an Innovative Supply Chain Project, or a State Energy Financing Institution Project, the lesser of 30 years or 90 percent of the projected useful life of the Eligible Project's major physical assets, as calculated in accordance with U.S. generally accepted accounting principles and practices; and

(ii) In the case of an Energy Infrastructure Reinvestment Project, 30 years.

(3) If any financing or credit arrangement of the Borrower or relating to the Eligible Project, other than the Guaranteed Obligations, has an amortization period shorter than that of the Guaranteed Obligations, DOE shall have determined that the resulting financing structure allocates to DOE a reasonably proportionate share of the default risk, in light of:

(i) DOE's share of the total debt financing of the Borrower;

(ii) Risk allocation among the credit providers to the Borrower; and

(iii) Internal and external credit enhancements.

(4) The Guarantee does not finance, either directly or indirectly tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code.

(5) The principal amount of the Guaranteed Obligations, when combined with funds from other sources committed and available to the Borrower, shall be sufficient to pay for expected Project Costs (including adequate contingency amounts) and otherwise to carry out the Eligible Project.

(6) There shall be a Reasonable Prospect of Repayment by the Borrower of the principal of and interest on the Guaranteed Obligations and all of its other debt obligations.

(7) The Borrower shall pledge collateral or surety determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations. Such collateral or security may include Eligible Project assets and assets not related to the Eligible Project.

(8) The Loan Guarantee Agreement and related documents shall include detailed terms and conditions that DOE deems necessary and appropriate to

protect the interests of the United States in the case of default, including ensuring availability of all relevant intellectual property rights, technical data including software, and technology necessary for DOE or any Person selected by DOE, to complete, operate, convey, and dispose of the defaulted Borrower or the Eligible Project.

(9) The Guaranteed Obligations shall not be subordinate in payment or lien priority to other financing. In DOE's discretion, Guaranteed Obligations may share a lien position with other financing on a *pari passu* basis.

(10) There is satisfactory evidence that the Borrower will diligently pursue the Eligible Project and is willing, competent, and capable of performing its obligations under the Loan Guarantee Agreement and the loan documentation relating to its other debt obligations.

(11) The Borrower shall have paid all fees and expenses due to DOE or the U.S. Government, including such amount of the Credit Subsidy Cost as may be due and payable from the Borrower at the time of the Conditional Commitment.

(12) The Borrower, any Eligible Lender, and each other relevant party shall take, and be obligated to continue to take, those actions necessary to perfect and maintain liens on collateral in respect of the Guaranteed Obligations.

(13) DOE or its representatives shall have access to the offices of the Borrower and the Eligible Project site at all reasonable times in order to monitor the—

(i) Performance by the Borrower of its obligations under the Loan Guarantee Agreement; and

(ii) Performance of the Eligible Project.

(14) DOE and Borrower have reached an agreement regarding the information that will be made available to DOE and the information that will be made publicly available.

(15) The Borrower shall have filed applications for or obtained any required regulatory approvals for the Eligible Project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, State, and local regulatory requirements.

(16) The Borrower shall have no delinquent Federal debt.

(17) The Project Sponsors have made or will make a significant Equity investment in the Borrower or the Eligible Project, and will maintain control of the Borrower or the Eligible Project as agreed in the Loan Guarantee Agreement.

(18) The Loan Guarantee Agreement and related agreements shall include such other terms and conditions as DOE deems necessary or appropriate to protect the interests of the United States.

(c) The Loan Guarantee Agreement shall provide that, in the event of a default by the Borrower:

(1) Interest on the Guaranteed Obligations shall accrue at the rate or penalty rate, as applicable, stated in the Loan Guarantee Agreement or the Loan Agreement until DOE makes full payment of the defaulted Guaranteed Obligations and, except when such Guaranteed Obligations are funded through the Federal Financing Bank, DOE shall not be required to pay any premiums, defaults, or prepayment penalties; and

(2) The holder of collateral pledged in respect of the Guaranteed Obligations shall be obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery.

(d)(1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.9. Such latter Eligible Lender shall be required to assume all servicing, monitoring, and reporting requirements as provided in the Loan Guarantee Agreement. Any transfer of the servicing, monitoring, and reporting functions shall be subject to the prior written approval of DOE.

(2) The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the Guaranteed Obligations, shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guaranteed Obligations. Any contractual agent approved by the Secretary to perform this function may transfer or assign this responsibility only with the Secretary's prior written approval.

(e) Each Loan Guarantee Agreement shall require the Borrower to make representations and warranties, agree to covenants, and satisfy conditions precedent to closing and to each disbursement that, in each case, relate to its compliance with the Davis-Bacon Act and the Cargo Preference Act.

(f) The Applicant, the Borrower, or the Project Sponsor must estimate, calculate, record, and provide to DOE any time DOE requests such information and at the times provided in the Loan Guarantee Agreement all costs incurred in the design, engineering, financing, construction, startup, commissioning, and shakedown of the Eligible Project in accordance with generally accepted accounting principles and practices.

§ 609.9 Lender servicing requirements.

(a) When reviewing and evaluating a proposed Eligible Project, all Eligible Lenders (other than the Federal Financing Bank) shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating, and disbursing a loan made by it without a Federal guarantee.

(b) Loan servicing duties shall be performed by an Eligible Lender, DOE, or another qualified loan servicer approved by DOE. When performing its servicing duties, the loan servicer shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

(1) During the construction period, monitoring the satisfaction of all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement, or related documents;

(2) During the operational phase, monitoring and servicing the Guaranteed Obligations and collection of the outstanding principal and accrued interest as well as undertaking to ensure that the collateral package securing the Guaranteed Obligations remains uncompromised; and

(3) Until the Guaranteed Obligations have been repaid, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or its other debt obligations.

§ 609.10 Project costs.

(a) The Project Costs of an Eligible Project are those costs, including escalation and contingencies, that are expended or accrued by a Borrower and are necessary, reasonable, customary, and directly related to the design, engineering, financing, construction, startup, commissioning, and shakedown of an Eligible Project.

(b) Project Costs include:

(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 construction of the facility;

(3) Costs of equipment purchases, including a reasonable reserve of spare parts to the extent required;

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

(5) Transaction Costs;

(6) Costs of necessary and appropriate insurance and bonds of all types including letters of credit and any collateral required therefor;

(7) Costs of design, engineering, startup, commissioning, and shakedown;

(8) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the Eligible Project;

(9) To the extent required by the Loan Guarantee Agreement and not intended or available for any cost referred to in paragraph (d) of this section, costs of funding any reserve fund, including without limitation, a debt service reserve, a maintenance reserve, and a contingency reserve for cost overruns during construction; provided that proceeds of a Guaranteed Obligation deposited to any reserve fund shall not be removed from such fund except to pay Project Costs, to pay principal of the Guaranteed Obligation, or otherwise to be used as provided in the Loan Guarantee Agreement;

(10) Capitalized interest necessary to meet market requirements and other carrying costs during construction;

(11) In DOE's sole discretion, the cost of refinancing outstanding indebtedness that is directly associated with the Eligible Project, including the principal amount of such indebtedness, accrued interest thereon, and any reasonable and customary prepayment premium or breakage costs; provided that DOE determines that the refinancing furthers the purpose of the Eligible Project.

(12) With respect to Energy Infrastructure Reinvestment Projects, the cost of remediation of environmental damage associated with the Energy Infrastructure; and

(13) Other necessary and reasonable costs, including, without limitation, previously acquired real estate, equipment, or other materials, costs of interconnection, and any engineering, construction, make-ready, design, permitting, or other work completed on an existing facility or project;

(c) Where a Project consists of the financing and installation of a series of distributed energy resources, DOE may deem the eligible Project Costs to consist of the reasonable and documented costs incurred by the end-user of each distributed energy resource in connection with the contractual agreement between the end-user and the Project Sponsor or its agent, provided that:

(1) DOE is able to validate such reasonable and documented costs through standard customer contracts and standard distributed energy resource system attributes; and

(2) The Borrower institutes a compliance system satisfactory to DOE to ensure that each distributed energy resource supported by a Guarantee complies with any eligibility criteria required by DOE, including with respect to approved customer contracts and approved distributed energy resource systems.

(d) 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-Eligible Project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

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

(5) Research, development, and demonstration costs of readying an innovative technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the Eligible Project, as determined by DOE;

(7) Expenses incurred after startup, commissioning, and shakedown of the facility, or, in DOE's discretion, any portion of the facility that has completed startup, commissioning, and shakedown;

(8) Borrower-paid Credit Subsidy Costs, the Administrative Cost of a Loan Guarantee, and any other fee collected by DOE; and

(9) Operating costs.

(e) Costs incurred in connection with an Eligible Project may be subject to such other criteria for inclusion as Project Costs as published by DOE from time to time in guidance on the Title XVII Loan Guarantee Program website pursuant to § 609.19.

§ 609.11 Transaction costs.

(a) Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by an Applicant or Project Sponsor, as appropriate, of an agreement satisfactory to DOE to pay the Transaction Costs charged by the independent consultants and outside legal counsel. Each Applicant, Borrower, or Project Sponsor, as applicable, shall be responsible for the payment of Transaction Costs associated with DOE's independent consultants and outside legal counsel in connection with an Application, Conditional Commitment, or Loan Guarantee Agreement, as applicable. Appropriate provisions regarding payment of such Transaction Costs shall also be included in each Term Sheet and Loan Guarantee Agreement or, upon a determination by DOE, in other appropriate agreements.

(b) Notwithstanding payment by Applicant, Borrower, or Project Sponsor, all services rendered by an independent consultant or outside legal counsel to DOE in connection with an Application, Conditional Commitment, or Loan Guarantee Agreement shall be solely for the benefit of DOE (and such other creditors as DOE may agree in writing). DOE may require, in its discretion, the payment of an advance retainer to such independent consultants or outside legal counsel as security for the collection of the fees and expenses charged by the independent consultants and outside legal counsel. In the event an Applicant, Borrower, or Project Sponsor fails to comply with the provisions of such payment agreement, DOE in its discretion, may stop work on or terminate an Application, a Conditional Commitment, or a Loan Guarantee Agreement, or may take such other remedial measures in its discretion as it deems appropriate.

(c) DOE shall not be financially liable under any circumstances to any independent consultant or outside counsel for services rendered in connection with an Application, Conditional Commitment, or Loan Guarantee Agreement except to the extent DOE has previously entered into an express written agreement to pay for such services.

§ 609.12 Credit ratings.

(a) Where conditions justify, in the sole discretion of the Secretary, DOE may require that an Applicant submit a preliminary credit assessment for the proposed project, reflecting the project without a Guarantee, from a nationally recognized statistical ratings organization.

(b) Where conditions justify, in the sole discretion of the Secretary, DOE may require that an Applicant provide

a credit rating for the proposed project, and subsequently provide updated ratings, from a nationally recognized statistical ratings organization.

§ 609.13 Fees and charges.

(a) Unless explicitly authorized by statute, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for the Credit Subsidy Cost, the Facility Fee, the Maintenance Fee, and any other fees charged by or paid to DOE relating to Title XVII or any Guarantee thereunder. An Applicant may, at any time, use non-Federal monies to pay the Credit Subsidy Cost or DOE fees.

(b) DOE may charge Applicants a non-refundable Facility Fee, payable on the closing date for the Loan Guarantee Agreement.

(c) In order to encourage and supplement private lending activity DOE may collect from Borrowers for deposit in the United States Treasury a non-refundable Risk-Based Charge which, together with the interest rate on the Guaranteed Obligation that LPO determines to be appropriate, will take into account the prevailing rate of interest in the private sector for similar loans and risks. The Risk-Based Charge shall be paid at such times and in such manner as may be determined by DOE, but no less frequently than once each year, commencing with payment of a pro-rated payment on the date the Guarantee is issued. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.

(d) DOE may collect a Maintenance Fee as set forth in the Loan Guarantee Agreement. The Maintenance Fee shall accrue from the date of execution of the Loan Guarantee Agreement through the date of payment in full of the related Guaranteed Obligations. If DOE determines to collect a Maintenance Fee, it shall be paid by the Borrower each year (or portion thereof) in advance in the amount specified in the applicable Loan Guarantee Agreement.

(e) In the event a Borrower or an Eligible Project experiences difficulty relating to technical, financial, or legal matters or other events (*e.g.,* engineering failure or financial workouts), the Borrower shall be liable as follows:

(1) If such difficulty requires DOE to incur time or expenses beyond those customarily expended to monitor and administer performing loans, DOE may collect an extraordinary expenses fee from the Borrower that will reimburse DOE for such time and expenses, as determined by DOE; and

(2) For all fees and expenses of DOE's independent consultants and outside counsel, to the extent that such fees and expenses are elected to be paid by DOE notwithstanding the provisions of § 609.11.

§ 609.14 Full faith and credit and incontestability.

The full faith and credit of the United States is pledged to the payment of principal and interest of Guaranteed Obligations pursuant to Guarantees issued in accordance with Title XVII and this part. The issuance by DOE of a Guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such Guarantee; and that, but for fraud or material misrepresentation by the Holder, except when the Holder is the Federal Financing Bank, such Guarantee shall be legal, valid, binding, and enforceable against DOE in accordance with its terms.

§ 609.15 Default, demand, payment, and foreclosure on collateral.

(a) If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Holder may make written demand for payment upon the Secretary in accordance with the terms of the applicable Guarantee. If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Secretary shall notify the Attorney General.

(b) Subject to the terms of the applicable Guarantee, the Secretary shall make payment within 60 days after receipt of written demand for payment from the Holder, provided that the demand for payment complies in all respects with the terms of the applicable Guarantee. Interest shall accrue to the Holder at the rate stated in the promissory note evidencing the Guaranteed Obligation, without giving effect to the Borrower's default in making a required payment of principal or interest on the applicable Guarantee Obligation or any other default by the Borrower, until the Guaranteed Obligation has been fully paid by DOE. Payment by the Secretary on the applicable Guarantee does not change Borrower's obligations under the promissory note evidencing the Guaranteed Obligation, Loan Guarantee Agreement, Loan Agreement, or related documents, including an obligation to pay default interest.

(c) Following payment by the Secretary pursuant to the applicable Guarantee, upon demand by DOE, the Holder shall transfer and assign to the Secretary (or his or her designee or agent) the promissory note evidencing the Guaranteed Obligation, all rights and interests of the Holder in the Guaranteed Obligation, and all rights and interests of the Holder in respect of the Guaranteed Obligation, except to the extent that the Secretary determines that such promissory note or any of such rights and interests shall not be transferred and assigned to the Secretary. Such transfer and assignment shall include, without limitation, all of the liens, security, and collateral rights of the Holder (or his or her designee or agent) in respect of the Guaranteed Obligation.

(d) Following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, the Secretary is authorized to protect and foreclose on the collateral, take action to recover costs incurred by, and all amounts owed to, the United States as a result of the defaulted Guarantee Obligation, and take such other action necessary or appropriate to protect the interests of the United States. In respect of any such authorized actions that involve a judicial proceeding or other judicial action, the Secretary shall act through the Attorney General. The foregoing provisions of this paragraph (d) shall not relieve the Secretary from his or her obligations pursuant to any applicable Intercreditor Agreement. Nothing in this paragraph (d) shall limit the Secretary from exercising any rights or remedies pursuant to the terms of the Loan Guarantee Agreement.

(e) The cash proceeds received as a result of any foreclosure on the collateral, or other action, shall be distributed in accordance with the Loan Guarantee Agreement (subject to any applicable Intercreditor Agreement).

(f) The Loan Guarantee Agreement shall provide that cash proceeds received by the Secretary (or his or her designee or agent) as a result of any foreclosure on the collateral or other action shall be applied in the following order of priority:

(1) Toward the pro rata payment of any costs and expenses (including unpaid fees, fees and expenses of counsel, contractors and agents, and liabilities and advances made or incurred) of the Secretary, the Attorney General, the Holder, a collateral agent, or other responsible person of any of them (solely in their individual capacities as such and not on behalf of or for the benefit of their principals),

incurred in connection with any authorized action following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, or as otherwise permitted under the Loan Agreement or Loan Guarantee Agreement;

(2) To pay all accrued and unpaid fees due and payable to the Secretary, the Attorney General, the Holder, a collateral agent, or other responsible person of any of them on a pro rata basis in respect of the Guaranteed Obligation;

(3) To pay all accrued and unpaid interest due and payable to the Secretary, the Attorney General, the Holder, a collateral agent, or other responsible person of any of them on a pro rata basis in respect of the Guaranteed Obligation;

(4) To pay all unpaid principal of the Guaranteed Obligation;

(5) To pay all other obligations of the Borrower under the Loan Guarantee Agreement, the Loan Agreement, and related documents that are remaining after giving effect to the preceding provisions and are then due and payable; and

(6) To pay to the Borrower, or its successors and assigns, or as a court of competent jurisdiction may direct, any cash proceeds then remaining following the application of all payment described in paragraphs (f)(1) through (5) of this section.

(g) No action taken by the Holder or its agent or designee in respect of any collateral will affect the rights of any person, including the Secretary, having an interest in the Guaranteed Obligations or other debt obligations, to pursue, jointly or severally, legal action against the Borrower or other liable persons, for any amounts owing in respect of the Guaranteed Obligation or other applicable debt obligations.

(h) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with exercise of rights as a lien holder or recovery of deficiencies due under the Guaranteed Obligation, the Secretary may take such action as he determines to be appropriate under the circumstances.

(i) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, the Secretary from purchasing any collateral or Holder's or other Person's interest in the Eligible Project upon foreclosure of the collateral.

(j) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, forbearance by any Holder with the consent of the Secretary for the benefit of the Borrower and the United States.

(k) The Holder and the Secretary may agree to a formal or informal plan of reorganization in respect of the Borrower, to include a restructuring of the Guaranteed Obligation and other applicable debt of the Borrower on such terms and conditions as the Secretary determines are in the best interest of the United States.

§ 609.16 Preservation of collateral.

(a) If the Secretary exercises his or her right under the Loan Guarantee Agreement to require the holder of pledged collateral to take such actions as the Secretary (subject to any applicable Intercreditor Agreement) may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the collateral, the Secretary shall, subject to compliance with the Antideficiency Act, 31 U.S.C. 1341 *et seq.,* reimburse the holder of such collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in § 609.15, no party may waive or relinquish, without the consent of the Secretary, any such collateral to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as he determines are required or appropriate, taking into account the term of any applicable Intercreditor Agreement, to care for, preserve, protect or maintain collateral pledged in respect of Guaranteed Obligations. The cost of such contracts may be charged to the Borrower.

§ 609.17 Audit and access to records.

Each Loan Guarantee Agreement and related documents shall provide that:

(a) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the Eligible Project as are necessary, including the Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all Eligible Project assets and non-Eligible Project assets pledged in respect of the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all Eligible Project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals, and all other documents and records relating to the Borrower or the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the Eligible Project; and

(b) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, Eligible Lender, or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender, DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

§ 609.18 Deviations.

(a) Subject to the requirements of Title XVII and as otherwise permitted by applicable law, the Secretary may authorize deviations from the requirements of this part upon:

(1) Either receipt from the Applicant, Borrower, or Project Sponsor, as applicable, of—

(i) A written request that the Secretary deviate from one or more requirements; and

(ii) A supporting statement briefly describing one or more justifications for such deviation; or

(iii) A determination by the Secretary in his or her discretion to undertake a deviation;

(2) A finding by the Secretary that such deviation supports program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government; and

(3) If the waiver would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents, DOE's consultation with OMB and the Secretary of the Treasury.

(b) If a deviation under this section results in an increase in the applicable Credit Subsidy Cost, such increase shall be funded either by additional fees paid by the Borrower or on behalf of the Borrower by any third party or, if an appropriation is available, by means of an appropriations act. The Secretary has

discretion to determine how the cost of a deviation is funded.

§ 609.19 Title XVII loan guarantee program guidance.

(a) Invitations for the submission of Applications for loan guarantees for Eligible Projects shall be published on DOE's Title XVII Loan Guarantee Program website. The Title XVII Loan Guarantee Program website shall contain guidance for potential Title XVII Applicants and solicit applications for a Guarantee.

(b) The Title XVII Loan Guarantee Program website must include, at a minimum, the following guidance:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE for Guarantees under Title XVII;

(2) The method and further instructions for submission of Applications;

(3) The name and address of the DOE representative whom a potential Applicant may contact to receive further information;

(4) The programmatic, technical, financial, and other factors and criteria that DOE will use to evaluate Applications, including but not limited to consideration of the Reasonable Prospect of Repayment, the amount of Equity provided, and the reliance on other Federal assistance;

(5) The required contents of the Application, which may vary by category of Eligible Project; and

(6) Such other information as DOE may deem appropriate.

(c) Using procedures as may be announced by DOE, a potential Applicant may request a meeting with DOE to discuss its potential Application. At its discretion, DOE may meet with a potential Applicant, either in person or electronically, to discuss its potential Application. DOE's responses to questions from potential Applicants and DOE's statements to potential Applicants, including any initial thoughts on the eligibility of the project, are pre-decisional and preliminary in nature. Any such responses and statements are subject in their entirety to any final action by DOE with respect to an Application submitted in accordance with § 609.4.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. FAA–2022–0912; Amdt. Nos. 91–368, 121–388, 125–73, and 135–144]

RIN 2120–AL36

Updating Manual Requirements To Accommodate Technology

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates the Federal Aviation Administration (FAA) manual requirements to reflect industry use of electronic and paper manuals. The amendments apply to fractional ownership operations; domestic, flag, and supplemental operations; rules governing the operations of U.S.-registered civil airplanes which have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved; and commuter and on-demand operations. This action requires manuals accessed in paper format to display the date of last revision on each page, and it requires manuals accessed in electronic format to display the date of last revision in a manner in which a person can immediately ascertain it. This action also revises the requirement for program managers or certificate holders to carry appropriate parts of the manual aboard airplanes during operations. The FAA instead requires program managers or certificate holders to ensure the appropriate parts of the manual are accessible to flight, ground, and maintenance personnel when such personnel are performing their assigned duties. Lastly, this rule updates outdated language that refers to accessing information in manuals kept in microfiche. The FAA removes this outdated language and simply requires that all manual information and instructions be displayed clearly and be retrievable in the English language.

DATES: This final rule is effective June 29, 2023.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sandra Ray, Voluntary Programs and Rulemaking Section, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (412) 329–3088; email *Sandra.ray@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FAA is adopting without change, a notice of proposed rulemaking (NPRM),[1] which proposed several amendments in title 14, Code of Federal Regulations (14 CFR), part 91, subpart K, and parts 121, 125, and 135 to remove certain prescriptive manual requirements for certificate holders. This rulemaking amends §§ 91.1025, 121.135, 125.73, and 135.23 to remove the requirement to have the date of last revision on each page concerned as it applies to operators using electronic manuals. Further, this rule adds a separate requirement to allow certificate holders using electronic manuals flexibility in displaying the date of last revision, while maintaining the existing requirement for certificate holders with paper manuals.

In addition, this rulemaking clarifies in §§ 91.1023, 121.139, and 135.21 that program managers or certificate holders must ensure appropriate parts of the manual are accessible on each aircraft when the aircraft are away from their principal base of operations, in lieu of indicating that manuals must exist in any particular format. This rulemaking provides certificate holders flexibility regarding how their flight, ground, and maintenance personnel access electronic manuals and permits them to obtain information in a manner that reflects current technological capabilities.[2]

Lastly, this rulemaking amends §§ 91.1023, 121.139, 125.71, and 135.21 to update language that requires certificate holders accessing manuals in ''other than printed form'' to ensure there is a ''compatible reading device available to those persons that provides a legible image'' or ''a system that is able to retrieve the maintenance information and instructions in the English language.'' The FAA replaces this outdated language with a requirement that all manual information and instructions be displayed clearly and be retrievable in the English language.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I,

[1] Updating Manual Requirements to Accommodate Technology notice of proposed rulemaking, 87 FR 42109 (Jul. 14, 2022).

[2] Other regulations, such as 14 CFR 91.9, contain language that does not preclude referring to or carrying manuals that exist in an electronic format. This rule does not address such regulations.