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DOE Proposes Regulations for Loan Guarantee Program

Program to spur clean, innovative energy technologies

WASHINGTON, DC – The U.S. Department of Energy (DOE) today issued a Notice of Proposed Rulemaking (NOPR) for its Loan Guarantee program, which will help spur investment in projects that employ new, clean energy technologies. Projects within DOE's Loan Guarantee program will help sustain economic growth, yield environmental benefits and allow for a more stable and secure energy supply. Under the FY'07 Continuing Resolution, Congress provided DOE with authority to issue guarantees for up to $4 billion in loans; and in the Administration's FY'08 budget, DOE requested $9 billion in loan guarantee authority.

"This demonstrates our desire to foster implementation and commercialization of new, environmentally friendly technologies that will reduce emissions and strengthen our energy and economic security," Secretary Bodman said. "This program will support promising energy technologies that will help encourage increased use of cleaner sources of energy worldwide."

DOE's Loan Guarantee program, authorized in Title XVII of the Energy Policy Act of 2005 (EPAct), aims to encourage early commercial use of new or significantly improved technologies in energy projects. By providing the full faith and credit of the United States government, loan guarantees will enable DOE to share some of the financial risks of projects that employ new technologies that avoid, reduce, or sequester air pollutants and greenhouse gases. Projects supported by loan guarantees will help fulfill President Bush's goal of reducing our reliance on imported sources of energy by diversifying our nation's energy mix and increasing energy efficiency.

DOE seeks a broad portfolio of large and small projects, from a wide variety of technologies. Within DOE's FY'08 budget request to guarantee up to $9 billion in loans, DOE has proposed to guarantee $4 billion in loans for central power generation facilities such as nuclear facilities or carbon sequestration optimized coal power plants; $4 billion in loans for projects that promote biofuels and clean transportation fuels; and $1 billion in loans for projects using new technologies for electric transmission facilities or renewable power generation systems. Projects seeking loan guarantees will undergo disciplined and rigorous reviews, necessary to take proper account of the potential risks of a project. Ultimately, the issuance of these loan guarantees will depend on the merits and benefits of particular project proposals and their compliance with statutory and regulatory requirements.

The proposed regulations provide the following:

- The Title XVII loan guarantee program will be implemented through a series of solicitations. The solicitations may target specific technology areas or be general;
- Projects must employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the loan guarantee agreement is executed;

- DOE may guarantee up to 90% of the amount of any loan as long as DOE does not issue guarantees for more than 80% of the total cost of a project;
- In the event of a loan default, DOE will have a superior lien on all project assets pledged as collateral for the guaranteed loan;
- The Secretary must determine that there is a “reasonable prospect” of repayment of the guaranteed debt;
- DOE must charge and collect fees sufficient to cover applicable administrative expenses;
- Borrower-paid Credit Subsidy Costs and administrative fees paid to DOE may not be included within total project costs for the purposes of determining the amount of guarantees that DOE can issue for a project;
- Receipt of other governmental assistance does not disqualify a project from receiving a Title XVII loan guarantee; however, when evaluating a project’s application for a Title XVII loan guarantee, DOE will consider the extent to which a project will receive other governmental assistance, (e.g., grants, tax credits, other loan guarantees);
- The guaranteed portion of a partially guaranteed loan or debt obligation may not be separated from or “stripped” from the non-guaranteed portion of the loan if the loan is participated, syndicated or otherwise resold in the secondary debt market; and
- The borrower must have a significant equity stake in a project.

In August 2006, DOE issued guidelines and a solicitation for pre-applications for up to $2 billion in loan guarantees. By the December 31, 2006 deadline for this solicitation, DOE received 143 pre-applications requesting more than $27 billion in loan guarantee protection (for project costs estimated at more than $51 billion). DOE continues to review and evaluate these pre-applications.

Under the FY’07 Continuing Resolution, signed by President Bush in February 2007, DOE received authorization to guarantee up to $4 billion in loan guarantees. Section 20320(b) of the CR further provides that no loan guarantees may be issued under the Title XVII program until DOE issues final regulations.

The NOPR will be open to public comment for 45 days once it is published in the Federal Register. Additonal information on the DOE’s NOPR and the loan guarantee program.

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