

**EMERGENCY STEEL GUARANTEE LOAN BOARD****13 CFR Chapter IV**

RIN 3004-ZA00

**Emergency Steel Guarantee Loan Program****AGENCY:** Emergency Steel Guarantee Loan Board.**ACTION:** Final rule.

**SUMMARY:** On August 17, 1999, President Clinton signed into law an act providing authority for guarantees of loans to qualified steel and iron ore companies and to qualified oil and gas companies. Chapter 1 of the Emergency Steel Loan Guarantee Act of 1999 ("Act"), established the Emergency Steel Guarantee Loan Program ("Program") for guaranteeing loans made by private sector lending institutions to qualified steel and iron ore companies. The Act established the Emergency Steel Guarantee Loan Board ("Board"), composed of the Chairman of the Board of Governors of the Federal Reserve System, as Chairman of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission. The Board has certain responsibilities under the law, including the issuance of necessary rules. The Department of Commerce was appropriated funds to implement and administer the Program. These regulations have been approved by the Board, and are being issued to implement the Program.

**DATES:** This rule is effective December 27, 1999.**FOR FURTHER INFORMATION CONTACT:** Executive Director, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington DC 20230, (202) 482-6151.**SUPPLEMENTARY INFORMATION:****Background**

The Program will provide guarantees for up to \$1 billion in loans to qualified steel and iron ore companies. These loans will be made by private sector lenders, with the Federal Government providing a guarantee for up to 85 percent of the amount of the principal of the loan. The Board, composed of the Chairman of the Board of Governors of the Federal Reserve System, who will serve as Chairman of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission, will oversee the Program. The Board will select an Executive Director, a Secretary, and a

General Counsel to oversee day-to-day operations of the Program.

A loan guarantee may be issued upon application to the Board by a private banking or investment institution which has committed to enter into an agreement to provide a loan to a qualified steel company. A qualified steel company is defined in the Act to mean any company that: (A) is incorporated under the laws of any State; (B) is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, including ingots, slab and billets, plates, flat-rolled steel, sections and structural products, bars, rail type products, pipe and tube, and wire rod; and (C) has experienced layoffs, production losses, or financial losses since January 1998 or that operates substantial assets of a company that meets these qualifications. An iron ore company incorporated under the laws of any State will be treated as a qualified steel company for purposes of the Program.

In order to guarantee a loan to a qualified steel company, the Board must make certain determinations. The Board must determine that credit is not otherwise available to a qualified steel company under reasonable terms or conditions sufficient to meet its financing needs. Next, the prospective earning power of that company, together with the character and value of the security pledged, must furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms. In addition, the loan to be guaranteed must bear interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan. Further the company must agree to an audit by the General Accounting Office, or its designee, and an independent auditor acceptable to the Board, prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding. In addition, audited financial statements are required to be submitted with an application. Finally, in the case of a purchaser of substantial assets of a qualified steel company, the Board must find that the company is unable to reorganize itself.

The Act established several conditions applicable to each loan guarantee issued by the Board. All loans guaranteed under this Program must be paid in full not later than December 31, 2005. The guarantee level may not exceed 85 percent of the amount of

principal of the loan. The aggregate amount of loans guaranteed and outstanding at any one time under this Program may not exceed \$1 billion, and the aggregate amount of loans guaranteed under this Program with respect to a single qualified steel company may not exceed \$250 million. Of the \$1 billion aggregate amount of loans authorized to be guaranteed and outstanding at any one time under the Program, not more than \$30 million will be loans made to iron ore companies. A qualified steel company receiving a guarantee under this section will be required to pay a fee in the amount of 0.5 percent of the principal of the loan to the Department of the Treasury to cover the costs of the Program payable within one year from the issuance of the guarantee. Finally, the terms and conditions of each guaranteed loan must provide that the loan may not be amended, and that no provision of the loan documents or the guarantee agreement can be waived, without the prior written consent of the Board.

In the Act, Congress appropriated \$140 million for the cost of the loans guaranteed. The Board will consider applications and award guarantees under the Program in accordance with the appropriated funding.

**Public Meeting**

To receive public input regarding operation of the Program, the Board held a public meeting on September 22, 1999, at the Department of Commerce. The meeting consisted of parties presenting oral statements to staff of the Department of Commerce, the Federal Reserve Board, and the Securities and Exchange Commission. Oral statements addressed issues and made suggestions regarding implementation of the Program. Thirteen parties, representing steel companies, presented oral testimony at the meeting. In addition to oral statements presented at the meeting, written comments were submitted by interested parties. All comments were considered in promulgating these rules.

**Description of Regulation**

The Board's regulations are divided into three subparts. Subpart A sets out the purpose of the rules and contains definitions of terms used in the other subparts. Subpart B contains rules regarding the Board's organization, staffing, rules of procedure, and procedures for public access to the Board's records. The Board will establish an official staff consisting of an Executive Director, General Counsel, and Secretary, with the respective responsibilities set out in Subpart B.

The Board may delegate to its official staff authority to take certain actions, subject to such terms and conditions as the Board deems appropriate. The Board may employ additional staff or outside consultants as it deems necessary to carry out its functions in accordance with the Act.

Subpart C sets out the eligibility requirements for lenders and borrowers under the Program, general loan terms, fees, and restrictions on assignment and transfer of loans guaranteed under the Program. In addition, Subpart C describes the process by which eligible lenders can submit applications for loan guarantees to the Board and the Board's procedures for processing and evaluating the applications in order to select the loans that will be granted guarantees. Finally, Subpart C sets out some of the Lender's responsibilities in originating and administering a guaranteed loan and the events and conditions that could cause the Board to terminate the guarantee in whole or in part.

The Act directs the Board to act on applications for loan guarantees as soon as possible. In addition, the Board must implement the Program within the appropriated funding provided by the Act and, thus, must ensure that it grants guarantees to the loans that it determines best meet the Program's evaluation criteria. In view of these and other considerations, the Board has determined to create an application "window" during which applicants must submit their loan guarantee applications. The window will run from the date these rules are published in the **Federal Register** until December 30, 1999.

Each application package received by the Board during this window will be screened to confirm that it meets all of the Program's eligibility requirements as set out in the applicable regulations and application forms. Application packages that do not meet the Program's eligibility requirements will not be considered for a loan guarantee. The Board will compare the eligible applications on a competitive basis and offer guarantees to those applications that it determines best meet the Program's evaluation criteria. As discussed in more detail in Subpart C, the Program's evaluation criteria include the ability of the Borrower to repay the loan according to its terms, the protection provided by the proposal to the Government in the event of default (including sufficiency of collateral, lien position, and percentage of guarantee requested), and the adequacy of the Lender's loan underwriting analysis. Since the

accelerated schedule does not provide time for the Board to negotiate with individual applicants and the Board's selection process will be on a competitive basis, it is in each applicant's best interest to provide, at the outset, a thorough proposal that ranks as high as possible on each of the Program's evaluation criteria. For example, applicants should request the lowest guarantee percentage practicable for their proposals at the outset. In addition, applications giving the government a higher security position on higher quality collateral will be given preference over those that provide a lesser level of security. Failure to do so could reduce the likelihood that the application will be selected to receive a guarantee.

#### **Administrative Law Requirements**

##### *Executive Order 12866*

This final rule has been determined to be a "significant regulatory action" under section 3(f) of Executive Order 12866.

##### *Administrative Procedure Act*

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

##### *Paperwork Reduction Act*

The Board will submit to the Office of Management and Budget, for clearance under the Paperwork Reduction Act, a package containing the necessary forms and documentation for participation in this Program.

##### *Regulatory Flexibility Act*

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

##### *Congressional Review Act*

This rule has been determined to be a major rule for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.* The Congressional Review Act requires that major rules have their effective date delayed 60 days while Congress has the opportunity to review the rule. While there are certain exemptions to this delayed effective date requirement, the Board has

determined that none are applicable to this rule.

##### *Intergovernmental Review*

No intergovernmental consultation with state and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

##### *National Environmental Policy Act*

The Board determined that this Program does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, Public Law 91-190 (NEPA), an Environmental Impact Statement is not required. Loans sought to be guaranteed under the Program will be assessed individually to determine appropriate compliance with NEPA.

##### *Unfunded Mandate Reform Act of 1995*

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

##### *Executive Order 12612*

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

##### *Executive Order 12630*

This rule does not contain policies that have takings implications.

##### *Programs Affected*

There is no Catalog of Federal Domestic Assistance listing for the Emergency Steel Loan Guarantee Program.

#### **List of Subjects in 13 CFR Part 400**

Administrative practice and procedure, Freedom of Information, Loan programs—Steel, Reporting and recordkeeping requirements.

Dated: October 18, 1999.

**Jonathan Orszag,**

*Acting Executive Director, Emergency Steel Loan Guarantee Board.*

For the reasons set out in the preamble, 13 CFR Chapter IV is established to read as follows:

#### **CHAPTER IV—EMERGENCY STEEL GUARANTEE LOAN BOARD**

#### **PART 400—EMERGENCY STEEL GUARANTEE LOAN PROGRAM**

Sec.

##### **Subpart A—General**

400.1 Purpose.

400.2 Definitions.

**Subpart B—Board Procedures**

- 400.100 Purpose and scope.
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- 400.108 Restrictions on lobbying.
- 400.109 Government-wide debarment and suspension (nonprocurement).
- 400.110 Amendments.

**Subpart C—Steel Guarantee Loans**

- 400.200 Eligible Borrower.
- 400.201 Eligible Lender.
- 400.202 Loan amount.
- 400.203 Guarantee percentage.
- 400.204 Loan terms.
- 400.205 Application process.
- 400.206 Environmental requirements.
- 400.207 Application evaluation.
- 400.208 Issuance of the Guarantee.
- 400.209 Funding for the Program.
- 400.210 Assignment or transfer of loans.
- 400.211 Lender responsibilities.
- 400.212 Liquidation.
- 400.213 Termination of Guarantee.
- 400.214 OMB control number.

**Authority:** Pub. L. 106–51, 113 Stat. 252 (15 U.S.C. 1841 note).

**Subpart A—General****§ 400.1 Purpose.**

This part is issued by the Emergency Steel Guarantee Loan Board pursuant to section 552 of title 5 of the United States Code and the Emergency Steel Loan Guarantee Act of 1999, Chapter 1 of Public Law 106–51. This part contains rules for making and servicing loans to qualified steel and iron ore companies guaranteed by the Board.

**§ 400.2 Definitions.**

(a) *Act* means the Emergency Steel Loan Guarantee Act of 1999, Chapter 1 of Public Law 106–51.

(b) *Administer, administering and administration*, mean the Lender's actions in making, disbursing, servicing (including, but not limited to care, preservation and maintenance of collateral), collecting and liquidating a loan and security.

(c) *Applicant* means the private banking or investment institution applying for a loan guarantee under this part.

(d) *Board* means the Emergency Steel Guarantee Loan Board.

(e) *Borrower* means a Qualified Steel Company which could receive a loan guaranteed by the Board under this Program.

(f) *Guarantee* means the written agreement between the Board and the Lender, and approved by the Borrower, pursuant to which the Board guarantees repayment of a specified percentage of

the principal of the loan, including the Special Terms and Conditions, the General Terms and Conditions, and all exhibits thereto.

(g) *Lender* means a private banking or investment institution that is eligible pursuant to § 400.201.

(h) *Loan Documents* mean the loan agreement and all other instruments, and all documentation between the Lender and the Borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan.

(i) *Program* means the Emergency Steel Guarantee Loan Program established by the Act.

(j) *Security* means all property, real or personal, required by the provisions of the Guarantee or by the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents or Guarantee.

(k) *Qualified Steel Company* means a company that is incorporated under the laws of any State; is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, including ingots, slab and billets, plates, flat-rolled steel, sections and structural products, bars, rail type products, pipe and tube, and wire rod; and has experienced layoffs, production losses, or financial losses since January 1, 1998. An iron ore company incorporated under the law of any state is considered a Qualified Steel Company for purposes of the Program.

**Subpart B—Board Procedures****§ 400.100 Purpose and scope.**

This subpart describes the Board's authorities and organizational structure, the means and rules by which the Board takes actions, and procedures for public access to Board records.

**§ 400.101 Composition of the Board.**

The Board consists of the Chairman of the Board of Governors of the Federal Reserve System, who acts as Chairman of the Board, the Chairman of the Securities and Exchange Commission, and the Secretary of Commerce.

**§ 400.102 Authority of the Board.**

Pursuant to the provisions of the Act, the Board is authorized to guarantee loans provided to Qualified Steel Companies by private banking and investment institutions in accordance with the procedures, rules, and regulations established by the Board, to make the determinations authorized by the Act, and to take such other actions as necessary to carry out its functions in accordance with the Act.

**§ 400.103 Offices.**

The principal offices of the Board are in the U.S. Department of Commerce, Washington, DC 20230.

**§ 400.104 Meetings and actions of the Board.**

(a) *Place and frequency.* The Board meets, on the call of the Chairman, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board.

(b) *Quorum and voting.* Two voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by a majority vote of the voting members. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(c) *Agenda of meetings.* To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(d) *Minutes.* The Secretary of the Board shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(e) *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(f) *Actions between meetings.* When, in the judgment of the Chairman, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary of the Board and the voting members may communicate their votes to the Chairman in writing (including an

action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(g) *Delegations of authority.* The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to the Executive Director, the General Counsel, or the Secretary of the Board, to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to delegated authority has the effect of an action taken by the Board.

#### **§ 400.105 Staff.**

(a) *Executive Director.* The Executive Director of the Board advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *General Counsel.* The General Counsel of the Board provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary of the Board.* The Secretary of the Board sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board and performs such other duties as the Board may require.

#### **§ 400.106 Ex parte communications.**

Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited. This section also applies to the Board's staff and employees of the constituent agencies who are or reasonably may be expected to be involved in the decisional process of the matter pending before the Board.

#### **§ 400.107 Freedom of Information Act.**

(a) *Definitions.* All terms used in this section which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA*, as used in this section, means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that

organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying.*—(1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information FOIA, as amended (5 U.S.C. 552)(FOIA). This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board's Freedom of Information Office pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity (for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230.

(3) *Electronic records.* Information available under this section that was created on or after November 1, 1996, shall also be available on the Board's website, found at [www.doc.gov](http://www.doc.gov)

(c) *Records available to the public on request.*—(1) *Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA. The Board's policy is to make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not

foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230; or sent by facsimile to the Secretary of the Board. The request shall be clearly marked **FREEDOM OF INFORMATION ACT REQUEST**.

(3) *Contents of request.* The request shall contain the following information:

- (i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;
- (ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;
- (iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests.*—(1) *Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually receives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2), of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that

person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

- (i) In the case of expedited treatment under paragraph (d)(2) of this section;
- (ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;
- (iii) Where the estimated charge is less than \$250, and the requester does not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or
- (iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this section, an appropriate search shall be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

- (i) The Secretary of the Board's determination of the request and the reasons therefor;
- (ii) The information withheld, and the basis for withholding; and
- (iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary

of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

- (i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or
- (ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section

may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the General Counsel of the Board, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230; or sent by facsimile to the General Counsel of the Board. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The General Counsel of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules; waiver of fees.*—

(1) *Fee schedule.* The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (f).

(i) *Search.* (A) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure.

Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (f)(3) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board shall charge the direct costs, including

operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees.* (A)

No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is \$25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$25.

(2) *Payment procedures.* All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6) of this section. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees.* If the estimated charges are likely to exceed \$25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed \$250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by \$1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary of the Board reasonably believes that a

requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in under paragraph (d)(4) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board.* The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) *Uniform fee schedule.*

Service	Rate
(i) Manual search .....	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction.	\$ .15 per page
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(g) *Request for confidential treatment of business information.*—(1)

*Submission of request.* Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated "PROPRIETARY" or "BUSINESS CONFIDENTIAL" in the submission and separated from information for which confidential treatment is not requested.

Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information.*—(1) *Request for confidential commercial or financial information.* A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter.* (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last



instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

#### **§ 400.108 Restrictions on lobbying.**

(a) No funds received through a loan guaranteed under this Program may be expended by the recipient of a Federal contract, grant, loan, loan Guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure

or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form—LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form—LLL), if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or Guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

#### **§ 400.109 Government-wide debarment and suspension (nonprocurement).**

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as "covered transactions".

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan Guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$100,000) under a primary covered transaction;



(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (l) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for

debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see paragraph (b)(1)(ii) of this section for the period of their exclusion).

(e) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted under paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

#### **§ 400.110 Amendments.**

The Board's rules in this chapter may be adopted or amended, or new rules may be adopted, only by majority vote of the Board. Authority to adopt or amend these rules may not be delegated.

#### **Subpart C—Steel Guarantee Loans**

##### **§ 400.200 Eligible Borrower.**

(a) An eligible Borrower must be a Qualified Steel Company that can demonstrate:

(1) Credit is not otherwise available to it under reasonable terms or conditions

sufficient to meet its financing needs, as reflected in the financial and business plans of the company;

(2) The prospective earning power of that company, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

(3) The company has agreed to permit audits by the General Accounting Office and an independent auditor acceptable to the Board prior to the issuance of the guarantee and while any such guaranteed loan is outstanding;

(4) It has experienced layoffs, production losses, or financial losses between January 1, 1998, and the date of application for the Guarantee, demonstrated as a comparison between employment, production, or net income existing on January 1, 1998 and on the date of application; and

(5) In the case of a purchaser of substantial assets of a Qualified Steel Company; the Qualified Steel Company is unable to re-organize itself.

(b) For purposes of this section, a company will be considered a purchaser of substantial assets of a Qualified Steel Company if the company's identifiable assets purchased from a Qualified Steel Company are 50 percent or more of the consolidated assets of that Qualified Steel Company and its subsidiaries.

(c) The Lender must provide with its application a letter from at least one lending institution other than the Lender to which the Borrower has applied for financial assistance, since January 1, 1998, indicating that the Borrower was denied for substantially the same loan they are now applying for, and the reasons the Borrower was unable to obtain the financing for which it applied. In addition, the Lender applying for a guarantee under this Program must certify that it would not make the loan without the Board's guarantee.

#### **§ 400.201 Eligible Lender.**

(a) A lender eligible to apply to the Board for a Guarantee of a loan must be:

(1) A banking institution, such as a commercial bank or trust company, subject to regulation by the Federal banking agencies enumerated in 12 U.S.C. 1813; or

(2) An investment institution, such as an investment bank, commercial finance company, or insurance company that is currently engaged in commercial lending in the normal course of its business.

(b) Status as a Lender under paragraph (a) of this section does not assure that the Board will issue the Guarantee sought, or otherwise preclude

the Board from declining to issue a Guarantee. In addition to evaluating an application pursuant to § 400.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Lender possesses the ability to administer the loan, as required by § 400.211(b), including its experience with loans to steel companies;

(3) The scope, volume and duration of the Lender's activity in administering loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Lender.

(c) In the case of the refinancing of an existing credit, the applicant must be a different lender than the holder of the existing credit.

#### **§ 400.202 Loan amount.**

(a) The aggregate amount of loan principal guaranteed under this Program to a single Qualified Steel Company may not exceed \$ 250 million.

(b) Of the aggregate amount of loans authorized to be guaranteed and outstanding at any one time, not more than \$30 million shall be loans to iron ore companies.

#### **§ 400.203 Guarantee percentage.**

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Steel Company.

#### **§ 400.204 Loan terms.**

(a) All loans guaranteed under the Program shall be due and payable in full no later than December 31, 2005.

(b) Loans guaranteed under the Program must bear a rate of interest determined by the Board to be reasonable. The reasonableness of an interest rate will be determined with respect to current average yields on outstanding obligations of the United States with remaining periods of maturity comparable to the term of the loan sought to be guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate of such loan to be unreasonable.

(c)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security

as provided for within the terms and conditions of the Guarantee.

(2) Without limiting the Lender's and Borrower's obligations under paragraph (c)(1) of this section, at a minimum, the loan shall be secured by—

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property, both real and personal, tangible or intangible, including accessions, replacements and proceeds thereof, which are acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and/or lien in all other property of the Borrower, including accessions, replacements and proceeds thereof, or which may be given by a third-party as Security for the loan, the priority of which shall be on the same and equal status with the highest voluntarily granted or acquired security interest or lien then existing therein;

(3) The entire loan will be secured by the same Security with equal lien priority for the guaranteed and the unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference over the guaranteed portion.

(4) An Applicant's compliance with paragraph (c)(2) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the loan.

(d) An eligible Lender may assess and collect from the Borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a Guarantee to the Lender.

#### **§ 400.205 Application process.**

(a) *Application deadline.* An original application and three copies must be received by the Board no later than 8 p.m. EST, December 30, 1999 in U.S. Department of Commerce, Washington DC 20230. Applications which have been provided to a delivery service on or before December 29, 1999, with "delivery guaranteed" before 8 p.m. on December 30, 1999, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed above guaranteed prior to the closing date and time. A postmark of December 30, 1999, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be

accepted via facsimile machine transmission or electronic mail.

(b) Applications shall contain the following:

(1) A completed Form "Application for Steel Guarantee Loan";

(2) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws" and attachments, as required by § 400.206(a)(2)(i)(D), unless the project is categorically excluded under § 400.206(b);

(3) All Loan Documents that will be signed by the Lender and the Borrower, if the application is approved, including all terms and conditions of, and Security or additional Security to assure the Borrower's performance under, the loan;

(4) Certification by the chairman of the board and the chief executive officer of the Borrower acknowledging that the Borrower is aware that the Lender is applying to the Board for a Guarantee of a loan under the Program, as described in the Loan Documents; and agreeing to permit audits by the General Accounting Office, its designee, and an independent auditor acceptable to the Board prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding;

(5) The Lender's full written underwriting analysis of the loan to be guaranteed by the Board;

(6) A certification that the Lender has followed the same loan underwriting analysis with the loan to be guaranteed as it would follow for a loan not guaranteed by the Government; and a certification by the Lender, that the loan, Lender, and Borrower meet each of the requirements of the Program as set forth in the Act and the Board's rules in this part;

(7) A description of all Security for the loan, including, as applicable, current appraisal of real and personal property, copies of any appropriate environmental site assessments, and current personal and corporate financial statements of any guarantors for the same period as required for the Borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent Certified Public Accountants;

(8) Consolidated financial statements of the Borrower for the previous three years that have been audited by an independent certified public

accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(9) A five year history and five year projection for revenue, cash flow, average realized prices and average realized production costs. If the loan funds are to be used to purchase substantial assets of an existing firm, a pro forma balance sheet at startup, and five years projected year end balance sheets and income statement at start-up;

(10) Documentation that credit is not otherwise available to the borrower under reasonable terms or conditions sufficient to meet its financial needs, as reflected in the financial or business plan of that company. The Lender must provide with its application those items required by § 400.200(c); and

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 400.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 400.201(b).

(c) No Guarantee will be made if either the Borrower or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

#### **§ 400.206 Environmental requirements.**

(a)(1) *General.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, except as provided in paragraph (b) of this section, and subject to paragraph (c) of this section, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other

sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws;" and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

(b) *Categorical exclusions from National Environmental Policy Act (NEPA) reviews.* The actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They are categorically excluded from the need to prepare an environmental assessment or impact statement under NEPA. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from compliance with other applicable local, State, or Federal environmental laws.

(1) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(2) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(3) Projects that solely involve the purchase and installation of office equipment, public safety equipment, or motor vehicles;

(4) Projects that solely involve the acquisition of working capital; and

(5) Projects that solely involve a combination of activities under paragraphs (b)(1) through (4) of this section.

(c) Actions listed in paragraph (b) that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

- (1) A floodplain;
- (2) A wetland;
- (3) Important farmlands, or prime forestlands or rangelands;
- (4) A listed species or critical habitat for an endangered species;
- (5) A property that is listed on or may be eligible for listing on the National Register of Historic Places;
- (6) An area within an approved State coastal zone management Program;
- (7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;
- (8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;
- (9) A sole source aquifer recharge area;

(10) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(11) Federal lands.

(d) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public. See 40 CFR 1506.6(b). Environmental information concerning specific projects can be obtained from the Board by contacting: Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230.

#### § 400.207 Application evaluation.

(a) *Eligibility screening.* Applications will be reviewed to determine whether the Lender and Borrower are eligible, the information required under § 400.205(b) is complete, and the proposed loan complies with applicable statutes and regulations. The Board can at any time reject an application that does not meet these requirements.

(b) *Evaluation criteria.* Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review, on a competitive basis, by the Board based upon the following evaluation factors, in order of importance:

- (1) The ability of the Borrower to repay the loan by the date specified in the Loan Document, which shall be no later than December 31, 2005;
- (2) The adequacy of the proposed provisions to protect the Government, including sufficiency of Security, the priority of the lien position in the Security, and the percentage of Guarantee requested; and

(3) Adequacy of the underwriting analysis performed by the Lender in preparing the application and the ability of the Lender to administer the loan in full compliance with the requisite standard of care set forth in § 400.211(b).

(c) *Decisions by the Board.* Upon completion of the evaluation of the application and as soon as possible after the due date, the Board will approve or deny all eligible applications timely received under this Program. The Board shall notify all Applicants in writing of the approval or denial of the Guarantee applications as soon as possible. Approvals for loan Guarantees shall be conditioned upon compliance with § 400.208.

#### § 400.208 Issuance of the Guarantee.

(a) The Board's decisions to approve any application for, and extend an offer of, guarantee under § 400.207 is conditioned upon:

- (1) The Lender and Borrower obtaining any required regulatory or judicial approvals;
- (2) The Lender and Borrower being legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;
- (3) The Board's receipt of the Loan Documents, Guarantee, and any related instruments, properly executed by the Lender, Borrower, and any other required party other than the Board; and
- (4) No material adverse change in the Borrower's ability to repay the loan between the date of the Board's approval and the date the Guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of Guarantee if the Board determines that the Lender or the Borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation, required by this section, will the Board sign and deliver the Guarantee.

(d) A Borrower receiving a loan guaranteed by the Board under this Program shall pay a one-time guarantee fee of 0.5 percent of the amount of the principal of the loan. This fee must be paid no later than one year from the issuance of the Guarantee.

#### § 400.209 Funding for the Program.

The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of

the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

#### § 400.210 Assignment or transfer of loans.

(a) Neither the Loan Documents nor the Guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the Lender, in whole or in part, without the prior written approval of the Board.

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of the Loan Documents and Guarantee, nor will it permit an assignment or transfer to be made to an entity which the Board determines not to be an Eligible Lender pursuant to § 400.201.

(c) The proscription under paragraph (a) of this section shall not apply to:

(1) Transfers which occur by operation of law, unless a primary purpose of the transaction leading to such a transfer was to assign, convey or sell the loan note or Guarantee without the necessity of securing the Board's prior written approval; or

(2) An action or agreement by the Lender which has the effect of distributing the risks of the credit among other Lenders if:

(i) Neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(ii) Both the unguaranteed and guaranteed portions of the loan are treated in the same manner;

(iii) The Lender remains solely responsible for the administration of the loan; and

(iv) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected.

#### § 400.211 Lender responsibilities.

(a) *General.* Lender shall comply with all provisions of the Guarantee.

(b) *Standard of care.* The Lender shall exercise due care and diligence in administering the loan as would be exercised by a responsible and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board.* In addition to any other representations

required by the Guarantee, the Lender shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Lender's rights and pursue its remedies, including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its sole discretion and pursuant to the Guarantee, elects to provide same.

(d) *Covenants.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall require the Loan Documents to contain such affirmative and negative covenants by the Borrower as are required by the terms and conditions of the Guarantee, such as the prohibition on the payment of dividends.

(e) *Monitoring.* In accordance with the Guarantee, the Lender shall monitor Borrower's performance under the Loan Documents to detect any noncompliance by the Borrower with any provision thereof, and will use its best efforts to cause Borrower's timely correction of any such noncompliance and Borrower's compliance with such provision thereafter.

(f) *Reporting.* With respect to any loan guaranteed by the Board pursuant to the Act and this part the Lender shall provide the Board with the following information:

(1) Audited financial statements for the Borrower for the prior fiscal year;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the

term of the loan within 60 days of the Borrower's fiscal year end; and

(3) A completed signed copy of Form "Quarterly Compliance Statement" that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) *Notices.* All written notices, requests, or demands made to the Board shall be mailed to the Board at the U.S. Department of Commerce, Washington, DC 20230, except as otherwise specified by the Guarantee or as directed by the Board. Lender shall notify the Board in writing without delay of:

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 3 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 3 business days, of the Lender's learning of such occurrence; and

(3) Any other notification requirements as provided by law, or by the terms of the Guarantee or Loan Documents.

#### **§ 400.212 Liquidation.**

(a) The Board may take, or direct to be taken, any action in liquidating the Security which the Board determines to be necessary or proper, consistent with Federal law and regulations.

(b) Pursuant to the Guarantee, upon written demand by the Lender and whether or not the Board has made any payment under the Guarantee, the Board, at the Board's sole option shall have the right to require that the Lender, solely or jointly with the Board, conduct to completion the liquidation of any or all of the Security. The Board may choose to conduct the liquidation itself.

#### **§ 400.213 Termination of Guarantee.**

(a) The Board, in its discretion, shall be entitled to terminate all of the Board's obligations under the Guarantee, without further cause, by giving written notice to the Lender of such termination, in the event that:

(1) The closing of the loan shall not have occurred in accordance with the terms and conditions of the Guarantee;

(2) The Guarantee fee required by § 400.208(d) shall not have been paid;

(3) The Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(4) Lender has released the Board from its liability and obligations under the Guarantee;

(5) Lender has been repaid in full on the loan;

(6) Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents; or

(7) Lender failed to comply with any material provision of the Loan Documents or the Guarantee.

(b) Upon receipt of a written demand for payment made pursuant to the Guarantee, the Board shall be entitled to seek such certifications from the Lender, undertake such audits or investigations, or take such other action as is provided for by law or the Guarantee so as to determine whether the Lender has complied with all of the Lender's obligations under the Guarantee.

#### **§ 400.214 OMB control number.**

[Reserved].

[FR Doc. 99-27581 Filed 10-22-99; 2:19 pm]

BILLING CODE 1310-FP-P