

**§ 400.206**

**13 CFR Ch. IV (1–1–10 Edition)**

(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 by the Lender that the Lender meets 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);

(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(c); and

(12) A description of any Supplemental Guarantee(s) that will apply to the Unguaranteed Portion of the loan.

(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.

[64 FR 57933, Oct. 27, 1999, as amended at 64 FR 72021, Dec. 23, 1999; 65 FR 24104, Apr. 25, 2000; 65 FR 70293, Nov. 22, 2000; 66 FR 53080, Oct. 19, 2001]

**§ 400.206 Environmental requirements.**

(a)(1) *In general.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, 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) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed generally in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any project, permanent or temporary, that will involve construction and/or installations;

(B) Any project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any project supporting renovation, other than interior remodeling.

(3) *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. (ii) 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 XYZ, "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) 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.

(c) *National Environmental Policy Act—(1) Purpose.* The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply: *Categorical exclusion* means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

*Environmental assessment* means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

*EIS* means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

*FONSI* means a finding of no significant impact on the quality of the human environment after the completion of an environmental assessment.

*NEPA* means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

*Working capital loan* means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to Executive Director.* (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Executive Director. The Executive Director will prepare or, at his or her discretion, coordinate replies to such correspondence.

(ii) With respect to actions of the Board, the Executive Director will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (1) This paragraph describes various classes of Board actions that normally do not have a significant impact on the

human environment and are categorically excluded. The word “normally” is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Borrower, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section 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:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

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

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) the Executive Director will re-

quest that the Lender and Borrower provide information concerning all potentially significant environmental impacts of the Borrower’s proposed project pursuant to 13 CFR 400.206. The Executive Director, consulting at his discretion with CEQ, will review the information provided by the Lender and Borrower. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board’s analysis determining the environmental impacts of the proposed project, should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed project.

(ii) The Executive Director, in preparing an environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the project for which the proceeds of the loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) Because of the statute’s admonition to the Board to make its decisions

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as soon as possible after receiving applications, the Board will not:

(A) Publish notice of intent to prepare an environmental assessment, as describe in 40 CFR 1501.7;

(B) Conduct scoping, as described in 40 CFR 1501.7; and

(C) Seek comments on the environmental assessment, as described in 40 CFR 1503.1.

(iv) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Executive Director shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to the Executive Director, Emergency Steel Guarantee Loan Program, 1099—14th Street, NW, Suite 2600 East, Washington, DC 20005. Prior to a final loan guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after an environmental assessment has been completed, it is determined that an EIS is necessary, it and other related documentation will be prepared by the Executive Director in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Executive Director may seek additional information from the applicant in preparing the EIS. Once the document is prepared, it shall be submitted to the Board. If the Board considers a document unsatisfactory, it shall be returned to the Executive Director for revision or supplementation prior to a loan guarantee decision; otherwise the Board will transmit the document to the Environmental Protection Agency.

(ii)(A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(1) The format and contents of the draft and final EIS shall be as discussed in 40 CFR 1502.

(2) The requirements of 40 CFR 1506.9 for filing of documents with the Envi-

ronmental Protection Agency shall be followed.

(3) The Executive Director, consulting at his discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(4) NEPA requires that the decision making “utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts.” 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(3) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking “major Federal actions.” A loan guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal; will be prepared. This record of decision will be prepared at the time the decision is made.

[64 FR 57933, Oct. 27, 1999, as amended at 64 FR 72021, Dec. 23, 1999; 65 FR 70294, Nov. 22, 2000]

### § 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