

notice in accordance with 12 U.S.C. 552(b) is unnecessary.

**Regulatory Flexibility Analysis**

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions.

**List of Subjects in 12 CFR Part 204**

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

**PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)**

1. The authority citation for part 204 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

**§ 204.9 Reserve requirement ratios.**

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement <sup>1</sup>
Net transaction accounts:	
\$0 to \$41.3 million .....	3 percent of amount.
Over \$41.3 million .....	\$1,239,000 plus 10 percent of amount over \$41.3 million.
Nonpersonal time deposits .....	0 percent.
Eurocurrency liabilities .....	0 percent.

<sup>1</sup> Before deducting the adjustment to be made by the paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of \$5.7 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, October 12, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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**EMERGENCY STEEL GUARANTEE LOAN BOARD**

**13 CFR Part 400**

**RIN 3003-ZA00**

**Emergency Steel Guarantee Loan Program; Third-party Enhancement of Guarantees; Refinancing and Transfer Restrictions**

**AGENCY:** Emergency Steel Guarantee Loan Board.

**ACTION:** Final rule.

**SUMMARY:** The Emergency Steel Guarantee Loan Board (Board) is amending the regulations governing the Emergency Steel Guarantee Loan Program (Program). These changes are meant to provide for supplemental guarantees by third parties and to change restrictions on refinancing existing credit and on loan guarantee transfers by Lenders. The intent of these changes is to increase participation in the Program by lenders.

**DATES:** This rule is effective October 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Marguerite S. Owen, General Counsel, Emergency Steel Guarantee Loan Board, 1099—14th Street, NW., Suite 2600 East, Washington, DC 20005, (202) 219-0584.

**SUPPLEMENTARY INFORMATION:** On October 27, 1999, the Board published a final rule codifying at Chapter 4, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106-51, the Emergency Steel Loan Guarantee Act of 1999 (64 FR 57932). Since those initial regulations were published the Board has made a number of changes to the regulations meant to conform the regulations to the Guarantee Agreement between the government and the lender, to allow for participations in unguaranteed tranches of loans guaranteed under the Program, to harmonize certain program requirements with commercial lending practices, streamline program operation, open a second period for the submission of applications and allow for certain delegations of authority. Today the Board is making additional changes designed to align Program administration with legal requirements and to increase participation by lenders in the Program. Section 400.106 is being revised to reflect the fact that the Program's evaluation process is no longer competitive and hence the concept of ex parte communications is no longer applicable. As revised, the rule prohibits only communications not on the public record between a member of the Board and an interested party, in order to avoid a situation where one member of the Board receives or conveys information concerning a

pending application that is not available to other members of the Board. Section 400.205 is being modified to reflect that the Board has extended the deadline for applications from April 2, 2001 to August 31, 2001. With respect to increasing lender participation, a new § 400.215 is added to allow for supplemental guarantees by third parties, including state and local governments and related provisions are being modified to reflect that change. Section 400.210 is being modified to allow for transfers of interests in guaranteed loans to Eligible Lenders without prior Board approval. Section 400.201 is being amended to allow refinancing of the applicant lender's existing credit if the applicant's risk exposure is at least substantially equivalent.

Public Law 106-51 has a requirement that the Board take into account the prospective earning power of the Borrower together with the nature and character of the security pledged in making a determination that there is a reasonable assurance of repayment of the loan sought to be guaranteed. The Program's regulations, at § 400.207, currently describe the Board's assessment of the nature and character of the security pledged for a loan, but do not address the Board's review of the prospective earning power of the Borrower. However, in compliance with the law, the Board has always evaluated the Borrower's prospective earning power in making a determination whether there is a reasonable assurance of repayment of the loan sought to be guaranteed. This rule will amend the Board's regulations to make clear that the Board does assess a Borrower's prospective earning power in making such a determination. In particular, the

rule makes clear that an essential and necessary criterion of the Board's evaluation of the application will be the commitment of the Borrower to undertake steps to eliminate or reduce economically unviable capacity.

On June 5, 2001, President Bush announced a three-pronged steel initiative aimed at addressing the current problems of the U.S. steel industry, eliminating inefficient excess capacity globally and restoring market forces to world steel trade. A key component of this initiative is the restructuring and rationalization of the steel industry, both at home and abroad, with a particular focus on reducing or eliminating economically unviable steelmaking capacity. The Board's evaluation of the prospective earning power of a Borrower is in compliance with the President's initiative and seeks to further its goals by reviewing restructuring efforts aimed at the reduction or elimination of economically unviable capacity in making a determination whether to approve a Loan Guarantee.

**Administrative Law Requirements**

*Executive Order 12866*

This final rule has been determined not to be significant for purposes 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.

*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 not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

*Intergovernmental Review*

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

*Unfunded Mandates 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 13132*

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

*Executive Order 12630*

This rule does not contain policies that have takings implications.

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

Administrative practice and procedure, Loan programs-steel, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

**Daniel J. Rooney,**

*Executive Secretary, Emergency Steel Guarantee Loan Board.*

For the reasons set forth in the preamble, 13 CFR part 400 is amended as follows:

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

1. The authority citation of part 400 continues to read as follows:

**Authority:** Pub. L. 106–51, 113 Stat. 252 (15 U.S.C. 1841 note); Pub. L. 106–102, 113 Stat. 1338.

1a. Section 400.2 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), adding new paragraphs (h), (n) and (o), and revising paragraph (a) and newly redesignated paragraphs (j) and (l), to read as follows:

**§ 400.2 Definitions.**

(a) *Act* means the Emergency Steel Loan Guarantee Act of 1999, Chapter 1 of Public Law 106–51 (113 Stat. 252), as amended.

\* \* \* \* \*

(h) *Guaranteed Portion* means the portion of the principal of a loan that is subject to the Guarantee.

\* \* \* \* \*

(j) *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. It includes any agreement and other documents relating to a Supplemental Guarantee. Loan Documents may not be modified without the prior written approval of the Board.

\* \* \* \* \*

(l) *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. It does not include a Supplemental Guarantee.

\* \* \* \* \*

(n) *Supplemental Guarantee* means a guarantee provided by one or more third parties, public or private, of part of the Unguaranteed Portion of a guaranteed loan.

(o) *Unguaranteed Portion* means the portion of the principal of a loan that is not covered by the Guarantee.

2. Section 400.106 is revised to read as follows:

**§ 400.106 Ex parte communications.**

Oral or written communication, not on the public record, between 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.

3. Section 400.201 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 400.201 Eligible Lender.**

\* \* \* \* \*

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

(2) Whether the Agent 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 Agent Lender's activity in administering loans;

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

(5) The Agent 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 Agent Lender.

(d) A proposed loan for the purpose, in whole or in part, of refinancing existing credit provided by the Agent will not be approved unless the Board is satisfied that the Agent retains at least a substantially equivalent level of risk as a result of the refinancing.

4. Section 400.203 is revised to read as follows:

**§ 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. Subject to the provisions of this part, one or more third parties, public or private, may guarantee repayment of part of the Unguaranteed Portion of a loan guaranteed by the Board.

5. Section 400.204 is amended by revising paragraphs (c)(2)(i) and (c)(3) to read as follows:

**§ 400.204 Loan terms.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property acquired, improved or derived from the loan funds;

\* \* \* \* \*

(3) The entire loan will be secured by the same Security with equal lien priority for the Guaranteed Portion and the Unguaranteed Portion of the loan. The Unguaranteed Portion of the loan will neither be paid first nor given any preference over the Guaranteed Portion. A Supplemental Guarantor shall not have a security interest, direct or indirect, in any asset of the Borrower or any affiliate thereof other than the Security.

\* \* \* \* \*

6. Section 400.205 is amended by revising paragraph (a), by removing "and" at the end of paragraph (b)(10), by removing the period at the end of paragraph (b)(11) and adding "; and" in its place, and by adding a new paragraph (b)(12) to read as follows:

**§ 400.205 Application process.**

(a) *Application process.* An original application and three copies must be received by the Board no later than 5 p.m. EST, August 31, 2001 in the Board's offices at 1099—14th Street, NW, Suite 2600 East, Washington, DC 20005. Applications which have been provided to a delivery service with "delivery guaranteed" before 5 p.m. on August 31, 2001 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 in this section guaranteed prior to the closing date and time. A postmark 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) \* \* \*

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

\* \* \* \* \*

7. Section 400.207 is amended by revising paragraph (b)(1) to read as follows:

**§ 400.207 Application evaluation.**

\* \* \* \* \*

(b) \* \* \*

(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. Evaluation of this factor will consider the prospective earning power of the Borrower. An essential and necessary element of the Board's evaluation of whether this criterion is satisfied is whether the applicant has committed to undertake significant efforts to eliminate or reduce economically unviable capacity;

\* \* \* \* \*

8. Section 400.208 is amended by revising paragraph (a)(3) to read as follows:

**§ 400.208 Issuance of the Guarantee.**

(a) \* \* \*

(3) The Board's receipt of the Loan Documents and any related instruments, in form and substance satisfactory to the Board, and the Guarantee, all properly executed by the Lender, Borrower, and any other required party other than the Board; and

\* \* \* \* \*

9. Section 400.210 is revised to read as follows:

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

(a) Neither the Loan Documents nor the Guarantee of the Board may be modified, in whole or in part, without the prior written approval of the Board.

(b) Upon notice to the Board and a certification by the assignor that the assignee is an Eligible Lender, and subject to the provisions of paragraphs (c) and (d) of this section and other provisions of this part, a Lender may assign or transfer its interest in the loan including the Loan documents and the Guarantee to a party that qualifies as an Eligible Lender pursuant to § 400.201. Any other assignment or transfer will require the prior written approval of the Board.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

(d) The Agent must hold and may not assign or transfer an interest in a loan guaranteed under the Program equal to at least the lesser of \$25 million or fifteen percent of the aggregate amount of the loan. In addition, the Agent must hold and may not assign or transfer an interest the Unguaranteed Portion of the loan equal to at least the minimum amount of the loan required to be held by the Agent under the preceding sentence multiplied by the percentage of the loan represented by the Unguaranteed Portion. A non-Agent Lender must hold and may not assign or transfer an interest in the Unguaranteed Portion of the loan representing no less than five percent of such Lender's total interest in the loan; provided, that a non-Agent Lender may transfer its interest in the Unguaranteed Portion after payment of the Guaranteed Portion has been made under the Guarantee.

10. Section 400.215 is added to read as follows:

**§ 400.215 Supplemental Guarantees.**

The Board will allow the structure of a guaranteed loan to include one or more Supplemental Guarantees that cover the Unguaranteed Portion of the loan; provided that:

(a) There shall be no Supplemental Guarantee with respect to the Unguaranteed Portion required to be held by the Agent pursuant to § 400.210(c);

(b) The Loan Documents relating to any Supplemental Guarantee shall be acceptable in form and substance to the Board; and

(c) In approving the issuance of a Guarantee, the Board may impose any conditions with respect to Supplemental Guarantee(s) relating to the loan that it considers appropriate.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2001-CE-19-AD; Amendment 39-12471; AD 2001-21-01]

RIN 2120-AA64

**Airworthiness Directives; Dornier Luftfahrt GmbH Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.