noncompliance by the Borrower with any provision thereof.

(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, in accordance with the Guarantee:

(1) Audited financial statements for the Borrower;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan; 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) * * *

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 5 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 5 business days, of the Lender's learning of such occurrence; and

* * * * *

7. Section 400.213 is amended by revising the section heading and paragraph (a) to read as follows:

§ 400.213 Termination of obligations.

(a) The Board, in its discretion, shall be entitled to terminate all, or a portion, of the Board's obligations under the Guarantee, without further cause, in the event that:

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

(2) A 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;

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

(4) A 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;

(5) A Lender fails to make a demand for payment within 30 days of payment default; or

(6) A Lender fails to comply with any material provision of the Loan Documents or the Guarantee.

* * * * *

§ 400.211 [Amended]

8. Section 400.211(g) introductory text is amended by adding the phrase ''H2500,'' immediately after the phrase ''U.S. Department of Commerce,''.

[FR Doc. 00–9991 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–NC–U

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Emergency Oil and Gas Guaranteed Loan Program; Conforming Changes

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Final rule.

SUMMARY: The Emergency Oil and Gas Guaranteed Loan Board (Board) is amending the regulations governing the Emergency Oil and Gas Guaranteed Loan Program (Program). These changes are meant to conform the regulations and the guarantee agreement that will be used for the program. The intent of these changes is to eliminate potential ambiguities or unintended conflicts between the language of the regulations and that of the Guarantee agreement. This rule also makes several technical changes to merely conform the regulations with the standard of care adopted by the Board, to conform the regulations to the form of the Guarantee and form of Application for Guarantee adopted by the Board, correct minor typographical errors and add a mail stop to the Board's mailing address, or to clarify the allocation of Lender responsibilities, liabilities and restrictions in circumstances where more than one lender are parties to the Guarantee.

DATES: This rule is effective April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Room H2500, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION: On October 27, 1999, the Board published a final rule codifying at Chapter 5, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Act of 1999 (64 FR 57946).

Section 500.2 sets forth certain definitions applicable to the Program. This rule adds a definition of ''Agent'', a term used in the Guarantee to refer to the applicant lender that is designated to perform certain duties on behalf of all lenders where more than one lender are parties to a Guarantee.

This rule also modifies the definition of ''Guarantee'' in § 500.2 to make clear that more than one lender may be parties to a Guarantee. The definition of ''Lender'' in § 500.2 is also modified to specify that in a multi-lender Guarantee, the term ''Lender'' means ''Agent''.

Section 500.201 of the Board's regulations sets forth the definition of an eligible lender for purposes of the Act and the factors that the Board will assess in determining whether the Board should issue a Guarantee to a particular applicant lender. The Board is amending this section of its regulations to clarify that multiple lenders under one application for a guarantee must each meet the Eligible Lender requirements, to require that an application for guarantee from more than one lender identify the lender that will act as Agent, and to set forth the respective responsibilities and liabilities of individual lenders, where more than one lender are parties to a Guarantee.

Section 500.205 of the Board's regulations specifies the information and documentation to be contained in an application for guarantee. The section is being modified to include a reference to documentation demonstrating that the lender is eligible under § 500.201(a) and to allow the Board to make a determination to issue the guarantee to such lender under § 500.201(c), as required by paragraph 36 of the Board's form of Application for Guarantee.

Section 500.210 of the Board's regulations sets forth restrictions and limitations on transfer of interests in a guaranteed loan. The section has been revised to reflect the fact that there may be multiple lenders that are parties to a Guarantee, and to allow transfer by a non-Agent lender of the non-guaranteed portion of a loan after payment under the Guarantee has been made.

Section 500.211 sets forth lender responsibilities under the Program. Paragraph (b) of this section sets forth a standard of care applicable to actions taken by a lender. Specifically, the regulations state:

> 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. (emphasis added).

Subsequent to publication of the final rule, the Board has been informed that

the formulation of the standard of care commonly used among commercial lenders requires the exercise of due care and diligence in administering the loan as would be exercised by a *reasonable* and prudent banking institution. (emphasis added). As such, the Board is amending its regulations to include the word ''reasonable'' in lieu of ''responsible'' as that is the term accepted and understood by commercial lenders to express the standard of care.

Paragraph (c) of § 500.211 requires a representation and agreement by the lender that it is able to, and will, administer the loan in accordance with the applicable standard of care. The paragraph has been modified to limit the representation and agreement to the applicant lender where there are multiple lenders that are parties to a Guarantee.

Paragraph (e) of § 500.211 specifies lender obligations with respect to loan monitoring. The paragraph is being amended to eliminate a requirement for best efforts to cause Borrower correction of any noncompliance with loan documents, because it is inconsistent with the ''reasonable and prudent'' standard of care that has been adopted by the Board.

Paragraph (f) of § 500.211 sets forth reporting requirements concerning guaranteed loans. The paragraph has been modified to eliminate certain references to specific due dates for reporting and instead refer to the terms of the Guarantee for such dates.

Paragraph (g) of § 500.211 states, in relevant part, that the Lender must notify the Board in writing without delay of the deterioration in the internal risk rating of a loan guaranteed under the Program within 3 business days of such action by the Lender; and 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. This rule merely changes, from three days to five days, the time within which the lender must provide notification of these events to the Board. This change is being made to provide lenders additional time to both discover and report the listed events.

Section 500.213 of the Board's regulations specifies the circumstances under which the Board in its discretion shall be entitled to terminate a guarantee. The section has been modified to conform to the form of Guarantee adopted by the Board by eliminating a reference to the possibility that a Guarantee might be executed before loan closing, eliminating a requirement for written notice of termination, and providing for partial as well as entire termination of a guarantee where there are multiple lenders that are parties to a Guarantee.

This rule does not affect a substantive change to the existing regulations. The government will hold lenders to the same standard of care using the term ''reasonable'' as it would have using the term ''responsible.'' This change is meant to clarify the regulations by using a term familiar to the lending community to express that standard of care. With regard to the time by which a lender must notify the Board of certain events, this rule does not change the events requiring notification, it merely changes the maximum time, from three days to five days, by which such reports must be made. The other changes merely conform the regulations with the standard of care adopted by the Board, conform the regulations to the form of Guarantee and form of Application for Guarantee adopted by the Board, correct a typographical error, or clarify the allocation of Lender responsibilities, liabilities and restrictions in circumstances where more than one lender are parties to a 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 is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

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 13132

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.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Loan programs—oil and gas, Reporting and recordkeeping requirements.

Charles E. Hall,

Executive Director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, the Emergency Oil and Gas Guaranteed Loan Board amends 13 CFR part 500 as follows:

PART 500—EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.2 is amended by redesignating paragraphs (c) through (k) as paragraphs (d) through (l), by adding a new paragraph (c), and by revising redesignated paragraphs (g) and (h) to read as follows:

§ 500.2 Definitions.

* * * * *

(c) *Agent* means that Lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all Lenders party to a Guarantee of a single loan, as is required by, or necessarily incidental to, the terms and conditions of the Guarantee.

* * * * *

(g) *Guarantee* means the written agreement between the Board and one or more Lenders, 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.

(h) *Lender* means a private banking or investment institution, eligible under § 500.201, that is a party to a Guarantee

issued by the Board. With respect to a Guarantee of a single loan to which more than one Lender is a party, the term Lender means Agent.

* * * * *

3. Section 500.201 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

§ 500.201 Eligible Lender.

* * * * *

(b)(1) If more than one banking or investment institution is applying to the Board for a Guarantee of a single loan, each one of the banking or investment institutions on the application must meet the requirements to be an eligible lender set forth in paragraph (a) of this section.

(2) An application for a Guarantee of a single loan submitted by a group of banking or investment institutions, as described in paragraph (b)(1) of this section, must identify one of the banking or investment institutions applying for such loan to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the Guarantee.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall be bound by all actions, and/or failures to act, of the Agent. The Board shall be entitled to rely upon such actions and/or failures to act of the Agent as binding the Lenders.

* * * * *

4. Section 500.205 is amended by revising paragraph (b)(11) to read as follows

§ 500.205 Application process.

* * * * *

(b) * * *

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 500.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 500.201(c).

* * * * *

5. Section 500.210 is amended by revising paragraph (b), by removing the period at end of paragraph (c)(2)(iv) and adding ''; or'' in its place, and by adding a new paragraph (c)(3) to read as follows:

§ 500.210 Assignment or transfer of loans.

* * * * *

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of a Lender's interest in the Loan Documents and Guarantee, nor will it permit an assignment or transfer to be made to a party which the Board determines not to be an Eligible Lender pursuant to § 500.201.

(c) * * *

(3) Transfer by a non-Agent Lender of the non-guaranteed portion of the loan after payment under the Guarantee has been made.

6. Section 500.211 is amended by revising paragraphs (b), (c), (e), (f), (g)(1) and (g)(2) to read as follows:

§ 500.211 Lender responsibilities.

* * * * *

(b) *Standard of care*. The Lender shall exercise due care and diligence in administering the loan as would be exercised by a reasonable 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 Applicant shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Applicant'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.

* * * * *

(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.

(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, in accordance with the Guarantee:

(1) Audited financial statements for the Borrower;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan; 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) * * *

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 5 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 5 business days, of the Lender's learning of such occurrence; and

* * * * *

7. Section 500.213 is amended by revising the section heading and paragraph (a) to read as follows:

§ 500.213 Termination of obligations.

(a) The Board, in its discretion, shall be entitled to terminate all, or a portion, of the Board's obligations under the Guarantee, without further cause, in the event that:

(1) The Guarantee fee required by § 500.208(d) shall not have been paid;

(2) A 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;

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

(4) A 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;

(5) A Lender fails to make a demand for payment within 30 days of payment default; or

(6) A Lender fails to comply with any material provision of the Loan Documents or the Guarantee.

* * * * *

§ 500.211 [Amended]

8. Section 500.211(g) introductory text is amended by adding the phrase ''H2500,'' immediately after the phrase ''U.S. Department of Commerce,''.

[FR Doc. 00–9992 Filed 4–24–00; 8:45 am]

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