Presidential Documents

Presidential Determination No. 90–30 of August 15, 1990

Determination Under Section 402(c) (2) of the Trade Act of 1974—German Democratic Republic

Memorandum for the Secretary of State

Pursuant to section 402 (c)(2) of the Trade Act of 1974 (the "Act"), 19 U.S.C. 2432(c)(2), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to the German Democratic Republic will substantially promote the objectives of section 402.

You are authorized and directed to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, August 15, 1990.

[FR Doc. 90–20651
Filed 8–28–90; 3:55 pm]
Billing code 3195–01–M

Editorial note: For the President's letter to the Speaker of the House of Representatives and the President of the Senate, dated Aug. 15, on trade with the German Democratic Republic, see the *Weekly Compilation of Presidential Documents* (vol. 26, p. 1255).

Presidential Documents

Presidential Determination No. [illegible] of August 15, 1986

Determination Under Section 402(c)(2) of the Trade Act of 1974—German Democratic Republic

Memorandum for the Secretary of State

Pursuant to section 402(c)(2) of the Trade Act of 1974 (the "Act") (19 U.S.C. 2432(c)(2)), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to the German Democratic Republic will substantially promote the objectives of section 402.

You are authorized and directed to publish this determination in the Federal Register.

THE WHITE HOUSE,
Washington, August 15, 1986.

[illegible]

Presidential Documents

Presidential Determination No. 90-31 of August 17, 1990

Determination Under Section 2(b) (2) of the Export-Import Bank Act of 1945, as Amended—German Democratic Republic

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635(b)(2), I hereby determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit and participate in the extension of credit in connection with the purchase or lease of any eligible product or service of U.S. origin by, for use in, or for sale or lease to the German Democratic Republic.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

THE WHITE HOUSE,
Washington, August 17, 1990.

[FR Doc. 90-20652
Filed 8-28-90; 3:56 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 169
Thursday, August 30, 1990

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

RIN 0572-AA42

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule; amendment.

SUMMARY: The Rural Electrification Administration (REA) is amending 7 CFR chapter XVII by amending part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. This amendment establishes policies and procedures relating to the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA, by financially distressed and other electric borrowers.

These regulations implement the provisions of section 637 of the 1989 Appropriations Act which allocates $350 million of this $500 million of prepayment activity to REA financed electric utilities, and the remaining $150 million to REA-financed telephone utilities.

These prepayments will be carried out under the provisions of section 306(A) of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) (the "RE Act"), section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202) the "Continuing Resolution"), and section 637 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460) (the "1989 Appropriations Act").

DATES: Final Rule is effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby amends 7 CFR chapter XVII by amending part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans.

This amendment is issued in conformity with Executive Order 12291, Federal Regulation. It will not (1) Have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has conclued that promulgation of this final rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR part 3015 subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This rule does not contain new or amended reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under OMB approval number 0572-0088.

The public reporting burden for this collection of information is estimated to vary from 10 to 200 hours per response with an average of 27 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0088), Washington, DC 20503.

Background

On May 23, 1989, REA published a Proposed Rule at 54 FR 22290 proposing to revise 7 CFR part 1786. After issuing that proposed rule, and in the process of developing the final rule, REA determined that it would make certain changes relating to the financially distressed borrowers' reserve. Because these changes were substantive, REA decided to solicit public comment on these proposed changes, while permitting telephone borrowers to make par prepayments.

On January 11, 1990, REA published a Final Rule at 55 FR 1142, revising 7 CFR part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans, which implemented the prepayment program in the amount of $150 million for REA-financed telephone systems. This Rule set forth the REA policy and procedures implementing section 306(A) of the RE Act which permits an REA-financed electric or telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

On the same day, REA published at 55 FR 1152, a Proposed Rule; Amendment, which addressed prepayment applications from financially distressed and other electric borrowers.

Comments

In the January 11, 1990 Proposed Rule; Amendment, REA invited interested parties to file comments on or before February 12, 1990. Nine different organizations or groups commented on the January 11, 1990 Proposed Rule; Amendment during the comment period. They were:

1. National Rural Electric Cooperative Association.
2. Smith Barney.
3. Arkansas Electric Cooperative Corporation.
4. Cajun Electric Power Cooperative, Inc.
5. Chugach Electric Association, Inc.
6. East Kentucky Power Cooperative, Inc.
7. Seminole Electric Cooperative Incorporated.
8. Tri-State Generation and Transmission Assoc., Inc.
9. United Power Association.

The comments of one organization were received after the expiration of the comment period and were similar to other comments that were received. All responses received within the comment period were considered in preparing this Final Rule; Amendment.

For the purposes of discussion, the comments of these organizations have been categorized.

A number of these organizations questioned the decision of REA to reserve the entire $350 million of remaining electric program prepayment authority for financially distressed electric borrowers. They felt that to do so would reward the, "* * * Failure to meet financial responsibilities * * *" and "* * * short-sighted state-regulatory agencies * * *." They indicated that "* * * healthier systems * * * should be recognized * * * rather than being directly discriminated against."

REA believes that the most critical issue facing Rural Electrification today is the massive amount of non-performing guaranteed loans in the REA portfolio. In order to maintain a viable lending program, REA must take steps to preserve the assets of the Rural Electrification and Telephone Revolving Fund (RETRF). Since the RETRF is REA's source of capital for making payments under contracts of guarantee, the use of the $350 million in remaining prepayment authority for financially distressed borrowers assists REA in achieving that goal. Therefore, REA continues to feel justified in reserving the $350 million for such borrowers.

One commentator felt that REA should not permit an REA-financed electric system which is providing assistance to another borrower which is in default or near default as part of a work out or restructuring to participate in this prepayment program. The use of prepayment authority in such a manner is, in REA's judgement, consistent with the generally accepted business practice of providing economic incentives to third party corporations assisting creditors with financial restructurings. Therefore, the commentator's proposed change was not accepted.

Other organizations suggested that the amount of prepayment authority be increased beyond the $350 million currently available to electric borrowers. Such a modification is clearly not within the scope of REA's authority under the various statutes which established the par prepayment program.

The principal modifications to 7 CFR part 1786 are summarized as follows:

The definition of the application period is being modified to enable financially distressed borrowers to apply for, and consummate a prepayment during a three year period after publication of the final rule. REA made the decision to lengthen the application period to three years for a number of reasons. On March 30, 1990, after a year of negotiations and after the publication of the Proposed Rule; Amendment, another financially distressed electric borrower filed for protection under the Bankruptcy Code. Additionally, experience has indicated that the restructuring of financially distressed borrowers takes a considerable amount of time and effort. REA does not believe that a one year period provides sufficient time to negotiate a restructuring agreement and complete a prepayment transaction for such borrowers.

The restriction limiting prepayments under the regulations to telephone borrowers was deleted.

The financially distressed borrowers' reserve is being established at $350 million. After three years, any unallocated funds remaining in the financially distressed borrowers' reserve will be allocated to borrowers filing standard electric program applications.

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—energy, Guaranteed loan program—telephony.

In view of the above, REA is amending 7 CFR chapter XVII by making the following revisions and amendments to part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

1. The authority citation for part 1786 continues to read as follows:

Authority: 7 U.S.C. 901–950b; title I, subtitle B, Pub. L. 99–509; title I, Pub. L. 100–202; Pub. L. 100–203; title VI, Pub. L. 100–460; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Section 1786.3 is being amended by revising the definition of "Application Period" in paragraph (a) to read as follows:

§ 1786.3 Definitions and rules of construction.

(a) * * *

Application period means a period during which REA is accepting applications to make prepayments pursuant to this part, and initially means:

(1) In the case of telephone borrowers, the period commencing on February 12, 1990 and ending on March 12, 1990;

(2) In the case of financially distressed borrowers, the period commencing October 1, 1990 and ending on July 30, 1993; or

(3) In the case of other borrowers, the period to be announced by REA.

* * * * *

3. Section 1786.4 is being amended by revising paragraphs (a)(2) and (a)(3) to read as follows, removing paragraph (a)(4) and revising paragraph (f)(2) to read as follows:

§ 1786.4 Qualifications.

(a) * * *

(2) Prepay the FFB loan by:

(i) using a private loan with the existing loan guarantee;

(ii) using internally generated funds; or

(iii) using a combination of a private loan with the existing loan guarantee and internally generated funds; and

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

* * * * *

(f) * * *

* * * * *

(2) *Financially distressed borrowers.* FFB loans that are eligible to be prepaid by utilizing the financially distressed borrowers' reserve are advances with long-term maturity dates, and which in the opinion of the Administrator, if prepaid, would result in an economic

savings to the financially distressed borrower.

4. Section 1786.5 is being amended by revising paragraph (d) to read as follows:

§ 1786.5 Prepayment authority, program allocations, categories of prepayment applications and financially distressed borrowers' reserve.

* * * * *

(d) *Financially distressed borrowers' reserve.* The $350 million of prepayment authority allocated for REA-financed electric utilities, is initially set aside into a financially distressed borrowers' reserve. This reserve of prepayment authority will be available for prepayments pursuant to this part by financially distressed borrowers who apply to make such a prepayment during the application period. In the event that a portion of financially distressed borrowers' reserve remains unsubscribed at the end of the initial application period, the unallocated portion of the financially distressed borrowers' reserve will be allocated to other electric borrowers having submitted applications during an application period to be announced by REA. Such prepayment applications shall be classified as standard electric program applications.

Dated: June 20, 1990.

George E. Pratt,

Acting Administrator.

[FR Doc. 90-20497 Filed 8-29-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB42

Coal Product Valuation

August 22, 1990.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the value of coal production from Federal coal leases. Under the rules being adopted, Federal coal lessees no longer would be permitted to deduct or exclude the costs of Federal Black Lung Excise Taxes, abandoned mine lands (AML) fees, and State and local severance taxes from the value of coal for royalty purposes. The MMS has concluded that these costs are part of the value of coal production and that MMS should return to its historical approach of requiring royalties to be paid on at least gross proceeds.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Herbert B. Wincentsen, Rodney Noah, and Michael Throckmorton of the Royalty Valuation and Standards Division of the Minerals Management Service (MMS), Lakewood, Colorado.

I. Introduction

A notice of proposed rulemaking to amend the coal product value regulations to remove the exclusion from royalty value for the costs of Abandoned Mine Land (AML) fees, Federal Black Lung excise taxes, and State and local severance taxes was published in the **Federal Register** on February 13, 1990 (55 FR 5024), with a 60-day comment period. On April 9, 1990, notice was given in the **Federal Register** that the public comment period was extended for an additional 30 days. As part of the process of receiving public comments on the proposed rule, public meetings were held in St. Louis, Missouri, on April 11, 1990, and in Madison, Wisconsin, on May 9, 1990. During the public comment period from February 13, 1990 to May 15, 1990, a total of 221 written comments were received from industry representatives, members of Congress, State Governments, local Governments, Indian tribes, Indian organizations, and other persons. At the public meetings, 44 oral comments were made. Transcripts from these meetings were included in the record and were incorporated as comments on the rulemaking.

In addition, many comments on the issue of excluding production taxes and fees were received during the period January 13, 1989 to February 13, 1990, after publication of final coal product value regulations on January 13, 1989 (54 FR 1492).

This rulemaking addresses exclusions from royalty value permitted by regulations published January 13, 1989 (54 FR 1492), and made effective March 1, 1989. The coal product value regulations issued on January 13, 1989, were the culmination of an extensive regulatory process including multiple proposed rules, hearings, and meetings with industry and affected States and Indian tribes. The rules also were the subject of considerable study and review by the Secretary of the Interior's Royalty Management Advisory Committee. (See 54 FR 1492.) One of the most controversial issues that was addressed during the rulemaking process was whether the cost of severance taxes, AML fees, and Black Lung excise taxes should be included as part of the value of coal production and, therefore, subject to royalty. Industry commenters generally supported an exclusion from value for these production-related taxes and fees. Some western coal producing States and Indian lessors supported the inclusion of these amounts in the value of production. The preamble to the final rule explains in detail the positions of interested parties. (See 54 FR 1511-1513.)

In that rulemaking, MMS generally continued the historical practice of basing the value of coal on the "gross proceeds" accruing to the lessee from the sale under an arm's-length contract. (30 CFR 206.257(b)(1).) The term gross proceeds was defined as including all monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. (30 CFR 206.251.) However, at 30 CFR 206.257(b)(5), MMS provided that the value of coal for royalty purposes would not include the costs of severance taxes, AML fees, and Black Lung excise taxes. This exclusion was to apply only to Federal leases—Indian leases were expressly exempted.

After the final rules were published, the Department of the Interior received many requests to reconsider the question of whether production taxes and fees should be excluded from royalty value. On February 13, 1990, MMS issued a Notice of Proposed Rulemaking to reconsider this issue (55 FR 5024) for the reasons outlined in the preamble to that section.

On February 13, 1990, MMS also released its study on the fiscal and production impacts resulting from the January 13, 1989, coal product value regulations. The study found no convincing evidence that production had been increased as a result of the decrease in royalties attributable to the policy change initiated by the decision to exclude production taxes and fees from the royalty base in that rule. In addition, for the period March 1 to August 31, 1989, royalty collections were found to be approximately 15 percent (or $16.6 million dollars) less than what they would have been had the January 13, 1989, rule not adopted the exclusion for production taxes and fees.

This rulemaking revises 30 CFR 206.251 and 206.257. The definition of severance tax is removed from § 206.251. Since there no longer will be an exclusion for such taxes, it is not