under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice sets out the process by which the Secretary will select CDCs to which contributions by taxpayers will qualify for tax credits.

Executive Order 12611. The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and will not have Federalism implications. The selection process envisioned by the notice qualifies contributions to those CDCs selected for tax credits under the Internal Revenue Code. This process will not affect the distribution of power and responsibility among the various levels of government.

Dated: March 2, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94-6593 Filed 3-21-94; 8:45 am]

BILLING CODE 4210-29-P

federal register

Tuesday
March 22, 1994

Part IV

Department of Transportation

Coast Guard

33 CFR Part 116
Alteration of Obstructive Bridges; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 116

[CGD 91–063]

RIN 2115–AE15

Alteration of Obstructive Bridges

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations which provide guidance for declaring a bridge unreasonably obstructive to the free navigation of navigable waters of the United States and the procedures for alteration of an obstructive bridge under the Truman-Hobbs Act, the Bridge Act of 1906, and the Rivers and Harbors Appropriation Act of 1899. The proposed amendments clarify and update regulations describing the procedures involved and provide additional details.

DATES: Comments must be received on or before May 23, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–063), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard, or Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying in room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia L. Waples, Chief, Alterations, Drawbridges, and Systems Branch (G–NBR–1), at (202) 267–0375.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–063) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. This proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES". The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Ms. Marcia L. Waples, Project Manager, and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

There are three primary Federal statutes which contain provisions that address the issue of bridges which are alleged to unreasonably obstruct navigation. Under section 18 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 502) and section 2 of the Truman-Hobbs Act (33 U.S.C. 512), and applicable delegation regulations, the Commandant of the Coast Guard shall order the alteration of a bridge which unreasonably obstructs the free navigation of the navigable waters of the United States. Under section 4 of the Bridge Act of 1906 (33 U.S.C. 494), the same provision applies to bridges over waters which are subject to the ebb and flow of the tide and which are used, or susceptible to being used, in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.

Until 1940, paying for the alteration of an obstructive bridge in order to render the waters that it traverses reasonably free and navigable was, in all cases, the responsibility of the bridge owner. Upon passage of the Truman-Hobbs Act, 33 U.S.C. 511–524, partial Federal funding of bridge alterations was made available through apportionment of the total cost of the alteration between the United States and the bridge owner. However, the Truman-Hobbs Act only applies to lawful bridges that carry only railroad traffic or both railroad and highway traffic, or are publicly-owned highway bridges. Title 33, part 116 of the Code of Federal Regulations, contains regulations governing alteration of bridges which are unreasonably obstructive to free navigation of a navigable water of the United States under any of the three statutes cited above.

In response to issues raised by Congress in the fall of 1991 regarding administration of the Truman-Hobbs Act, the Coast Guard reviewed its guidance contained in chapter 6 of the Bridge Administration Manual, COMDTINST M16590.5 (series), pertaining to bridges eligible for consideration under the Truman-Hobbs Act. The Coast Guard also reviewed the implementing regulations contained in 33 CFR part 116. These reviews were conducted in order to ascertain whether the Bridge Administration Manual and the implementing regulations reflect, accurately and with sufficient detail, the procedures used for determining if a bridge is an unreasonable obstruction to navigation and, if so, the process for determining if it may be altered under the Truman-Hobbs Act. As a result of this review, the guidance set forth in chapter 6 of the Bridge Administration Manual, COMDTINST 16590.5 (series), was revised on February 27, 1992, in order to clarify and provide additional detail concerning the manner in which the U.S. Coast Guard administers the Truman-Hobbs Act.

The purpose of the proposed amendments is to provide clarification of the procedures for determining whether a bridge unreasonably obstructs navigable waters, and, if it does, procedures for ordering its alteration.

Discussion of Proposed Amendments

The proposed amendment revises 33 CFR part 116 by adding new descriptive language and clarifying, reordering and reformatting existing provisions that are still valid. The following is a discussion, section by section, of the changes the proposed amendment would make.

Section 116.01 would be enhanced to include a reference to the statutes pertaining to obstructive bridges and would address the types of bridges that may be considered for alteration under the Truman-Hobbs Act. A note would be added to direct the reader to the Bridge Administration Manual, COMDTINST 16590.5 (series), for further guidance, if desired.

Section 116.05 would address who can file a complaint, to whom it should be sent, and what information it should include.

Section 116.10 would address the District Commander's procedures for acting on complaints, or investigating suspicions related to allegedly obstructive bridges. Under the revised provisions, the complainant would be encouraged to furnish specific details and information to the District Commander in writing to support an allegation of unreasonable obstruction of navigation.

Section 116.15 would provide for a public hearing to determine if there is a need for an alteration and if so, the extent of the alteration needed.

Proposed § 116.20 describes the calculation of the benefit to cost ratio and its application.

Section 116.25 describes the issuance of the Order to Alter and is essentially unchanged from current § 116.25.

Section 116.30 would provide for the submission and approval of plans and specifications for a bridge alteration.

Section 116.35 would describe the format of the apportionment of costs for bridges eligible for alteration under the Truman-Hobbs Act.

Section 116.40 would provide for the submission of bids, the approval of the award of contract, the approval of the apportionment of cost, the guaranty of cost and allowance for partial payments.

Section 116.45 provides for appeals in the event that the complainant or the bridge owner is not satisfied with any decision made during the process. Additionally, the Truman-Hobbs Act provides for judicial review of the apportionment of costs.

Regulatory Assessment

This proposal is not a significant regulatory action and has not been reviewed by the Office of Management and Budget under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Assessment is unnecessary. This proposal merely updates regulations describing administrative procedures for implementing provisions governing alteration of obstructive bridges. There will be no direct cost to the general public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This proposal is intended to clarify regulations describing existing procedures used by the U.S. Coast Guard to implement statutory provisions governing alteration of obstructive bridges. The procedures described in this proposal are not new. This proposal describes some procedures in use, but not currently set forth in the Code of Federal Regulations. It also deletes some outdated provisions in the CFR. Therefore, this proposal is largely editorial in nature and imposes no special expense on small businesses. Because it expects the economic impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement, to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, record keeping, notification, and other similar requirements.

This proposed rule contains collection of information requirements in § 116.35. The following particulars apply:

DOT No: 2115.

OMB Control No: 2115–AE15.

Administration: U.S. Coast Guard.

Title: Alteration of Obstructive Bridges.

Need for Information: The information being collected will be used in executing an action required by law.

Proposed use for information: To provide for apportionment of costs to be paid by the bridge owner and to be paid by the Federal government for alteration of a bridge that unreasonably restricts navigation.

Frequency of Response: Once per action.

Burden Estimate: The estimated time needed to respond to the collection is 40 hours to research and reproduce files and to prepare correspondence.

Respondents: Less than 10, in any year, of the possible 1600 drawbridge owners.

Form(s): None.

Average Burden Hours Per Respondent: 40.

The Coast Guard has submitted the requirements to OMB for review under section 305(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Administering the alteration of bridges found to be unreasonably obstructive to free navigation of the navigable waters of the United States has been committed to the Coast Guard by statute and therefore this proposal, if adopted, is expected to preempt state action on similar matters.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of procedures, processes, and guidance for alteration of bridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 116

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 116 as follows:

1. Part 116 is revised to read as follows:

PART 116—ALTERATION OF OBSTRUCTIVE BRIDGES

Sec.

116.01 Purpose.
116.05 Complaints of unreasonably obstructive bridges.
116.10 Preliminary review.
116.15 Public hearings.
116.20 Benefit-to-cost ratio for Truman-Hobbs Act projects.
116.25 Order to Alter.
116.30 Plans and specifications.
116.35 Apportionment of costs under the Truman-Hobbs Act.
116.40 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible to be altered under the Truman-Hobbs Act.

Sec.
116.45 Appeals.

Authority: 5 U.S.C. 552, 33 U.S.C. 521, 49 CFR 1.46(c).

§ 116.01 Purpose.

This part outlines the general procedures by which a bridge may be determined to be an unreasonable obstruction to navigation and an order to alter issued. This part contains regulations to implement three statutes which pertain to obstructive bridges: Section 18 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 502., section 4 of the Bridge Act of 1906, 33 U.S.C. 494, and the Truman-Hobbs Act of 1940, as amended, 33 U.S.C. 511–524. Only a railroad bridge, a combination highway/railroad bridge, or a publicly-owned highway bridge may be eligible for alteration under the Truman-Hobbs Act.

Note: In addition to the regulations contained in this subpart, guidance can be found in chapter 6 of COMDTINST M16590.5 (series), entitled, "Bridge Administration Manual." This manual may be reviewed at Coast Guard Headquarters or any district office.

§ 116.05 Complaints of unreasonably obstructive bridges.

Any person, company, or other entity may submit a complaint that a bridge unreasonably obstructs navigation to the commander of the Coast Guard district in which the bridge is located. The complaint should be in writing and include specific details to support the allegation.

§ 116.10 Preliminary review.

(a) The commander of the Coast Guard district in which the bridge is located may review the district files and records of accidents as well as details of any complaint submitted to the Coast Guard, to determine if a bridge appears to be an unreasonable obstruction to the navigation of a waterway of the United States and to determine if further investigation is necessary. The District Commander may conduct a preliminary investigation.

(b) If the District Commander conducts a preliminary investigation, the District Commander will notify the complainant of the results of the investigation. The notification will include sufficient information so that the basis for the decision is apparent, and, inform the complainant of the appeal process.

(c) The District Commander also will determine, (if the preliminary review indicates alteration may be required), if the bridge in question is eligible for consideration under the Truman-Hobbs Act.

(d) Preliminary determinations by the District Commander under this section may be appealed as described in § 116.45.

§ 116.15 Public hearings.

Before issuing an Order to Alter, a public hearing will be held by the District Commander of the district in which the bridge is located, at a location close to the bridge in question. At the hearing, the owners and controllers of the bridge, the complainant(s), and other interested parties will be given reasonable opportunity to offer evidence and be heard, orally or in writing, on the extent of any alteration necessary.

§ 116.20 Benefit-to-cost ratio for Truman-Hobbs Act projects.

(a) Computation of the benefit-to-cost ratio for the proposed alteration project must be calculated by dividing the annualized navigation benefit of the bridge alteration by the annualized government share of the cost of the bridge alteration. Benefits data should be collected over a statistically valid time period.

(b) In order for a bridge to be considered an unreasonable obstruction to navigation under the Truman-Hobbs Act and to qualify for alteration under the provisions of that Act, the benefits to navigation, expressed in dollars, must be greater than or equal to the government share of the cost of altering the bridge (the ratio must be at least 1:1). If so, then the bridge is declared unreasonably obstructive to navigation and an Order to Alter will be issued under the Truman-Hobbs Act.

§ 116.25 Order to Alter.

(a) The District Commander will review the complaint and all gathered facts, including those from a hearing or from an investigation report, and make a preliminary recommendation whether a bridge should be declared an unreasonable obstruction to navigation and that an Order to Alter should be issued.

(b) The Commandant will make a final determination, and issue an Order to Alter if the bridge is an unreasonable obstruction to navigation. The order may be accompanied by a Letter of Special Conditions, setting forth safeguards to protect the environment or otherwise providing for other special conditions or needs relevant to the alteration project.

(1) An Order to Alter for a bridge that is not eligible for Truman-Hobbs funding, will specify the changes that are required to be made and will prescribe a reasonable time in which to accomplish them.

(2) If a bridge is eligible to be altered under the Truman-Hobbs Act, the Order to Alter also will specify the navigational clearances to be accomplished.

(c) The order will be served promptly on the bridge owner. A copy of the order as served, together with a statement on the order executed by the person serving the order, showing on whom, when, and where the service was made, must be returned to the Commandant. Alternatively, service may be made by certified mail, return receipt requested (signed by the addressee), postage prepaid, in place of personal service.

(d) Failure to comply with any order issued under the provisions of this part will subject the owner or controller of the bridge to the penalties prescribed in 33 U.S.C. 495, 502, or 519, as appropriate, and as otherwise provided by law.

§ 116.30 Plans and specifications.

(a) The bridge owner must submit plans and specifications to provide for alteration of the bridge in accordance with the Order to Alter to the Commandant (G–NBR). The plans and specifications, at a minimum, must provide for the clearances identified in the Order to Alter, and also may include any additional alteration of the bridge that the owner considers desirable to meet the requirements of railroad or highway traffic.

(b) Commandant (G–NBR) will approve or reject the plans and specifications in whole or in part, and may require the submission of new or additional plans and specifications.

(c) When Commandant (G–NBR) has approved the plans and specifications, they are final and binding upon all parties, unless changes are approved later.

§ 116.35 Apportionment of cost under the Truman-Hobbs Act.

(a) The bridge owner must bear such part of the cost attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including expected savings in repair and maintenance, expected increased carrying capacity, costs attributable to the requirements of highway and railroad traffic, and actual capital costs of the used service life. The United States will bear the balance of the costs, including that part attributable to the necessities of navigation.

(b) "Direct and special benefits" ordinarily will include items desired by the owner but which have no counterpart in the old bridge or are of higher quality than similar items in the old bridge such as improved signal and fender systems, pro rata share of dismantling costs, and improvements included, but not required, in the interests of navigation.

(c) The statements of the proportionate shares of cost will include or be accompanied by a breakdown of the statements of total cost and proportionate shares, including sufficient details of the features of construction to show how the apportionment was determined and to permit adequate review and auditing of the statements.

(d) The Commandant may require an equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring alteration or relocation. This requirement may be made for other reasons, in addition to the bridge being an unreasonable obstruction to navigation, as a condition or precedent to the making of an order to alter.

(e) Proportionate shares of cost to be borne by the United States and the bridge owner are developed in substantially the following form:

Total cost of project	$______
Less salvage	$______
Less contribution by third party	$______
Cost of Alteration to be Apportioned	$______
Share to be borne by the bridge owner:	
Direct and Special Benefits:	
a. Removing old bridge	$______
b. Fixed charges	$______
c. Betterments	$______
Expected savings in repair or maintenance costs:	
a. Repair	$______
b. Maintenance	$______
Costs attributable to requirements of railroad and/or highway traffic	$______
Expenditure for increased carrying capacity	$______
Expired service life of old bridge	$______
Subtotal	$______
Share to be borne by the bridge owner	$______
Contingencies	$______
Total	$______
Share to be borne by the United States	$______
Contingencies	$______
Total government costs	$______

§ 116.40 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible to be altered under the Truman-Hobbs Act.

(a) Bids obtained by the bridge owner must be submitted to Commandant for approval.

(b) Having provided the bridge owner with opportunity to be heard during the development of the Apportionment of Costs, an Order of Apportionment of Costs is issued by the Commandant.

(c) After the bridge owner submits the guaranty of costs required by 33 U.S.C. 515, the Commandant authorizes the owner to award the contract.

(d) Partial payments of the government's costs are authorized as the work progresses to the extent that funds have been appropriated.

§ 116.45 Appeals

(a) If a complainant disagrees with a recommendation regarding obstruction or eligibility made by a District Commander or Commandant (G–NBR), the complainant may appeal to the Chief, Office of Navigation Safety and Waterway Services.

(b) The appeal must be submitted in writing to Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, within 30 days after the District Commander's or Commandant (G–NBF) decision. The Chief, Office of Navigation Safety and Waterway Services, will make a decision on the appeal within 60 days after receipt of the appeal. The decision of this appeal shall constitute final agency action.

(c) Any order of apportionment made or issued under section 6 of the Truman-Hobbs Act, 33 U.S.C. 516, may be reviewed by the Court of Appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for review is filed within 90 days after the date of issuance of the order. The review is described in section 10 of the Truman-Hobbs Act, 33 U.S.C. 520. The review proceedings do not operate as a stay of any order issued under Truman-Hobbs, other than an order of apportionment, nor relieve any bridge owner of any liability or penalty under other provisions of that act.

Dated: March 15, 1994.

R.C. Houle,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–6511 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Tuesday
March 22, 1994

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1994.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in four special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, November 19, 1993, and February 7, 1994.

Rescissions (Attachments A and C)

As of March 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 48 of the Administration's rescission proposals in Public Law 103–211. A total of $1,560.6 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1994, $4,132.3 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

58 FR 54256, Wednesday, October 20, 1993

58 FR 59517, Tuesday, November 9, 1993

58 FR 63264, Tuesday, November 30, 1993

59 FR 7122, Monday, February 14, 1994

Leon E. Panetta,

Director.

BILLING CODE 3110-01-M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President............	3,172.2
Rejected by the Congress.........................	-1,611.6
Amounts rescinded by the Emergency Supplemental...	-1,560.6
Currently before the Congress....................	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President..............	8,572.4
Routine Executive releases through March 1, 1994...	-4,440.1
Overturned by the Congress.......................	---
Currently before the Congress....................	4,132.3

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A	25,562		2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38	438		2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	17,539	3-4-94	12,463	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			12,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41	15,645		2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39	5,094		2-7-94			5,094	P.L. 103-211
Rural Electification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40	5,688		2-7-94			3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 103-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III	R94-42	49,600		2-7-94			29,600	P.L. 103-211
Public Law 480 program account	R94-43	35,400		2-7-94			22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration	R94-15		2,000	11-1-93	*		2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army	R94-44	48,000		2-7-94				
Aircraft procurement, Navy	R94-45	51,700		2-7-94			10,000	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46	50,000		2-7-94				
Aircraft procurement, Air Force	R94-47	105,600		2-7-94			12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48	50,000		2-7-94			50,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	105,039	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93			97,300	P.L. 103-211
	R94-49	10,000		2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93			42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	80,000	3-1-94	100,000	P.L. 103-211
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50	66,000		2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51	8,800		2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	*			
	R94-32A	12,858		2-7-94	*		29,833	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55	17,000		2-7-94			17,000	P.L. 103-211
Federal Aviation Adminstration								
Grants-in-aid for airports (Airport and airway trust fund)	R94-56	488,200		2-7-94			488,200	P.L. 103-211
Coast Guard								
Operating expenses	R94-57	5,000		2-7-94				
Acquisition, construction, and improvements	R94-58	2,000		2-7-94				
Office of the Secretary								
Rental payments	R94-59	1,781		2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60	10,067		2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61	16,275		2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A	1,669		2-7-94				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62	88,000		2-7-94			63,000	P.L. 103-211
Space flight, control, and data communications	R94-63	32,000		2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64	25,000		2-7-94			25,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		
OTHER INDEPENDENT AGENCIES								
Board for International Development								
Israel relay station	R94-65	1,700		2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66	10,000		2-7-94			5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67	12,700		2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93	*			
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		**1,226,061**	**1,946,122**		**1,075,065**		**1,560,612**	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 3-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	591,415				991,048
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,800,000				1,337,279
Foreign military financing program account	D94-10	46,530		11-19-93					46,530
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	66,885				51,174
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317

07-Mar-94

ATTACHMENT D
Status of FY 1994 Deferrals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 3-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	1,961,737				874,123
TOTAL, DEFERRALS		7,334,903	1,237,548		4,440,098	0		0	4,132,353

07-Mar-94

[FR Doc. 94-6588 Filed 3-21-94; 8:45 am]

BILLING CODE 3110-01-C

federal register

Tuesday
March 22, 1994

Part VI

Department of Education

Office of the Secretary

34 CFR Part 668
Standards for Participation in Title IV, HEA Programs; Proposed Rule

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Part 668

Standards for Participation in Title IV, HEA Programs

AGENCY: Department of Education.

ACTION: Request for comments.

SUMMARY: On December 20, 1993, the President signed Public Law 103–208, the Higher Education Technical Amendments of 1993. This notice requests public comments on how to implement certain provisions of the technical amendments relating to the determination of school default rates.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: All comments concerning this issue should be addressed to Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449.

FOR FURTHER INFORMATION CONTACT: Doug Laine, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 2(c)(55) of Public Law 103–208 amends section 435 of the Higher Education Act of 1965, as amended (the Act), 20 U.S.C. 1085. This section modifies the process governing schools' appeals of their cohort default rates based on allegations of improper loan servicing. This provision adds a new paragraph on appeals based upon allegations of improper loan servicing to section 435(a) of the Act stating that an institution that is subject to loss of eligibility for the Federal Family Education Loan Program pursuant to section 435(a)(2)(A); is subject to loss of eligibility for the Federal Supplemental Loans for Students program pursuant to section 428A(a)(2); or is an institution whose cohort default rate equals or exceeds 20 percent for the most recent year for which data are available, may include in its appeal of such loss or rate a defense based on improper loan servicing (in addition to other defenses). In any such appeal, the Secretary shall take whatever steps are necessary to ensure that the institution has access to a representative sample (as determined by the Secretary) of the relevant loan servicing and collection records of the affected guaranty agencies and loan servicers for a reasonable period of time, not to exceed 30 days. The Secretary shall reduce the institution's cohort default rate to reflect the percentage of defaulted loans in the representative sample that are required to be excluded pursuant to section 435(m)(1)(B) of the Act.

In making suggestions, commenters should also review section 435(m)(1)(B) of the Act, which states that in determining the number of students who default before the end of the fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance. That section also provides that, in considering appeals with respect to cohort default rates pursuant to subsection (a)(3), the Secretary shall exclude any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of the cohort default rate.

The Secretary intends to issue regulations establishing procedures for schools to appeal their default rates based on improper loan servicing. The Secretary intends to issue these procedures in an interim final rule with a request for comments. This notice solicits public help in developing such procedures. The Secretary invites public comment on any aspect of implementing the statute, but in particular, the Secretary would appreciate comments on the procedural issues discussed below.

Pending the issuance of regulations, the Secretary will continue to construe the Act in the course of adjudicating pending appeals based upon allegations of improper loan servicing. Under Public Law 103–208, the changes to sections 435(a)(3) and 435(m)(1)(B) of the Act apply with respect to determinations (and appeals of determinations) of cohort default rates for fiscal year 1989 and succeeding fiscal years. The Act does not provide for reopening prior determinations.

1. Procedures for use in determining whether to exclude loans which due to improper servicing or collection would result in an inaccurate or incomplete calculation of a school's cohort default rate.

The Secretary would appreciate comments which suggest procedures for the Secretary to use in determining whether to exclude any loans which, due to improper servicing or collection would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of (the institution's) cohort default rate. The Secretary is particularly interested in receiving suggestions for procedures which are clear and concise and which will result in completion of the appeal process within the statutory time frames. Commenters may also want to comment on procedures the Secretary should follow in identifying loans the inclusion of which would, due to improper servicing or collection, result in an inaccurate or incomplete calculation of the cohort default rate.

2. Procedures for sampling of loan servicing and collection records.

The Secretary would appreciate comments which suggest a process for selecting a representative sample of the relevant loan servicing and collection records to be reviewed and identifying which records are relevant. The Secretary notes that statistical sampling seems most appropriate for this situation. The Secretary also notes that there are different types of statistical sampling, and different sampling procedures can result in different levels of accuracy. The Secretary asks commenters to suggest the type and parameters of sampling and provide reasons for any recommendations.

The Secretary also solicits ideas on the procedures for requesting relevant loan servicing and collection records, and the time frame for making such requests. The Act states that a school must have access to a representative sample of the relevant loan servicing and collection records for a reasonable period of time, not to exceed 30 days. The Secretary is willing to consider a shorter time frame than 30 days.

3. Procedures for schools to review tape dump data provided by the guaranty agencies to the Secretary for use in determining cohort default rates.

Section 2(c)(60)(A) of Public Law 103–208 also amended section 435(m)(1)(A) of the Act to allow a school an opportunity to review and correct the tape dump data for the school (which provides information on the loans included in the calculation of the school's cohort default rate) before the rates are calculated. The tape dump data is provided by the guaranty agencies to the Secretary.

The Secretary also intends to issue appropriate regulations, consistent with this amendment, establishing procedures and time frames for institutions to request data from the guaranty agencies and resolve discrepancies. This notice solicits public help in developing such procedures and time frames, and in determining how they should relate to other procedures for correcting data, specifically as found in 34 CFR 668.15(g)(1). The Secretary notes that the requirement for precalculation review is not effective until October 1, 1994.

Regarding the procedures and time frames for review and correction of data provided by the guaranty agencies, the Secretary is particularly interested in suggested time frames that provide ample opportunity for review and correction, but still allow the Secretary to issue cohort default rates in a timely manner. In addition, the Secretary is interested in public comment on the effect of such precalculation reviews on further appeals by the institutions under 34 CFR 668.15(g)(1).

Dated: March 8, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94-6592 Filed 3-21-94; 8:45 am]

BILLING CODE 4000-01-P

federal register

Tuesday
March 22, 1994

Part VII

Environmental Protection Agency

40 CFR Part 80
State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4853–2]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision.

SUMMARY: On February 12, 1993, the Governor of Alaska submitted a petition requesting that the State of Alaska be considered for certain exemptions from the diesel fuel sulfur requirements of section 211(i) of the Clean Air Act, as amended. Alaska did not request an exemption from the minimum cetane requirement for motor vehicle diesel fuel as set forth in section 211(i) of the Act.

Today's final decision grants the exemptions requested by the State of Alaska from the diesel fuel sulfur content requirement of section 211(i) of the Act and related provisions in section 211(g). The exemptions are based on the finding that it is unreasonable to require persons in Alaska who are located in remote communities not served by the Federal Aid Highway System (FAHS), and, at this time, for persons served by the FAHS in Alaska, to comply with the sulfur requirement of section 211(i) and those related portions of EPA's motor vehicle diesel fuel regulations, 40 CFR part 80, due to Alaska's unique geographical, meteorological and economic factors, as well as significant local factors.

DATES: The exemptions are effective on March 22, 1994, pursuant to 5 U.S.C. 553(d)(1), which allows publication of a rule less than 30 days before its effective date, where, as here, such rule grants or recognizes an exemption or relieves a restriction.

ADDRESSES: Copies of information relevant to this final decision notice are available for inspection in public docket A–93–14 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. on Monday through Friday. A duplicate public docket, AK1–1993–1, has been established at U.S. EPA Region X, 1200 Sixth Avenue (AT–082), Seattle, WA 98101, (206) 553–0180, and is available between the hours of 8 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m. on Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Ms. Whitney Trulove-Cranor, Environmental Protection Specialist, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233–9036.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) provides that the States of Alaska and Hawaii may seek exemption from the requirements of this subsection in the same manner as provided in section 325 [1] of the Act, and requires the Administrator to take final action on any petition filed under this section, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including section 211(i). An exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or other local factors as the Administrator deems significant.

II. Petition for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, Governor of the State of Alaska, submitted a petition to exempt motor vehicle diesel fuel in Alaska from all of the requirements of section 211(i) except the minimum cetane index requirement of 40. The petition requested a short-term exemption for areas accessible by the FAHS and a permanent exemption for areas not accessible by the FAHS. The short-term exemption would exempt motor vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the FAHS from meeting the sulfur content requirement specified in section 211(i) until October 1, 1996. Those areas of Alaska not reachable by the FAHS would be permanently exempt from the sulfur content requirement of section 211(i). The petition was based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

The following discussion summarizes the contents of the petition.

A. Geography and Location of the State of Alaska

At 586,000 square miles in area, Alaska is about one-fifth as large as the combined area of the lower 48 states. Because of its extreme northern location, rugged terrain and sparse population, no other state relies on barges to deliver petroleum products to the extent Alaska does. Only 35% of Alaska's communities are served by the FAHS which is a combination of road and marine highways. Communities accessible by the FAHS account for 69% of the total State population. The remaining 65% of Alaska's communities are served by barge lines and are referred to as "remote" communities. Although barge lines can directly access some remote communities, those communities that are not located on a navigable river are served by a two-stage delivery system: over water by barge line and then over land to reach the community. Remote communities with populations over 100 account for 13% of the total State population. The remaining 18% of the population consists of remote communities with populations less than 100 persons. In 1990, the State's total population was only 550,043.

Because of the State's high latitude, it experiences seasonal extremes in the amount of daily sunlight, which in turn affects the cost of construction in Alaska. For example, the city of Anchorage, located at 61° latitude, receives approximately 19 hours of sunlight on a summer day, and approximately 5.5 hours of sunlight on a winter day; whereas, the community of Point Barrow, located at 71° latitude, receives approximately 24 hours of sunlight on a summer day, and approximately zero hours of sunlight on

[1] Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law No. 101–549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

a winter day. Alaska's petition states that this limitation on the amount of winter-time daylight is one reason why construction costs in the State are high compared to the lower 48 states.

According to the petition, Alaska's extreme northern location places it in a unique position to fuel transcontinental cargo flights between Europe, Asia, and North America. Roughly 75% of all air transit freight between Europe and Asia lands in Anchorage, as does that between Asia and the United States. The result is a large market for jet-A fuel produced by local refiners, which decreases the importance of highway diesel fuel to these refiners. Based on State tax revenue receipts and estimates by Alaska's refiners, diesel fuel consumption for highway use represents roughly 5% of total distillate fuel consumption.

B. Climate, Meteorology and Air Quality

Alaska's climate is colder than that of the other 48 states. The extremely low temperatures experienced in Alaska during the winter impose a unique fuel composition requirement for diesel fuel in Alaska, known as a "cloud point" specification.[2] Although all highway diesel fuels, which are governed by the American Society of Testing and Materials (ASTM) product specifications, are required to meet a cloud point specification, the cloud point varies from one area to another since it is based on the tenth percentile minimum ambient temperature for the area in which the fuel will be used.[3] Alaska has the most severe cloud point specification for diesel fuel in the U.S. at −56 °F. For this reason, all diesel fuel used in the State of Alaska is produced by refiners located in Alaska. Jet-A kerosene meets the same cloud point specification as No. 1 diesel fuel (which is marketed primarily during the winter as opposed to No. 2 diesel fuel which is marketed primarily in the summer) and is commonly mixed with or used as a substitute for No. 1 diesel fuel. However, because jet-A kerosene is allowed a maximum sulfur content of 0.3%, the new diesel fuel sulfur requirement of 0.05% would prohibit using jet-A and No. 1 diesel fuel interchangeably.

Ice formation during the winter months restricts fuel delivery to remote areas served by barge lines. Therefore, fuel is generally only delivered to these areas between the months of May and October. This further restricts the ability of fuel distributors in Alaska to supply multiple grades of petroleum products to remote communities.

The only violations of ambient air quality standards in Alaska are for carbon monoxide (CO) and particulate matter (PM_{10}). CO violations have only been recorded in the State's two largest communities: Anchorage and Fairbanks. PM_{10} violations have only been recorded in two rural communities, Mendenhall Valley of Juneau and Eagle River, a community within the boundaries of Anchorage. The most recent PM_{10} inventories for these two communities show that these violations are the result of fugitive dust from paved and unpaved roads, and that motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of each of these areas.[4] Moreover, Eagle River has not had a violation of the PM_{10} standard since 1986 and plans to apply for a change in its attainment status. Mendenhall Valley has plans for extensive road paving to be implemented to control road dust. The sulfur content of diesel fuel is not expected to have any significant impact on ambient PM_{10} or CO levels in any of these areas because of the minimal contribution by motor vehicles to PM_{10} in these areas and because diesel fuel sulfur content has no direct effect on vehicle CO emissions.[5]

C. Economic Factors

Alaska states in its petition that local refineries have limited refining capabilities. Demand for jet-A kerosene, which is sold as No. 1 diesel fuel because it meets Alaska's winter cloud point specification, accounts for almost fifty percent (50%) of distillate consumption and dominates refiner planning. A survey of the refiners in Alaska, conducted by the State, revealed that it would cost over $100,000,000 in construction and process modifications to refine Alaska North Slope (ANS) crude into 0.05% sulfur diesel fuel to meet the demand for highway diesel fuel. Among the reasons for the high cost include the construction costs in Alaska, which range from 25% to 65% higher than costs in the lower 48 states, and the cost of modifying the fuel production process itself. The petition states that because there is such a small demand for highway diesel fuel in Alaska, the costs that would be incurred to comply with section 211(i)'s sulfur requirement are excessive; and without an exemption from having to meet this requirement, most refiners would choose to exit the market for highway diesel fuel. Although one refiner has discovered a low-cost approach to producing 0.05% sulfur diesel fuel, information provided to EPA subsequent to the receipt of this petition revealed that this fuel is a custom Arctic Heating Fuel that has its own unique specifications and does not meet all ASTM standards for highway diesel fuels such as No. 1 and No. 2 diesel. Therefore, this low-sulfur diesel fuel would not be marketed for commercial use, but only for internal use in fleet vehicles on the North Slope.[6]

Currently, barge shipments of diesel fuel to remote communities do not require segregation of diesel fuel used in motor vehicles from diesel fuel used for off-highway purposes. It would be costly to create separate storage facilities and tankage for transportation of low-sulfur highway diesel fuel to remote communities, where motor vehicle diesel fuel consumption represents less than 5% of total distillate consumption. Since the majority of diesel fuel consumption in these communities is for off-highway purposes (generation of electricity, heat, non-road vehicles) the cost associated with converting the entire diesel fuel supply to low-sulfur diesel would be prohibitive, increasing the overall cost of living in these communities. Currently, it is not uncommon for the cost of electricity to exceed 50 cents/kwh in remote communities, as opposed to the cost of electricity for communities on the FAHS, which ranges from 6.6 cents/kwh to 11.25 cents/kwh. In comparison, the national average cost of electricity in 1992 was 6.8 cents/kwh for all sources

[2] The cloud point defines the temperature at which a cloud or haze of wax crystals appears in the oil. Its purpose is to ensure a minimum temperature above which fuel lines and other engine parts are not plugged by solids that form in the fuel.

[3] Annual Book of ASTM Standards, Designation D975–89 "Standard Specification for Diesel Fuel Oils," Current edition approved March 31, 1989.

[4] "PM_{10} Emission Inventories for the Mendenhall Valley and Eagle River Areas," prepared for the U.S. Environmental Protection Agency, Region X, by Engineering-Science, February 1988.

[5] Some reduction of vehicle CO and hydrocarbon (HC) emissions may occur as an indirect result of the use of aftertreatment devices which may be used by engine manufacturers to comply with the more stringent 1994 particulate standards (55 FR 34121, August 21, 1990). Although it is possible that the use of high-sulfur diesel fuel will have an adverse effect on the function of such aftertreatment devices, negating the benefit of CO reduction, engine out emissions of CO will not be affected by the use of high-sulfur diesel. Furthermore, diesel powered vehicles are inherently low CO emitters and do not contribute significantly to ambient CO levels.

[6] Letter from Robert G. Kratsas, Manager, Environment, Health and Safety, ARCO Alaska, Inc. to Commissioner John A. Sandor of the Alaska Department of Environmental Conservation (DEC), March 10, 1992, and letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc. to Ronald G. King of the Alaska DEC, April 9, 1993.

(i.e., residential, commercial, industrial, and other).[7]

The Alaska Department of Environmental Conservation (ADEC) has estimated that refiners would have to charge an additional 28 to 46 cents per gallon of highway diesel fuel to recover the cost of the investment to produce low-sulfur diesel fuel, compared to an estimated 3 to 5 cents per gallon increase for the lower 48 states. Currently, the price of diesel fuel marketed on the FAHS in Alaska ranges from $1.09 to $1.21 per gallon. Prices of diesel fuel in remote communities currently range from $1.45 to $2.65 per gallon.

D. Environmental Factors

Information provided to EPA by the State of Alaska subsequent to receipt of the petition indicates that the current sulfur content for diesel fuel in Alaska averages approximately 0.1% by weight for nine months of the year, and 0.25% by weight for the remaining three months of the year. Thus, the current level of sulfur in motor vehicle diesel fuel used in Alaska is well below the current ASTM sulfur specification of 0.5% (by weight).[8]

III. Public Participation

Following the August 27, 1993 publication of EPA's proposed decision to grant the exemptions requested by Alaska, there was a thirty day comment period, during which interested parties could request a hearing or submit comments on the proposal. The Agency received no request for a hearing. Comments in support of EPA's proposal to grant the exemptions were received from Kodiak Oil Sales, Inc., BP Exploration (Alaska), Inc., and BP Pipeline (Alaska), Inc. The Engine Manufacturers Association (EMA) submitted comments expressing concern about engine manufacturer's warranty and recall liability for diesel vehicles in Alaska fueled with high sulfur diesel fuel. The Alaska Department of Environmental Conservation (DEC) submitted a request to the Agency that this final decision notice address the issue of dyeing diesel fuel not intended for use in motor vehicles. In light of their petition for exemption from the diesel sulfur requirements, the Alaska DEC requested a waiver from having to dye noncomplying diesel fuel.

Manufacturer's Emissions Warranty

The Agency acknowledges that vehicles which were certified with low sulfur diesel fuel may be unable to meet federal emissions standards if they are fueled with high sulfur diesel fuel. However, EPA believes that waiving engine manufacturers' liability from the general warranty provisions of section 207 is not necessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects which cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emissions and emissions related engine components.

It has been consistent EPA policy that misuse and/or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emissions and emissions related engine components affected by this misuse. In this case, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling," it will have the same adverse effect on emissions control components. Thus, EPA believes that where the use of high sulfur diesel fuel will have an adverse impact on the emissions durability of specific engine parts or systems, such as a trap oxidizer or other aftertreatment devices, the manufacturer will have a reasonable basis for denying warranty coverage on that part or other related parts. However, as has consistently been EPA's policy, those components not adversely affected by the use of high sulfur diesel should continue to receive full emissions warranty coverage.

Recall Liability

Heavy-duty engine manufacturers are responsible for recalling and repairing engines that do not comply with emission requirements for their useful lives. EPA tests engine classes to determine whether engines comply with applicable emission standards when properly used and maintained. Under section 207(c), if a substantial number of engines in a specific engine class do not comply when tested, that entire class can be recalled. If a situation arose in which an engine fueled with exempted diesel fuel were included in an EPA in-use compliance test program, EPA would determine, on a case-by-case basis, if the noncompliance were the result of the use of the exempted diesel fuel. If it were determined that the exempted fuel was the cause of the engine's failure to meet the applicable emission standards, that fact would be considered before seeking a recall of the class. Given the fact that high sulfur diesel fuel will be used in vehicles in Alaska until at least October 1, 1996, the Agency does not intend to use test results (emissions levels) from these vehicles to show noncompliance by those engines for the purpose of recalling an engine class.[9] In cases in which it was determined that the overall class was subject to recall, however, individual engines would not be excluded from repair on the basis of the fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or malmaintenance. The situation that would occur in Alaska is no different and, thus, the manufacturers should remain liable for performing recall repairs on these engines when required.

Dyeing Noncomplying Diesel Fuel

The motor vehicle diesel fuel regulations, codified at 40 CFR 80.29, provide that any diesel fuel which does not show visible evidence of the dye 1,4 dialkylamino-anthraquinone shall be considered to be available for use in motor vehicles, and subject to the sulfur and cetane index requirements. Although today's action exempts diesel fuel in Alaska from the sulfur requirement until at least October 1, 1996, it does not exempt diesel fuel in Alaska from the minimum cetane requirement.

The Alaska DEC and various refiners in Alaska have indicated to EPA that all diesel fuel manufactured for sale and marketed in Alaska, for use in both motor vehicle and nonroad applications, meets the minimum cetane requirement for motor vehicle diesel fuel. Therefore, dyeing diesel fuel to be used in nonroad vehicles will be unnecessary in Alaska as long as it has a minimum cetane index of 40.[10] However, in the event that

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[7] "Monthly Energy Review," Energy Information Administration, U.S. Department of Energy, March 1993.

[8] American Society for Testing and Materials Standard D975.

[9] If the Agency determines that areas on the highway system will have to comply with the low sulfur diesel fuel requirements beginning October 1, 1996, any motor vehicle introduced into commerce on or after that date, which is registered in an area located on the highway system, would be subject to using low sulfur diesel fuel. These vehicles would also be subject to EPA's in-use compliance test program. If such vehicles are found to be in noncompliance with emissions standards, EPA may use the test results as a basis for determining the recall of an engine class.

[10] If EPA determines that areas located on the highway system will be required to use low sulfur diesel fuel beginning October 1, 1996, diesel fuel manufactured for sale and marketed on the highway

high sulfur diesel fuel is exported from Alaska to the lower-48 states, it would be necessary for the importer facility to add dye to the noncomplying fuel before it is introduced into commerce. At this time, EPA will not require high-sulfur diesel fuel to be dyed if it is being exported from the lower-48 states to Alaska. However, the product must be clearly marked as diesel fuel for export only that does not comply with the sulfur standard for motor vehicle diesel fuel, and supporting documentation substantiates that it is for export to Alaska only.

IV. Final Decision

Presently, refiners in the State of Alaska are the only source of highway diesel fuels meeting the arctic cloud point specification. Such fuels are not currently available in the lower 48 states. Given the petroleum refining, storage and distribution infrastructure in the State of Alaska, in-state refiners and residents of remote communities would be most affected if required to comply with the section 211(i) diesel fuel sulfur content requirement.

In complying with the section 211(i) sulfur requirement, refiners have the option to invest in the process modifications necessary to produce low-sulfur diesel fuel for use in motor vehicles, or not invest in the process modifications and only supply diesel fuel for off-highway purposes (e.g., heating, generation of electricity, fuel for non-road vehicles). Most of Alaska's refiners indicated that given the minuscule size of the highway diesel fuel market in Alaska, they could not justify the investments required to produce low-sulfur diesel fuel and would choose to exit the market for highway diesel fuel if this exemption is not granted. Although one refiner appears to have discovered a low-cost approach to producing a diesel fuel that meets the section 211(i) sulfur requirement, this fuel does not meet ASTM viscosity specifications for No. 1 diesel. Another limitation to this low-cost approach is that the process modifications involved in producing low-sulfur diesel fuel would result in a substantial decrease in yield. The refiner indicated to EPA that even if it could produce a commercial grade low-sulfur diesel fuel, it would primarily be for internal use only, as the refiner does not have the capacity to supply Alaska's highway diesel fuel market. In addition, the cost and logistics of distribution to areas on the highway system would also be prohibitive due to the location of the refineries.[11]

Because compliance with the low-sulfur requirement would, at this time, create a severe economic burden for refiners, distributors and consumers of diesel fuel in the State of Alaska, EPA grants a three year exemption from this requirement to communities served by the Federal Aid Highway System until October 1, 1996.[12] This economic burden is created by unique meteorological conditions in Alaska and unique distillate product demands as outlined above. As a result of these conditions, low-sulfur diesel fuel was not available for commercial use in Alaska by October 1, 1993, when the section 211(i) requirement went into effect.

EPA believes that a three year exemption from the diesel fuel sulfur content requirement is a reasonable time period for areas served by the FAHS. During the exemption period, the State of Alaska plans to establish a Task Force (in which an EPA representative will participate) to evaluate further the availability of arctic-grade, low-sulfur diesel fuel from out-of-state refiners, the costs associated with importing the fuel, and the costs of storing and distributing the fuel to areas on the highway system. If the Task Force's evaluation provides adequate proof that it is not economically feasible to produce or import an arctic-grade diesel fuel that meets the 0.05% sulfur requirement, and that it would not be feasible for EPA to impose an intermediate sulfur content standard for motor vehicle diesel fuel used in areas served by the highway system, and no other alternatives are discovered, the State will have adequate time to prepare and submit another exemption request. If a new exemption request is submitted, EPA will publish another notice in the **Federal Register** and re-examine the issue of an exemption.

Although the State's largest communities, Fairbanks and Anchorage, are CO nonattainment areas, granting this exemption is not expected to have any significant impact on ambient CO levels because the sulfur content in diesel fuels does not directly affect CO emissions as explained above. Two rural communities are designated nonattainment areas with respect to PM_{10}; however, motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of these two areas, where the PM_{10} violations are attributable to fugitive dust. Consequently, EPA believes that granting a three year exemption to communities served by the highway system will not have any significant impact on the attainment prospects of either of these communities.

Whether low-sulfur diesel fuel is produced in Alaska or imported from the lower 48 states or Canada,[13] there remains the problem of segregating the two fuels for transport to communities located off the highway system and storage of the fuels thereafter. Fuel is delivered to these communities by barge lines and off-road transport only between the months of May and October due to ice formation which blocks waterways leading to these communities for much of the remainder of the year. The fuel supplied to these communities during the summer months must last through the winter and spring months until the ice has melted and resupply can occur. Additionally, the existing fuel storage facilities limit the number of fuel types that can be stored for use in these communities. The cost of constructing separate storage facilities and providing separate tanks for transport of low-sulfur diesel fuel to remote communities is prohibitive. This is largely due to the high cost of construction in Alaska and the constraints inherent in distributing fuel to Alaska's remote communities as outlined above. One alternative to constructing separate storage facilities is to supply only low-sulfur diesel fuel to these communities. However, the result would require use of the higher cost, low-sulfur diesel fuel for all diesel fuel needs. This would greatly increase the already high cost of living in these communities since approximately 95% of distillate consumption in these communities is for nonroad uses, such as operating diesel powered electrical generators.

Given that highway diesel fuel consumption represents less than 5% of

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system that does not have visible evidence of the dye will be presumed to be intended for use in motor vehicles and must be in compliance with the maximum 0.05% sulfur standard, as well as the minimum cetane standard of 40.

[11] Letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc., to Ronald G. King of the Alaska DEC, April 9, 1993.

[12] EPA will consider a community to be served by the Federal Aid Highway System if it can be reached by an on-road vehicle from the contiguous road system or by barge on the marine highway system. All other communities not accessible by the contiguous road or marine highway system will be considered remote communities.

[13] Although low-sulfur diesel fuel is not currently available in Canada, Environment Canada is working with diesel fuel refiners in Canada and manufacturers of diesel vehicles to create Memoranda of Understanding, whereby 0.05% sulfur diesel fuel, which also meets the cetane index requirement of 40, is expected to be available in some parts of Canada by October 1, 1994. The availability and cost of low-sulfur diesel fuel from Canada will be a consideration in future exemption requests, if any, from Alaska for areas served by the FAHS.

total distillate consumption in remote communities, that many villages have a total of only one or two vehicles, and that these communities are currently in attainment with all air quality standards, EPA believes that the cost of using low-sulfur diesel fuel in remote communities far outweighs the benefits. Because the Agency believes that requiring remote communities to comply with the section 211(i) sulfur requirement would create a severe economic burden on distributors of diesel fuel to these communities and the residents of these communities themselves, and because the Agency believes the unique conditions faced by remote communities are not likely to change in the future, the Agency has decided to permanently exempt communities that are not served by the contiguous road or marine highway system from the 0.05% (by weight) sulfur requirement of section 211(i) of the Act.

For the same reasons, the Agency is also exempting Alaska from those provisions of section 211(g)(2) of the Act that prohibit the fueling of motor vehicles with high-sulfur diesel fuel.[14] Although Alaska did not explicitly request an exemption from this provision in its petition, it is reasonable to read the petition as including such a request. Sections 211(g) and 211(i) both restrict the use of high-sulfur motor vehicle diesel fuel, and exempting Alaska from section 211(i)'s sulfur content requirement but not from section 211(g)'s related prohibition would provide no relief from the problems Alaska presented in their petition. Therefore, areas in Alaska served by the FAHS are exempt from the related 211(g)(2) provisions until October 1, 1996, and remote areas, not accessible by the FAHS, are permanently exempt from these related provisions.

The exemptions granted today will apply to all persons in Alaska subject to the prohibitions of sections 211(i) and (g) of the Act and the diesel fuel requirements in 40 CFR part 80. The exemptions will apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel, or who introduce diesel fuel into motor vehicles, in Alaska. However, today's action does not exempt Alaska from the minimum cetane or alternative aromatic content requirement for motor vehicle diesel fuel. Consequently, diesel fuel intended for use in motor vehicles remains subject to the cetane or alternative aromatic content requirement as explained in the "Public Participation" section above.

EPA recognizes that the primary purpose of reducing the sulfur content of diesel fuel is to reduce vehicle particulate emissions. Additional benefits cited in the diesel final rule (55 FR 34120, August 21, 1990) include a reduction in sulfur dioxide (SO_2) emissions and the ability to use exhaust aftertreatment devices on diesel fueled vehicles, which would result in some reduction of HC and CO exhaust emissions. Despite the possibility that the use of high-sulfur diesel fuel may have an adverse effect on the function of aftertreatment devices, or cause an increase in particulate sulfate emissions in diesel vehicles equipped with such devices, any increase in sulfate particulate emissions would likely be insignificant in Alaska since current motor vehicle contributions to PM_{10} emissions are minimal, as previously discussed in section II, part B. Also, the lower sulfur requirement for motor vehicle diesel fuel will have no impact on the attainment prospects of Fairbanks and Anchorage with respect to CO, since reducing sulfur content has no direct affect on CO emissions, also discussed in section II, part B. Since Alaska is currently in attainment with HC and SO_2 air quality standards, there is currently no concern for reducing HC or SO_2 emissions. Additionally, the extent to which exhaust aftertreatment devices will be used on diesel vehicles, and the extent to which damage would occur to these devices as a result of using high-sulfur diesel fuel, is relatively uncertain at this time. Given the limited number of vehicles that may be affected, EPA plans to handle warranty and recall liability issues on a case-by-case basis.

The Agency recognizes that granting these exemptions means Alaska will forego the potential benefits to its air quality resulting from the use of low-sulfur diesel fuel. The Agency believes that the potential benefits to Alaska's air quality are minimal and far outweighed by the increased costs to remote communities, and at this time, to communities served by the highway system. For this reason, EPA grants the requested exemptions.

V. Statutory Authority

Authority for the final action in this notice is in sections 211(i)(4) (42 U.S.C. 7545(i)(4)) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order (E.O.) 12866, the Agency must judge whether a regulation is a "significant regulatory action" and thus subject to OMB review and the requirements of the Executive Order. The decision announced today alleviates any potential adverse economic impacts in Alaska and is not a significant regulatory action as defined in E.O. 12866.

VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have significant economic impact on a substantial number of small entities. Today's final decision will not have an adverse economic impact on small business entities, as the action eases requirements otherwise applicable to affected entities. Thus, it will not result in a significant adverse impact on a substantial number of small business entities.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: March 14, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–6669 Filed 3–21–94; 8:45 am]

BILLING CODE 6560–50–P

[14] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05%, when such fuel is permitted to be sold or dispensed for use in motor vehicles. The exemptions granted today would include exemptions from this prohibition, but not include the prohibitions in § 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

Tuesday
March 22, 1994

Part VIII

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1786

Discounted Prepayments on REA Electric Loans; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Discounted Prepayments on REA Electric Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) is adding a new regulation to allow electric borrowers to prepay their REA notes at a discounted present value. The new subpart establishes policies and procedures to implement the provisions of the "Rural Electrification Administration Improvement Act of 1992," and will provide REA policies and procedures regarding REA borrowers who wish to prepay REA loans at a discounted present value.

EFFECTIVE DATE: This final rule is effective March 22, 1994.

FOR FURTHER INFORMATION CONTACT: Patrick Shea, Financial Analyst, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone number (202) 720–0736, FAX (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget. However, the proposed rule was reviewed by the Office of Management and Budget in conformance with Executive Order 12291 and Departmental Regulation 1512–1.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this final rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans from coverage under this Order.

Background

The proposed rule for Discounted Prepayments on REA Electric Loans was published on September 16, 1993, at 58 FR 48465 under 7 CFR part 1786. Comments were requested and a total of 15 organizations and individuals responded within the 30-day comment period. All comments were considered and some revisions were made in response to those comments.

REA is adding a new subpart to part 1786 to implement Public Law 102–428 cited as the "Rural Electrification Administration Improvement Act of 1992." Section 2 of Public Law 102–428 amended Section 306B of the Rural Electrification Act of 1936 (RE Act)(7 U.S.C. 901 *et seq.*) to enable a borrower of REA electric loans to prepay its REA direct and insured loans at the lesser of: (A) The outstanding principal balance of the loan or; (B) the present value of the loan discounted from the face value of each payment at maturity at the rate established by the Administrator. The discount rate applicable to the prepayment of a loan shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan. Before this new legislation was enacted a direct or insured loan made under the Act could not be sold or prepaid at a value that was less than the outstanding principal balance on the loan.

A prior law (Pub. L. 99–509) allowed for a prepayment of REA electric and telephone loans at a discounted present value, but that prepayment had to take place prior to October 1, 1987. Twenty nine REA electric borrowers took advantage of that prepayment law. Later, another amendment (Pub. L. 101–624) was passed allowing borrowers that had merged with one of the 29 previous borrowers of electric loans who had prepaid, to prepay at a discounted present value. This prepayment had to take place within one year of the merger.

The new law (Pub. L. 102–428) does not have any deadline or expiration date. The regulations implementing the prior prepayment programs required that borrowers prepay all of their outstanding REA debt obligations and agree not to apply for any additional REA financial assistance, unless they first repaid the amount of the discount, plus interest. Public Law 102–428 allows borrowers who prepay at a discount to remain eligible for REA financial assistance, other than direct or insured loans, including rural development loans and grants and loan guarantees.

Borrowers may prepay at a discount all, or a portion of, outstanding REA debt provided the loan funds were advanced prior to May 1, 1992, or have been advanced for not less than 2 years. Borrowers may apply for direct or insured loans 120 months after the date of the most recent prepayment. During the 120-month period, the Administrator may consider providing such a loan if, among other matters: (1) The loan is necessary to assure repayment of, or protect the Government's security for any outstanding direct loans, insured loans, or loan guarantees; or (2) the borrower's system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing at reasonable terms to restore the system from non-REA sources, including the Federal Emergency Management Agency, and from private sources.

This new law also allows those borrowers who prepaid under the prior laws to remain eligible for financial assistance under the RE Act in the same manner as other borrowers who take advantage of this new law. If a prior prepayer wishes to apply for direct or insured REA loans, it must first wait 180 months from the date of the prepayment and then, if the discount was based on the average rate on utility bonds bearing a rating of "Aa" as set forth in Moody's Public Utility News Reports, pay the difference between that discount and the amount of discount that would have been allowed using the discount rate specified in this regulation which is based on the cost of funds to the U.S. Treasury at the time of prior prepayment plus interest on said difference from the date of that prepayment.

Several section numbers and headings of the final rule have been added and modified and others have been reserved. One of these reserved sections will be used to describe the methodology for prepayments of the new municipal rate loan program. Details of this loan program are set forth in REA regulations published December 20, 1993, at 58 FR 66260, as an interim rule. It would be premature to determine a methodology for the prepayment of these loans until the regulation governing this loan program is finalized.

Finally, this regulation sets out the procedure for borrowers who wish to take advantage of this prepayment program.

Comments

The comments are discussed under the appropriate section number and heading of the proposed rule. Some of these section numbers and headings have been changed in this final rule. Generally, many of the comments indicate a misunderstanding that the regulation was written for a single prepayment of all outstanding REA debt. This rule describes the process for prepayments of all or a part of outstanding REA debt. There will be one prepayment agreement pursuant to which a borrower may prepay all or a part of its REA debt through one or more closings. The regulation has been revised to make clear that the prepayment agreement contemplates an initial prepayment and at the borrower's discretion, subsequent prepayments.

Section 1786.153 Discounted Present Value

Comment: A comment was received that suggested that the use of the State and municipal bond interest rate from the Federal Reserve Statistical Release was inappropriate for the purpose of the tax exempt financing adjustment. This interest rate is based on 20-year tax exempt bonds while it is being subtracted from an interest rate based on "A" rated utility bonds of 30 years.

Response: The tax exempt adjustment for the discount rate has been changed to correct the inappropriate match caused by subtracting a 20-year issue rate from a 30-year issue rate. Instead, the interest rate for the new municipal rate REA loan program, as set forth in 7 CFR 1714.5 published December 20, 1993, at 58 FR 66266, will be used as the discount rate when this adjustment for tax exempt financing is necessary. See § 1786.153(b).

Comment: Several commenters suggested that the timeframe of setting the discount rate is too short. One commenter stated that "The time between the public offering of debt and closing on the issue is usually 3 weeks. In order to properly size the refinancing, the borrower needs to know the date and amount of the prepayment. The proposed regulations @ (sic.) 1786.158(e), only give 3 - 8 business days notice of the amount, and undefined notice of the date."

Response: The timeframe set for selecting the discount rate and calculating the amount of discounted present value prepayment has been determined based on REA experience. It is the same timeframe (8 business days) that was used in the last REA discounted prepayment regulation found at 1786 subpart E. REA must set the discount rate as close as possible to closing because the legislation provides that the discount rate shall be the cost of borrowing to the U.S. Treasury at the time of prepayment. If a public debt issuance is going to be used to finance a prepayment REA will try to facilitate the timing of that transaction. REA has added new sections to the regulation at §§ 1786.159 and 1786.160 to provide a preclosing notice not less than 10 business days prior to closing to notify the borrower of the closing date.

Section 1786.155 Eligible Borrower

Comment: Restructured loans should not be restricted from prepaying at a discount.

Response: The terms and conditions of existing restructure agreements vary from borrower to borrower. Some restructured loans no longer have the same term to maturity. Some of these agreements consolidated all debt into one note which included direct REA loans and guaranteed loans. REA guaranteed loans are not eligible for a discounted prepayment under this section. In many cases the interest rate and term to maturity were arrived at considering all of this consolidated debt. The original notes may have been granted an extended maturity and, in some cases, some of the restructured debt was put under new notes with an indefinite maturity and no accumulated interest. In other cases the original REA notes remained intact and other debt was restructured. Any prepayment of any portion of the debt would require that all remaining debt be reevaluated.

However, REA recognizes that in some cases the terms of restructure agreements might not be inconsistent with or preclude prepayment under this regulation. Section 1786.155 has been changed to allow REA to consider the eligibility of borrowers with restructured loans on a case-by-case basis.

Comment: A comment was submitted regarding the requirement that no REA loan funds could be left in the Construction Fund Account at the time of closing. The commenter suggested that the regulation be modified to allow the borrower to simply repay these funds at full value.

Response: REA agrees that a borrower may simply repay these funds at face value and then proceed with the prepayment of all other advanced funds. This restriction, as required by the legislation, prevents borrowers from receiving any REA direct or insured loan funds during the 120-month period after a prepayment. REA direct or insured loan funds in the Construction Fund must be expended for approved purposes or repaid at face value to REA before a prepayment at a discount. It is the borrower's choice to meet this eligibility requirement with either of the two suggested methods.

Comment: The rescission of unadvanced loan funds should be required at closing rather than at the time of application.

Response: The regulation has been modified to reflect this comment. See § 1786.158 (j) of this final rule.

Section 1786.156 Application Procedure

Comment: A comment was received concerning the requirement that the source of financing should be identified. The comment questions the need of the borrower to provide evidence that it has the ability to obtain the necessary financing because the REA is "unlikely to incur any costs or processing burden" if the financing is not obtained. REA should accept a certification of the General Manager that it has the ability to obtain the necessary funds to repay rather than the requirement that the borrower provide "evidence" that it has this ability.

Response: It is important for REA to know that the borrower has the ability to obtain financing and to identify the source of that financing. If the financing is to be tax exempt, REA must make an adjustment in its discount rate. REA will normally accept a certification of the General Manager as "evidence" of the ability to obtain the necessary financing.

Comment: Several commenters stated that the application period is too long (60 days) considering that commercial banks only extend credit for 30 days and bond purchase agreements on privately placed debt issues only last 1 to 3 weeks.

Response: The application procedure at § 1786.156 has been changed to address the timing of the processing of prepayments. REA will respond to an application within 30 days and the borrower will then have the right to request a closing date. However in selecting a closing date the borrower should ensure that it will have sufficient time to meet all conditions of closing. For example, if the borrower needs to process a lien accommodation it may take 50 days as provided for a normal review under the lien accommodation rule found at 7 CFR part 1717 subpart R. Utility companies must have available credit arrangements and it is assumed that any REA borrower who wishes to prepay at a discount and not be eligible for additional REA financial assistance for 120 months would not prepay unless it had secured adequate credit arrangements.

Comment: One commenter stated that borrowers using outside financing will have to obtain a lien accommodation and inquired about REA policies regarding lien accommodations.

Response: The Lien Accommodations and Subordinations regulation, 7 CFR subpart R was published as a final rule October 19, 1993. The borrower is responsible for obtaining the appropriate lien accommodation and it should apply for that lien accommodation within the timeframes specified in that regulation.

Comment: Several comments questioned whether REA had the legal authority to disapprove an application.

Response: REA must reserve the right to review and approve applications under its prepayment program. If a borrower executes a prepayment agreement and only prepays a portion of its REA loans and at a later date elects to prepay some or all of its remaining REA loans, then REA must review the borrowers request because circumstances could have changed to make it ineligible to prepay. Examples of a change in circumstances after a partial prepayment include the borrower's failure to honor its wholesale power contract or a default on the repayment of outstanding REA loans.

Comment: One commenter objected to the Administrator having the right to request additional information for an incomplete application.

Response: REA must retain some flexibility to address particular situations including those not contemplated in the legislation. It should be noted that this is consistent with other regulations, such as 7 CFR 1710.150, which require that additional information may be necessary for the Administrator to make certain findings required by the RE Act and prudent lending practice.

Section 1786.158 Terms and Conditions of Prepayment Agreement

There were many comments concerning the terms and conditions of the prepayment agreement including:

Comment: The 60-day application period and the 60-day closing notice are too long.

Response: The application procedures have been changed to reflect this concern. However, REA needs a reasonable time to process a prepayment request and agreement and the borrower needs time to meet other regulatory and contractual requirements. If the borrower has its paperwork in order and there are no complications with approvals of other lenders and state regulatory authorities, then the execution date may not require as much time as contemplated in the proposed rule. See § 1786.159 of this final rule. After the initial prepayment closing, subsequent prepayments will not normally require more than 30 days notice. See § 1786.160 of this final rule. If a borrower wishes to make a prepayment of less than all outstanding REA debt and use outside financing, the borrower may need to get an REA lien accommodation. The timeframes for obtaining a lien accommodation, described in 7 CFR part 1717, are approximately 15 to 30 days for Advance approval and 20 to 50 days for Normal review. Obtaining a lien accommodation is the borrower's responsibility.

Comment: The ability of the Administrator to reschedule closings to meet administrative considerations should not be allowed.

Response: The Administrator must have this discretion because of the varying demands and increased borrower flexibility of the REA loan program. REA does not expect to change any scheduled closing dates except in extraordinary circumstances.

Comment: REA should include a consent to issue refunding debt when a public debt offering is going to be used to fund a prepayment.

Response: This regulation has been written to address the typical REA discounted prepayment, which does not involve a public debt offering. REA will try to accommodate the special needs of a public debt refinancing where necessary on a case-by-case basis.

Comment: REA should specify when it will make available a release of lien.

Response: § 1786.161 of the rule has been revised to clarify that REA will normally provide required releases simultaneously with the prepayment of all REA debt.

Comment: An objection was submitted concerning REA's ability to terminate the right of a borrower to prepay.

Response: If a borrower is interested in making a prepayment of less than all outstanding REA loans, then the prepayment agreement will give the borrower the right to make a series of partial prepayments over an indefinite period of time. If the borrower's conditions change after the agreement is executed that would make the borrower ineligible to make a prepayment, such as a default in the repayment of outstanding REA loans, REA must retain the capacity to terminate the right of a borrower to prepay.

Comment: What security instrument will be necessary if a borrower wants or has outstanding rural development loans after all REA debt has been paid off?

Response: The security required for rural development loans held by borrowers prepaying REA debt will be addressed on a case-by-case basis.

Section 1786.160 (§ 1786.163 in This Final Rule) Existing Wholesale Power Contracts

Comment: Several commenters questioned the need for and basis of the requirement that a prepaying borrower enter into a supplement to its wholesale power contract. One commenter suggested that the requirement represented an attempt to restrict the business and freedom of contract of the prepaying borrower and will frustrate the purpose of the RE Act to allow cooperatives to finance their activities from private capital sources.

Response: Since the early days of the REA program, REA has made loans to provide electric service in rural areas through a two tiered system consisting of distribution borrowers and power supply borrowers. The power supply borrowers are owned and controlled by their members, the distribution borrowers. The distribution borrowers are bound to the power supply borrower by 35-year all-requirements contracts. The contracts assure that the power supply facilities financed by REA will be dedicated to serving persons in rural areas and that the distribution borrowers will financially support the power supplier. Wholesale power contracts in the form prescribed by REA are a key part of the Government's security for loans to the power supply borrowers. For further discussion, see 55 FR 38930.

The required supplement to the wholesale power contract serves only to clarify the rights of the respective parties in the event that a distribution borrower undertakes an action, such as the sale of a substantial part of its system, that may have an adverse effect on the power supply borrower, the integrated distribution/power supply system, or REA. The required supplement does not change the fundamental rights of the parties to the contract. In the case of *Tri-State G & T Assn.* v. *Shoshone River Power & Light,* 874 F.2d 1359 (10th Cir. 1989), the court concluded that the existing form of contract obligates a distribution member to maintain its power requirements and remain in business throughout the term of the contract, that interference with the contract (in that case, a sell-out by a distribution member to an investor-owned utility) would "constitute an abuse of the federal program" (p. 1360). Rather, the supplement sets forth the procedure pursuant to which the borrower may sell out its system or otherwise take an action that affects its power requirements. The supplement strikes a balance that in effect allows the borrower to buy its way out of the contract on terms and conditions to be negotiated between the parties and subjected to REA approval and that will be designed to avoid adversely impacting the rates of other members or the power supply borrower's ability to repay its loans and other obligations. In no sense does the supplement discourage borrowers from financing their activities from private lending sources.

REA has concluded that the clarification is in the interests of the REA program particularly when a distribution borrower is prepaying all REA indebtedness and will no longer be subject to those controls and approval rights set forth in the REA loan contract, mortgage and regulations. A similar requirement was imposed in the previous REA discounted prepayment program implemented in 1986. See 7 CFR subpart C § 1786.54(g). The requirement is entirely consistent with the prepayment provisions of the RE Act which provide that "the Administrator may establish (terms and conditions) that are reasonable and necessary to carry out this subsection." (section 306B(a)(4)). REA has, however, added a provision permitting the Administrator to grant an exemption to the requirement that a borrower enter into a supplement to its wholesale power contract in appropriate circumstances.

Comment: Several commenters suggested that, because the supplemental contract requires payments made pursuant to a buyout by a distribution borrower to be paid directly to a noteholder, the power supplier could incur costly prepayment penalties and other problems. The commenters suggested that alternative payment arrangements be permitted.

Response: REA has modified the language of the supplemental contract to allow alternative payment arrangements in applying the proceeds of a buyout.

Comment: There was a comment questioning the need to enter into a supplement to the existing wholesale power contract if the borrower is already operating under the most current form of contract.

Response: A new provision has been added to § 1786.163 of this final rule which may allow those borrowers who are operating under the new form of wholesale power contract, which has a provision like the one in this regulation to be exempted from this requirement.

Section 1786.161 (§ 1786.164 in This Final Rule) Loan Fund Audit

Comment: There was one objection to the requirement that REA schedule an audit within 6 months of a prepayment of all REA loan funds. The objection was directed at requiring the audit to be performed prior to closing.

Response: It is REA's practice to insure, through an audit, that its loan funds are spent only for approved RE Act purposes. The field accountant's work load requires a reasonable length of time to schedule this audit. REA believes that "within six months" of prepayment of all outstanding REA debt is a reasonable time. To schedule the loan fund audit at or before closing would result in a delay of the closing of up to 6 months. If the borrower prefers this option, it can be arranged.

Section 1786.162 Records (§ 1786.165 Reporting, in This Final Rule)

Comment: There was one objection to the requirement that a loan fund audit of the borrowers' records must be performed, after prepaying all REA electric loans, if a borrower continues to have outstanding rural development loans. The proposed requirement would leave a borrower subject to all of the audit procedures of 7 CFR part 1773. The comment suggested that any audit should only be directed at those rural development loans.

Response: This requirement is directed at REA's obligation to see that its loan and grant funds are spent in compliance with the respective agreements, that loans are repaid to REA according to contract, and that the borrower is otherwise in compliance with the provisions of its loan and security agreement. This section has been modified to relieve the borrower of the auditing procedures prescribed in 7 CFR part 1773. The borrowers' records must remain open to an audit by REA as long as there are outstanding rural development loans and/or grants.

Section 1786.164 (§ 1786.167 in This Final Rule) Restrictions to Additional REA Financing

Comment: Several comments objected to the language limiting the Administrator's discretion to only allowing direct or insured loans during the 120-month restricted period to protect outstanding Government loans.

Response: REA has revised the language so that the Administrator's discretion is not limited. Nonetheless, REA anticipates that the discretion will be exercised only in unusual cases examples of which are included in the regulatory text.

Section 1786.165 (§ 1786.168 in This Final Rule) Borrowers who Prepaid Under This Part Prior to October 21, 1992

Comment: Several comments argued that former borrowers who prepaid at the discount based on the "Aa" utility rate prior to October 1, 1987, must be treated in the same manner as other borrowers with respect to reentry into the loan program and that REA had changed the meaning of the legislation regarding the requirements that must be met to qualify for this reentry after a discounted prepayment.

Response: REA believes that the intent of this legislation was clearly to treat all borrowers equally. As the legislation makes clear, this requires first, the repayment of the difference between the deeper prepayment discount in 1986 and 1987 and the Treasury-based discount required under this regulation. Second, since borrowers who participate in the current prepayment program, are restricted from receiving any direct or insured REA loan funds for 120 months from the date of that prepayment, so too the prior prepayers must also wait 180 months from the date of their prepayment which was prior to October 1, 1987. Both of these requirements must be met before the prior payers would be on an equal playing field with the current borrowers who prepay under this regulation.

Comment: Several comments also argued that former borrowers who prepaid at the discount based on the "Aa" utility rate prior to October 1, 1987, must be treated in the same manner as other borrowers with respect to eligibility for loan guarantees and rural development loans, without meeting any additional requirements.

Response: REA has changed § 1786.168(c) in the final rule to permit former borrowers who prepaid prior to October 1, 1987, to apply for loan guarantees and rural development loans.

List of Subjects in 7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For reasons set forth in the preamble, REA proposes to amend title 7 of the Code of Federal Regulations to add a new subpart F to 7 CFR part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart F—Discounted Prepayments on REA Electric Loans

Subpart F—Discounted Prepayments on REA Electric Loans

Authority: 7 U.S.C. 901 *et seq.*; 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.

§ 1786.150 Purpose.

This subpart sets forth the policies and procedures of REA whereby borrowers may prepay, with private financing or internally generated funds, outstanding REA Notes evidencing electric loans at the Discounted present value of the REA Notes, pursuant to the provisions of section 306(B) of the RE Act as amended by Public Law 102–428, 106 Stat. 2183, adopted October 21, 1992.

§ 1786.151 Definitions and rules of construction.

(a) *Definitions.* As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA).

Borrower means any organization which has an outstanding note(s) evidencing electric loans made by REA, or has previously prepaid such notes under subparts C and E of this part.

Business day means any day on which both the REA and the Federal Reserve Bank of New York are open for business.

Construction Fund Account means the Cash—Construction Fund—Trustee Account, maintained by the borrower pursuant to the terms of the outstanding REA Loan Contract.

Closing shall mean one of the several contemplated closings of the prepayment of the Qualified Notes prescribed by the Prepayment agreement.

Closing date shall mean any business day identified as such by the Government in its preclosing notice delivered to the Company pursuant to § 1786.158.

Closing request shall mean a request by the borrower of the Government to schedule a closing for certain Qualified Notes on the date requested therein.

Direct loan means a loan made pursuant to section 4 of the RE Act.

Discounted present value shall have the meaning set forth in § 1786.153.

Distribution borrower means a borrower that sells electric power and energy at retail in rural areas.

Electric loan means a Direct loan or an Insured loan made for the purpose of furnishing electric energy to persons in rural areas.

Final maturity means the final date on which all outstanding principal and accrued interest on an electric loan is due and payable.

Government means the United States of America, acting through the Administrator of the Rural Electrification Administration.

Insured loan means a loan made pursuant to Section 305 of the RE Act.

Lien accommodation means the sharing of the Government's (REA's) lien on property, usually all property, covered by the lien of the REA Mortgage.

Loan guarantee means a loan guarantee under Section 306 of the RE Act.

Power supply borrower means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to REA wholesale power contracts.

Preclosing notice shall mean a notice delivered by the Government to the borrower in response to a closing request, identifying the closing date, the Qualified Notes to be prepaid at such closing and documents to be delivered by the borrower to the Government prior to the closing date.

Prepayment agreement shall have the meaning set forth in § 1786.158.

Qualified Notes shall have the meaning set forth in § 1786.154.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans or loan guarantees pursuant to the RE Act.

REA Mortgage means collectively those mortgages and security agreements made by and among the borrower, the Government, and third parties, if any, securing indebtedness evidencing electric loans or loan guarantees made pursuant to the RE Act.

Rural development loans means loans or grants made pursuant to Rural development programs.

Rural development programs means loan or grant programs under the authority of the Administrator pursuant to sections 313, 501, and 502 of the RE Act.

Supplemental lender means a private lender whose loan to the borrower is secured by the REA mortgage.

Tax exempt financing means borrowing evidenced by bonds, notes and other evidence of indebtedness the income of which is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural.

§ 1786.152 Prepayments of REA loans.

An electric loan made under the RE Act shall not be sold or prepaid at a value that is less than the outstanding principal balance, except that, on request of a borrower, an electric loan made under the RE Act, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be prepaid by the borrower at the lesser of the outstanding principal balance of the loan or the discounted present value thereof.

§ 1786.153 Discounted present value.

(a) The discounted present value shall be calculated by summing the present values of all remaining payments on all Qualified Notes to be prepaid according to the following formula and adjusted as provided in paragraph (b) of this section if tax exempt financing is used.

$$\text{Present Value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k}\left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366}\right)I\right]}$$

Where:

The Greek letter, Sigma (Σ) means the sum of the following terms.

The Greek letter, Pi (Π) means the product of the following terms.

P_k=Total payment, including interest due on the K^{th} payment date following the prepayment date.

n=Total number of remaining payment dates to final maturity.

$D1_i$=Number of days in the i^{th} payment period that are in a non-leap year (365-day year).

$D2_i$=Number of days in the i^{th} payment period that are in a leap year (366-day year).

I=The discount rate applied to each transaction ascertained by using data specified in the "Federal Reserve Statistical Release" (H.15 (519)), which is published each Monday. The availability of this Release will be announced when the information is available by telephone on (202) 452–3206. See adjustment for tax exempt refinancing at paragraph (b) of this section. The specific discount rate will be based on the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication 8 business days prior to the closing and will be interpolated from that information as follows:

Remaining final maturity of REA loan: At least (# years)	But less than (# years)	Treasury constant maturities
0	2	1-year.
2	3	2-year.
3	4	3-year.
4	5	(1)
5	6	5-year.
6	7	(2)
7	8	7-year.
8	9	(3)
9	10	(3)
10	11	10-year.
11	20	(4)
20	21	20-year.
21	30	(5)
30	36	30-year.

Notes: [1] The arithmetic mean between the 3-year. and 5-year. Treasury Constant Maturities; i.e., if 3-year. rate is 3.00% and the 5-year. rate is 4.00% then the rate used would be 3.5%.

[2] The arithmetic mean between the 5-year and 7-year Treasury Constant Maturities computed as above.

[3] A straight line interpolated rate between the 7-year rate and the 10-year rate. (See formula below)

[4] A straight line interpolated rate between the 10-year note and the 20-year Bond rate. (See formula below)

[5] A straight line interpolated rate between the 20-year bond and the 30-year bond using the following formula:

$$I = B + \frac{((C - E) \times (A - B))}{F - E}$$

Where:

I=The discount rate interpolated from the cost of money to the Treasury.

A=The Treasury interest rate for the most recently published maturity (in years) that is the shortest Treasury term (in years) which is greater than the borrower's remaining term (in years) to final maturity; i.e., (if the note to be prepaid has a final maturity of more than 10 years then this rate is the 20-year Treasury rate)

B=The Treasury interest rate for the most recently published maturity (in years) that is the longest Treasury term (in years) which is less than the borrower's remaining term (in years) to final maturity; i.e., (if the note to be prepaid has a final maturity of more than 10 years but less than 20 years then this term is the 10-year Treasury rate)

C=The remaining number of full years to the final maturity of the borrower's note. Drop all fractions of a year and use the remaining full years.

E=The published Treasury term (in years) to maturity which is the longest term to maturity for the published term that is less than the remaining term (in years) to final maturity of the borrower's note; i.e., (if the note to be prepaid has remaining years to maturity between 11 and 20 years then this term would be 10 or if the note to be prepaid has remaining years to maturity between 21 years and 30 years then this term would be 20).

F=The published Treasury term (in years) to maturity which is the shortest term to maturity for the published term that is greater than the remaining term (in years) to maturity of the borrower's note; i.e., (if the note to be prepaid has remaining years to maturity between 11 and 20 years then this term would be 20 or if the remaining years to maturity is between 21 and 30 years then this term would be 30).

Note: The percentage terms used in the above formula will be truncated to two decimal places. For the purpose of the terms A, B, E, and F above the published Treasury rate and term shall mean the Treasury Constant Maturities from the Federal Reserve Statistical Release for 7 years, 10 years, 20 years, and 30 years.

(b)(1) In the event that the borrower prepays a loan under paragraph (a) of this section using, directly or indirectly, tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is no greater than the benefit the borrower would receive if the borrower used financing that was not tax exempt. The borrower shall certify in writing whether the financing will be tax exempt.

(2) The discount rate established in paragraph (a) of this section shall be adjusted for a tax exempt financing by substituting for the "I" term in the discount rate formula, a discount rate equal to the interest rate(s) published pursuant to 7 CFR 1714.5, determination of interest rates on municipal rate loans. This is the interest rate established for the new REA loan program which is based on municipal interest rates for issues of comparable maturity. No interpolation or average will be used. If a note is to be prepaid under this subpart and is subject to this tax exempt adjustment, the discount rate will be determined from the published table in the **Federal Register**. For example, if the note to be discounted matures in the year 1999 then the discount rate will be the interest rate for the year 1999. REA will publish a schedule of interest rates for municipal rate loans in the **Federal Register** at the beginning of each calendar quarter. The published rates in effect eight business days prior to closing will be used for the discount rates. All notes to be prepaid that have remaining years to maturity of more than 20 years will be discounted at the interest rate in effect for new REA municipal rate loans of comparable maturity at the time of closing.

§ 1786.154 Qualified Notes.

An eligible borrower may prepay Qualified Notes under this subpart at the discounted present value. A Qualified Note is a note evidencing an REA electric loan, all advances of which were made prior to May 1, 1992, or not less than 2 years prior to the date of prepayment closing. See §§ 1786.155(a)(3) and 1786.158 (h) and (j).

§ 1786.155 Eligible borrower.

(a) To be eligible to prepay an electric loan under this subpart, the borrower must be in compliance with the following: (1) The borrower shall be current on all payment obligations on outstanding loans made or guaranteed by REA. For the purpose of determining eligibility for prepayment, a default by a power supply borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower;

(2) There shall exist no material defaults under the borrower's REA Loan Contract and Mortgage;

(3) The borrower shall have expended all funds advanced pursuant to the REA Loan Contract for the purposes for which such funds were advanced. A borrower will not be eligible to prepay under this subpart if it has any funds advanced pursuant to the REA Loan Contract in its Construction Fund Account; and

(4) The borrower shall be current on all obligations under any wholesale power contract with an REA financed power supply borrower.

(b) The eligibility of borrowers that have had any indebtedness representing loans made or guaranteed by REA restructured shall be determined on a case by case basis considering the terms and conditions of the restructuring agreement.

§ 1786.156 Application procedure.

Any borrower seeking to prepay Qualified Notes under this subpart should apply to the appropriate REA Regional Director or the Director of the Power Supply Division. The application shall provide the following: (a) Borrower's REA designation;

(b) Borrower's name and address;

(c) A certified copy of a resolution of the board of directors of the borrower that the borrower wishes to enter into a prepayment agreement providing for the prepayment of all or a portion of its Qualified Notes;

(d) Listing of each Qualified Note to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding principal balance;

(e) Evidence that the borrower has the ability to obtain the financing necessary to prepay its Qualified Notes listed in paragraph (d) of this section and identification of the source of financing and the need if any of obtaining a lien accommodation from REA; and

(f) Such additional information as the Administrator may request.

§ 1786.157 Approval of applications.

(a) Ordinarily, within 30 days of receipt, an application will be reviewed and the borrower will be notified as to whether the application has been approved. If the application has not been approved, the borrower will be informed as to the reasons. If the application is approved the borrower shall thereafter be provided with a prepayment agreement for execution.

(b) The Administrator may limit the number of applications approved and closings scheduled from time to time, taking into account, among other matters, administrative considerations of the REA.

§ 1786.158 Terms and conditions of prepayment agreement.

Upon receipt of a satisfactory application, REA shall provide to the borrower for its execution a prepayment agreement, in form and substance satisfactory to REA, which may include the following: (a) Provide for the prepayment of one or more Qualified Notes from time to time, but no more than two closings may be scheduled in any calendar year unless a third closing is for the prepayment of all outstanding electric loans of the borrower;

(b) Set forth procedures and forms through which the borrower will notify the Government of each election it makes to prepay certain Qualified Notes upon a requested closing date and the Government will notify the borrower of the established closing date and prepayment amount for the Qualified Notes for each closing;

(c) Reserve to the Administrator the right to reschedule closing dates to meet administrative considerations;

(d) Set forth closing requirements identifying the location and manner of payment, and all documentation and information to be delivered prior to or at closing, including opinions of counsel and certificates from the borrower;

(e) Provide for notice by either telephone or facsimile to be given by REA to the borrower not more than 8 nor less than 3 business days before a scheduled closing date of the amount to be paid at closing which shall include all accrued interest and the discounted present value of the Qualified Notes to be prepaid;

(f) Provide for notice of the 120 month period during which the borrower's eligibility for direct or insured loans will be restricted;

(g) Set forth representations and warranties;

(h) Require the borrower to prepay each Qualified Note specified in full;

(i) Require the borrower to identify the source of the financing that will be used directly or indirectly to refinance the Qualified Notes. If the source is other than internally generated funds, the borrower must certify in writing whether such financing will be tax exempt, and if tax exempt financing will be used, furnish all information on the terms and conditions of the financing as REA may require;

(j) Require the borrower to rescind the unadvanced balance of all outstanding electric loans as of the date of initial closing;

(k) Require the borrower, if it is a party to a wholesale power contract with a power supply borrower, to provide the Administrator with such assurances as the Administrator may require that it is in compliance with and will continue to comply with its obligation to such power supply borrower;

(l) Provide REA, if the Administrator determines it necessary, with security for all outstanding rural development loans and amendments to any outstanding rural development loan agreements in form and substance, and on terms and conditions, satisfactory to REA;

(m) Prescribe remedies for violating the terms and conditions of the prepayment agreement;

(n) Provide for termination by REA of the right for the borrower to prepay thereunder;

(o) Provide evidence that any approvals required from any supplemental lender have been obtained; and

(p) Set forth such other terms and conditions as the Administrator shall deem appropriate.

§ 1786.159 Initial closing.

(a) Upon receipt of the prepayment agreement, the borrower may submit, pursuant to the terms of the prepayment agreement, a closing request which shall request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to the borrower's closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date.

§ 1786.160 Subsequent closings.

(a) Each subsequent prepayment after the initial closing shall be facilitated with the submission of an additional closing request by the borrower. Each closing request must request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to each subsequent closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date in each case.

§ 1786.161 Return of Qualified Notes and release of lien.

Upon payment to REA at closing of the full amount specified in the notice delivered by REA to the borrower pursuant to the terms of the prepayment agreement (see § 1786.158(e)), REA will deliver to the borrower at closing those Qualified Notes which have been paid in full at such closing, and upon payment and discharge of all outstanding REA debt obligations by the borrower, REA will deliver to the borrower at the final closing a release of lien prepared by the borrower pursuant to the terms of the prepayment agreement.

§ 1786.162 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its REA Loan Contract, its outstanding notes issued to REA, and the REA Mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA Mortgage, or other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments of any loans pursuant to the RE Act in accordance with the terms of such loans.

§ 1786.163 Existing wholesale power contracts.

(a) If the borrower is a party to a wholesale power contract with a power supply borrower financed pursuant to the RE Act, the Administrator may require that the borrower and the power supply borrower enter into a supplement to the outstanding wholesale power contract providing substantially as follows:

Sample Contract Terms

So long as any of the notes evidencing secured loans of the power supply borrower are outstanding, the borrower will not, without the approval in writing of the power supply borrower and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The power supply borrower will not unreasonably withhold or condition its consent to any such, reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The power supply borrower will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other members of the power supply borrower or impair the ability of the power supply borrower to repay its secured loans in accordance with their terms, or adversely affect system performance in a material way. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the power supply borrower's consent, so long as the borrower shall pay such portion of the outstanding indebtedness on the power supply borrower's notes or other obligations as shall be determined by the power supply borrower with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and power supply borrower may require either: (1) To eliminate any adverse effect that such action seems likely to have on the rates of the other members of the power supply borrower, or

(2) To assure that the power supply borrower's ability to repay the secured loans and other obligations of the power supply borrower in accordance with their terms is not impaired.

The Administrator may require, among other things, that any payment owed under (2) of the preceding sentence that represents a portion of the power supply borrower's indebtedness on Notes shall be paid by the borrower in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the power supply borrower and held and invested in a manner satisfactory to the Administrator.

[End of sample contract terms]

(b) The Administrator may exempt a borrower from the requirement to enter into a supplement to its outstanding wholesale power contract if the Administrator determines that such requirement is burdensome and unnecessary in light of the provisions of the existing wholesale power contract, other security arrangements of the power supply borrower, and any other relevant facts and circumstances. Normally such exemption will be granted only with the concurrence of the power supply borrower.

§ 1786.164 Loan fund audit.

In the event that a borrower shall prepay all its outstanding electric loans REA shall have the right to audit within six (6) months of closing transactions involving the REA Construction Fund Account established and maintained by the borrower pursuant to the terms of the REA Loan Contract and to inspect all books, records, accounts, and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to the REA Loan Contracts which do not comply with the requirements thereof, the borrower shall be required to pay the REA an amount equal to the difference between the amount which the borrower prepaid under this subpart with respect to such advances, and the amount which the borrower would otherwise have been required to return to the REA as a result of noncompliance if the borrower had not prepaid such advances, plus interest. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.165 Reporting.

Borrowers that no longer have any loans made or guaranteed by REA and are considering applying for other financial assistance pursuant to the RE Act are encouraged to file the end-of-year operating report, REA Form 7.

§ 1786.166 Approvals.

The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

§ 1786.167 Restrictions to additional REA financing.

(a) No borrower that prepays an electric loan at a discount as provided under this subpart may apply for or receive direct or insured loans during the 120 months from the most recent closing date, except at the discretion of the Administrator. During the 120 month period the Administrator may consider providing an insured loan if, among other matters, it is necessary to assure repayment of, or protect the Government's security for any outstanding loans or loan guarantees, or the borrower's system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing at reasonable terms to restore the system from non-REA sources, including the Federal Emergency Management Agency, and from private sources. Upon expiration of the 120 months, such borrowers may apply for direct or insured loans in the same manner as other borrowers provided that such borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 120 months.

(b) Borrowers that prepay their direct or insured REA loans under this subpart remain eligible for certain types of financial assistance under the RE Act, including loan guarantees and rural development loans.

§ 1786.168 Borrowers who prepaid under this part prior to October 21, 1992.

(a) A borrower that had prepaid, prior to the date of enactment of Public Law 102–428 (106 Stat. 2183) on October 21, 1992, at a discount rate as provided at 7 CFR part 1786, subpart C: (1) Shall not be eligible except at the discretion of the Administrator as stated in paragraph § 1786.167(a), to apply for or receive direct or insured loans during the 180-month period beginning on the date of the prepayment; and

(2) Shall not be eligible to apply for or receive direct or insured loans from REA until the borrower has repaid to the REA the sum of: (i) The amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury as calculated at § 1786.153 at the time of the prepayment; and

(ii) Interest on the amount described in paragraph (a)(2)(i) of this section for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury. This rate will be calculated first on the date of prepayment and at one year intervals from that date based on the same U.S. Treasury issues published in the Federal Reserve Statistical Release closest to that date. The Treasury rate of interest to be applied for each year will be the rate for the Treasury issue of comparable maturity to the number of years from the prepayment date to the repayment date and at one year intervals thereafter.

(b) If a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before October 21, 1992, this section shall supersede any provision in the agreement relating to the restoration of eligibility for loans under the RE Act.

(c) Borrowers who prepaid prior to October 1, 1987, are eligible for assistance under the RE Act in the same manner as other borrowers with respect to loan guarantees and the rural development loans.

(d) During the 180 month period described in paragraph (a)(1) of this section the Administrator may consider providing an insured loan, if the conditions described in § 1786.167(a) exist.

(e) Borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 180 month period described in paragraph (a)(1) of this section.

§ 1786.169 Liability.

It is the intent of this subpart that any failure on the part of REA to comply with any provisions of this subpart, including without limitation, those provisions setting forth specified timeframes for action by REA on applications for prepayments or closing requests, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

§ 1786.170 Prepayment of loans approved after December 20, 1993. [Reserved]

§§ 1786.171–1786.199 [Reserved]

Dated: March 16, 1994.

Karl N. Stauber,

Acting Under Secretary, Small Community and Rural Development.

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