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PART I

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This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Executive Office of the President

Section 213.3303 is amended to show that one position of Secretary to the Administrator, Federal Energy Office, is excepted under Schedule C.

Effective on January 15, 1974, § 213.3303(k) is added as set out below.

§ 213.3303 **Executive Office of the President.**

* * * * *

(k) *Federal Energy Office.*

(1) One Secretary to the Administrator.

(5 U.S.C. secs. 3301, 3302; E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 74–1042 Filed 1–14–74;8:45 am]

PART 213—EXCEPTED SERVICE

Executive Office of the President

Section 213.3303 is amended to show that one position of Confidential Secretary to the Deputy Director, Special Action Office for Drug Abuse Prevention, is no longer excepted under Schedule C.

Effective on January 15, 1974, § 213.3303(j)(2) is revoked.

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74–1044 Filed 1–14–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3314 is amended to show that one position of Special Assistant to the Deputy Assistant Secretary for Economic Development is excepted under Schedule C.

Effective on January 15, 1974, § 213.3314(q)(8) is added as set out below.

§ 213.3314 **Department of Commerce.**

* * * * *

(q) *Office of the Assistant Secretary for Economic Development.*

* * * * *

(8) One Special Assistant to the Deputy Assistant Secretary for Economic Development.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74–1045 Filed 1–14–74;8:45 am]

PART 213—EXCEPTED SERVICE

Selective Service System

Section 213.3346 is amended to show that one position of Chief, Management Evaluation Group, is no longer excepted under Schedule C.

Effective on January 15, 1974, § 213.3346(e) is revoked.

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74–1043 Filed 1–14–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that one position of Assistant to the Assistant Secretary for Housing Production and Mortgage Credit is excepted under Schedule C.

Effective on January 15, 1974, § 213.3384(b)(11) is added as set out below.

§ 213.3384 **Department of Housing and Urban Development.**

* * * * *

(b) *Office of the Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Administration Commissioner.*

* * * * *

(11) One Assistant to the Assistant Secretary.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74–1041 Filed 1–14–74;8:45 am]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

PART 56—VOLUNTARY GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

PART 70—GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF; AND U.S. CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

Corrections

Due to a typographical error in FR Doc. 73–20432, 38 FR 26799, in the issue of Wednesday, September 26, 1973, "§ 56.522 *Summary of grades.*" should read "§ 56.222 *Summary of grades.*"

Due to a typographical error in FR Doc. 73–27012, 38 FR 35229, in the issue of Wednesday, December 26, 1973, in § 70.137 paragraph "(a)(3)" should read "(a)(2)."

Done at Washington, D.C., on January 9, 1974.

E. L. PETERSON,
Administrator, Agricultural Marketing Service.

[FR Doc.74–1052 Filed 1–14–74;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

[Amdt. 1]

PART 752—WATER BANK PROGRAM

On page 23729 of the FEDERAL REGISTER of November 8, 1972, there was published a proposed amendment to the regulations governing the Water Bank Program (7 CFR, Part 752).

Interested persons were given 30 days to submit written data, views, or arguments regarding the proposed changes. The basis and purpose of the proposed amendment were set forth in the notice. No comments were received. The amendment as proposed is adopted.

This amendment shall become effective January 15, 1974.

Signed at Washington, D.C., on January 7, 1974.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

1. Section 752.4 is amended to read as follows:

§ 752.4 Geographical applicability.

The program will be applicable in States and counties designated by the Deputy Administrator.

2. Section 752.5 is amended to read as follows:

§ 752.5 Eligible farm.

A farm is eligible for participation in the program if (a) at the time the request for an agreement is filed, land on the farm is not covered by a Water Bank Program agreement, (b) the farm contains type 3, 4, or 5 wetlands which are identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the farm is located, and (c) the farm meets the other requirements specified in this part.

3. Section 752.6(c) is amended by adding a new subparagraph (5) to read as follows:

§ 752.6 Land eligible for designation.

* * * * *

(c) * * *

(5) Type 3, 4, or 5 wetlands which are common to more than one farm unless the portion of a wetland area common to more than one farm which is located on the farm which controls the potential outlet for drainage is placed under agreement. After an agreement has been approved for the farm controlling the outlet for drainage, an agreement may be entered into with any or all other farms for other portions of the common wetland area if all agreements have the same beginning date as the farm controlling the outlet for drainage.

4. Section 752.7(e) is amended to read as follows:

§ 752.7 Use of designated acreage.

* * * * *

(e) No crop shall be harvested from the designated acreage and such acreage shall not be grazed except as may be called for in the conservation plan as provided in paragraph (b) of this section: *Provided*, That the designated acreage may be grazed in the first year of the agreement period prior to the date the agreement is approved.

5. Section 752.9(a) is amended to read as follows:

§ 752.9 Agreement period.

(a) The agreement period shall be 10 years. The agreement shall become effective on January 1 of the year in which the agreement is approved: *Provided*, That an agreement approved in 1972 shall become effective on January 1, 1973, in cases where, at the time the agreement is approved, the county committee determines that the agreement signers will be unable to comply with the provisions in § 752.7 relating to the use of the designated acreage during the year 1972.

* * * * *

(Sec. 12, 84 Stat. 1471, 16 U.S.C. 1311)

[FR Doc.74-1248 Filed 1-14-74;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Regulation 620, Amendment 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period January 6-12, 1974. The quantity that may be shipped is increased due to improved market conditions for California-Arizona lemons. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of lemons available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Lemon Regulation 620 (39 FR 997). The marketing picture now indicates that there is a greater demand for lemons than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of lemons to fill the current market demand thereby making a greater quantity of lemons available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* The provision in paragraph (b)(1) of § 910.920 (Lemon Regulation 620 (39 FR 997) is hereby amended to read as follows: "210,000 cartons."

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 10, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.74-1049 Filed 1-14-74;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATION

[FHA Instruction 465.2]

PART 1872—REAL ESTATE SECURITY

Management and Sale of Acquired Real Estate

Subpart C of 7 CFR Part 1872 (38 FR 19204) is amended to clarify the authority of the State Director in handling negotiated sales and to make certain editorial corrections. Since the change is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. As amended, § 1872.65(e) reads as follows:

§ 1872.65 Method of sale of property that was security for a loan made under the Consolidated Farm and Rural Development Act.

* * * * *

(e) *Negotiated sale.* If no sealed bid or bids at a public sale are accepted, the State Director, after negotiating with interested parties including all previous bidders, may sell the property at the best price obtainable without further public notice, provided there are no indications that by readvertising the property for sale, additional interest will be created and likely result in a higher price being obtained. A satisfactory offer received under such negotiations will be reduced to writing on Form FHA 465-10 and will be accepted and awarded in the same manner as provided in paragraph (d) (4) and (5) of this section. Such sales will be negotiated on the same terms as provided in the public notice and at a price not lower than the best qualified offer received as a result of the public notice unless otherwise authorized by the National Office. If a satisfactory sale cannot be negotiated within 30 days, all interested parties will be notified in writing that negotiations have been discontinued. The State Director should close his file on the negotiations. He may then change the terms and conditions (and interest rate for all Business and Industrial loans and loans processed under Subparts A, D, E, J, and L of Part 1823 of this chapter) as appropriate and enter into new negotiations. In negotiating a sale the State Director may solicit proposals by oral and written communications. In some instances it may be possible to assemble the persons interested in purchasing the property for open competitive bidding with the sale being made to

the person making the best offer. If offers are solicited orally or by mail without such an assembled meeting, the invitation to negotiate should include notice of the place, date, and hour at which time the best offer will be determined and, if satisfactory, accepted. Such date and hour shall be rigidly adhered to, and if a satisfactory offer is obtained at that time, it will be accepted immediately and other offers or suggestion of future offers after that date will be declined. If an acceptable offer is not made on that date, a new date will be set. Other acceptable methods of negotiations may be followed but care should be taken to afford equal opportunity to each negotiator. Usually, the amount offered by one interested party will not be disclosed to any other interested parties. However, if other offers are disclosed to one negotiator, the same information will be given to all other negotiators. No offer on the basis of a specified sum above the best alternative offer should be entertained. In connection with such negotiations it may be necessary to incur reasonable administrative expenses including the cost of communications, postage, and similar items to consummate the sale. Such sales may be advertised in local newspapers provided the costs of such advertisement are reasonable.

(7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 42 U.S.C. 2942; 5 U.S.C. 301; 40 U.S.C. Appendix 203; delegation of authority by the Sec. of Agri., 38 FR 14944, 14948, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850.)

Effective date: This amendment is effective January 15, 1974.

Dated: December 26, 1973.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.74-1247 Filed 1-14-74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 11010; Amdt. Nos. 25-35; 33-5]

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

Engine Rotor System Unbalance

The purpose of these amendments to Parts 25 and 33 of the Federal Aviation Regulations is to require on turbojet engine powered transport category airplanes an indicator to indicate rotor system unbalance, and to require that a means of connecting the indicating system be provided on turbojet engines.

These amendments are based upon two of the proposals contained in a notice of proposed rule making (Notice 71-12) published in the FEDERAL REGISTER on May 5, 1971 (36 FR 8383). Numerous comments were received in response to Notice 71-12, which the FAA is currently reviewing. The FAA believes that it is in the interest of safety to adopt these two proposals herein without delay, while the final disposition of the remaining proposals is being completed. A number of comments relating to these two proposals were received in response to the notice and except for those indicating agreement with the proposals or merely repeating issues discussed and disposed of in the notice, the FAA's disposition of the comments is set forth herein.

Several commentators expressed doubt as to the reliability of presently available engine vibration indicating systems and suggested proposed § 25.1305(d)(3) not be adopted. They further pointed out that the present equipment is expensive and difficult to maintain. As stated in the notice, the FAA is aware that the currently available vibration detectors are not as reliable as the engines they monitor and to that extent, they may impose an economic penalty; however, a rotor system failure can be catastrophic and the contributions to flight safety gained from a vibration monitoring system that provides the flight crew with an appropriate vibration warning far outweighs any difficulties that may be experienced. The value of the system has been recognized by the aviation industry in that vibration monitoring systems have been voluntarily installed in most turbine powered transport category airplanes currently in production.

Several commentators expressed concern that inadvertent engine shutdowns might possibly result from the failure of the flight crew to differentiate between normal and abnormal engine vibration readings. They point out that variations in vibration levels exist between different engines of the same type as well as on the same engine at different flight and power conditions. The rule, however, does not require that a level of acceptable vibration be specified. It merely requires an indication of "rotor system unbalance" in the engine as installed in the aircraft. The indicator may be employed to sense a trend of vibrations over a period of time, rather than a specific level at a particular instant. The FAA considers the addition of a vibration indicator to be necessary in the interest of safety and that flight crews will be able to properly interpret the indicator readings.

One commentator expressed concern that the proposed vibration indicating system could not be used effectively as the principle means of detecting engine failure. The intent of the amendment does not, however, make the vibration indicator the sole or exclusive monitoring indicator. Rather, it is an addition to the present engine instrumentation and provides additional information on engine conditions.

One commentator proposed use of the term "mounting provisions" instead of "connection" in proposed § 33.29(b) in order to make the rule more general. The term "connection," is a general term and the FAA considers it more descriptive and less restrictive than the term "mounting provision."

It was suggested by a commentator that some engines with damped rotors would not reflect rotor unbalance with an externally mounted vibration monitoring system. The amendment to § 33.29 (b) does not require that only an externally mounted system be utilized, but permits any system which would indicate an unbalance of the rotor system. To ensure this intent, the term "vibration monitoring" has been deleted. This change makes the adopted rule less restrictive than the proposed rule while still requiring a system which will indicate rotor system unbalance.

Interested persons have been afforded an opportunity to participate in the making of these amendments and due consideration has been given to all matter presented.

These amendments are made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1425), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, Parts 25 and 33 of the Federal Aviation Regulations are amended as follows, effective March 1, 1974:

1. Section 25.1305 is amended by adding a new paragraph (d)(3) to read as follows:

§ 25.1305 Powerplant instruments.

* * * * * * *

(d) * * *

(3) An indicator to indicate rotor system unbalance.

* * * * * * *

2. A new § 33.29 is added to read as follows:

§ 33.29 Instrument connection.

(a) [Reserved]

(b) A connection must be provided on each turbojet engine for an indicator system to indicate rotor system unbalance.

Issued in Washington, D.C., on January 8, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.74-1027 Filed 1-14-74;8:45 am]

[Airspace Docket No. 73-SW-70]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Atlanta, Tex., transition area.

On November 15, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 31542) stating the Federal Aviation Administration proposed to designate a transition area at Atlanta, Tex.

Interested persons were afforded an opportunity to participate in the rule

making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 28, 1974, as hereinafter set forth.

In § 71.181 (39 FR 440), the following transition area is added:

ATLANTA, TEX.

That airspace extending from 700 feet above the surface within a 5-mile radius of Atlanta Municipal Airport (latitude 33°06' 10" N., longitude 94°11'40" W.) and within 3 miles each side of the 047° bearing from the NDB (latitude 33°06'13" N., longitude 94°11'25" W.) extending from the 5-mile radius area to a point 8 miles northeast of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Fort Worth, Tex., on January 2, 1974.

ALBERT H. THURBURN,
Acting Director, Southwest Region.

[FR Doc.74-1026 Filed 1-14-74;8:45 am]

[Airspace Docket No. 73-GL-35]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On page 21502 of the FEDERAL REGISTER dated August 9, 1973, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate the transition area at Peru, Indiana.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective February 28, 1974.

This amendment is made under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Illinois, on December 20, 1973.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

In § 71.181 (39 FR 440), the following transition area is added:

PERU, IND.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Peru Airport (latitude 40°47'10"N., longitude 86°08'47"W.), excluding the area which overlies the Kokomo transition area.

[FR Doc.74-1025 Filed 1-14-74;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER A—GENERAL REGULATIONS

PART 908—MAINTAINING RECORDS AND SUBMITTING REPORTS ON WEATHER MODIFICATION ACTIVITIES

Provisions for Reporting Additional Information

In a notice published in the FEDERAL REGISTER of November 6, 1973 (38 FR 30563), the Administrator of the National Oceanic and Atmospheric Administration proposed to amend the rules on maintaining records and submitting reports on weather modification activities (37 FR 22974). Interested persons were given until December 6, 1973 to submit written views, objections, recommendations, or suggestions in connection with the proposed amendments. The few comments received in response to the notice have been considered in detail, but they did not provide any basis for revision of the proposed additions to the rules.

The purpose of these amendments to 15 CFR Part 908, is to provide for the reporting of the additional information required by NOAA to carry out the intent of the President's Directive to the Secretary of Commerce:

* * * to expand his regulations to provide for Federal notification, including recommendations where appropriate, to operators and State officials in cases where a report disclosed that a proposed project may endanger persons, property, or the environment or the success of Federal research projects. Notifications will be available to the public.

Over the past 27 years, weather modification activities have been undertaken to secure benefits for man, and the results have been encouraging. Although there has been no evidence in this period that these activities have significantly endangered persons, property, or the environment, the President's Message recognizes that such activities may have the potential to cause adverse effects, if carried out without appropriate safeguards.

It is almost impossible to predetermine with certainty all of the effects of a given weather modification operation. For that reason, to minimize the possibility of harmful results, planning for weather modification operations usually includes project safeguards and consideration of environmental impact which will eliminate hazards that might be reasonably foreseen. The amendments, which require the reporting of current safety practices and environmental considerations, will provide a single source of information on the safety and environmental precautions used in weather modification activities in the United States. Compilations of these practices may form the basis for later publication of techniques generally used in the industry to avoid potential danger. The reported information will also help operators to anticipate, and hopefully avoid, possible interference of one experiment or operation by another.

Appropriate Federal agencies have agreed to report their weather modification activities to the Secretary of Commerce. This Federal reporting complements the reporting of non-Federal sponsored projects and provides for a central source of information on all weather modification activities in the United States.

The actions of the Department of Commerce under these amendments are not intended as, nor do they constitute, approval, disapproval, or regulation of weather modification operations. Any notification that may be made to operators and State officials on the basis of information received will be advisory only.

Therefore, pursuant to the authority contained in 15 U.S.C. 330–330e and 15 U.S.C. 313, and pursuant to a Directive to the Secretary of Commerce reflected in the President's February 15, 1973 State of the Union Message on Natural Resources and Environment, and the Fact Sheet accompanying the Message, the National Oceanic and Atmospheric Administration (NOAA) amends 15 CFR by additions to Part 908, adopting the rules set forth below. These rules will be administered by the Administrator, National Oceanic and Atmospheric Administration, on behalf of the Secretary of Commerce, pursuant to the Secretary's delegation of authority in section 3, subparagraph .01t of the Department of Commerce Organization Order 25–5A.

The amendments are as follows:

1. Change § 908.4(a)(7) by deleting the word "and" after the semi-colon.

2. Change § 908.4(a)(8) to § 908.4(a)(9).

3. Add § 908.4(a)(8) as follows:

§ 908.4 Initial report.

(a) * * *

(8) Answers to the following questions on project safeguards:

(i) Has an Environmental Impact Statement, Federal or State, been filed: Yes ____ No ____. If Yes, please furnish a copy as applicable.

(ii) Have provisions been made to acquire the latest forecasts, advisories, warnings, etc. of the National Weather Service, Forest Service, or others when issued prior to and during operations? Yes ____ No ____. If Yes, please specify on a separate sheet.

(iii) Have any safety procedures (operational constraints, provisions for suspension of operations, monitoring methods, etc.) and any environmental guidelines (related to the possible effects of the operations) been included in the operational plans? Yes ____ No ____. If Yes, please furnish copies or a description of the specific procedures and guidelines.

4. Add § 908.12(d) to read as follows:

§ 908.12 Public disclosure of information.

* * * * *

(d) When consideration of a weather modification activity report and related information indicates that a proposed project may significantly depart from the practices or procedures generally employed in similar circumstances to avoid danger to persons, property, or the environment, or indicates that the success of Federal research projects may be adversely affected if the proposed project is carried out as described, the Administrator will notify the operator(s) and State officials of such possibility and make recommendations where appropriate. The purpose of such notification shall be to inform those notified of existing practices and procedures or Federal research projects known to NOAA. Notification or recommendation, or failure to notify or recommend, shall not be construed as approval or disapproval of a proposed project or as an indication that, if carried out as proposed or recommended it may, in any way, protect or endanger persons, property, or the environment or affect the success of any Federal research project. Any advisory notification issued by the Administrator shall be available to the public and be included in the pertinent activity report file.

Effective date. These amendments shall be effective on February 15, 1974.

ROBERT M. WHITE,
Administrator.

[FR Doc.74-1077 Filed 1-14-74;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

[Docket No. C-2479]

PART 13—PROHIBITED TRADE PRACTICES

Eccles Motor Company and Julian W. Eccles

Correction

In FR Doc. 73-27021, appearing at page 35301 in the issue for Thursday, December 27, 1973, in the italicized heading under the authority citation, the name "Julia W. Eccles" should read "Julian W. Eccles".

[Docket No. C-2120]

PART 13—PROHIBITED TRADE PRACTICES

Longines-Wittnauer, Inc. and Credit Services, Inc.

ORDER GRANTING REQUEST FOR CORRECTION

The Commission having inadvertently failed to delete paragraph I B(4) of the order to cease and desist issued on December 21, 1971 (37 FR 2579, Feb. 2, 1972), in FR Doc. 73-25475, appearing at page 33279 in the issue for Monday, December 3, 1973, accordingly by its Order Granting Request for Correction ordered that the October 30, 1973, Order Modifying the Cease and Desist Order be corrected by inserting the following paragraph:

It is further ordered, That Paragraph I B(4) be deleted from the order to cease and desist issued against respondents on December 21, 1971.

By the Commission.

Issued: December 11, 1973.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.74-1031 Filed 1-14-74;8:45 am]

SUBCHAPTER B—GUIDES AND TRADE PRACTICE RULES

PART 250—GUIDES FOR THE HOUSEHOLD FURNITURE INDUSTRY

Correction

In FR Doc. 73-26888, appearing at page 34992 in the issue for Friday, December 21, 1973, make the following changes:

1. In the 5th paragraph, the 10th line, reading "cerning it in advertising, labeling or" should be transferred below the 16th line which reads "designations or representations con-"

2. In § 250.5(d)(1), insert the word "and" after the semi-colon.

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

[Docket No. 206-12]

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

Novoloid; Addition to Generic Names and Definitions

On December 21, 1970, the Carborundum Co., Post Office Box 337, Niagara Falls, N.Y. 14302 (applicant), filed an application pursuant to § 303.8 (16 CFR 303.8) of the rules and regulations under the Textile Fiber Products Identification Act, 72 Stat. 1717, et seq., 79 Stat. 124, 15 U.S.C. § 70, et seq. (hereinafter referred to as "Act"), requesting that 16 CFR 303.7, setting forth generic names and definitions of manufactured textile fibers, be amended by adding thereto a new generic name and definition. The requested addition would cover a fiber which, applicant urges, should not be identified by any existing generic name because of being substantially different from fibers in present classifications, both in properties and chemical structure. The name and definition recommended by applicant are as follows:

Novolon [or novoloid]—a manufactured fiber containing at least 85 percent of a cross-linked novolac.

By letter of February 19, 1971, the Commission assigned to applicant's fiber the temporary designation "CA-0001," in accordance with § 303.8 (16 CFR 303.8) of the Commission's rules and regulations under the Act.

On February 25, 1972, a notice of proposed rule making was issued by the Commission in this proceeding and subsequently published in the FEDERAL REGISTER at 37 FR 4724, March 4, 1972. Such Notice announced that the Commission was considering the application, including the following questions:

(1) Whether the fiber described in the application may properly be designated by any existing generic name or names contained in 16 CFR 303.7, and

(2) What, if any, amendment to the rules and regulations under the Act, particularly § 303.7 thereof, may be necessary and proper with regard to matters raised in the application.

The notice further provided that interested parties could participate in this proceeding by submitting their views, arguments, or other pertinent data, in writing, to the Commission.

The applicant described the fiber as follows:

The composition of the fiber may be considered with reference to the basic aspects of the method by which such fibers may be made. A phenolicaldehyde novolac is prepared by condensing a phenolic compound and an aldehyde in the presence of an acid catalyst, a stoichiometric excess of the phenolic compound preferably and customarily being employed. The novolac so obtained is fiberized by any conventional method such as melt spinning. The resulting novolac fibers are then heated in an environment containing formaldehyde and an acid catalyst to effect curing, i. e., cross-linking, of the novolac. Such cross-linking occurs primarily by virtue of methylene bridges formed between the 2, 4, and/or 6 positions of the phenolic structural unit.

The term "phenolic compound" in the present context refers primarily to the compound phenol itself, from which most novolacs are prepared. However, it also encompasses phenol wherein one or more of the hydrogen atoms are substituted by a monovalent radical, provided, however, that the phenol is not so extensively substituted in the 2, 4 and/or 6 positions as to preclude subsequent cross-linking. Cresol is a primary example of such a substituted phenol. Similarly, the term "aldehyde" refers to any aldehyde capable of condensing with the phenolic compound to form a novolac. Formaldehyde is by far the most commonly used, but other aldehydes such as acetaldehyde may be employed. The novolac melt from which the instant fibers are formed preferably contains at least 50 percent of a novolac produced from phenol and formaldehyde.

Prior to fiberization, up to 15 percent of a suitable additive may be incorporated in the novolac, if desired, to obtain improvements in certain respects.

Applicant stated that the subject fiber is most significantly characterized by remarkable resistance to heat and flame, being infusible and nonflammable; that it is also substantially unaffected by many acids; and that it is insoluble in organic solvents.

The only party (other than applicant) who made submittals in this proceeding was E. I. du Pont de Nemours & Co., Inc. It stated it would support the application if applicant had presented convincing proof that its fiber had real commercial potential at present or in the foreseeable future. It objected, however, to a coined name for the proposed new generic class, preferring instead the term "novolac fiber."

The first question presented is whether any of the existing generic definitions of § 303.7 encompass CA–0001. Applicant and du Pont take the view that they do not. After examination of § 303.7 from this standpoint, it is concluded that CA–0001 is not covered by any of the classifications therein.

Applicant has demonstrated that CA–0001 is a useful and practical fiber which applicant is currently producing and marketing.

No objection has been made to the generic definition proposed by applicant to cover its fiber. After consideration of the matter the Commission has found such definition acceptable, except that it fails to specify whether the percentage figure used ("85 percent of a cross-linked novolac") is a weight or a mol percentage. The Commission has modified the definition to specify a by-weight percentage.

Finally, there is the question of a proper name for the new generic classification. Upon study of this matter the Commission has concluded that the coined term "novoloid" is the best choice in the circumstances.

Further, the Commission, in the interest of delineating the grounds on which it has based this decision and shall base future decisions as to the grant of generic names for textile fibers, sets out the following criteria for grant of such generic names.

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

2. The fiber must be in active commercial use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of the abovementioned criteria in consideration of any future applications for generic names and in a systematic review of any generic names previously granted which no longer meet these criteria.

After consideration of the views, arguments, and data submitted pursuant to the Notice of proposed rule making herein and other pertinent information and material available to the Commission, the Commission has determined to amend its rules and regulations under the Textile Fiber Products Identification Act in the manner set forth below.

Section 303.7, *Generic names and definitions for manufactured fibers*, of 16 CFR Part 303 is hereby amended by adding a new paragraph (r) to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(r) *Novoloid.* A manufactured fiber containing at least 85 percent by weight of a cross-linked novolac. (Sec. 7, 72 Stat. 1717; 15 U.S.C. 70e).

Effective date. The amendment to the Commission's rules and regulations prescribed herein shall become effective February 15, 1974.

The designation CA–0001 previously assigned to applicant's fiber for temporary use is hereby revoked as of the effective date of the above amendment.

By the Commission.

Issued: January 15, 1974.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.74–1066 Filed 1–14–74;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 74–20]

PART 1—GENERAL PROVISIONS

Customs Laboratories

Section 1.6 of the Customs regulations lists the addresses and Customs regions of the several Customs laboratories. One Customs laboratory has been moved and several new ones have been established. In order to reflect these changes, it is necessary to amend the Customs regulations.

Accordingly, § 1.6, Customs Regulations, is revised as follows:

§ 1.6 Customs laboratories.

The addresses of the several Customs laboratories and the Customs regions served thereby are as follows:

Address	*Region*
408 Atlantic Avenue, Boston Massachusetts 02210	I
201 Varick Street, New York, New York 10014	II
103 South Gay Street, Baltimore, Maryland 21202	III
P.O. Box 2112, U.S. Customhouse, San Juan, Puerto Rico 00903	IV
Customhouse, 1–3, E. Bay Street, Savannah, Georgia 31401	IV
423 Canal Street, New Orleans, Louisiana 70130	V and VI
301 Broadway, San Antonio, Texas 78205	VI
861 6th Avenue, San Diego, California 92101	VII
300 South Ferry Street, San Pedro, California 90731	VII
630 Sansome Street, San Francisco, California 94111	VIII
610 S. Canal Street, Chicago, Illinois 60607	IX

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

Because this amendment merely updates addresses, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall be effective January 15, 1974.

[SEAL] VERNON D. ACREE, *Commissioner of Customs.*

Approved: January 3, 1974.

JAMES B. CLAWSON, *Acting Assistant Secretary of the Treasury.*

[FR Doc.74–1244 Filed 1–14–74;8:45 am]

[T.D. 74–21]

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Public International Organizations Entitled to Free Entry Privileges

By Executive Order No. 11718 signed May 14, 1973 (38 FR 12797), the President designated the International Telecommunications Satellite Organization (INTELSAT) as an international organization entitled to enjoy certain privileges, exemptions, and immunities conferred by the International Organizations Immunities Act of December 29, 1945 (59 Stat. 669). At the same time, the President revoked this status for the Interim Communications Satellite Committee and the International Telecommunications Satellite Consortium.

Executive Order 11718 extends the benefits of section 3 of the International Organizations Immunities Act (22 U.S.C. 288b), providing for the duty-free treatment of the baggage and effects of alien officers and employees of international organizations, only to the representatives to the Board of Governors of INTELSAT and their alternates, and only to the extent those benefits were enjoyed by the representatives to the Interim Communications Satellite Committee and their alternates under Executive Order 11227.

The names of public international organizations currently entitled to free entry privileges are set forth in section 148.87(b) of the Customs Regulations, together with the number and date of the Executive Order by which they were designated.

§ 148.87(b) [Amended]

Section 148.87(b) is amended by the following addition (in proper alphabetical order) and deletions:

Addition:

Organization	Executive order	Date
International Telecommunications Satellite Organization (Intelsat)—Limited privileges only	11718	May 14, 1973

Deletions:

Organization	Executive order	Date
Interim Communications Satellite Committee	11227	June 2, 1965
International Telecommunications Satellite Consortium	11227	Apr. 30, 1966

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 1, 59 Stat. 669; 19 U.S.C. 66, 1498, 1624, 22 U.S.C. 288)

Inasmuch as these amendments merely correct the listing of organizations entitled by law to claim free entry privileges as public international organizations, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] VERNON D. ACREE,
Commissioner of Customs.

Approved: January 3, 1974.

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[FR Doc.74-1246 Filed 1-14-74;8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER G—TRIBAL GOVERNMENT

PART 60—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Beginning on page 31430 of the FEDERAL REGISTER of November 14, 1973 (38 FR 31430), there was published a notice of proposed rule making to add a new Part 60 to 25 CFR relating to the preparation of proposed plans for the use or distribution of judgment funds appropriated in satisfaction of awards made by the Indian Claims Commission and the United States Court of Claims. The regulations were proposed pursuant to the Act of October 19, 1973 (Public Law 93-134; 87 Stat. 466, 467, 468).

Interested persons were given 53 days, beginning on November 14, 1973, and ending on January 5, 1974, in which to submit written comments, views or objections regarding the proposed regulations. Pursuant to section 6(c) of Public Law 93-134, a public hearing on the proposed regulations was held December 13, 1973, at Denver, Colorado, notice of which was published December 4, 1973, in the FEDERAL REGISTER (38 FR 33401). Before, at, and since the hearing, numerous comments, suggestions and objections, both oral and written, on the proposed regulations have been received. Careful consideration has been given to these views and the result has been to make the changes in the proposed regulations which are published below as final rules. The following sections of the proposed regulations were modified (sections not listed were not changed):

Section 60.1 *Definitions.* Deletions and modifications in the definitions were made to conform with the changes made in the other sections of Part 60.

Section 60.3 *Time limits.* This section was revised to eliminate self-imposed time limits which might in some cases prevent compliance with statutory deadlines. Other changes were made to reflect more completely the statutory provisions and to eliminate the detailing of administrative mechanics.

Section 60.4 *Conduct of hearings of record.* Revision of this section was made to authorize an Area Director to designate an appropriate Departmental official to conduct hearings in his stead.

Section 60.5 *Submittal of proposed plan by Secretary.* Modifications were made in this section to eliminate references to matters of internal administration. The last sentence was deleted as a possible interference with meeting the deadlines established by the Act.

Section 60.6 *Submittal of proposed legislation by Secretary.* This section was renumbered § 60.7. The last sentence of the section was eliminated as being unnecessary.

Section 60.7 *Extension of period for submitting plans.* This section was renumbered § 60.6.

Section 60.8 *Enrollment aspects of plans.* The first part of the section was modified to simplify the language and to eliminate the detailing of matters of internal administration. The last sentence was deleted as being unnecessary.

Section 60.9 *Programming aspects of plans.* This section was slightly modified to make it possible to consider all relevant factors in programming judgment funds.

Section 60.10 *Per capita payment aspects of plans and protection of funds accruing to minors and legal incompetents.* This section was revised to clarify its provisions and to provide fully for all authorized methods of handling per capita payments made to deceased beneficiaries, minors, and legal incompetents.

Section 60.11 *Investment of judgment funds.* This section was revised to provide, in addition to investment of judgment funds by the Secretary, for investments by tribes after approval of plans or enactment of use or distribution legislation.

Section 60.12 *Insuring the proper performance of effective plans.* The first sentence of the section was modified to reflect the possibility that an official of the Department of the Interior other than the Area Director might work with tribal governing bodies in establishing timetables.

Public Law 93-134 requires that plans for the use or distribution of judgments awarded by the Indian Claims Commission or the United States Court of Claims shall be submitted by the Secretary of the Interior to the Congress within one hundred and eighty (180) days after the appropriations of the funds to pay the judgments, or within 180 days of the date of the Act for judgments for which funds were appropriated before the date of the Act. An additional delay in the effective date of these regulations will further shorten the time remaining to prepare plans pursuant to them. The revisions made in the proposed regulations, and reflected in these final regulations, are in consonance with the comments received and within the limits of the underlying laws; and no benefits would be gained by deferring the effective date. Therefore, good cause exists and is so found that the 30-day deferred effective date or any other deferred effective date otherwise required by 5 U.S.C. section 553(d) should be dispensed with under the exception provided in subsection 553 (d) (3). Accordingly, the new Part 60 as written below will be effective on January 15, 1974.

Sec.
60.1 Definitions.
60.2 Purpose.
60.3 Time limits.
60.4 Conduct of hearings of record.
60.5 Submittal of proposed plan by Secretary.
60.6 Extension of period for submitting plans.
60.7 Submittal of proposed legislation by Secretary.
60.8 Enrollment aspects of plans.
60.9 Programing aspects of plans.
60.10 Per capita payment aspects of plans and protection of funds accruing to minors and legal incompetents.
60.11 Investment of judgment funds.
60.12 Insuring the proper performance of approved plans.

AUTHORITY: 5 U.S.C. 301; 87 Stat. 466, 467, 468.

§ 60.1 Definitions.

As used in this Part 60, terms shall have the meanings set forth in this section.

(a) "Act" means the Act of October 19, 1973 (P.L. 93-134; 87 Stat. 466, 467, 468).

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.

(e) "Superintendent" means the Superintendent or Officer in Charge of any one of the Agency Offices or other local offices of the Bureau of Indian Affairs or his authorized representative.

(f) "Congressional Committees" means the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States.

(g) "Indian tribe or group" means any Indian tribe, nation, band, pueblo, community or identifiable group of Indians, or Alaska Native entity.

(h) "Tribal governing body" means, as recognized by the Secretary, the governing body of a formally organized or recognized tribe or group; the governing body of any informally organized tribe or group, the governing body of a formally organized Alaska Native entity or recognized tribe in Oklahoma, and for the purposes of the Act the recognized spokesmen or representatives of any descendant group.

(i) "Plan" means the document submitted by the Secretary, together with all pertinent records, for the use or distribution of judgment funds, to the Congressional Committees.

(j) "Enrollment" means that aspect of a plan which pertains to making or bringing current a roll of members of an organized, reservation-based tribe with membership criteria approved or accepted by the Secretary, a roll of members of an organized or recognized entity in Oklahoma, or Alaska or elsewhere, or a roll prepared for the purpose of making per capita payments for judgments awarded by the Indian Claims Commission or United States Court of Claims; or which pertains to using an historical roll or records of names, including tribal rolls closed and made final, for research or other purposes.

(k) "Program" means that aspect of a plan which pertains to using part or all of the judgment funds for tribal social and economic development projects.

(l) "Per capita payment" means that aspect of a plan which pertains to the individualization of the judgment funds in the form of shares to tribal members or to individual descendants.

(m) "Use or distribution" means any utilization or disposition of the judgment funds, including programing, per capita payments, or a combination thereof.

(n) "Individual beneficiary" means a tribal member or any individual descendant, found by the Secretary to be eligible to participate in a plan, who was born on or prior to, and is living on, the approval date of the plan.

(o) "Approval date" means the date that a plan is approved by the Congress. Except for a plan disapproved by either House, the approval date of a plan shall be the sixtieth (60) day after formal submittal of a plan by the Secretary to the Congressional Committees, excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three (3) calendar days to a day certain. In the event a proposed plan is disapproved by either House, or in the event the Secretary is unable to submit a plan and therefore proposes legislation, the approval date shall be the date of the enabling legislation for the disposition of the judgment funds.

(p) "Minor" is an individual beneficiary who is eligible to participate in a per capita payment and who has not reached the age of eighteen (18) years.

(q) "Legal incompetent" is an individual beneficiary eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal courts.

(r) "Attorney fees and litigation expenses" means all fees and expenses incurred in litigating and processing tribal claims before the Indian Claims Commission or the United States Court of Claims.

§ 60.2 Purpose.

The regulations in this part govern the preparation of proposed plans for the use or distribution, pursuant to the Act, of all judgment funds awarded from the date of the Act to Indian tribes and groups by the Indian Claims Commission or the United States Court of Claims, excepting any tribe or group whose trust relationship with the Federal Government has been terminated and for which there exists legislation authorizing the disposition of its judgment funds; and of all funds deriving from judgments entered prior to the date of the Act for which there has been no enabling legislation.

§ 60.3 Time limits.

(a) The Secretary shall cause to begin as early as possible the necessary research to determine the identity of the ultimate or present day beneficiaries of judgments. Such research shall be done under the direction of the Commissioner of Indian Affairs. The affected tribes or groups shall be encouraged to submit pertinent data. All pertinent data, including cultural, political and historical material, and records, including membership, census and other rolls shall be considered. If more than one entity is determined to be eligible to participate in the use or distribution of the funds, the results of the research shall include a proposed formula for the division or apportionment of the judgment funds among or between the involved entities.

(b) The results of all research shall be provided to the governing bodies of all affected tribes and groups. The Area Director shall assist the affected tribe or group in arranging for preliminary sessions or meetings of the tribal governing body, or public meetings. The Area Director shall make a presentation of the results of the research and shall arrange for expertise of the Bureau of Indian Affairs to be available at these meetings to assist the tribe or group in developing a use or distribution proposal, bearing in mind that under the Act not less than twenty (20) per centum of the judgment funds, including investment income thereon, is to be used for tribal programs unless the Secretary determines that the particular circumstances of the affected Indian tribe clearly warrant otherwise.

§ 60.4 Conduct of hearings of record.

(a) As soon as appropriate after the tribal meetings have been held and the Commissioner has reviewed the tribal proposal(s), the Area Director, or such other official of the Department of the Interior as he shall designate to act for him, shall hold a hearing of record to receive testimony on the tribal proposal(s).

(b) The hearing shall be held after appropriate public notice beginning at least twenty (20) days prior to the date of such hearing, and after consultation with the governing body of the tribe or group regarding the date and location of the hearing, to obtain the testimony of members of the governing body and other representatives, spokesmen or members of the tribe or group on the proposal(s).

(c) All testimony at the hearing shall be transcribed and a transcript thereof shall be furnished to the Commissioner and the tribal governing body immediately subsequent to the hearing. Particular care shall be taken to insure that minority views are given full opportunity for expression either during the hearing or in the form of written communications by the date of the hearing.

(d) Whenever two or more tribes or groups are involved in the use or distribution of the judgment funds, including situations in which two or more Area Offices are concerned, every effort shall be made by the Area Director or Directors to arrange for a single hearing to be conducted at a time and location as convenient to the involved tribes and groups as possible. Should the tribes and groups not reach agreement on such time or place, or on the number of entities to be represented at the hearing, the Commissioner, after considering the views of the affected tribes and groups, shall within twenty (20) days of receipt of such advice by the Area Director, designate a location and date for such hearing and invite the participation of all entities he considers to be involved and the Commissioner's decision shall be final.

§ 60.5 Submittal of proposed plan by Secretary.

Subsequent to the hearing of record, the Commissioner shall prepare all pertinent materials for the review of the Secretary. Pertinent materials shall include:

(a) the tribal use or distribution proposal or any alternate proposals;

(b) a copy of the transcript of the hearing of record;

(c) a statement on the hearing of record and other evidence reflecting the extent to which such proposal(s) meets the desires of the affected tribe or group, including minority views;

(d) copies of all pertinent resolutions and other communications or documents received from the affected tribe or group, including minorities;

(e) a copy of the tribal constitution and bylaws, or other organizational document, if any; a copy of the tribal enrollment ordinance, if any; and a statement as to the availability or status of the membership roll of the affected tribe or group;

(f) a statement reflecting the nature and results of the investment of the judgment funds as of thirty (30) days of the submittal of the proposed plan, including a statement concerning attorney fees and litigation expenses;

(g) a statement justifying any compromise proposal developed by the Commissioner in the event of the absence of agreement among any and all entities on the division or apportionment of the funds, should two or more entities be involved;

(h) and a statement regarding the feasibility of the proposed plan, including a timetable prepared in cooperation with the tribal governing body, for the implementation of programing and roll preparation.

Within one hundred and eighty (180) days of the appropriation of the judgment funds the Secretary shall submit

a proposed plan, together with the pertinent materials described above, simultaneously to each of the Chairmen of the Congressional Committees, at the same time sending copies of the proposed plan and materials to the governing body of the affected tribe or group. The one hundred and eighty (180) day period shall begin on the date of the Act with respect to all judgments for which funds have been appropriated and for which enabling legislation has not been enacted.

§ 60.6 Extension of period for submitting plans.

An extension of the one hundred and eighty (180) day period, not to exceed ninety (90) days, may be requested by the Secretary or by the governing body of any affected tribe or group submitting such request to both Congressional Committees through the Secretary, and any such request shall be subject to the approval of both Congressional Committees.

§ 60.7 Submittal of proposed legislation by Secretary.

(a) Within thirty (30) calendar days after the date of a resolution by either House disapproving a plan, the Secretary shall simultaneously submit proposed legislation authorizing the use or distribution of the funds, together with a report thereon, to the Chairmen of both Congressional Committees, at the same time sending copies of the proposed legislation to the governing body of the affected tribe or group. Such proposed legislation shall be developed on the basis of further consultation with the affected tribe or group.

(b) In any instance in which the Secretary determines that circumstances are not conducive to the preparation and submission of a plan, he shall, after appropriate consultation with the affected tribe or group, submit proposed legislation within the 180-day period to both Congressional Committee simultaneously.

§ 60.8 Enrollment aspects of plans.

An approved plan that includes provisions for enrollment requiring formal adoption of enrollment rules and regulations shall be implemented through the publication of such rules and regulations in the FEDERAL REGISTER. Persons not members of organized or recognized tribes and who are are not citizens of the United States shall not, unless otherwise provided by Congress, be eligible to participate in the use or distribution of judgment funds, excepting heirs or legatees of deceased individual beneficiaries.

§ 60.9 Programing aspects of plans.

In assessing any tribal programing proposal the Secretary shall consider all pertinent factors, including the following: the percentage of tribal members residing on or near the subject reservation, including former reservation areas in Oklahoma, or Alaska Native villages; the formal educational level and the general level of social and economic adjustment of such reservation residents; the nature of recent programing affecting the subject tribe or group and particularly the reservation residents; the needs and aspirations of any local Indian communities or districts within the reservation and the nature of organization of such local entities; the feasibility of the participation of tribal members not in residence on the reservation; the availability of funds for programing purposes derived from sources other than the subject judgment; and all other pertinent social and economic data developed to support any proposed program.

§ 60.10 Per capita payment aspects of plans and protection of funds accruing to minors and legal incompetents.

(a) Per capita payments shall be made in accordance with conditions to be prescribed in the plan. The shares of deceased individual beneficiaries, enhanced by investment earnings, shall be held in special accounts until paid to the decedents' heirs or beneficiaries as provided in the plan.

(b) Protection of the shares of minors and legal incompetents shall be part of approved plans containing per capita payment aspects. The Commisioner shall insure the protection of such shares, whether they be handled individually or collectively. As in the case of the per capita shares of deceased beneficiaries, investment income on the per capita shares of minors and incompetents shall accrue to those shares and shall be the property of such minors and incompetents. Per capita shares and investment income accruing on the per capita shares of deceased individual beneficiaries, minor and incompetents, as well as the principal thereof, shall not be subject to State and Federal income taxes and shall not be considered as income or resources under the Social Security Act, as amended.

(c) All per capita shares or portions thereof which are not paid but which remain unclaimed with the Federal Government shall be maintained separately and be enhanced by investment, and shall be subject to the provisions of the Act of September 22, 1961 (75 Stat. 584). No per capita share or a portion thereof shall be transferred to the U.S. Treasury as "Monies Belonging to Individuals Whose Whereabouts are Unknown."

§ 60.11 Investment of judgment funds.

As soon as possible after the appropriation of judgment funds and pending approval of a plan or the enactment of legislation authorizing the use or distribution of the funds, the Commissioner shall invest such funds pursuant to 25 U.S.C. 162a. Investments of judgment funds and of investment income therefrom will continue to be made by the Commissioner after the approval of a plan or enactment of use or distribution legislation to the extent funds remain available for investment under such plan or legislation, and provided that thereafter investments of judgment funds made available for tribal use are not undertaken by the tribe pursuant to authorizing law. Invested judgment funds, including investment income therefrom, shall be withdrawn from investment only as currently needed under approved plans or legislation authorizing the use or distribution of such funds.

§ 60.12 Insuring the proper performance of approved plans.

A timetable prepared in cooperation with the tribal governing body shall be included in the plan submitted by the Secretary for the implementation of all programing and enrollment aspects of a plan. At any time within one calendar year after the approval date of a plan, the Area Director shall report to the Commisisoner on the status of the implementation of the plan, including all enrollment and programing aspects, and thenceforth shall report to the Commissioner on an annual basis regarding any remaining or unfulfilled aspects of a plan. The Area Director shall include in his first and all subsequent annual reports a statement regarding the maintenance of the timetable, a full accounting of any per capita distribution, and the expenditure of all programing funds. The Commissioner shall report the deficient performance of any aspect of a plan to the Secretary, together with the corrective measures he has taken or intends to take.

Dated: January 11, 1974.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.74-1298 Filed 1-11-74;1:40 pm]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1954—PROCEDURES FOR THE EVALUATION AND MONITORING OF APPROVED STATE PLANS

Pursuant to the authority in sections 8(g)(2) and 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2) and 667), (hereinafter referred to as the Act) 29 CFR Ch. XVII is amended by adding a new Part 1954.

The new Part 1954 contains interpretations of the statutory provisions of the Act and implementing regulations relating to evaluation of State plans approved under section 18(c) of the Act. Section 18(f) of the Act requires the Assistant Secretary to make a continuing evaluation of the manner in which each State having a plan approved under section 18(c) of the Act is carrying out such plan. This evaluation is to be made on the basis of reports submitted by the States and from the Assistant Secretary's own inspections.

Subpart B of the new Part describes the several reports required of States with approved plans. As part of the evaluation system, States will be required to submit quarterly and annual

reports to the appropriate Regional Office. Subpart B of the regulations also outlines another portion of the program for continuing evaluation of State programs through visits to States with approved plans and audits of the State programs.

Because of the continuing public interest in the approval and operation of State plans; the legal requirements of the Act to provide continuing evaluation of the plans; and the need to make a final determination on approval of the plan pursuant to section 18(e) of the Act, the Occupational Safety and Health Administration has decided to initiate a public complaint procedure under section 18(f) of the Act. This complaint procedure provides an opportunity for public input into the evaluation of the actual operations of the approved State plans just as previous regulations provided for such input into plan approval and review of changes to State plans. (See 29 CFR Part 1902 and 29 CFR Part 1953).

Such a complaint procedure for Federal grant-in-aid programs is recommended by the Administrative Conference of the United States[1] as a mechanism for affording program beneficiaries and interested persons the opportunity for involvement in the approval and evaluation process of Federal agency grant programs which will lead to improved program operations and demonstrate the agency's responsiveness to the public.

Subpart C of Part 1954, therefore, describes the procedures for submission of complaints from any interested person about the operation or administration of a State plan or plans. Response to these complaints constitutes another means by which the Assistant Secretary may secure additional data to assist his evaluation of approved State plans, as required by the Act. A complaint about State program administration (CASPA) may be made by any interested person and an investigation may be made and a report prepared if the oral or written complaint presents reasonable grounds to believe that the complaint is warranted. If it is determined that an investigation or report is not warranted, the complainant shall be notified and informed of the opportunity to obtain informal review of this determination. Where a report is prepared or an investigation made on the basis of the complaint a copy of the results will be furnished to the complainant as well as the State and become part of the evaluation of the State plan. The complainant's name will be considered confidential. In addition, by July 1, 1974, States with approved plans will also be required to establish a method or methods of notifying employees, employers and the public of these complaint procedures.

The new Part 1954 contains statutory interpretations and procedural rules based on these interpretations. Part 1954 was submitted for comment to the Advisory Committee on Intergovernmental Relations. No substantive comments or objections were received. To date, twenty-three State plans have been approved, the earliest on November 30, 1972. Because formal procedures for evaluation of the administration and operation of these plans are necessary to assure adequate protection of worker safety and health and to encourage State responsibilities for and improvement of their programs for worker safety and health, as mandated by the Act, the new Part 1954 shall be effective January 15, 1974.

Interested persons may however, submit written data, views and arguments concerning these regulations until February 14, 1974. The submissions are to be addressed to the Director, Office of Federal and State Operations 8th Floor, 1726 M Street NW., Washington, D.C. 20210. The regulations may be re-examined in light of these comments.

The new Part 1954 reads as follows:

Subpart A—General

Secs.
1954.1 Purpose and scope.
1954.2 Monitoring system.
1954.3 Concurrent authority. [Reserved]

Subpart B—State Monitoring Reports and Visits to State Agencies

1954.10 Reports from the States.
1954.11 Visits to State agencies.

Subpart C—Complaints About State Program Administration (CASPA)

1954.20 Complaints about State program administration.
1954.21 Processing and investigating a complaint.
1954.22 Notice provided by States.

AUTHORITY: Sec. 8(g)(2), Pub. L. 91-596, 84 Stat. 1600 (29 U.S.C. 657(g)(2)); sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Subpart A—General

§ 1954.1 Purpose and scope.

(a) Section 18(f) of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) provides that "the Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved * * * is carrying out such plan."

(b) This Part 1954 applies to the provisions of section 18(f) of the Act relating to the evaluation of approved plans for the development and enforcement of State occupational safety and health standards. The provisions of this Part 1954 set forth the policies and procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 38 FR 3754, May 12, 1971) will continually monitor and evaluate the operation and administration of approved State plans.

(c) Following approval of a State plan under section 18(c) of the Act, workplaces in the State are subject to a period of concurrent Federal and State authority. The period of concurrent enforcement authority must last for at least three years. Before ending Federal enforcement authority, the Assistant Secretary is required to make a determination as to whether the State plan, in actual operation, is meeting the criteria in section 18(c) of the Act including the requirements in Part 1902 of this chapter and the assurances in the approval plan itself. After an affirmative determination has been made, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out section 18(f) of the Act), 9, 10, 13, and 17 of the Act shall not apply with respect to any occupational safety or health issues covered under the plan. The Assistant Secretary may, however, retain jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 of the Act before the date of the determination under section 18(e) of the Act.

(d) During this period of concurrent Federal and State authority, the operation and administration of the plan will be continually evaluated under section 18(f) of the Act. This evaluation will continue even after an affirmative determination has been made under section 18(e) of the Act.

§ 1954.2 Monitoring system.

(a) To carry out the responsibilities for continuing evaluation of State plans under section 18(f) of the Act, the Assistant Secretary has established a State Program Performance Monitoring System. Evaluation under this monitoring system encompasses both the period before and after a determination has been made under section 18(e) of the Act. The monitoring system is a three phased system designed to assure not only that developmental steps are completed and that the operational plan is, in fact, at least as effective as the Federal program with respect to standards and enforcement, but also to provide a method for continuing review of the implementation of the plan and any modifications thereto to assure compliance with the provisions of the plan during the time the State participates in the cooperative Federal-State program.

(b) Phase I of the system begins with the initial approval of a State plan and continues until the determination required by section 18(e) of the Act is made. During Phase I, the Assistant Secretary will secure monitoring data to make the following key decisions: (1) What should be the level of Federal enforcement; (2) Should plan approval be continued; and (3) What level of technical assistance is needed by the State to enable it to have an effective program.

(c) Phase II of the system relates to the determination required by section 18(e) of the Act. The Assistant Secretary must decide, after no less than three years following approval of the plan, whether or not to relinquish Federal authority to the State for issues covered by the occupational safety and health program in the State plan. Phase II will be a comprehensive evaluation of

[1] Recommendation 31, Enforcement of Standards in Federal Grant-in-Aid Programs, adopted December 7, 1971.

the total State program, drawing upon all information collected during Phase I.

(d) Phase III of the system begins after an affirmative determination has been made under section 18(e) of the Act. The continuing evaluation responsibility will be exercised under Phase III, and will provide data concerning the total operations of a State program to enable the Assistant Secretary to determine whether or not the plan approval should be continued or withdrawn.

(e) The State program performance monitoring system provides for, but is not limited to, the following major data inputs: (1) Quarterly and annual reports of State program activity; (2) Visits to State agencies; (3) On-the-job evaluation of State compliance officers; and (4) Investigation of complaints about State program administration.

§ 1952.3 Concurrent authority. [Reserved]

Subpart B—State Monitoring Reports and Visits to State Agencies

§ 1954.10 Reports from the States.

(a) In addition to any other reports required by the Assistant Secretary under sections 18(c)(8) and 18(f) of the Act and § 1902.3(1) of this chapter, the State shall submit quarterly and annual reports as part of the evaluation and monitoring of State programs.[1]

(b) Each State with an approved State plan shall submit to the appropriate Regional Office an annual occupational safety and health report in the form and detail provided for in the report and the instructions contained therein.

(c) Each State with an approved State plan shall submit to the appropriate Regional Office a quarterly occupational safety and health compliance and standards activity report in the form and detail provided for in the report and the instructions contained therein.

§ 1954.11 Visits to State agencies.

As a part of the continuing monitoring and evaluation process, the Assistant Secretary or his representative shall conduct visits to the designated agency or agencies of State with approved plans at least every 6 months. An opportunity may also be provided for discussion and comments on the effectiveness of the State plan from other interested persons. These visits will be scheduled as needed. Periodic audits will be conducted to assess the progress of the overall State program in meeting the goal of becoming at least as effective as the Federal program. These audits will include case file review and follow-up inspections of workplaces.

Subpart C—Complaints About State Program Administration (CASPA)

§ 1954.20 Complaints about State program administration.

(a) Any interested person or representative of such person or groups of persons may submit a complaint concerning the operation or administration of any aspect of a State plan. The complaint may be submitted orally or in writing to the Assistant Regional Director for Occupational Safety and Health (hereinafter referred to as the Assistant Regional Director) or his representative in the Region where the State is located.

(b) Any such complaint should describe the grounds for the complaint and specify the aspect or aspects of the administration or operation of the plan which is believed to be inadequate. A pattern of delays in processing cases, of inadequate workplace inspections, or the granting of variances without regard to the specifications in the State plans, are examples.

(c)(1) If upon receipt of the complaint, the Assistant Regional Director determines that there are reasonable grounds to believe that an investigation should be made, he shall cause such investigation, including any workplace inspection, to be made as soon as practicable.

(2) In determining whether an investigation shall be conducted and in determining the timing of such investigation, the Assistant Regional Director shall consider such factors as: (i) The extent to which the complaint affects any substantial number of persons; (ii) The number of complaints received on the same or similar issues and whether the complaints relate to safety and health conditions at a particular establishment; (iii) Whether the complainant has exhausted applicable State remedies; and (iv) The extent to which the subject matter of the complaint is pertinent to the effectuation of Federal policy.

§ 1954.21 Processing and investigating a complaint.

(a) Upon receipt of a complaint about State program administration, the Assistant Regional Director will acknowledge its receipt and may forward a copy of the complaint to the designee under the State plan and to such other person as may be necessary to complete the investigation. The complainant's name and the names of other complainants mentioned therein will be deleted from the complaint and the names shall not appear in any record published, released or made available.

(b) In conducting the investigation, the Assistant Regional Director may obtain such supporting information as is appropriate to the complaint. Sources for this additional information may include "spot-check" follow-up inspections of workplaces, review of the relevant State files, and discussion with members of the public, employers, employees and the State.

(c) On the basis of the information obtained through the investigation, the Assistant Regional Director shall advise the complainant of the investigation findings and in general terms, any corrective action that may result. A copy of such notification shall be sent to the State and it shall be considered part of the evaluation of the State plan.

(d) If the Assistant Regional Director determines that there are no reasonable grounds for an investigation to be made with respect to a complaint under this Subpart, he shall notify the complaining party in writing of such determination. Upon request of the complainant, or the State, the Assistant Regional Director, at his discretion, may hold an informal conference. After considering all written and oral views presented the Assistant Regional Director shall affirm, modify, or reverse his original determination and furnish the complainant with written notification of his decision and the reasons therefore. Where appropriate the State may also receive such notification.

§ 1954.22 Notice provided by State.

(a)(1) In order to assure that employees, employers, and members of the public are informed of the procedures for complaints about State program administration, each State with an approved State plan shall adopt not later than July 1, 1974, a procedure not inconsistent with these regulations or the Act, for notifying employees, employers and the public of their right to complain to the Occupational Safety and Health Administration about State program administration.

(2) Such notification may be by posting of notices in the workplace as part of the requirement in § 1902.4(c)(2)(iv) of this chapter and other appropriate sources of information calculated to reach the public.

Signed at Washington, D.C., this 8th day of January 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.74-1243 Filed 1-14-74;8:45 am]

[1] Such quarterly and annual reports forms may be obtained fro mthe Office of the Assistant Regional Director in whose Region the State is located.

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 2—DELEGATIONS OF AUTHORITY

Chief Medical Director

Section 2.93 is revised to read as follows:

§ 2.93 Chief Medical Director is delegated authority to enter into sharing agreements authorized under provisions of 38 U.S.C. 5053 and § 17.210 of this chapter and whith may be negotiated pursuant to provisions of 41 CFR 8-3.204(c); contracts with medical schools, clinics and any other group or individual capable of furnishing such services to provide scarce medical specialist services at VA facilities (including, but not limited to, services of physicians, dentists, nurses, physicians' assistants, dentists' assistants, technicians, and other medical support personnel); and when a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 213 for medical and ancillary services.

The delegation of authority is identical to § 17.98 of this chapter.

Approved: January 8, 1974.

By direction of the Administrator.

RUFUS H. WILSON,
Associate Deputy Administrator.

[FR Doc.74-1067 Filed 1-14-74;8:45 am]

PART 17—MEDICAL

Expansion of Health Care

On pages 31846 through 31853 of the FEDERAL REGISTER of November 19, 1973, there was published a notice of proposed regulatory development to amend §§ 17.30 through 17.365 to provide for expansion of health care. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

Three comments were received. One was favorable. One suggested utilizing services of local federally-funded community mental health centers and spelling out procedure for developing service contracts. These matters are not appropriate to be published in VA Regulations but will be considered at such time as procedural (manual) issues are developed. The third comment suggested that podiatrists' services be included within the term "medical services". A change to § 17.30(m) has been made to accomplish this change.

Effective date. These VA Regulations are effective September 1, 1973 except §§ 17.75 through 17.77 which are effective January 1, 1971 and §§ 17.37 introduction and paragraph (b); 17.38 introduction and paragraphs (b) and (c)(2); 17.40; and 17.352, 17.353, and 17.360 through 17.362 which are effective July 1, 1973.

Approved: January 8, 1974.

By direction of the Administrator.

RUFUS H. WILSON,
Associate Deputy Administrator.

1. In § 17.30, paragraphs (l) and (m) are amended to read as follows:

§ 17.30 Definitions.

* * * * *

(l) *Hospital care.* The term "hospital care" includes:

(1) Medical services rendered in the course of hospitalization of any veteran and transportation and incidental expenses for any veteran who is in need of treatment for a service-connected disability or is unable to defray the expense of transportation; and

(2) Such mental health services, consultation, professional counseling, and training (including (i) necessary expenses for transportation if unable to defray such expenses; or (ii) necessary expenses of transportation and subsistence in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of Title 38, United States Code under the terms and conditions set forth in the applicable Veterans Administration travel regulations of the members of the immediate family (including legal guardians) of a veteran or such a dependent or survivor of a veteran, or, in the case of a veteran or such dependent or survivor of a veteran who has no immediate family members (or legal guardian), the person in whose household such a veteran, or such a dependent or survivor certifies his intention to live, as may be necessary or appropriate to the effective treatment and rehabilitation of a veteran or such a dependent or a survivor of a veteran; and

(3) Medical services rendered in the course of the hospitalization of a dependent or survivor of a veteran receiving care in a Veterans Administration medical facility and transportation and incidental expenses for a dependent or survivor of a veteran who is in need of treatment for any injury, disease, or disability and is unable to defray the expense of transportation.

(m) *Medical services.* The term "medical services" includes, in addition to medical examination and treatment, such home health services as the Administrator determines to be necessary or appropriate for the effective and economical treatment of a disability of a veteran or a dependent or survivor of a veteran receiving care in a Veterans Administration medical facility, optometrists' and podiatrists' services, dental and surgical services, and except under provisions of § 17.60(e), dental appliances, wheelchairs, artificial limbs, trusses, and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies as the Administrator determines to be reasonable and necessary.

* * * * *

2. The centerhead immediately preceding § 17.36 is changed and § 17.36 is revised to read as follows:

HOSPITAL OR NURSING HOME CARE AND MEDICAL SERVICES IN FOREIGN COUNTRIES

§ 17.36 Hospital or nursing home care and medical services in foreign countries other than the Philippines.

No person shall be entitled to receive hospital, nursing home or domiciliary care or medical services in a foreign country other than the Republic of the Philippines, except as provided in paragraphs (a) and (b) of this section:

(a) Hospital or nursing home care or medical services for otherwise eligible veterans who are citizens of the United States sojourning or residing abroad and in need of treatment for an adjudicated service-connected disability, or non-service-connected disability associated with and held to be aggravating a service-connected disability.

(b) Hospital or nursing home care or medical services for a veteran who has been found in need of vocational rehabilitation, and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, and who is medically determined to be in need of care or treatment for any of the following reasons:

(1) To make possible his entrance into a course of training; or

(2) To prevent interruption of a course of training; or

(3) To hasten the return to a course of training of a veteran in interrupted or leave status, when a cessation of instruction has become necessary because of illness, injury, or a dental condition.

3. Section 17.37 is revised to read as follows:

§ 17.37 Hospital or nursing home care in the Philippines in facilities other than Veterans Memorial Hospital.

Hospital or nursing home care may be authorized in the Republic of the Philippines in facilities other than the Veterans Memorial Hospital for any veteran, if:

(a) *For United States veterans.* He is a United States veteran and is eligible for hospital or nursing home care under § 17.47 (a) or (b), or a veteran who has been found in need of vocational rehabilitation, and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, and hospital care has been determined necessary for any of the reasons enumerated in § 17.36(b), or

(b) *For Commonwealth Army veterans or new Philippine Scouts.* He is a Commonwealth Army veteran or a new Philippine Scout in need of hospital or nursing home care for service-connected disability or non-service-connected disability associated with and held to be aggravating a service-connected disability and (1) facilities in the Veterans Memorial Hospital are being used to the maximum extent feasible in hospitalizing such veterans, or (2) he is suffering from leprosy, or (3) use of the facility is required in emergency circumstances.

4. In § 17.38, the headnote, the introductory portion preceding paragraph (a) and paragraphs (b)(2) and (c) are amended and paragraphs (d) and (e) are added so that the amended and added material reads as follows:

§ 17.38 Hospital or nursing home care at Veterans Memorial Hospital, Philippines.

Hospital or nursing home care at the Veterans Memorial Hospital, Quezon City, Republic of the Philippines, may be authorized by the United States Veterans Administration pursuant to the terms and conditions set forth in §§ 17.350 through 17.370, for the following persons:

* * * * *

(b) *For new Philippine Scouts.* Care at the Veterans Memorial Hospital may be authorized for any person who served as a new Philippine Scout, if:

* * * * *

(2) He enlisted before July 4, 1946, he is in need of care for non-service-connected disability, and he is unable to defray the expenses of such care and so states under oath.

(c) *For United States veterans.* (1) Care at the Veterans Memorial Hospital may be authorized for any service-connected disability of a veteran of service in the Armed Forces of the United States (including veterans of service in the Philippine Scouts under laws in effect prior to the enactment of section 14 of the Armed Forces Voluntary Recruitment Act of 1945), who is eligible for hospital care under § 17.47 (a) or (b).

(2) Care at the Veterans Memorial Hospital may be authorized for a veteran of any war for a non-service-connected disability if such veteran is unable to defray the expenses of necessary hospital care and so states under oath.

(d) *Transfers for nursing home care.* Transfer of any veteran hospitalized in the Philippines at Veterans Administration expense to a nursing home facility may be authorized subject to the following:

(1) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(2) The cost of the nursing home care in such institution does not exceed 50 per centum of the Veterans Memorial Hospital per diem rate jointly determined for each fiscal year by the two governments to be fair and reasonable.

(3) The nursing home care will not be for more than 6 months in the aggregate in connection with any one transfer, except in the case of a veteran whose hospitalization was primarily for a service-connected disability. In such case entitlement to nursing home care under this subparagraph is not subject to any limitation.

(e) *Extensions of community nursing home care beyond 6 months.* The Chief Medical Director or his designee may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a contract nursing care facility at Veterans Administration expense beyond 6 months for circumstances of an unusual nature such as when a medical and economic need continues to exist, additional time is required to complete other arrangements for care or when readmission to a hospital is not deemed professionally advisable despite terminal deterioration of the veteran's medical condition.

5. Sections 17.39 and 17.40 are revised to read as follows:

§ 17.39 Outpatient care in the Philippines for United States veterans.

Outpatient care in the Republic of the Philippines may be authorized for any United States veteran eligible for such care under § 17.60.

§ 17.40 Outpatient care for Commonwealth Army veterans and new Philippine Scout veterans.

Outpatient care may be authorized in Veterans Administration facilities by contract or agreement between the two governments for any Commonwealth Army veteran or new Philippine Scout veteran for the treatment of a service-connected disability, or for a nonservice-connected disability associated with and held to be aggravating a service-connected disability.

6. In § 17.46b, the headnote, the introductory portion preceding paragraph (a) and paragraphs (a) and (c) are amended to read as follows:

§ 17.46b Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

Hospital care may be furnished when beds are available to members or former members of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, now National Oceanic and Atmospheric Administration hereinafter referred to as "NOAA", and Public Health Service) temporarily or permanently retired for physical disability or receiving disability retirement pay who require hospital care for chronic diseases and who have no eligibility for hospital care under laws governing the Veterans Administration, or who having eligibility do not elect hospitalization as Veterans Administration beneficiaries. Care under this section is subject to the following conditions:

(a) Persons defined in this section who are members or former members of the active military, naval, or air service must agree to pay the subsistence rate set by the Administrator of Veterans Affairs, except that no subsistence charge will be made for those persons who are members or former members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now "NOAA", and enlisted personnel of the Army, Navy, Marine Corps, and Air Force.

* * * * *

(c) In the case of persons who are former members of the Coast and Geodetic Survey, care may be furnished under this section even though their retirement for disability was from the Environmental Science Services Administration or NOAA.

7. In § 17.47, paragraphs (a), (b), (c) (1), (d), and (f) are amended to read as follows:

§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

Within the limits of Veterans Administration facilities, hospital, domiciliary, or nursing home care may be furnished the following applicants.

(a) Hospital or nursing home care for veterans in need of such care for an adjudicated service-connected disability or for a non-service-connected condition which is associated with and held to be aggravating such disability (see § 17.33 with respect to presumption relating to psychosis).

(b) Hospital or nursing home care:

(1) Hospital or nursing home care for veterans discharged or released for disability incurred or aggravated in line of duty when in need of hospital or nursing home care for the disability for which discharged or released, or for a non-service-connected condition which is associated with and held to be aggravating such disability.

(2) Hospital care for persons defined in § 17.46b who require hospitalization for chronic diseases incurred in line of duty.

(c) Hospital, nursing home or domiciliary care:

(1) Hospital or nursing home care for veterans discharged or released for disability incurred or aggravated in line of duty, or persons in receipt of or but for the receipt of retirement pay would be entitled to disability compensation for a service-connected disability, when suffering from non-service-connected disabilities requiring hospital care.

* * * * *

(d) Hospital or nursing home care for any veteran, domiciliary care for veterans of a war provided they swear they are unable to defray the expense of hospital or domiciliary care except veterans in receipt of pension shall not have to state under oath that they are unable to defray the expense of hospital or domiciliary care, and who are suffering from a disability, disease, or defect which, being susceptible to cure or decided improvement, indicates need for hospital care, or which, being essentially chronic in type, is producing disablement of such degree and of such probable persistency as will incapacitate from earning a living for a prospective period, and thereby indicates need for domiciliary care. Transportation at Government expense will not be provided to such veterans unless they make the statement under oath that they are unable to defray the expenses of transportation. The additional requirements for eligibility for domiciliary care enumerated in paragraph (c) (3) of this section are also for application to these veterans applying for domiciliary care.

* * * * *

(f) Hospital or nursing home care for any veteran for a non-service-connected disability if such veteran is 65 years of age or older.

8. In § 17.48, paragraphs (c) (2) and (f) are amended to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital or domiciliary care.

* * * * *

(c) Under paragraph (d) of § 17.47: * * *

(2) "Unable to defray the expense of hospital or domiciliary care"—the affidavit of the applicant on VA Form 10–10 that he is unable to defray the expenses of hospital or domiciliary care or that he is unable to defray the expenses of transportation to and from a Veterans Administration facility will constitute sufficient warrant to furnish hospitalization or domiciliary care or Government transportation.

* * * * *

(f) Within the limits of Veterans Administration facilities, any veteran who is receiving hospital or nursing home care in a hospital under the direct and exclusive jurisdiction of the Veterans Administration, or hospital care in a Federal hospital under agreement, may be furnished medical services to correct or

treat any non-service-connected disability of such veteran, in addition to treatment incident to the disability for which he is hospitalized, if the veteran is willing, and such services are reasonably necessary to protect the health of such veteran.

9. In § 17.49, the headnote is amended; in paragraph (a)(3), subdivisions (vi) through (ix) are amended and subdivision (x) is added; and paragraph (c) is added so that the added and amended material reads as follows:

§ 17.49 Veterans Administration policy on priorities for hospital, nursing home and domiciliary care.

(a) *Priorities for hospital care.* Eligible persons will be admitted or transferred to a Veterans Administration hospital in the following order: * * *

(3) *Priority groups.* * * *

(vi) Group VI includes veterans eligible under § 17.47 (d) or (f) not hospitalized by the Veterans Administration (are not in hospitals or are in non-Veterans Administration hospitals but not under Veterans Administration authorization).

(vii) Group VII includes persons eligible under § 17.54 requiring hospital care.

(viii) Group VIII includes persons eligible under § 17.46 (b), (c), or (d) (active duty or retired military personnel, beneficiaries from other Federal agencies, veterans of nations allied with the United States in World War I or II, persons treated under sharing agreements, etc.).

(ix) Group IX includes patients in Veterans Administration hospitals who have requested transfer, at their own expense for personal reasons, to another appropriate Veterans Administration hospital which is not nearest their home, provided the clinical findings indicate that such patients will require hospital care for a period of 6 months or more in the latter hospital.

(x) Group X includes veterans eligible under § 17.47 (d) or (f) requiring hospital care (*a*) for an occupational injury or disease incurred in or as a result of their employment who are entitled to necessary medical and hospital treatment elsewhere at no expense to themselves by means of some form of industrial coverage provided by their employer or under a workmen's compensation statute or law or (*b*) who are entitled to necessary medical and hospital treatment elsewhere at no expense to themselves by reason of some other form of insurance. An applicant will be classified in paragraph (a)(3)(x) (*a*) or (*b*) of this section only when an employer or insurer has admitted liability and advised the Veterans Administration in writing that the veteran is eligible for the necessary medical and hospital care at no expense to himself. If such information is not available, the application will be placed in group VI and no action will be taken to ascertain liability prior to admission of the veteran.

* * * * *

(c) *Priorities for nursing home care.* Priorities for nursing home care will follow the same sequence as that provided in paragraph (a) of this section for hospital care, except in the case of nursing home care for a service-connected disability, priority will be given to veterans transferred from Veterans Administration hospitals to Veterans Administration nursing homes over veterans directly admitted.

10. Section 17.50 is revised to read as follows:

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Veterans Administration.

Hospital facilities operated by the Department of Defense or the Public Health Service (or any other agency of the United States Government) may be used for the care of Veterans Administration patients pursuant to agreements between the Veterans Administration and the department or agency operating the facility. When such an agreement has been entered into and a bed allocation for Veterans Administration patients has been provided for in a specific hospital covered by the agreement, care may be authorized within the bed allocation for any veteran eligible under § 17.47. Care in a Federal facility not operated by the Veterans Administration, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.46b, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under §§ 17.46b, 17.47(b)(2) or 17.47 (c)(2) regardless of whether he may have dual eligibility under other provisions of § 17.47.

11. In § 17.50b, paragraphs (a), (d), (e), and (f) are amended to read as follows:

§ 17.50b Use of public or private hospitals for veterans.

When it is in the best interests of the Veterans Administration and Veterans Administration patients, contracts may be entered into for the use of public or private hospitals for the care of veterans. When demand is only for infrequent use, individual authorizations may be used. Admissions in public or private facilities, however, subject to the provisions of § 17.50c, will only be authorized, whether under a contract or as an individual authorization, for any veteran, if:

(a) *For service-connected disability or disability for which discharged.* The veteran is in need of hospital care or medical services for an adjudicated service-connected disability, or for a disability for which he was discharged from service and which was incurred or aggravated in line of duty, or

* * * * *

(d) *For women veterans.* The veteran is a woman veteran in need of hospital care, or

(e) *For veterans in Puerto Rico and other possessions.* The veteran is a veteran in need of hospital care in the Commonwealth of Puerto Rico or other Territory, Commonwealth or possession of the United States (except the authority under this paragraph expires December 31, 1978), or

(f) *For veterans in Alaska or Hawaii.* The veteran is a veteran in need of hospital care in Alaska or Hawaii whose public or private hospital admission can be accommodated within an average daily patient load per thousand veteran population at Veterans Administration expense in Federal, public or private hospital facilities in Alaska or Hawaii not exceeding the average daily patient load per thousand veteran population hospitalized by the Veterans Administration within the 48 contiguous States (except the authority under this paragraph expires December 31, 1978), or

* * * * *

12. Sections 17.51, 17.51a, and 17.51b are revised to read as follows:

§ 17.51 Use of community nursing homes.

(a) Nursing home care in a contract public or private nursing home facility may be authorized for the following:

(1) Any veteran eligible for hospital care under § 17.47 (a), (b), (c), (d) or (f) who has attained the maximum hospital benefit and for whom a protracted period of nursing home care will be required.

(2) Any person who has been furnished care in any hospital of any of the Armed Forces, who the appropriate Secretary concerned has determined has received maximum hospital benefits but requires a protracted period of nursing home care, and who upon discharge therefrom will become a veteran.

(3) Any veteran who requires nursing home care for a service-connected disability without first requiring a period of hospitalization. Admission may be authorized upon a determination of need therefor by a physician employed by the Veterans Administration or, in areas where no such physican is available, by carrying out such function under contract or fee arrangement.

(b) Such nursing home care will be subject to the following restrictions:

(1) Any veteran eligible under paragraph (a)(1) of this section shall be transferred to the nursing home care facility from a hospital under the direct and exclusive jurisdiction of the Veterans Administration, except as provided for in § 17.51b, and

(2) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(3) The cost of the nursing home care will not exceed 40 percent of the cost of care furnished by the Veterans Administration in a general medical and surgical hospital as determined from time to time, and

(4) Except as provided for in § 17.51a, nursing home care will not be for more than 6 months in the aggregate in connection with any one transfer, except

in the case of a veteran whose hospitalization was primarily for a service-connected disability. In such case entitlement to nursing home care under this section is not subject to any time limitation.

(5) The standards prescribed by the Chief Medical Director and any report of inspection of institutions furnishing nursing home care to veterans shall, to the extent possible, be made available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

§ 17.51a Extensions of community nursing home care beyond 6 months.

The Chief Medical Director, his deputy, Associate Chief Medical Director for Operations, or the Director, Field Operations may authorize, for any veteran whose hospitalization was not primarily for service-connected disability, an extension of nursing care in a public or private nursing home care facility at Veterans Administration expense beyond 6 months for circumstances of an unusual nature such as when a medical and economic need continues to exist, additional time is required to complete other arrangements for care, or when readmission to a hospital is not deemed professionally advisable despite terminal deterioration of the veteran's medical condition.

§ 17.51b Transfers from facilities for nursing home care in Alaska and Hawaii.

Transfer of any veteran hospitalized in a non-Veterans Administration hospital facility at Veterans Administration expense to a community nursing home facility in Alaska or Hawaii may be authorized subject to the provisions of § 17.51, except paragraph (b) (1).

13. A new centerhead and § 17.54 are added to read as follows:

MEDICAL CARE FOR SURVIVORS AND DEPENDENTS OF CERTAIN VETERANS

§ 17.54 Medical care for survivors and dependents of certain veterans.

(a) Medical care may be provided for: (1) The wife or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, and (2) The widow or child of a veteran who died as a result of a service-connected disability who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of chapter 55 of title 10, United States Code (CHAMPUS).

(b) Medical care authorized by paragraph (a) of this section shall be provided in the same or similar manner and subject to the same or similar limitations as medical care furnished to certain dependents and survivors of active duty and retired members of the Armed Forces being furnished such care as beneficiaries of the Armed Forces. Furthermore, it shall be provided in accordance with the terms and conditions set forth in an agreement between the Administrator and the Secretary of Defense under which the Secretary shall include coverage for such medical care under the contract, or contracts, he enters into to provide medical care to beneficiaries of the Armed Forces, and under which the Administrator shall fully reimburse the Secretary for all costs and expenditures made for the purpose of affording the medical care authorized in this section.

(c) In limited situations, the Chief Medical Director or his designee may authorize care and treatment to the class of beneficiaries covered by this section in specialized Veterans Administration medical facilities which are uniquely equipped to provide the most effective care and treatment, and which are not otherwise being utilized for the care of veterans. Such medical care may be furnished on either an inpatient or outpatient basis and may be furnished in either Veterans Administration hospitals or in Veterans Administration outpatient clinics.

14. In § 17.60, the headnote and paragraphs (e), (f), and (h) are amended to read as follows:

§ 17.60 Outpatient care for eligible persons.

Medical services may be furnished to the following applicants under the conditions stated, except that applicants for dental treatment, as defined in paragraphs (a) to (d) inclusive of this section must also meet the applicable provisions of § 17.123:

* * * * *

(e) *For pre-hospital care.* Persons eligible for hospital care under § 17.47, where a professional determination is made that such care is reasonably necessary in preparation for admission of such persons or to obviate the need for bed care.

(f) *For post hospital care.* Persons eligible for hospital care under § 17.47 who have been granted hospital care, and outpatient care is reasonably necessary to complete treatment incident to such hospital care. (38 U.S.C. 612(f) (1) (B))

* * * * *

(h) *For veterans 80 percent or more disabled from a service-connected disability.* Outpatient care, except outpatient dental treatment, may be authorized to treat any non-service-connected disability of a veteran who has a service-connected disability rated at 80 percent or more.

* * * * *

15. The centerhead preceding § 17.75 is changed and §§ 17.75, 17.76 and 17.77 are revised to read as follows:

REIMBURSEMENT FOR LOSS BY NATURAL DISASTER OF PERSONAL EFFECTS OF HOSPITALIZED OR NURSING HOME PATIENTS

§ 17.75 Conditions of custody.

When the personal effects of a patient who has been or is hospitalized or receiving nursing home care in a Veterans Administration hospital or center were or are duly delivered to a designated location for custody and loss of such personal effects has occurred or occurs by fire, earthquake, or other natural disaster, either during such storage or during laundering, reimbursement will be made as provided in §§ 17.76 and 17.77.

§ 17.76 Submittal of claim for reimbursement.

The claim for reimbursement for personal effects damaged or destroyed will be submitted by the patient to the Director. The patient will separately list and evaluate each article with a notation as to its condition at the time of the fire, earthquake, or other natural disaster i.e. whether new, worn, etc. The date of the fire, earthquake, or other natural disaster will be stated. It will be certified by a responsible official that each article listed was stored in a designated location at the time of loss by fire, earthquake, or other natural disaster or was in process of laundering. He will further state whether the loss of each article was complete or partial, permitting of some further use of the article. The responsible official will certify that the amount of reimbursement claimed on each article of personal effects is not in excess of the fair value thereof at time of loss. The certification will be prepared in triplicate, signed by the responsible officer who made it, and countersigned by the Director of the hospital or center. After the above papers have been secured, voucher will be prepared, signed, and certified, and forwarded to the Fiscal Officer for his approval, payment to be made in accordance with fiscal procedure. The original list of property and certificate are to be attached to voucher.

§ 17.77 Claims in cases of incompetent patients.

Where the patient is insane and incompetent, he will not be required to make claim for reimbursement for personal effects lost by fire, earthquake, or other natural disaster as required under the provisions of § 17.76. The responsible official will make claim for him, adding the certification in all details as provided for in § 17.76. After countersignature of this certification by the Director, payment will be made as provided in § 17.76, and the amount thereby disbursed will be turned over to the Director for custody.

16. In § 17.78, that portion of paragraph (a) preceding subparagraph (1) is amended to read as follows:

§ 17.78 Adjudication of claims.

(a) *Claims comprehended.* Claims for reimbursing Veterans Administration employees for cost of repairing or replacing their personal property damaged or destroyed by patients or members while such employees are engaged in the performance of their official duties will be adjudicated by the Director of the station concerned. Such claims will be considered under the following conditions, both of which must have existed and, if either one is lacking, reimbursement or payment for the cost or repair of the damaged article will not be authorized:

* * * * *

17. The centerhead preceding § 17.80 is changed and § 17.80 is revised to read as follows:

PAYMENT AND REIMBURSEMENT OF THE EXPENSES OF MEDICAL SERVICES NOT PREVIOUSLY AUTHORIZED

§ 17.80 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.

To the extent allowable, payment or reimbursement of the expenses of care, not previously authorized, in a private or public (or Federal) hospital not operated by the Veterans Administration, or of any medical services not previously authorized including transportation (except prosthetic appliances, similar devices, and repairs) may be paid on the basis of a claim timely filed, under the following circumstances:

(a) *For veterans with service-connected disabilities.* Care or services not previously authorized were rendered to a veteran in need of such care or services: (1) For an adjudicated service-connected disability; (2) for non-service-connected disabilities associated with and held to be aggravating a service-connected disability; (3) for any disability of a veteran who has a total disability permanent in nature resulting from a service-connected disability; (4) for any illness, injury or dental condition in the case of a veteran who is found to be in need of vocational rehabilitation and for whom an objective had been selected or who is pursuing a course of vocational rehabilitation training and is medically determined to have been in need of care or treatment for any of the reasons enumerated in § 17.36(b); and

(b) *In a medical emergency.* Care and services not previously authorized were rendered in a medical emergency of such nature that delay would have been hazardous to life or health, and

(c) *When Federal facilities are unavailable.* Veterans Administration or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused.

18. Section 17.82 is revised to read as follows:

§ 17.82 Claimants.

A claim for payment or reimbursement of services not previously authorized may be filed by the veteran who received the services (or his guardian) or by the hospital, clinic, or community resource which provided the services, or by a person other than the veteran who paid for the services.

19. In § 17.83, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 17.83 Preparation of claims.

Claims for costs of services not previously authorized shall be on such forms as shall be prescribed and shall include the following:

* * * * *

20. In § 17.84, the introductory portion preceding paragraph (a) and paragraph (d) are amended and paragraph (f) is revoked to read as follows:

§ 17.84 Where to file claims.

Claims for payment or reimbursement of the expenses of services not previously authorized should be filed as follows:

* * * * *

(d) *For services rendered in other foreign countries.* Claims for the expenses of care or services rendered in other foreign countries should be filed with the American Embassy or Consulate, and

* * * * *

(f) [Revoked]

21. In § 17.85, the introductory portion preceding paragraph (a) and paragraph (b) are amended and paragraph (c) is added so that the amended and added material reads as follows:

§ 17.85 Timely filing.

Claims for payment or reimbursement of the expenses of medical care or services not previously authorized must be filed within the following time limits:

* * * * *

(b) In the case of care or services rendered prior to a Veterans Administration adjudication allowing service connection, a claim must be filed within 2 years of the date of notification of such allowance of an original or reopened claim for service connection of the disability for which treatment was rendered, except payment will not be made for any care rendered more than 2 years prior to filing the original or reopened claim for service connection which resulted in allowance, or

(c) Claims for medical care and services rendered on or after January 1, 1971 for treatment of a non-service-connected illness or injury for a veteran who has a total disability permanent in nature resulting from a service-connected disability must be filed by August 2, 1975. Claims filed after August 2, 1975, will be subject to the time limit stated in paragraph (a) of this section.

22. Section 17.86 is revised to read as follows:

§ 17.86 Date of filing claims.

The date of filing any claim for payment or reimbursement of the expenses of medical care and services not previously authorized shall be the postmark date of a formal claim, or the date of any preceding telephone call, telegram, or other communication constituting an informal claim.

23. 17.88 and 17.89 are revised to read as follows:

§ 17.88 Retroactive payments prohibited.

When a claim for payment or reimbursement of expenses of services not previously authorized has not been timely filed in accordance with the provisions of § 17.85, the expenses of any such care or services rendered prior to the date of filing the claim shall not be paid or reimbursed. In no event will a bill or claim be paid or allowed for any care or services rendered prior to the effective date of any law, or amendment to the law, under which eligibility for the medical services at Veterans Administration expense has been established.

§ 17.89 Payment for treatment dependent upon preference prohibited.

No reimbursement or payment of services not previously authorized will be made when such treatment was procured through private sources in preference to available Government facilities.

24. Sections 17.95 and 17.96 are revised to read as follows:

§ 17.95 Authority to adjudicate reimbursement claims.

The Veterans Administration medical installation having responsibility for the fee basis program in the region or territory (including the Republic of the Philippines) served by such medical installation shall adjudicate all claims for the payment or reimbursement of the expenses of services not previously authorized rendered in the region or territory.

§ 17.96 Authority to adjudicate foreign reimbursement claims.

The Veterans Administration Hospital, Washington, D.C., shall adjudicate claims for the payment or reimbursement of the expenses of services not previously authorized rendered in any foreign country except the Republic of the Philippines.

25. Section 17.98 is revised to read as follows:

§ 17.98 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

The Chief Medical Director is delegated authority to enter into: (a) Sharing agreements authorized under the provisions of 38 U.S.C. 5053 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8-3.204(c); (b) contracts with medical schools, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Veterans Administration facilities (including but not limited to, services of physicians, dentists, nurses, physicians' assistants, dentists' assistants, technicians, and other medical support personnel); and (c) when a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 213 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the field station level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in § 17.99. All such contracts and agreements will be negotiated pursuant to 41 CFR Chapters 1 and 8.

26. In § 17.100, paragraph (a)(1) is amended to read as follows:

§ 17.100 Transportation of claimants and beneficiaries.

Transportation at Government expense will be authorized eligible claimants and beneficiaries of the Veterans Administration for these purposes:

(a) *Admission.* (1) Hospital admission of applicants under §§ 17.47 (a) and (b) and 17.54.

* * * * *

27. In § 17.166, paragraph (a) is amended to read as follows:

§ 17.166 Aid for domiciliary care.

Aid may be paid to the designated State official for domiciliary care furnished in a recognized State home for any veteran if:

(a) The veteran is a veteran of a war or of service after January 31, 1955, and

* * * * *

28. In § 17.166a, the introductory portion of paragraph (a) preceding subparagraph (1) is amended to read as follows:

§ 17.166a Aid for nursing home care.

Aid may be paid to the designated State official for nursing home care furnished in a recognized State home for any veteran if:

(a) The veteran needs nursing home care and is a veteran of a war or of service after January 31, 1955, and in addition:

* * * * *

29. In § 17.166b, paragraph (a) is amended to read as follows:

§ 17.166b Aid for hospital care.

Aid may be paid to the designated State official for hospital care furnished in a recognized State home for any veteran if:

(a) The veteran is a veteran of a war or of service after January 31, 1955, and

* * * * *

30. Section 17.166c is revised to read as follows:

§ 17.166c Amount of aid payable.

The amount of aid payable to a recognized State home shall be at the per diem rates of $4.50 for domiciliary care, $6 for nursing home care, and $10 for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home.

§ 17.170 [Amended]

31. The note immediately preceding § 17.170 is revised to read as follows:

NOTE: The purpose of the regulations concerning State home facilities for furnishing nursing home care is to effectuate the provisions of 38 U.S.C. 5031–5037 to assist the several States to construct State home facilities for furnishing nursing home care to war veterans and veterans with service after January 31, 1955.

32. In § 17.170, paragraph (f) is added to read as follows:

§ 17.170 Definitions.

* * * * *

(f) The term "veteran" means a veteran of a war or of service after January 31, 1955.

33. In § 17.171, paragraph (a) is amended to read as follows:

§ 17.171 Nursing home beds required for war veterans by State.

(a) For purposes of the regulations concerning State home facilities for furnishing nursing home care, Appendix "A" prescribes the number of beds required to provide adequate nursing home care to war veterans residing in each State. Such number does not exceed two and one-half beds per 1,000 war veteran population of such State.

* * * * *

34. In § 17.173(a), subparagraph (1) is amended and subparagraph (4) is added and paragraphs (c) and (d) are amended to read as follows:

§ 17.173 Applications with respect to projects.

(a) A State desiring to receive assistance for construction of facilities for furnishing nursing home care must submit an application in writing for such assistance to the Administrator. The applicant will submit as part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 65 per centum of the estimated cost of construction of such project,

* * * * *

(4) Any comments or recommendations made by appropriate State clearing houses pursuant to policies outlined in Part I, Office of Management and Budget Circular A–95 (revised).

* * * * *

(c) The Administrator will approve any such application if he finds that:

(1) There are sufficient funds available to make the grant requested with respect to such project,

(2) The proposal has been favorably reviewed by the State or local clearing house as required in paragraph (a) of this section,

(3) Such grant does not exceed 65 per centum of the estimated cost of construction of such project,

(4) The application contains such assurances as to use, title, financial support, reports and access to records, payment of prevailing rates of wages, and compliance with the provisions of Executive Order 11246 (3 CFR Ch. IV) as required in paragraph (b) of this section,

(5) The plans and specifications for such project are in accord with VA general standards, appendix "B", and,

(6) The construction of such project, together with other projects under construction, and other facilities will not exceed the two and one-half beds per thousand war veteran population limitation prescribed in § 17.171.

(d) The Administrator shall certify applications which he approves to the Secretary of the Treasury in the amount of the grant requested, but in no event an amount greater than 65 per centum of the estimated cost of construction of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment to the applicant or, if designated by the applicant, the State home for which such project is being constructed or any other agency or instrumentality of the applicant. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of construction as the Administrator may determine and certify for payment to the Secretary of the Treasury. Funds paid for the construction of an approved project will be used solely for carrying out such project as so approved.

35. Section 17.175 is revised to read as follows:

§ 17.175 Recapture provisions.

If, within 20 years after completion of any project for construction of facilities for furnishing nursing home care with respect to which a grant has been made under the regulations concerning State home facilities for furnishing nursing home care, such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for nursing home care to war veterans, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such facilities, 65 per centum of the then value of such facilities, as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such facilities are situated (38 U.S.C. 5036).

36. In § 17.180, paragraph (e) is added to read as follows:

§ 17.180 Definitions.

* * * * *

(e) The term "veteran" for purposes of §§ 17.180 through 17.184 means a veteran of a war or of service after January 31, 1955.

37. Section 17.181 is revised to read as follows:

§ 17.181 Scope of grant program.

Subject to availability of an appropriation, a grant may be made to a State which has submitted, and has had approved by the Administrator, an application for assistance in remodeling, modification or alteration of existing domiciliary and hospital facilities in State homes providing care and treatment of war veterans and recognized by the Veterans Administration for the purpose of payment of Federal aid pursuant to 38 U.S.C. 641. The amount of the grant requested with respect to such project may not exceed 65 percent of the estimated total cost of construction of such project nor may one State receive a commitment of more than 20 percent of the

amount appropriated for the grant program for that fiscal year. Grants shall include fixed equipment included in construction contracts, but shall not be made for construction of new buildings or for additions to existing buildings.

38. In § 17.182(b), the period at the end of subparagraph (7) is changed to "; and" and a new subparagraph (8) is added; in paragraph (c), subparagraph (2) is amended, the period at the end of subparagraph (5) is changed to "; and" and a new subparagraph (6) is added; and paragraph (d) is amended so that the amended and added material reads as follows:

§ 17.182 Project applications.

* * * * *

(b) The applicant must furnish reasonable assurance in writing that:

* * * * *

(8) The proposal has been favorably reviewed by the appropriate State or local clearing house pursuant to policies outlined in Part I, Office of Management and Budget Circular A–95 (revised).

(c) The Administrator will approve any such application if he finds that:

* * * * *

(2) Such grant does not exceed 65 percent of the estimated cost of construction of such project and does not result in a commitment of more than 20 percent of the amount appropriated for that fiscal year;

* * * * *

(6) The proposal has been favorably reviewed by the State or local clearing house pursuant to policies outlined in Part I, Office of Management and Budget Circular A–95 (revised).

(d) The Administrator shall certify applications which he approves to the Secretary of the Treasury in the amount of the grant requested but in no event an amount greater than 65 percent of the estimated (or actual) cost of construction of the project, which shall not have resulted in commitment in any fiscal year of more than 20 percent of the amount appropriated for that fiscal year, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment to the applicant or, if designated by the applicant, the State home for which such project is being constructed or any other agency or instrumentality of the applicant. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of construction as the Administrator may determine and certify for payment to the Secretary of the Treasury. Funds paid for the construction of an approved project will be used solely for carrying out such project as so approved.

* * * * *

39. In § 17.210, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 17.210 Sharing specialized medical resources.

Subject to such terms and conditions as the Chief Medical Director shall prescribe agreements may be entered into for sharing medical resources with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or medical schools or clinics in a medical community with geographical limitations determined by the Chief Medical Director, provided:

* * * * *

40. Sections 17.352 and 17.353 are revised to read as follows:

§ 17.352 Amounts and use of grant funds for the replacement and upgrading of equipment.

Grants awarded under § 17.351 shall not exceed the amounts provided by the appropriation acts of the Congress of the United States for the purpose. Funds appropriated for the upgrading and replacement of equipment at the Veterans Memorial Hospital, or for rehabilitating its equipment, shall remain available in consecutive fiscal years until expended, but in no event shall exceed the amount of $50,000 per year. It is not intended that such funds will be utilized to expand the hospital facilities. Upgrading of equipment, however, would permit purchase of new and additional equipment not now possessed by the hospital.

§ 17.353 Grants for education and training.

Grants to the Republic of the Philippines to assist the Veterans Memorial Hospital in medical education and training of health service personnel, which the Administrator may make under the authority cited in § 17.350, shall be subject to such terms and conditions as he shall prescribe. Among such terms and conditions to which the grants will be subject will be United States Veterans Administration approval of all education and training programs to be supported by grant funds. Grants under this section shall not exceed the amounts provided by the appropriation acts of the Congress of the United States for such purpose and in no event shall exceed $50,000 for each fiscal year during the 5 years beginning with fiscal year 1973.

41. Sections 17.360 and 17.361 are revised to read as follows:

§ 17.360 Payments for medical care in lieu of grants.

Subject to the provisions of §§ 17.361 through 17.370, payments in lieu of grants for reimbursement of medical expenses, may be made for hospital and nursing home care, outpatient care, and transportation furnished Commonwealth Army veterans or new Philippine Scout veterans in connection with treatment at the Veterans Memorial Hospital (or at a facility under contract or subcontract) authorized under § 17.37(b), 17.38 (a) or (b), 17.40, or 17.41. Costs for outpatient care shall be segregated from inpatient care costs. Hospital and nursing home costs shall be computed on the basis of per diem costs as agreed upon for each fiscal year by the Government of the United States and the Government of the Republic of the Philippines, and the expenses for services, supplies, and other items to be included in the per diem rate shall be as agreed upon by the two Governments.

§ 17.361 Limitations on payments for medical and nursing home care.

Payments in lieu of grants under § 17.360 shall not exceed the amounts provided by the appropriation act of the Congress of the United States for such purpose, and in no event shall exceed $2 million for each fiscal year during the 5 years beginning with fiscal year 1974. This sum shall include an amount not to exceed $250,000 for any one such fiscal year for nursing home care. In determining these limitations the following costs shall:

(a) Exclude all medical and nursing home care and transportation costs incurred in connection with authorized treatment at the Veterans Memorial Hospital of United States veterans, and

(b) Include all medical care and transportation costs incurred in connection with outpatient treatment authorized under § 17.40 for Commonwealth Army or new Philippine Scout veterans.

42. Section 17.362 is revised to read as follows:

§ 17.362 Acceptance of medical supplies as payment.

Upon request of the Government of the Republic of the Philippines, payment for medical and nursing home services for which payment may be authorized under § 17.360, may consist in whole or in part, of available medicines, medical supplies, or equipment furnished by the Veterans Administration to the Veterans Memorial Hospital at valuations determined by the Administrator. Such valuations shall not be less than the cost of the items and shall include the cost of transportation, arrastre, brokerage, shipping and handling charges.

43. Section 17.365 is revised to read as follows:

§ 17.365 Admission priorities.

In determining admissions or transfers of eligible Commonwealth Army veterans, new Philippine Scout veterans and United States veterans to Veterans Memorial Hospital, and in determining discharges, the following priorities shall be observed:

(a) First priority shall be given to the admission and retention of eligible Commonwealth Army veterans and new Philippine Scouts in need of care for service-connected disability or non-service-connected disability associated with and held to be aggravating a service-connected disability, and

(b) Second priority shall be given to the admission and retention of United States veterans who are in need of treatment for service-connected disabilities or non-service-connected disabilities associated with and held to be aggravating a service-connected disability, and

(c) Third priority shall be given the admission or retention of Commonwealth Army veterans, new Philippine

Scout veterans and United States veterans in need of hospital care for non-service-connected disabilities.

[FR Doc.74-1068 Filed 1-14-74;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

STATE ALLOTMENTS

Section 205(a) of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) provides for the allotment to the States of sums not to exceed those authorized to be appropriated by section 207 of the Act. The formula for allotment of sums available to the States is determined by the provisions of section 205. These regulation amendments are promulgated reflecting a sum of $4 billion being allotted to the States based 50 percent on the ratios of Table I and 50 percent of Table II of House Public Works Committee Print No. 93-28, pursuant to P.L. 93-243 with no State receiving less than its Fiscal Year 1972 allotment. The allotment for Fiscal Year 1975 is rounded to the nearest $50 to be compatible with the Fiscal Year 1972 allotment.

In addition to the allotment of Fiscal Year 1975 contract authority, this promulgation also reflects editorial changes in the previously published allocation regulations, which are made on the basis of public and intra-agency comment, in the interest of clarifying the allocation mechanism.

Effective date. This regulation shall become effective immediately upon publication. Good cause for immediate effectiveness of this regulation is found in section 205(a) of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), which requires that the allotments contained herein be made by January 1 immediately preceding the beginning of the fiscal year for which funds are authorized.

Dated: January 9, 1974.

RUSSELL E. TRAIN,
Administrator.

Revise §§ 35.910-1 and 35.910-2 as follows:

§ 35.910-1 Allotment.

Allotments shall be made among the States from funds authorized to be appropriated pursuant to section 207 in the ratio that the most recent congressionally approved estimate of the cost of constructing all needed publicly owned treatment works in each State bears to the most recent congressionally approved estimate of the cost of construction of all needed publicly owned treatment works in all of the States. Computation of a State's ratio shall be carried out to the nearest ten thousandth percent (0.0001 percent) and allotted amounts will be rounded to the nearest thousand dollars except for Fiscal Year 1975 which will be rounded to the nearest fifty dollars.

§ 35.910-2 Reallotment.

(a) Sums allotted to a State under § 35.910-1 shall be available for obligation on and after the date of such allotment and shall continue to be available to such State for a period of one year after the close of the fiscal year for which such sums are authorized. Funds remaining unobligated at the end of the allotment period will be immediately reallotted by the Administrator, on the basis of the most recent allotment ratio to those States which have used their full allotment.

(b) Reallotted sums shall be added to the last allotments made to the States and shall be in addition to any other funds otherwise allotted, and be available for obligation in the same manner and to the same extent as such last allotment.

(c) Any sums which have been obligated under this subpart which remain after final payment, or after termination of a project, shall be credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be available for obligation in the same manner and to the same extent as such last allotment.

§ 35.910-3 Fiscal Year 1973 and 1974 Allotments.

(a) For Fiscal Years ending June 30, 1973 and June 30, 1974, sums of $2 billion and $3 billion, respectively, have been allotted on the basis of Table III of House Public Works Committee Print No. 92-50.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section for Fiscal Years 1973 and 1974 are as follows:

State	Percentage	State	Percentage
Alabama	0.3612	Missouri	1.6556
Alaska	.2252	Montana	.1662
Arizona	.1346	Nebraska	.3708
Arkansas	.3536	Nevada	.2877
California	9.8176	New Hampshire	.8309
Colorado	.3166	New Jersey	7.7040
Connecticut	1.6810	New Mexico	.2108
District of Columbia	.7114	New York	11.0578
Delaware	.6565	North Carolina	.9229
Florida	3.6264	North Dakota	.0467
Georgia	.9730	Ohio	5.7737
Hawaii	.3303	Oklahoma	.4603
Idaho	.2177	Oregon	.8494
Illinois	6.2489	Pennsylvania	5.4214
Indiana	3.3662	Rhode Island	.4889
Iowa	1.1557	South Carolina	.6455
Kansas	.3742	South Dakota	.0948
Kentucky	.6599	Tennessee	1.1605
Louisiana	.9428	Texas	2.7694
Maine	0.9675	Utah	.1408
Maryland	4.2582	Vermont	.2218
Massachusetts	3.7576	Virginia	2.9143
Michigan	7.9814	Washington	.8906
Minnesota	2.0319	West Virginia	.4999
Mississippi	.3935	Wisconsin	1.7415
		Wyoming	.0263
		Guam	.0872
		Puerto Rico	.8845
		Virgin Islands	.0893
		American Samoa	.0048
		Trust Territory of Pacific Islands	.0378
			100.0000

(c) Based upon the percentages, the sums allotted to the States as of July 1, 1973, for Fiscal Years 1973 and 1974 are as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	$7,224,000	$10,836,000
Alaska	4,504,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,608,000
California	196,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,228,000	21,342,000
Florida	72,528,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,606,000	9,909,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,226,000
Kentucky	13,198,000	19,797,000
Louisiana	18,856,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,628,000	239,442,000
Minnesota	40,638,000	60,957,000
Mississippi	7,870,000	11,805,000
Missouri	33,112,000	49,668,000
Montana	3,324,000	4,986,000
Nebraska	7,416,000	11,124,000
Nevada	5,754,000	8,631,000
New Hampshire	16,618,000	24,927,000
New Jersey	154,080,000	231,120,000
New Mexico	4,216,000	6,324,000
New York	221,156,000	331,734,000
North Carolina	18,458,000	27,687,000
North Dakota	934,000	1,401,000
Ohio	115,474,000	173,211,000
Oklahoma	9,216,000	13,824,000
Oregon	16,988,000	25,482,000
Pennsylvania	108,428,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,896,000	2,844,000
Tennessee	23,210,000	34,815,000
Texas	55,388,000	83,082,000
Utah	2,816,000	4,224,000
Vermont	4,436,000	6,654,000
Virginia	58,286,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,998,000	14,997,000
Wisconsin	34,830,000	52,245,000
Wyoming	536,000	804,000
Guam	1,744,000	2,616,000
Puerto Rico	17,690,000	26,535,000
Virgin Islands	1,786,000	2,679,000
American Samoa	96,000	144,000
Trust Territory of Pacific Islands	756,000	1,134,000
Total	2,000,000,000	3,000,000,000

§ 35.910-4 Fiscal Year 1975 Allotments.

(a) For the Fiscal Year ending June 30, 1975, a sum of $4 billion has been allotted based 50 percent on the ratios of Table I and 50 percent of Table II of House Public Works Committee Print No. 93-28, pursuant to P.L. 93-243.

(b) The percentages used in computing the State allotments set forth in paragraph (c) below, for Fiscal Year 1975 are as follows:

State	Percentage	State	Percentage
Alabama	0.8016	New York	12.4793
Alaska	0.3830	North Carolina	1.7929
Arizona	0.4066	North Dakota	0.0818
Arkansas	0.6069	Ohio	4.9184
California	11.6340	Oklahoma	1.1953
Colorado	0.7867	Oregon	0.8682
Connecticut	1.7687	Pennsylvania	5.6652
Delaware	0.5548	Rhode Island	0.5306
District of Columbia	0.9724	South Carolina	1.4223
Florida	4.1838	South Dakota	0.0907
Georgia	1.9369	Tennessee	1.2303
Hawaii	1.0463	Texas	1.6534
Idaho	0.2009	Utah	0.4217
Illinois	6.4173	Vermont	0.3001
Indiana	1.6196	Virginia	2.5096
Iowa	1.0012	Washington	1.6463
Kansas	1.0222	West Virginia	0.9598
Kentucky	1.6579	Wisconsin	1.3317
Louisiana	0.7245	Wyoming	0.0768
Maine	0.6670	Guam	0.0478
Maryland	1.3767	Puerto Rico	1.0385
Massachusetts	2.2945	Virgin Islands	0.0796
Michigan	4.7978	American Samoa	0.0147
Minnesota	1.6341	Trust Territory of the Pacific Islands	0.0133
Mississippi	0.5355		
Missouri	1.8960		
Montana	0.1421		
Nebraska	0.5314		
Nevada	0.4755		
New Hampshire	0.8920		
New Jersey	6.4769		
New Mexico	0.1869		

(c) Based upon the percentages set forth in paragraph (b) and allotment adjustments the sums allotted to the States as of January 1, 1974, are as follows:

Alabama	$33,785,150
Alaska	15,059,100
Arizona	17,695,750
Arkansas	23,860,100
California	457,420,100
Colorado	30,930,900
Connecticut	69,542,900
Delaware	21,815,300
District of Columbia	38,233,800
Florida	164,496,400
Georgia	76,153,000
Hawaii	41,140,000
Idaho	7,898,400
Illinois	252,311,700
Indiana	63,678,100
Iowa	39,364,800
Kansas	40,192,500
Kentucky	65,183,600
Louisiana	35,551,850
Maine	26,227,000
Maryland	54,128,100
Massachusetts	90,215,900
Michigan	188,637,400
Minnesota	64,247,300
Mississippi	22,346,700
Missouri	74,546,400
Montana	7,534,600
Nebraska	20,894,000
Nevada	18,695,600
New Hampshire	35,072,950
New Jersey	254,656,200
New Mexico	10,670,500
New York	490,654,200
North Carolina	70,494,200
North Dakota	6,876,100
Ohio	193,378,700
Oklahoma	46,997,400
Oregon	34,136,700
Pennsylvania	222,744,100
Rhode Island	20,864,000
South Carolina	55,922,000
South Dakota	7,308,800
Tennessee	48,371,800
Texas	106,900,250
Utah	16,579,600
Vermont	11,800,800
Virginia	98,672,400
Washington	64,730,500
West Virginia	37,735,700
Wisconsin	52,360,400
Wyoming	4,049,450
Guam	2,172,000
Puerto Rico	40,832,900
Virgin Islands	3,130,900
American Samoa	576,700
Trust Territory of Pacific Islands	524,300

Allotment adjustment has been made for those States that would receive an allotment that would be less than their Fiscal Year 1972 allotment. The allotment of those States which fall below their Fiscal Year 1972 allotment will be restored to their Fiscal Year 1972 allotment using funds from the total allotment. Remaining funds will be allocated to States (excluding the States with allotment adjustment) based on adjusted percentages. Minimum allotment amounts are determined on the basis of Table III of House Public Works Committee Print 93-28.

[FR Doc.74-1057 Filed 1-14-74;8:45 am]

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to Surcharge and Management of Parking Supply Regulations

Between November 6 and December 12, 1973, the Environmental Protection Agency, acting under court order, promulgated or approved transportation control plans in the FEDERAL REGISTER for 30 major urban areas. Many aspects of these plans have been highly controversial, but without doubt the most dispute has centered on parking surcharge measures to be implemented in ten air quality regions or portions of regions in California, Massachusetts, New Jersey, and the District of Columbia area, and on regulations providing for the review of all new parking facilities over a certain size limit in these and other jurisdictions. On the basis of information and studies available to EPA at the time of promulgation, each of these measures appeared to be most effective in carrying out the mandate of the law.

When the House Committee on Interstate and Foreign Commerce reported out its version of the Energy Emergency Act on December 10, 1973, it included a provision forbidding the imposition of parking surcharges by EPA without the consent of Congress. In addition, the Committee directed the Administrator to submit a study to Congress within six months on the necessity and desirability of such fees to achieve air quality standards.

This provision was then amended on the floor of the House to also forbid the requiring of bus/carpool lanes and the review of new parking facilities without prior Congressional approval.

The Conference Committee, in its draft report on the Energy Emergency Act, retained the prohibition on surcharges without prior Congressional approval. The prohibition on bus/carpool lanes was dropped, and the prohibition on review of new parking facilities was changed to a grant of authority to the Administrator to suspend such review until January 1, 1975. It was the understanding both of the Administrator and of the conferees that this authority would extend to "indirect source" regulations insofar as they concerned parking facilities, and that the authority would be exercised if granted. The Administrator would have been required to submit a report to Congress on the necessity, economic impact, and relation to other Federal transportation programs of all three types of control measures.

The Energy Emergency Act was not passed by Congress for reasons completely unrelated to the amendments to the Clean Air Act which it contained. Even so, it is my judgment that the provisions it contains respecting transportation controls should be regarded as firm congressional guidance on that issue. On the House side, these provisions were reported out by the same committee that has jurisdiction over the Clean Air Act, and were made more stringent by the full House. The Conference Committee contained three members of the Senate Subcommittee on Air and Water Pollution, in which the transportation control provisions of the Clean Air Amendments of 1970 originated. These members participated with their counterparts on the House side in a special subcommittee of the conferees to consider the Clean Air Act, and the language in the draft conference report represents their agreement.

The Clean Air Act, even as it now stands, does not authorize the imposition before mid-1977 of any transportation control measures which are not "reasonably available" at the time they are imposed. In making my determination of what measures are in fact "reasonably available" under the statute, I do not believe I may properly ignore such strong expressions of intent on the part of those who wrote it as set forth above. Accordingly, I am by this notice taking the following actions to conform all transportation control plans promulgated by EPA to the expressed intent of Congress:

1. All surcharge regulations are being withdrawn. This includes general surcharge regulations in California, the District of Columbia area, and Massachusetts, as well as "employer incentive" regulations in California and New Jersey which by their language explicitly require surcharges. This will not prevent EPA from approving any surcharge which may be adopted and submitted either by a state as part of an implementation plan or by an employer as part of an incentive plan, although in no case will the adoption of surcharges be made a condition of plan approval. The "employer incentive" regulations in California and New Jersey will be replaced

with more generally worded regulations on the schedules previously announced in notices of proposed rulemaking affecting these two states.

2. All regulations providing for the review of new parking facilities to determine their individual impact on air quality are being mended to defer the date of review of these facilities until January 1, 1975. This will also be the effective date of any review of parking facilities under the "indirect source" regulations which are currently required by court order to be promulgated on or before January 31, 1974.

In addition to these steps, EPA will also make the study and write the report called for in the conference bill and will report its findings and conclusions to the Congress as specified. The Agency looks forward to productive discussion with the Congress of transportation control measures generally. Such measures, if properly and prudently applied, can contribute significantly to the reduction of automobile caused air pollution and to the creation of improved metropolitan environments in the years to come.

The preparation of this report to Congress will provide additional material for the factual and policy background against which Congress and EPA can jointly explore the questions raised by the use of parking surcharges in transportation control plans. In addition, the year's delay in implementing parking review will make possible a thorough reexamination of the current parking regulations, and the report should also assist that process. Local governments will be able to use this time to develop region-wide parking management plans that can remove the need for any EPA promulgation. A number of local governments have already begun this process and have requested EPA assistance. To further encourage this effort, the Agency will within the next six months issue general guidelines for developing such plans. Where local plans are submitted on or before October 15, 1974, EPA will defer any potential case-by-case review of individual parking facilities until the submitted plan can be fully evaluated.

In view of the fact that his notice simply carries out Congressional instructions which but for unrelated events would have been law by now, the Administrator finds that good cause exists for making these regulations effective January 15, 1974. In the case of parking review regulations, good cause is also provided by the need to remove uncertainty and delay in the construction of building projects, particularly those projects which are currently under construction and have applied for permits under the regulations as they now stand.

This notice of final rulemaking is issued under authority of sections 110 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 1857c-5 and 1857g(a).

Dated: January 9, 1974.

RUSSELL E. TRAIN,
Administrator.

Part 52 of 40 CFR Ch. I is amended as follows:

1. The following sections are revoked and reserved:

a. Subpart F—§§ 52.248, 52.249, and 52.250.

b. Subpart W—§§ 52.1150 and 52.1137.

c. Subpart FF—§ 52.1590.

d. Subpart WW—§ 52.2488.

2. The following paragraphs in the sections specified are revoked, and the succeeding paragraphs are redesignated accordingly:

a. In subpart J, paragraph (d)(3) of § 52.476.

b. In subpart V, paragraph (d)(3) of § 52.1080.

c. In subpart W, paragraphs (b), (c), and (d) of § 52.1136.

d. In subpart VV, paragraph (b)(3) of § 52.2435.

3. The following paragraphs of the following sections are amended by deleting the phrases "August 15, 1973", "November 12, 1973", "November 13, 1973", and "February 15, 1974" wherever they appear, and substituting in each case the phrase "January 1, 1975":

a. Subpart C—paragraphs (c), (d), and (h) of § 52.86.

b. Subpart D—paragraphs (c), (d), and (h) of § 52.139.

c. Subpart F—paragraphs (c), (d), and (g) of § 52.251.

d. Subpart J—paragraphs (c) and (d) of § 52.493.

e. Subpart V—paragraphs (c) and (d) of § 52.1103 and paragraphs (c), (d), and (j) of § 52.1111.

f. Subpart W—paragraph (d) of § 52.1135.

g. Subpart FF—paragraphs (c), (d), and (g) of § 52.1588.

h. Subpart NN—paragraphs (c), (d), and (h) of § 52.2040.

i. Subpart SS—paragraphs (c) and (d) of § 52.2295.

j. Subpart VV—paragraphs (c) and (d) of § 52.2443.

k. Subpart WW—paragraphs (c), (d), and (h) of § 52.2486.

4. In Subpart D, the second sentence of paragraph (k) of § 52.139 is amended by substituting "October 15, 1974" for "April 1, 1974". The third sentence in that paragraph is amended by deleting the phrase "By June 1, 1974".

5. In Subpart F, paragraph (j) of § 52.251 is amended by changing "March 31, 1974" to "October 15, 1974".

6. In Subpart SS, paragraph (1) of § 52.2295 is amended by changing "December 1, 1973" to "December 1, 1974".

[FR Doc.74-1058 Filed 1-14-74;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 177—FEDERAL, STATE AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO VOCATIONAL STUDENTS AND STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

Special Allowances

Subparagraph (3) of § 177.4(c), *Special allowances,* which deals with the payment to lenders of the allowances authorized by section 2 of the "Emergency Insured Student Loan Act of 1969" (Pub. L. 91-95) is amended to provide for the payment of such an allowance for the period October 1, 1973, through December 31, 1973, inclusive.

In light of the directives in the Emergency Insured Student Loan Act of 1969 with respect to the factors that the Secretary of Health, Education, and Welfare is to consider and the officials with whom he is to consult in setting the rate of the special allowance, and since a comment period would cause delay of at least 30 days, following each quarterly 3-month period, before lenders could apply for the special allowance for such period, it has been determined pursuant to 5 U.S.C. 553 that the solicitation of comment as to the rate of the special allowance for any particular quarter is both unnecessary and contrary to the public interest. The amendment to § 177.4(c)(3) effected hereby will therefore become effective immediately.

Section 177.4(c)(3) is amended as follows:

§ 177.4 **Payment of interest benefits, administrative cost allowances and special allowance.**

* * * * *

(c) *Special allowances.* * * *

(3) Special allowances are authorized to be paid as follows:

* * * * *

(xviii) For the period October 1, 1973, through December 31, 1973, inclusive, a special allowance is authorized to be paid in an amount equal to the rate of two and one-half percent per annum of the average unpaid balance of disbursed principal of eligible loans.

(Sec. 2, 83 Stat. 141)

Dated: January 3, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: January 11, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.460 Guaranteed Student Loan Program)

[FR Doc.74-1317 Filed 1-10-74;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19823, FCC 74-22]

PART 73—RADIO BROADCAST SERVICES

FM Table of Assignments for Certain States

In the matter of amendment of § 73.202(b), FM Broadcast Stations (Brattleboro, Vt.; Ship Bottom, N.J.; Derby, Kans.; Amherst, Mass.; Tallulah, La.; Wadesboro, N.C.; Jena, La.; Bowling Green, Mo.; Chillicothe, Ill.; and Butler, Mo.). Docket No. 19823, RM-2131, RM-2202, RM-2190, RM-2204, RM-2159, RM-2207, RM-2189, RM-2220, RM-2191, RM-2221, RM-2233.

1. The Commission has under consideration its notice of proposed rule making adopted September 11, 1973, FCC 73–945 (38 FR 26465), inviting comments on a number of changes in the FM Table of Assignments (§ 73.202(b) of the rules). With the exception of the proposal for Wadesboro, North Carolina, all proposals were unopposed. Except as noted, the population figures were taken from the 1970 U.S. Census. The communities, channel assignments proposed, and petitioning parties are as follows:

RM–2131	Channel 244A to Brattleboro, Vermont (Southern Vermont Broadcasters, Inc.).
RM–2159	Channel 261A to Ship Bottom, New Jersey (Max L. Raab).
RM–2189	Channel 240A to Derby, Kansas (Benjamin Foster and Hank Parkinson).
RM–2190	Channel 224A to Brattleboro, Vermont (Radio Brattleboro, Inc.).
RM–2191	Channel 265A to Amherst, Massachusetts (Hampshire County Broadcasting Co.).[1]
RM–2202	Channel 285A to Tallulah, Louisiana (Radio Station KTLD).[1]
RM–2204	Channel 272A to Wadesboro, North Carolina (Carolinas Advertising, Inc.).[1]
RM–2207	Channel 257A to Jena, Louisiana (Radio Station KCKW).
RM–2220	Channel 265A to Bowling Green, Missouri (Pike County Broadcasting Co.).
RM–2221	Channel 232A to Chillicothe, Illinois (William D. Englebrecht).
RM–2233	Channel 288A to Butler, Missouri (Bates County Broadcasting Co.).

2. In each of the above cases, the petitioning party seeks the assignment of a first channel without requiring any other changes in the FM Table of Assignments. With the exception of Amherst, Mass., Tallulah, La. and Wadesboro, N.C., which require the transmitters to be located short distances from the communities, each assignment can be made in conformance with the Commission's minimum mileage separation rule. (See footnote 1.) Each petitioning party stated its intent to apply for the channel, if assigned, and to build a station if authorized.

3. We have given careful consideration to all comments, supporting statements and other pleadings, and find it in the public interest to assign the proposed FM channels to the above-listed communities with the exception of Wadesboro, N.C. (See paragraph 5, below.) While in two cases the original proponents did not come forward with comments, we are adopting these as well as the nine which were supported, since they appear generally meritorious. In the Notice of Proposed Rule Making in this proceeding, we set out the economic and other information pertaining to the need for a first FM assignment in each of the communities. We shall, therefore, not repeat it in this document.

[1] In order to meet the minimum spacing requirements of our rules, a site 2 miles southwest of Amherst, Mass., would be required; a site 6 miles southwest of Wadesboro, N.C., would be required; and a site west of Tallulah, La. would be required.

4. *Brattleboro, Vermont.* With reference to the two separate petitions filed, each proposing the assignment of a first FM channel to Brattleboro, Vermont (population 12,239), we stated in our Notice of Proposed Rule Making that it was not clear from the petitions whether, if two channels were assigned to Brattleboro, each petitioner would be willing to build a station there. We requested the petitioners to furnish information on this point as well as information as to whether Brattleboro could support two FM stations. In comments filed by Radio Brattleboro, Inc. (RM–2190) (petitioner proposing assignment of 224A), petitioner states that, if the channel is assigned, it will immediately file its application notwithstanding the assignment of a second FM channel since it feels that Brattleboro has a need for the type of service it can provide and further states that it is confident that Brattleboro's rapid growth can adequately sustain two FM channels. It points out an increase in actual and proposed residential home construction at Brattleboro as indicating the growth that is occurring there. Petitioner further states that coupled with the increase in housing is an expansion in Brattleboro's major industries. It notes, for example, that present local producers of paper look to a 5 percent to 8 percent a year increase in production with a total employment gain of 25 percent by 1977. Petitioner contends that although Brattleboro and Windham County (population 33,074), in which it is located, are rapidly growing, Brattleboro does not have a single FM channel assigned to it nor does any community in Windham County, and since allocation of two FM channels can be made, there is no reason for the residents of Brattleboro to continue to be deprived of the mass communications facilities that are designed to meet the public needs and interests. In comments filed by Southern Vermont Broadcasters, Inc. (Rm–2131), (petitioner proposing assignment of Channel 244A) petitioner states it will expeditiously apply to activate Channel 244A regardless of whether Channel 224A is assigned to Brattleboro. Petitioner feels there is ample revenue potential in the area which would certainly support its proposed FM facility. It notes that at present both Brattleboro AM stations (Class IV) serve the communities surrounding Brattleboro only to a limited extent during the day and almost not at all at night. In petitioner's opinion the additional market areas which will be opened to it by the greater coverage radius offered by an FM facility will provide the revenues necessary to underwrite the cost of operating that facility. Moreover, petitioner believes that if each of the Class IV AM stations is given an opportunity to add FM facilities (the AM licensees are the petitioners herein) they could remain on a par technically and program service to the area will be improved since the stations will be forced to continue competing for listeners by presenting attractive programming, which would not be the case if only one FM outlet were available in the community.

5. We believe that the two proposed FM channels should be assigned to Brattleboro. The two channel assignments would provide for two Class A FM stations which would cover larger areas at night with broadcast service than presently available from the two Class IV AM stations. In addition, considering the size of Brattleboro and its anticipated growth, and since the assignments can be made without any adverse effect on other stations, we are of the view that the assignment of the channels would serve the public interest.

6. *Wadesboro, North Carolina.* The Notice, on the basis of a petition filed by Carolinas Advertising, Inc., licensee of standard broadcast Station WADE, proposed assignment of Channel 272A to Wadesboro, North Carolina. It noted that Wadesboro, with a population of 3,977 persons, is the seat of Anson County (population 23,488) and has a daytime-only AM station. Carolinas Advertising filed comments in support of the proposed assignment.

7. Comments were also filed by Robert Broadcasting Company, Inc., urging the assignment of Channel 272A to Pageland, South Carolina,[2] instead of Wadesboro, North Carolina. Pageland is located some 22 miles southwest of Wadesboro. Robert Broadcasting asserts that Pageland does not have a broadcast outlet and that assigning the channel to Pageland will give it the first diversity of local expression since none of the principals of petitioner has any connection with the Pageland weekly newspaper. It contends that Pageland has a population of 2,122 persons and is located in Chesterfield County which has a population of 33,667 persons. The government of Pageland, it avers, is a mayor-council form with the mayor and the four councilmen serving two-year terms of office and the county is governed by a three-member board of commissioners who are elected for two-year terms. It states that Pageland has a police department and a 24-man volunteer fire department, and that there are five major industries in Pageland, which employ 758 persons. Robert Broadcasting further states that if the channel is assigned to Pageland, it will promptly construct and operate the station.

8. Since it appears that Channel 272A is the only Class A channel presently available for assignment to this area which could be assigned without requiring changes in the presently existing assignments, a determination must be made as to whether assignment of the channel to Wadesboro or Pageland would better serve the public interest. Wadesboro, a county seat, has a population of 3,977 persons and has a daytime-only AM station. An FM channel here would provide for a first local nighttime broadcast outlet. On the other hand, Pageland with a population of 2,122 is not a county seat

[2] The station would have to be located 7 miles east of Pageland.

and does not have a broadcast station. Thus a channel here would provide for a first local broadcast outlet. A study made by the staff on the basis of the Roanoke Rapids and Goldsboro, N.C., criteria (9 F.C.C. 2d 672 (1967)) indicates that a Wadesboro station would provide a first FM service to approximately 440 persons and a second FM service to approximately 8,800 persons, while a Pageland station would provide a first FM service to approximately 1,060 persons and add a second service to approximately 4,630 persons. On balance, it appears that it would better serve the public interest to assign Channel 272A to Pageland where a station could provide a first FM service to a larger segment of the population than an FM station at Wadesboro, as well as provide a first fulltime local broadcast outlet. This would be in accordance with the FM allocation priorities.

9. Authority for the adoption of the amendments contained herein appears in section 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

10. In view of the foregoing, *it is ordered*, That effective February 19, 1974, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended to read as follows:

City	*Channel No.*
Illinois:	
Chillicothe	232A
Kansas:	
Derby	240A
Louisiana:	
Jena	257A
Tallulah	285A
Massachusetts:	
Amherst	265A
Missouri:	
Bowling Green	265A
Butler	288A
New Jersey:	
Ship Bottom	261A
South Carolina:	
Pageland	272A
Vermont:	
Brattleboro	224A, 244A

11. *It is further ordered*, That this proceeding is terminated.

Adopted: January 3, 1974.

Released: January 7, 1974.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-1075 Filed 1-14-74;8:45 am]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-57; Amdt. No. 172-22]

PART 172—COMMODITY LIST OF HAZARDOUS MATERIALS CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 170-189 OF THIS CHAPTER

Classification and Packaging of Corrosive Materials; Correction

On December 28, 1973, the Hazardous Materials Regulations Board published several amendments to the Department's Hazardous Materials Regulations (38 FR 35467), one of which contained an error for caustic potash in the List of Hazardous Materials. Therefore, the Board has changed the entry "Caustic potash, dry, solid, flake, bead, or granular. *See* potassium hydroxide, dry, etc." in FR Doc. 73-27101 (Amdt. No. 172-22) to read as follows:

Article	Classed as—	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
Caustic potash, dry, solid, flake, bead, or granular.	Cor	173.244, 173.245b	Corrosive	100 pounds.

(Secs. 831-835, title 18 U.S.C., sec. 9, Department of Transportation Act (49 U.S.C. 1657), and title VI and sec. 902(h), Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472 (h), and 1655(c)).

Issued in Washington, D.C. on January 8, 1974.

ALAN I. ROBERTS,
Secretary, Hazardous Materials Regulations Board.

[FR Doc.74-1055 Filed 1-14-74;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[AMENDMENT NO. 3 TO REVISED SERVICE ORDER NO. 1108]

PART 1033—CAR SERVICE

Reading Co. and Lehigh Valley Railroad Co.

JANUARY 10, 1974.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 9th day of January 1974.

Upon further consideration of Revised Service Order No. 1108 (37 FR 28634; 38 FR 5876, and 23792) and good cause appearing therefor:

It is ordered, That:

§ 1033.1108 Reading Company, Richardson Dilworth and Andrew L. Lewis, Jr., trustees, authorized to operate over tracks of Lehigh Valley Railroad Company, John F. Nash and Robert C. Haldeman, trustees. [Amended]

Revised Service Order No. 1108 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., March 15, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 15, 1974.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-1242 Filed 1-14-74;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

On August 16, 1973, notice of proposed rulemaking Governing the Taking and Importing of Marine Mammals, as required by title I of the Marine Mammal Protection Act of 1972 (Pub. L. 92-522) was published in the FEDERAL REGISTER (38 FR 22133).

Forty-five days were given within which any person wishing to do so could file written comments, suggestions or objections pertaining to the proposed regulations with the Director, National Marine Fisheries Service, Washington, D.C. 20235.

Twenty-two comments on the published proposed rule making were received. After consideration of all relevant material presented by interested persons, the proposed rulemaking is hereby adopted as final regulations, subject to the changes set out below. In addition, as a result of the enactment of the Endangered Species Act of 1973 (Pub. L. 93-205), certain additional changes were made in the definitions as well as the prohibitions.

1. *Part 216 Marine Mammals, Taking and Importing.*

(a) Under the table of contents of Subpart B, § 216.14, the words, "Proof of Compliance" have been deleted and the words, "Marine Mammals Taken Before the Act" have been added.

(b) Under the table of contents of Subpart C, § 216.26 *Collection of certain dead marine mammal parts* has been added.

(c) Under the table of contents of Subpart D, § 216.32 *Undue economic hardship* has been deleted and § 216.33 is redesignated as § 216.32; § 216.34 is redesignated as § 216.33, and § 216.35 is redesignated as § 216.34.

2. In the definition of marine mammal in § 216.3, the words "and physiologically" have been deleted.

3. Section 216.14 has been amended. In § 216.14 the title "Proof of compliance" has been deleted and retitled "Marine mammals taken before the Act" and a new text added. The new text sets out requirements which must be met with regard to the importation of marine mammals taken before the effective date of the Act, and the importation of marine mammal products deriving from such pre-Act mammals.

4. In § 216.23, paragraph (b)(ii) has been renumbered (b)(iii) and a new text for paragraph (b)(ii) has been added.

5. In § 216.23(b), paragraph (b)(ii) has been renumbered (b)(iii) and (b)(iii) renumbered (b)(iv) and a new text for paragraph (b)(ii) has been added.

6. In the paragraph following § 216.23 (c)(vi), the words "or other agent" have been inserted between "tannery" and "shall" in the seventh line.

7. A new § 216.26 *Collection of certain dead marine mammal parts* has been added to Subpart C. The new section allows the collection of bones, teeth, and ivory of dead marine mammals from beaches, subject to certain requirements.

8. In § 216.31(a)(7) the phrase, "Secretary may request" has been deleted. A new paragraph (a)(8) has been added.

9. Section 216.32 *Undue economic hardship* has been deleted in its entirety. Sections 216.33, 216.34, and 216.35, have been renumbered §§ 216.32, 216.33, and 216.34, respectively.

10. In that part of § 216.40, listing ports through which marine mammals or marine mammal products which are not to be forwarded or transshipped within the United States may be imported; the words, "Alaska—Juneau, Anchorage, Fairbanks" have been added.

11. In the first sentence of § 216.62, "15" days has been changed to "30" days.

12. In paragraph (c) of § 216.64, the sum "$10,000" has been changed to "$5,000" on the 11th line of the text.

In addition to the changes described above, it has been determined to propose a list of items which qualify as "authentic native articles of handicraft and clothing." Since this would involve new material which was not covered by the proposed rule making of August 16, 1973, the list will be published as a proposal in the FEDERAL REGISTER in the near future with opportunity for public comment.

This regulation is effective January 15, 1974.

Dated: January 11, 1974.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

Subpart A—Introductions

Sec.
216.1 Purpose of regulations.
216.2 Scope of regulations.
216.3 Definitions.
216.4 Other laws and regulations.

Subpart B—Prohibitions

Sec.
216.11 Prohibited taking.
216.12 Prohibited importation.
216.13 Prohibited uses, possession, transportation and sales.
216.14 Marine Mammals taken before the Act.

Subpart C—General Exceptions

Sec.
216.21 Actions permitted by international treaty, convention, or agreement.
216.22 Taking by State or local government officials.
216.23 Native exception.
216.24 Taking incidental to commercial fishing operations.
216.25 Exempted marine mammals and marine mammal products.
216.26 Collection of certain dead marine mammals parts.

Subpart D—Special Exceptions

216.31 Scientific research permits and public display permits.
216.32 Waivers of the moratorium. [Reserved]
216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.
216.34 Possession of permits.

Subpart E—Designated Ports

216.40 Importation at designated ports.

Subpart F—Penalties and Procedures for Their Assessment

216.51 Penalties.
216.52 Notice of proposed assessment; opportunity for hearing.
216.53 Waivers of hearing; assessment of penalty.
216.54 Appointment of administrative law judge and agency representative; notice of hearing.
216.55 Failure to appear; official transcript; record for decision.
216.56 Duties and powers of the administrative law judge.
216.57 Appearance of the respondent and the agency representative.
216.58 Evidence.
216.59 Filing of briefs.
216.60 Decisions.
216.61 Remission or mitigation.
216.62 Payments of penalty.
216.63 Forfeiture and return of seized property.
216.64 Holding and bonding.
216.65 Enforcement officers.

AUTHORITY: Title I of the Marine Mammal Protection Act of 1972, 86 Stat. 1027 (16 U.S.C. 1361–1407), Pub. L. No. 92–522.

Subpart A—Introduction

§ 216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361–1407, Public Law 92–522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 216.2 Scope of Regulations.

This Part 216 applies solely to marine mammals and marine mammal products as defined in § 216.3. For regulations under the Act, with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

§ 216.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 216:

"Act" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361–1407, Public Law 92–522.

"Alaskan Native" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. sec. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to § 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

"Commercial fishing operation" means the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

"Endangered Species" means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, P.L. 93–205 (see Part 17 of this title).

"Incidental catch" means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"Marine environment" means the oceans and the seas, including estuarine and brackish waters.

"Marine mammal" means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).

"Native village or town" means any community, association, tribe, band, clan or group.

"Pregnant" means pregnant near term.

"Secretary" shall mean the Secretary of Commerce or his authorized representative.

"Subsistence" means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

"Take" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal, including, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

"Threatened species" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

§ 216.4 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations.* Section 109 of the Act provides that on or after December 21, 1972, no State may adopt any law or regulation with regard to the taking of marine mammals, or enforce any existing law or regulation which relates to the taking or protection of marine mammals. Any State may adopt laws or regulations relating to the taking or protection of any species or population stocks of marine mammals if the Secretary determines after review by him that such laws or regulations will be consistent with the provisions of the Act and the regulations in this part. In no event, however, will the Secretary approve any State laws or regulations which:

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship.

(c) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) above, unless otherwise provided by the Secretary.

(f) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(g) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(h) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

Subpart B—Prohibitions

§ 216.11 Prohibited Taking.

Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for;

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this Part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, and sales.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

§ 216.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides, in effect, that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

> The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of -- under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the Act. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or 216.32.

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151–1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat.

In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this Section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;
(4) The name and official position of the State official or employee involved;
(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and
(6) Such other information as the Secretary may require.

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:
(1) By Alaskan Natives who reside in Alaska for subsistence, or
(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and
(3) In each case, not accomplished in a wasteful manner.
(b) *Restrictions.*
(1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:
(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under subsection (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or
(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or
(iii) It is an edible portion and it is sold in an Alaskan Native village or town.
(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:
(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under subsection (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or
(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or
(iii) It has first been transformed into an authentic native article of handicraft or clothing; or
(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.
(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:
(i) the name and address of the applicant;
(ii) a description of the applicant's procedures for receiving, storing, processing, and shipping materials;
(iii) a proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos, pursuant to this section;
(iv) such other information as the Secretary may request;
(v) a certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) the signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.
(d) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

§ 216.24 Taking incidental to commercial fishing operations.

(a) Until October 21, 1974, marine mammals may be taken incidental to the course of commercial fishing operations, and no permit shall be required, so long as the taking constitutes an incidental catch. In any event, it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching zero mortality and serious injury rate.
(b) In furtherance of the Secretary's research and development program under section 111 of the Act, the following regulations shall apply: Any duly authorized agents of the Secretary may from time to time, after timely oral or written notice to the vessel owner or charterer board and/or accompany commercial fishing vessels documented under the laws of the United States, whenever the Secretary determines that there is space available, on regular fishing trips, for the purpose of conducting research or observation operations. Such research and observation operations shall be carried out in such manner as to minimize interference with commercial fishing operations. No master, charterer, operator or owner of such vessel shall impair or in any way interfere with the research or observations being carried out. The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such agents on board such vessels.

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:
(1) To any marine mammal taken before December 21, 1972, or
(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.
(b) The prohibitions contained in § 216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.
(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term "ocean" includes bays and estuaries.
(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the Bureau of Sport Fisheries and Wildlife.
(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.
(d) Title to any marine mammal parts collected under this section is not transferable unless consented to, in writing, by the Secretary.

Subpart D—Special Exceptions

§ 216.31 Scientific research permits and public display permits.

(a) The Director may issue permits authorizing the taking and importation

of marine mammals for scientific research. Any person desiring to obtain a scientific research or display permit may make application therefore to the Secretary. Such application shall be in writing, addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, and shall contain the following information:

(1) The name, address, and phone number of the applicant;

(2) A statement of the purpose, date, location and manner of the taking or importation;

(3) A description of the marine mammal or the marine mammal product to be taken or imported, including the species or subspecies involved; the population stock, when known; the number of specimens or products (or the weight thereof, where appropriate); and the anticipated age, size, sex, and condition (i.e. whether pregnant or nursing) of the animals involved;

(4) If the marine mammal is to be taken and transported alive, or held for public display, a complete description of the manner of transportation, care, and maintenance, including the type, size, and construction of the container or artificial environment; arrangements for feeding and sanitation; a statement of the applicant's qualifications and previous experience in caring for and handling captive marine mammals and a like statement as to qualifications of any common carrier or agent to be employed by the applicant to transport the animal; and a written certification of a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal and that in his opinion they are adequate to provide for the well-being of the animal;

(5) If the application is for a scientific research permit, a detailed description of the scientific research project or program in which the marine mammal or marine mammal product is to be used including a copy of the research proposal relating to such program or project and the names and addresses of the sponsor or cooperating institutions and the scientists involved;

(6) If the application is for a scientific research permit, and if the marine mammal proposed to be taken or imported is listed as an endangered or threatened species or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine mammal, including a discussion of possible alternatives, whether or not under the control of the applicant;

(7) If the application is for a public display permit, a detailed description of the proposed use to which the marine mammal or marine mammal product is to be put, including the manner, location, and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit for such display, and whether and to what extent the display is connected with educational or scientific programs.

There shall also be included a complete description of the enterprise seeking the display permit and its educational and scientific qualifications, if any;

(8) Such other information as the Secretary may request.

(9) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(10) Such application shall be signed by the applicant.

The sufficiency of the application shall be determined by the Secretary and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bone fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act: whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

§ 216.32 Waivers of the moratorium.

[Reserved]

§ 216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford

to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefore; and

(2) The steps which the Permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice or such other date as may be specified in the notice by the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

§ 216.34 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart E—Designated Ports

§ 216.40 Importation at designated ports.

Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR Part 14.

For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.
Los Angeles, Calif.
New Orleans, La.
Seattle, Wash.
Honolulu, Ha.

additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

Alaska—Juneau, Anchorage, Fairbanks
Hawaii—Honolulu
Puerto Rico—San Juan
Guam—Honolulu, Ha.
American Samoa—Honolulu, Ha.
Virgin Islands—San Juan, P.R.

Importers are advised to see 50 CFR Part 14 for importation requirements and information.

Subpart F—Penalties and Procedures for Their Assessment

§ 216.51 Penalties.

Any person who violates any provision of the Act or of any permit or regulation, including without limitation, conditions imposed by the Secretary with respect to the taking, importing, maintenance or transporting of marine mammals or marine mammal products, issued thereunder may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Each unlawful taking or importation shall be a separate offense.

§ 216.52 Notice of proposed assessment; opportunity for hearing.

(a) Prior to the assessment of a civil penalty pursuant to section 105(a) of the Act, a notice of proposed assessment issued by the Secretary shall be served personally or by registered or certified mail, return receipt requested, upon the person believed to be subject to a penalty (the respondent). The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulations, or permit allegedly violated; and

(3) The amount of penalty proposed to be assessed.

The notice shall inform the respondent that he has 20 days from receipt of the notice in which to request a hearing or to waive it. The request or waiver shall be in writing and addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. The notice shall further inform the respondent that if he does not respond to the notice within the 20 days allowed, he shall be deemed to have waived his right to a hearing and to have consented to the making of an assessment without a hearing.

(b) With his request for a hearing or with his written waiver of a hearing, the respondent may submit objections to the proposed assessment. He may deny the existence of the violation or ask that no penalty be assessed or that the amount be reduced. The respondent must set forth in full all facts supporting his denial of the alleged violation or his request for relief.

§ 216.53 Waiver of hearing; assessment of penalty.

(a) If a written waiver of a hearing is timely made, or if a hearing is deemed to have been waived as provided in § 216.52(a), the Secretary shall proceed either to make an assessment of a civil penalty or to rescind the proposed assessment, taking into consideration such showing as may have been made by respondent pursuant to § 216.52(b). Such action shall become the final administrative decision of the Secretary when rendered, and any civil penalty assessed shall be collected in accordance with § 216.62. Notice of such final decision shall be promptly sent to the respondent by registered or certified mail, return receipt requested.

(b) If, despite the waiver of a hearing, the Secretary believes that there are material facts at issue which cannot otherwise be satisfactorily resolved, he may refer the case to an administrative law judge as provided in § 216.54.

§ 216.54 Appointment of Administrative Law Judge and Agency Representative; notice of hearing.

(a) If a written request for a hearing has been timely made, or the Secretary determines, pursuant to § 216.53(b), that a hearing should be held, the case shall be assigned to an administrative law

judge appointed pursuant to 5 U.S.C. 3105. Written notice of the assignment shall promptly be given to the respondent, together with the name and address of the person who will present evidence on behalf of the Secretary at the hearing (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the administrative law judge, with a copy served on the agency representative or the respondent as the case may be.

(b) The Secretary shall deliver to the administrative law judge a copy of the notice of proposed assessment, any response of the respondent thereto, and other materials deemed relevant to the case and shall furnish to the respondent a copy of any such materials not already in respondent's possession.

(c) The administrative law judge shall promptly cause to be served on the parties notice of the time and place of the hearing, which shall not be less than 10 days after service of the notice of hearing except in extraordinary circumstances.

§ 216.55 Failure to appear; official transcript; record for decision.

(a) If the respondent fails to appear at the hearing, he will be deemed to have consented to a decision being rendered on the record made at the hearing.

(b) The Secretary shall provide the services of an official reporter who shall make the [only] official transcript of the proceedings. Copies of the official transcript may be obtained from the official reporter upon payment of the charges therefor.

(c) The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

§ 216.56 Duties and powers of the Administrative Law Judge.

It shall be the duty of the administrative law judge to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before submission of the case, pursuant to § 216.60, to the Secretary, the administrative law judge shall have authority to

(1) Rule on offers of proof and receive relevant evidence;

(2) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(3) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct, and strike all testimony of witnesses refusing to answer any questions ruled to be proper which are related to such questions;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(5) Dispose of procedural requests, motions or similar matters and order hearings reopened prior to issuance of the administrative law judge's report and recommendations;

(6) Grant requests for appearance of witnesses or production of documents;

(7) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(8) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(9) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(10) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place;

(11) Take official notice of any matters not appearing in evidence in the record which are among the traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided*, That the parties shall be given notice, either during the hearing or by reference in the administrative law judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(12) Prepare, serve, and submit his report and recommendations pursuant to § 216.60;

(13) Take any other action necessary and not prohibited by this section.

§ 216.57 Appearance of the respondent and the agency representative.

The respondent and the agency representative shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, to conduct oral argument at the close of testimony and to introduce into the record relevant documentary or other evidence, except that the participation of either party shall be limited to the extent prescribed by the administrative law judge.

§ 216.58 Evidence.

All evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible in the hearing.

§ 216.59 Filing of briefs.

The respondent and the agency representative may submit a brief to the administrative law judge. The original and one copy of such brief shall be filed within 7 days after the close of the hearing, except that the administrative law judge may, for good cause, grant an extension of such time for filing.

§ 216.60 Decisions.

(a) After the close of the hearing and the receipt of briefs, if any, the administrative law judge shall expeditiously prepare an initial decision. The initial decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon the materials issues presented, and shall specifically find whether the respondent committed the violations alleged and, if so, the amount of the civil penalty to be assessed.

(b) The administrative law judge shall cause his initial decision to be served on the respondent and the agency representative within 20 days after the close of the hearing or the receipt of all briefs, whichever is later, and shall forthwith transfer the record in the case to the Secretary.

(c) Within 10 days of receipt of the initial decision of the administrative law judge, either the respondent or the agency representative may file with the Secretary an appeal of the initial decision. If no appeal is received within such period, the initial decision shall become the final administrative decision of the Secretary. If an appeal is received within such period, the Secretary shall render a final decision after considering the record and the appeal. Notice of an appeal by either party shall be promptly given in writing to the other party and notice of the Secretary's final decision upon appeal shall be promptly given in writing to both parties.

§ 216.61 Remission or mitigation.

For good cause shown, the Secretary may at any time remit or mitigate the assessment of a civil penalty made under the provisions of these regulations.

§ 216.62 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

§ 216.63 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to 107 of the Act, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within

30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

§ 216.64 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. The Regional Director of the National Marine Fisheries Service, or his designee, shall attempt immediately to notify the respondent by telephone, but in any case shall, within 48 hours of the receipt of the seized property, dispatch notice thereof by registered or certified mail, return receipt requested, to the respondent. Such notice shall describe the property seized, including its declared value, and state the time, place, and reason for the seizure. Such notice shall also give the name and telephone number of a person in the Regional Director's Office who may be contacted regarding such seized property.

(c) The Regional Director of the National Marine Fisheries Service, upon written request of the respondent, may permit the respondent to post a bond or other surety satisfactory to the Regional Director, in lieu of the seized property: *Provided*, That posting of bond or other surety will not be permitted in the case of a living marine mammal seized under the Act. Such bond or other surety shall be in the amount of $5,000 for each alleged violation, as determined by the Regional Director, or an amount equal to the value of the seized property, whichever is greater. Such posting of bond or other surety will not be permitted unless the Regional Director is convinced that the respondent intends to maintain possession or control of the seized property until all proceedings regarding the seized property are completed; or unless the Regional Director is convinced that release of the seized property will not adversely interfere with such proceedings or with the purposes of the Act.

§ 216.65 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

[FR Doc.74-1261 Filed 1-14-74;8:45 am]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 46]

SHELLED NUTS

Volume of Composite Fiber-Bodied Containers

Notice is given that a petition has been filed jointly by Owens-Illinois, Inc., Toledo, OH 43666, and the Planters Peanut Division of Standard Brands, Inc., 200 Jackson Ave., Suffolk, VA 23434, proposing amendment of the standard of fill of containers for shelled nuts in rigid or semirigid containers (21 CFR 46.52) to provide for determining the volume of cylindrical fiber-bodied containers intended as an alternative to metal cans for packaging shelled nuts.

Grounds given in the petition in support of the proposal are: (1) The standard includes methods for determining the volume of containers of irregular shape (including glass jars), box-shaped containers, cylindrical containers without indented ends, and cylindrical containers with indented ends (specifically metal cans with ends attached by double seams), but does not provide for determining the volume of cylindrical fiber-bodied containers with indented ends: (2) There is a significant market potential for the fiber-bodied containers; and, (3) The use of such containers would be in consonance with the current emphasis on the development of packaging material more readily biodegradable and more easily recycled.

In the development of the fiber-bodied container the petitioners state that they have attempted to duplicate the inside volume of a comparable metal can. To provide strength, however, the body wall of the fiber-bodied container is about 0.030 inch thicker than that of a metal can (0.040 inch as opposed to 0.010 inch).

The method prescribed in § 46.52(b)(2)(iii) for determining the inside volume of metal cans with indented ends considers the inside diameter to be the outside diameter at the double seam minus one-eighth inch. The petitioners state that a greater amount would have to be subtracted from the outside diameter if the same method is to be applied to the fiber-bodied containers with indented ends and having a 0.030 inch thicker wall. Accordingly, the petitioners propose that an additional 0.060 inch (one-sixteenth inch), or a total of three-sixteenths inch be subtracted from the outside diameter of the fiber-bodied containers measured at the double seam. The petitioners contend that the proposed change would have a significant effect on the calculated volume and, consequently, on the calculated percent fill of container for the shelled nuts.

The Commissioner of Food and Drugs proposes, in addition to the petitioners' proposal, certain editorial changes in § 46.52 to improve the wording of paragraph (b)(2)(iii) which sets forth methods for determining the volumes of cylindrical containers.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that § 46.52 be amended in paragraph (b)(2)(iii) as follows:

§ 46.52 Shelled nuts in rigid or semirigid containers; fill of containers; label statement of substandard fill.

* * * * *

(b) * * *

(2) * * *

(iii) For cylindrical containers, calculate the container volume in cubic centimeters as the product of the height times the square of the diameter, both measured in inches, times 12.87; or as the product of the height times the square of the diameter, both measured in centimeters, times 0.7854. For containers that do not have indented ends, use the inside height and inside diameter as the dimensions. For metal cans with indented ends (that is, metal cans with ends attached by double seams), consider the height to be the outside height at the double seam minus three-eighths inch (0.953 centimeter) and the diameter to be the outside diameter at the double seam minus one-eighth inch (0.318 centimeter). For fiber-bodied containers with indented ends (that is, fiber-bodied cans with metal ends attached by double seams), consider the height to be the outside height at the double seam minus three-eighths inch (0.953 centimeter) and the diameter to be the outside diameter at the double seam minus three-sixteenths inch (0.476 centimeter).

* * * * *

Interested persons may, on or before March 18, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6-86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: January 4, 1974.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.74-1015 Filed 1-14-74;8:45 am]

[21 CFR Part 1040]

LASER PRODUCTS

Proposed Performance Standard

Correction

In FR Doc. 73-25614, appearing at page 34084 in the issue of Monday, December 10, 1973, make the following changes:

1. In the last line of § 1040.10(b)(13), the last letter, "h", should read "r".

2. In the fifth line of § 1040.10(f)(1)(iv)(*b*), insert numeral "I" between the words "Class" and "or".

3. In the first line of § 1040.10(f)(7), the first word "ocation", should read "Location".

4. In the second line of the penultimate paragraph, "1973" should read "1974".

Social Security Administration

[20 CFR Part 416]

[Regulations No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—Determinations, Reconsiderations, Hearings, Appeals, and Judicial Review

POLICIES AND PROCEDURES

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553) that the amendments to the regulations set forth in tentative form are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments provide policies and procedures with respect to determinations and reconsideration, hearings, Appeals Council review, and the right to judicial review.

The rules set forth in the proposed regulations will be applied by the Social Security Administration in order to administer the Supplemental Security Income program during the period from January 1, 1974, when the new program becomes effective, until final regulations are adopted.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data,

views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, on or before February 14, 1974.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed amendments are to be issued under the authority contained in sections 1102, and 1601–1634, 49 Stat. 647, as amended, 86 Stat. 1465–1478; 42 U.S.C. 1302, 1381–1385.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: December 27, 1973.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 9, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Part 416 of 20 CFR Ch. III is amended as follows:

1. Sections 416.1401–1405 are added to proposed Subpart N to read as follows:

Sec.
416.1401 General.
416.1403 Determinations.
416.1404 Notice of initial determination.
416.1405 Effect of initial determination.

§ 416.1401 General.

The provisions contained in this Subpart N relate to determinations under title XVI (Supplemental Security Income) and administrative and judicial review. The provisions herein govern in determining whether a determination is subject to review and set forth the conditions and procedures for reconsideration, hearings, Appeals Council review, and the right to judicial review of initial determinations.

§ 416.1403 Determinations.

(a) *Initial determinations.* The Administration shall, with respect to the application (or conversion) of, or on behalf of, any individual who is or claims to be an eligible individual or eligible spouse and with respect to redeterminations pursuant to section 1611(c)(1) of the Act, make findings of fact setting forth pertinent conclusions and an initial determination with respect to eligibility for supplemental security income benefits and the amount of such benefits. For the purposes of this subpart, the following determinations are also considered initial determinations:

(1) A determination with respect to waiver of recovery of an overpayment;

(2) A determination that payment will be made to a representative payee on behalf of a recipient; except that such a determination with respect to an individual under age 18 or with respect to an individual adjudged legally incompetent or with respect to an individual determined to be a drug addict or an alcoholic shall not be considered an initial determination;

(3) A determination that penalties are to be imposed for failure to report the occurrence of certain events; and

(4) A determination that a recipient is a drug addict or alcoholic.

(b) *Other determinations.* Determinations with respect to presumptive disability for the payment of benefits prior to a determination of disability and eligibility for, or amount of, emergency cash advances are not considered initial determinations.

§ 416.1404 Notice of initial determination.

(a) Written notice of an initial determination shall be mailed to the party to such determination at his last known address and to his representative, if any, except that such notice shall not be required in the case of a determination that a party's eligibility for benefits has ended because of such party's death.

(b) If thei nitial determination denies, in whole or in part, the application of a party, the notice of the determination shall state the basis for such determination.

(c) If the initial determination is that a party's eligibility for benefits has ended or that benefits are to be suspended or that a reduction or adjustment is to be made in the amount of benefits, the notice of such determination shall state the basis for the determination and shall provide notice and opportunity for an evidentiary hearing before such determination is effectuated except as otherwise provided in Subpart M of this Part.

(d) Each notice of an initial determination shall inform the party of his right to the pertinent administrative appellate process.

§ 416.1405 Effect of initial determination.

The initial determination shall be final and binding upon the party or parties to such determination unless it is reconsidered in accordance with §§ 416.1408–416.1423, or it is revised.

[FR Doc.74–1194 Filed 1–14–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 56, and 61]

[CGD 73–248P]

MARINE ENGINEERING

Clarification Amendments

Correction

In FR Doc. 73–26178 in the issue of Tuesday, December 11, 1973 on page 34122 the following changes should be made:

1. In § 56.60–1, in paragraph 5.d.1. the quoted material in the third line should read "ductile iron."

2. Delete the paragraph under § 56.60–5 and substitute the following: 8. By adding the words "(High temperature applications)" to the heading of § 56.60–5.

§ 61.15–5 [Amended]

9. By amending § 61.15–5 by striking the 4th sentence in pargaraph (b) and inserting the following words: "A pipe with a nominal size of 3 inches or less is not required to be hydrostatically tested."

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73–SW–69]

ALTERATION OF TRANSITION AREA

Proposed Alteration

On November 15, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 31541) stating that the Federal Aviation Administration proposed to alter the 700-foot transition area at Minden, La.

Subsequent to publication of the notice of proposed rule making, an additional instrument approach procedure has been established on the Minden, La., NDB which will require additional controlled airspace for aircraft executing the approach procedure. The airspace docket is hereby amended to further alter the Minden, La., 700-foot transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 14, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (39 FR 440), the Minden, La., transition area is amended to read:

MINDEN, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Minden-Webster Airport (latitude 32°39'00" N., longitude 93°18'00" W.) and within 2.5 miles each side of Shreveport VORTAC 105° T (098° M) radial extending from the 5-mile radius area to 25 miles east of the VORTAC; within 3 miles each side of the 021° T (015° M) bearing from the NDB (latitude 32°38'28" N., longitude 93°18'06" W.) extending from the 5-mile radius area to 8 miles north of the NDB; within 3 miles each side of the 186° T (180° M) bearing from the NDB extending from the 5-mile radius area to 8 miles south of the NDB.

The proposed alteration of the transition area will provide controlled airspace for aircraft executing instrument approach procedures predicated on the Minden, La., NDB.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, TX., on December 28, 1973.

ALBERT H. THURBURN,
Director, Southwest Region.

[FR Doc.74-1029 Filed 1-14-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SW-85]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Camden, Ark., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before January 15, 1974, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (39 FR 440), the Camden, Ark., transition area is amended to read:

CAMDEN, ARK.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Harrell Airport (latitude 33°37'00" N., longitude 92°45'45" W.) and within 2 miles each side of the 012° T (006° M) bearing from the Camden RBN (latitude 33°37'15" N., longitude 92°45'45" W.), extending from the 5-mile radius area to 8 miles north of the RBN and 2.5 miles each side of the El Dorado, Ark., VORTAC (33°15'21.7" N., 92°44'37'6" W.) 356° T (350° M) radial extending from the 5-mile radius area to 20 miles north of the El Dorado VORTAC.

Alteration of the transition area is to provide controlled airspace for an instrument approach procedure to the Harrell Airport predicated on the El Dorado VORTAC.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, TX, on January 2, 1974.

A. H. THURBURN,
Acting Director, Southwest Region.

[FR Doc.74-1028 Filed 1-14-74;8:45 am]

Federal Railroad Administration

[49 CFR Chapter II]

[Docket No. RSOR-3, Notice 1]

PROTECTION OF RAILROAD EMPLOYEES WHILE INSPECTING, REPAIRING OR SERVICING RAILROAD EQUIPMENT

Advance Notice of Proposed Safety Regulations

The Federal Railroad Administration (FRA) is studying possible courses of action with respect to the development of safety regulations which would require railroads to take certain protective measures to assure the safety of railroad employees engaged in the inspection, repair and servicing of trains, locomotives and other railroad rolling equipment. The rules would apply to railroads that are part of the general railroad system of transportation and to railroads operating exclusively in rapid transit, commuter, or other short-haul passenger service in a metropolitan or suburban area.

BACKGROUND

The Association of American Railroads' (AAR) Standard Code of Operating Rules is the foundation for the operating rules and practices of most railroads. Using the AAR Code as a guideline, each railroad constructs, interprets and applies its rules as it sees fit according to the conditions under which it operates.

Rule 26 of the AAR Code provides:

A blue signal, displayed at one or both ends of an engine, car or train, indicates that workmen are under or about it; when thus protected it must not be coupled to or moved. Each class of workmen will display the blue signals and the same workmen are alone authorized to remove them. Other equipment must not be placed on the same track so as to intercept the view of the blue signals, without first notifying the workmen. When emergency repair work is to be done under or about engine or cars in a train and a blue signal is not available, the engineman will be notified and protection must be given those engaged in making repairs.

Most railroads have issued rules corresponding in varying degrees to these AAR rules. However, application, interpretation and observance of these rules differ greatly from railroad to railroad, and in many cases, from location to location on the same railroad. This situation results in confusion and uncertainty as to the procedures to be followed in a given situation. Experience proves that this confusion and uncertainty may have tragic consequences. Moreover, the railroads' failure to strictly enforce these protective rules has contributed to a number of serious injuries and fatalities to railroad employees working under or about rolling equipment. The FRA believes that many of these injuries and fatalities could have been avoided if adequate mandatory rules had been in effect and observed.

The FRA has recently taken initial steps toward the development of minimum standards for railroad operating rules. On May 14, 1973 the FRA published in the FEDERAL REGISTER (38 FR 12617) a notice of proposed rule making which would require railroads to provide the FRA with certain information concerning their operating practices. In addition, an advance notice of proposed rule making, requesting public participation and comment on the nature of rules to eliminate the most troublesome causes of serious train accidents resulting from human factors, was published in the FEDERAL REGISTER of August 9, 1973 (38 FR 21503). It was anticipated that the information furnished as a result of these notices would assist the FRA in the development of uniform Federal operating requirements. Rule making proceedings pursuant to these notices are still in progress.

PUBLIC PARTICIPATION REQUESTED

The purpose of this advance notice is to solicit public participation and comment on the nature of the rules to be developed by FRA to protect railroad employees who must work on, under and between locomotives and cars while performing inspection, repair and servicing tasks.

Specific advice is requested on the following points:

(1) Should these rules be promulgated in the form of minimum standards, allowing individual railroads to enforce their own more stringent rules; or should the Federal standards require absolute uniformity of application to all railroads.

(2) How may Rule 26 of the AAR Code and similar rules issued by various railroads be strengthened and clarified to improve safety?

(3) What measures should be required to protect employees working on equipment located in a hump yard? What measures should be taken to secure manual and remotely-controlled switches providing entrance to a track where employees are working on or under equipment? What controls should be exercised over the placement and removal of these protective measures? Should written records of the protective measures taken be required?

(4) What measures should be taken to protect employees working on or under equipment that is located on other than hump yard track? Should these measures be required during initial terminal and other train air brake tests?

Communications should identify the docket number and notice number and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before March 1, 1974, will be considered by FRA in development of a notice of proposed rule making. Comments received after that date will be considered so far as practicable. All comments received will be available both before and after the closing date for communications, for examination by interested persons during regular business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

This advance notice is issued under the authority of sec. 202, 84 Stat. 971, 45 U.S.C. 431; Sec. 1.49(n) of the Regulations of the Office of the Secretary of Transportation, 49 C.F.R. 1.49(n).

Issued in Washington, D.C. on January 9, 1974.

JOHN W. INGRAM,
Administrator.

[FR Doc.74-1237 Filed 1-14-74;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 73-33; Notice 1]

LAMPS, REFLECTIVE DEVICES AND ASSOCIATED EQUIPMENT

Motor Vehicle Safety Standards

Correction

In FR Doc. 74-106 appearing on page 822 in the issue of January 3, 1974 the proposed effective date in the second column, reading "February 4, 1974", should read "Thirty days after publication of the final rule in the FEDERAL REGISTER".

[49 CFR Part 573]

[Docket No. 69-31; Notice 5]

DEFECT REPORTING REQUIREMENTS

Proposed Extensions and Modifications

This notice proposes several amendments to the Defect Reports regulation, appearing in 49 CFR Part 573. The proposal would extend the requirements of the regulation to manufacturers of motor vehicle equipment, modify the information required to be reported in defect and quarterly reports including deletion of the requirement for the reporting of production figures, and make other modifications below. The Defect Reports regulation was issued February 17, 1971 (36 FR 3064).

The regulation would be amended to require the filing of defect information reports (§ 573.4) by manufacturers of motor vehicle equipment, including manufacturers of tires. When equipment has been used as original equipment in the vehicles of more than one vehicle manufacturer, a separate defect report would be required from the equipment manufacturer and from each vehicle manufacturer using the equipment. When equipment is used as original equipment in the vehicles of only one manufacturer, only one report would be required, and either the vehicle or equipment manufacturer would be permitted to submit it. Equipment manufacturers would bear sole responsibility for reporting defects in aftermarket equipment. In addition to submitting the information presently required to be submitted by vehicle manufacturers, equipment manufacturers (other than tire manufacturers) would be required to include the name and address, where known, of each distributor, dealer, and vehicle manufacturer to whom potentially defective equipment has been sold, and the number of items sold to each. The proposal will provide NHTSA with more comprehensive defect information in situations involving motor vehicle equipment, particularly in situations where the defect involves equipment not manufactured specifically for the vehicles of one vehicle manufacturer. Such situations have arisen in the past several years, usually involving multistage vehicles. In these cases, the equipment manufacturer has generally been in a better position than the individual vehicle manufacturers to determine whether a defect existed, and to provide much of the information required in the defect information report. The NHTSA has tentatively determined that the most effective way to obtain this information is to make the equipment manufacturer directly responsible for reporting it.

The proposal would also require equipment manufacturers who conduct defect notification campaigns directed at distributors, dealers, or purchasers to file quarterly reports (§ 573.5). The NHTSA recognizes that equipment manufacturers, except for tire manufacturers, are not required by law to conduct notification campaigns unless the NHTSA formally orders such a campaign pursuant to proceedings under section 113(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1402(e)). In the past, however, numerous equipment manufacturers who have discovered safety related defects in their products have voluntarily conducted campaigns. The proposed amendment would not enlarge the duties of manufacturers of equipment under the National Traffic and Motor Vehicle Safety Act to notify distributors, dealers, or purchasers, and would require the filing of quarterly reports only when such notification campaigns are conducted.

The proposed amendment would revoke the requirement that manufacturers include in quarterly reports the production figures for vehicles they manufacture. Based on its experience with this requirement, the NHTSA has decided that the information is not of sufficient benefit to justify the cost to manufacturers of providing it. Revoking the requirement will eliminate the need for filing quarterly reports by manufacturers who are not conducting notification campaigns.

The regulation would also be amended to specifically state that vehicles and equipment found not to conform to a motor vehicle safety standard, except for inconsequential nonconformities, will be considered to contain safety related defects. There is apparently some confusion as to whether a nonconformity to a safety standard is a safety related defect under the Safety Act. The NHTSA position has been that all but inconsequential nonconformities are safety related defects, and to eliminate further ambiguity this regulation would require that a nonconformity with a safety standard, except for one deemed inconsequential in its relation to safety, must be reported similarly to other safety related defects. Nonconformities that are determined not to be safety related defects would be required to be reported under a separate provision.

The requirements pertaining to the furnishing to NHTSA of notices, bulletins, and other communications to dealers and purchasers, where more than one dealer or purchaser is involved, for all defects whether or not safety related (§ 573.7), would similarly be extended to equipment manufacturers. Among equipment manufacturers, however, only manufacturers of tires would be required to maintain owner lists (§ 573.6). Tire manufacturers are the only equipment manufacturers presently required under the Safety Act to maintain the names and addresses of first purchasers.

There has been some question whether a defect report must be filed regarding vehicles in the hands of distributors and dealers. The NHTSA has taken the position that, under the existing regulatory provisions, defect reports must be filed regarding vehicles that have been delivered to dealers, as well as those that have been delivered to purchasers.

The NHTSA does not believe there is justification for continuing to allow vehicles that have left the immediate control of the manufacturer to be exempt from the reporting requirements. The practice has tended to hide from the NHTSA and the public the precise details of these motor vehicle defects. In practice, apart from situations where such defects may not have been reported at all, they have been reported in many instances only after the manufacturer has privately corrected them. This is not

consistent with the purpose of section 113 of the Safety Act, as implemented by the Defect Reports regulation, that immediate notice of defects be provided to the agency in order that it can, if it determines it necessary, make specific defect information available to the public. In the case of NHTSA, the information is closely related to its ability to monitor the correction of vehicles found to be defective. The practice further allows manufacturers to avoid compliance with section 113, and both the Defect Reports and Defect Notification (49 CFR Part 577) regulations, when it later appears that the requirements applied with respect to at least some of the vehicles involved. This notice, therefore, proposes that defect and quarterly reports include all defective vehicles and equipment that have been transported from their place of final manufacture.

The proposal also suggests some changes in the information presently supplied in both defect information and quarterly reports (apart from those changes necessitated solely by applying the requirements to equipment manufacturers). In the defect information report, the requirement for identifying affected vehicles would be modified to list separate criteria for passenger cars, vehicles other than passenger cars, and motor vehicle equipment. The revised criteria are intended to facilitate the identification of vehicles and equipment for the purposes of submitting the report. The information required as part of quarterly reports, including the number of vehicles inspected, found to contain the defect, and corrected, would be replaced by requirements that each of the following be reported: the total number of vehicles inspected, the number needing and receiving corrective action, the number needing but not receiving corrective action, and the number not needing corrective action. This information would provide a more complete picture to NHTSA of the extent of campaign completion, and resolve what appears to be some confusion as to meaning of "inspected" under the existing requirements.

Some changes have been proposed in the present language of the standard for purely editorial purposes. In addition, the address to which information is to be submitted has been revised.

In light of the above, it is proposed that 49 CFR Part 573, Defect Reports be revised to read as set forth below.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date: April 16, 1974.

Proposed effective date: 180 days from date of publication of the final rule.

Issued on January 9, 1974.

JAMES B. GREGORY,
Administrator.

PART 573—DEFECT REPORTS

Section

573.1 Scope.
573.2 Purpose.
573.3 Application.
573.4 Defect information report.
573.5 Quarterly report.
573.6 Owner lists.
573.7 Notices, bulletins, and other communications.
573.8 Address for submitting required reports and other information.

AUTHORITY: (Secs. 108, 112, 113, and 119, Public Law 89-563, 80 Stat. 718 as amended, Sections 2, 4 Public Law 91-265, 84 Stat. 262 (15 U.S.C. 1397, 1401, 1402, 1408); delegation of authority at 49 CFR 1.51) unless otherwise noted.

§ 573.1 Scope.

This part specifies requirements for manufactureres to maintain lists of owners of defective motor vehicles and tires, and for reporting to the National Highway Traffic Safety Administration safety related and other defects in motor vehicles and motor vehicle equipment, for reporting nonconformities to motor vehicle safety standards, for providing quarterly reports on defect notification campaigns, and for providing copies to NHTSA of communications regarding defects with distributors, dealers, and purchasers.

§ 573.2 Purpose.

The purpose of this part is to inform NHTSA of defective and noncomplying motor vehicles and items of motor vehicle equipment, and to obtain information for NHTSA on the adequacy of manufacturers' defect notification campaigns, on corrective action, on owner response, and to compare the defect incidence rate among different groups of vehicles.

§ 573.3 Application.

This part applies to manufacturers of complete motor vehicles, incomplete motor vehicles, and motor vehicle equipment, with respect to all vehicles and equipment that have been transported from their place of final manufacture.

In the case of vehicles or equipment manufactured outside the United States, compliance with §§ 573.4 and 573.5 by either the fabricating manufacturer or the importer of the vehicle or item of equipment with respect to a particular defect shall be considered compliance by both. In the case of vehicles manufactured in two or more stages, compliance with §§ 573.4 and 573.5 by either the manufacturer of the incomplete vehicle or one of the subsequent manufacturers of the vehicle shall be considered compliance by all manufacturers. In the case of motor vehicle equipment used as original equipment in the vehicles of only one vehicle manufacturer, compliance §§ 573.4 and 573.5 by either the vehicle or equipment manufacturer shall be considered compliance by both. For purposes of this part, a manufacturer of tires includes an owner of a tire brand name that is not owned by the tire manufacturer.

§ 573.4 Defect information report.

(a) Each manufacturer shall furnish a defect information report to the NHTSA for each defect in his vehicles or items of equipment that he or the Administrator determines to be related to motor vehicle safety, including any nonconformity with a motor vehicle safety standard except a nonconformity having an inconsequential relationship to motor vehicle safety.

(b) Each defect information report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been discovered. Information required by paragraph (c) of this section that is not available within that period shall be submitted as it becomes available. Each manufacturer submitting new information relative to a previously submitted report shall refer to the notification campaign number when a number has been assigned by the NHTSA.

(c) Each manufacturer shall include in each defect information report the information specified below. Manufacturers of motor vehicles and tires shall include only the information specified in paragraphs (c)(1) through (8) of this section. Manufacturers of motor vehicle equipment other than tires shall include, in addition, the information specified in paragraph (c)(9) of this section.

(1) The manufacturer's name: The full corporate or individual name of the fabricating manufacturer of the vehicle or item of equipment shall be spelled out, except that such abbreviations as "Co." or "Inc.", and their foreign equivalents, and the first and middle initials of individuals, may be used. In the case of imported vehicles or items of equipment, the agent designated by the fabricating manufacturer pursuant to section 110(e) of the National Traffic and Motor Vehicle Safety Act (15 USC 1399(e)) shall be also stated. If the fabricating manufacturer is a corporation that is controlled by another corporation that assumes responsibility for compliance with all requirements of this part, the name of the controlling corporation may be used.

(2) Identification of the vehicles or items of equipment potentially containing the defect.

(i) In the case of passenger cars, the identification shall be by the make, line, vehicle identification number, model year, the inclusive dates (month and year) of manufacture, and any other data necessary to describe the affected vehicles.

(ii) In the case of vehicles other than passenger cars, the identification shall be by body style or type, vehicle identification number, inclusive dates (month and year) of manufacture, GVWR or class for trucks, displacement (cc) for motorcycles, and number of passengers for buses.

(iii) In the case of items of motor vehicle equipment, the identification shall be by generic name of the component (tires, child seating systems, axles, etc.), part number, size and function if applicable, the inclusive dates (month and year) of manufacture, and any other descriptive information necessary to identify the item.

(3) The total number of vehicles or items of equipment potentially containing the defect, and the number of vehicles or items of equipment in each group identified pursuant to paragraph (c)2 of this section.

(4) The percentage of vehicles or items of equipment specified pursuant to paragraph (c)(2) of this section estimated to actually contain the defect.

(5) A description of the defect, including both a brief summary and a detailed description, with graphic aids as necessary, of the nature and physical location (if applicable) of the defect.

(6) A chronology of all principal events that were the basis for the determination that the defect related to motor vehicle safety, including all warranty claims, field service bulletins, and other information, with their dates of receipt.

(7) A statement of measures to be taken to repair the defect.

(8) Three copies of all notices, bulletins, and other communications that relate directly to the defect and are sent to more than one manufacturer, distributor, dealer, or purchaser. These copies shall be submitted to the NHTSA not later than they are initially sent to manufacturers, distributors, dealers, or purchasers.

(9) (For manufacturers of equipment other than tires) The name and address (where known) of each distributor and dealer of such manufacturer, and the name of each vehicle manufacturer, to whom a potentially defective item of equipment has been sold, the number of such items sold to each, and the date of delivery.

§ 573.5 Quarterly reports.

(a) Each manufacturer who is conducting a defect notification campaign to manufacturers, distributors, dealers, or purchasers, shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section, not more than 25 working days after the close of each calendar quarter.

(b) Each report shall include the following information, identified by and in the order of the subparagraph headings of this paragraph, with respect to each notification campaign conducted within the period of time specified in paragraph (d) of this section.

(1) The notification campaign number assigned by NHTSA.

(2) The date notification began and the date completed.

(3) The number of vehicles or items of equipment involved in the notification campaign.

(4) The number of vehicles or items of equipment estimated to contain the defect.

(5) The number of vehicles or items of equipment inspected (the sum of paragraphs (b) 6, 7, and 8 of this section.

(6) The number of vehicles or items of equipment needing and receiving corrective action.

(7) The number of vehicles or items of equipment needing but not receiving corrective action.

(8) The number of vehicles or items of equipment not needing corrective action.

(9) The number of vehicles or items of equipment determined to be unreachable for inspection due to export, theft, scrapping, failure to receive certified letter, or other reasons (specify). The number of vehicles or items of equipment in each category shall be specified.

(c) If the manufacturer determines that the original information submitted under paragraphs (b) (3) and (4) of this section is incorrect, revised figures and an explanatory note shall be submitted. If the nature of the defect prevents determination of the information required by paragraphs (b) (6), (7), and (8) of this section, the manufacturer shall include a brief explanation. Information supplied in response to paragraphs (b) (5), (6), (7), and (8) of this section shall be cumulative totals.

(d) Unless otherwise directed by the NHTSA, the information specified in paragraph (b) of this section, with respect to each notification campaign, shall be included in each quarterly report for six consecutive quarters, beginning with the quarter in which the campaign was initiated, (i.e., the date of initial mailing of the defect notification to owners) or until corrective action has been completed on all defective vehicles involved in the campaign, whichever occurs sooner.

§ 573.6 Owner lists.

Each manufacturer of motor vehicles or tires shall maintain in a form suitable for inspection, such as computer information storage devices or card files, a list of the names and addresses of each first purchaser for a purpose other than resale of his vehicles or tires, and of any other owner known to the manufacturer, for each vehicle or tire involved in a safety defect notification campaign initiated after the effective date of this part. In the case of motor vehicles, the list shall include the vehicle identification number for each vehicle. In the case of tires, the list shall include the tire identification number for each tire. Each list shall show the status of correction with respect to each vehicle or tire involved in each notification campaign, updated as of the end of each quarterly reporting period specified in § 573.5(d) of this part. Each list shall be retained, beginning with the date on which the defect information report required by § 573.4 of this part is initially submitted to the NHTSA, for 5 years in the case of a defect involving motor vehicles, and for 3 years in the case of a defect involving tires.

§ 573.7 Noncompliance with a Federal motor vehicle safety standard.

Each manufacturer shall furnish a report containing the information required with respect to defects by § 573.4 (c)(1) through (5) of this part for each noncompliance with a Federal motor vehicle safety standard that he determines to have an inconsequential relationship to motor vehicle safety. The report shall be furnished within 5 days of the determination to the Office of Standards Enforcement, National Highway Traffic Safety Administration, Washington, D.C. 20590.

§ 573.8 Notices, bulletins, and other communications.

Each manufacturer shall furnish the Administration a copy of all notices, bulletins, and other communications, other than those required to be submitted pursuant to § 573.4(c)(8) of this part, sent to more than one manufacturer, distributor, dealer, or purchaser, regarding any defect in his vehicle or items of equipment, whether or not safety-related. Copies shall be submitted monthly, not more than 5 working days after the last day of each month.

§ 573.9 Address for submitting required reports and other information.

All required reports and other information except that required pursuant to § 573.7 of this part shall be submitted to the Office of Defects Investigation, National Highway Traffic Safety Administration, Washington, D.C. 20590.

[FR Doc.74-1056 Filed 1-14-74;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, 212, 214]

[EDR 261; Docket No. 26301]

CHARTER FLIGHTS

Certain Split Charter Operations

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments to Parts 207, 208, 212 and 214 of its Economic Regulation proposed amendments to Parts 207, tions (14 CFR Parts 207, 208, 212 and 214) to prohibit direct air carriers and foreign air carriers from combining on the same aircraft one or more split charters, operated by an indirect air carrier under any of our Special Regulations, with one or more split charters of the

"prior affinity" type, involving the same person acting as travel agent for the "prior affinity" charter.

The principal features of the proposed rule are set forth in the attached explanatory statement and the proposed amendments are set forth in the proposed rules. The amendments are proposed under authority of sections 101(3), 204(a), 401 and 402 of the Federal Aviation Act of 1958, as amended (72 Stat. 737, 743, 754 and 757, as amended; 49 U.S.C. 1301, 1324, 1371 and 1372).

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before February 15, 1974, will be considered by the Board before taking final action upon the proposed rules. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

EXPLANATORY STATEMENT

Under the Board's present general charter rules applicable to direct air carriers and foreign air carriers, various specified types of passenger charters are permitted to be carried on the same aircraft as split charters (i.e., charters for less than the entire capacity of an aircraft) so long as each such split charter covers at least 40 seats.[1] These charter rules include no prohibition against combining on the same aircraft split charters of the various authorized types.

Thus, under the existing rules, the same person may engage part of an aircraft's capacity for one or more split charters as an indirect air carrier operating charters authorized by one or more of our Special Regulations,[2] and he may also engage part of the same aircraft as an agent or representative of a "prior affinity" group.[3]

It has come to our attention that enforcement problems have arisen as a result of the practice of certain persons acting as indirect air carriers with respect to split charters on aircraft for which they have also engaged split charter space as purported agents for "prior affinity" groups. Basically, the problem represents a particular ramification of the general difficulty of adequately enforcing our "prior affinity" rules,[4] in that the mere opportunity to combine this type of charter on the same aircraft with one or more of the various types of charters authorized under our Special Regulations, creates a situation conducive to unlawful charter operations. Thus, the same person is enabled to market both types of charters, acting ostensibly as a mere agent (i.e., in a non-entrepreneurial capacity) with respect to one charter and as a risk-taking indirect air carrier with respect to another charter; yet, in actuality he intends to regard the aggregate of charter space which he has engaged as available for allocation among prospective participants in either type of charter, depending upon requirements which develop in the course of his marketing, and then to revise the various charter contracts to conform to the number of seats already sold.

We have therefore tentatively concluded that it would be desirable to amend our general charter regulations so as to preclude the continuation of the above-described practice. Accordingly, the amendments to Parts 207, 208, 212 and 214 proposed herein would prohibit combining on the same aircraft one or more split charters operated by an indirect air carrier who is also acting as agent with respect to one or more split charters of the "prior affinity" type.

PROPOSED RULE

It is proposed to amend Parts 207, 208, 212, and 214 of the Board's Economic regulations (14 CFR Parts 207, 208, 212, and 214) as follows:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

1. Amend § 207.11(c)(6) by adding a further proviso at the end thereof, to read as follows:

§ 207.11 Charter flight limitations.

* * * * *

(c) * * *

(6) * * * *Provided,* That with respect to paragraph (c) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats: *And provided further,* That paragraph (c) of this section shall not be construed to apply to movements of property: *And provided further,* That with respect to paragraph (c) of this section a person engaging less than the entire capacity of an aircraft as agent or representative of a group of persons pursuant to paragraph (c)(2) of this section may not engage any space on the same aircraft as an indirect air carrier operating one or more charters pursuant to paragraph (c)(3), (4), (5), or (6) of this section.

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

2. Amend § 208.6(c)(6) by adding a further proviso at the end thereof to read as follows:

§ 208.6 Charter flight limitations.

* * * * *

(c) * * *

(6) * * * *Provided,* That with respect to paragraph (c) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats: *And provided further,* That paragraph (c) of this section shall not be construed to apply to movements of property: *And provided further,* That with respect to paragraph (c) of this section a person engaging less than the entire capacity of an aircraft as agent or representative of a group of persons pursuant to paragraph (c)(2) of this section may not engage any space on the same aircraft as an indirect air carrier operating one or more charters pursuant to paragraph (c)(3), (4), (5), or (6) of this section.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

3. Amend § 212.8(b)(6) by adding a further proviso at the end thereof to read as follows:

§ 212.8 Charter flight limitations.

* * * * *

(b) * * *

(6) * * * *Provided,* That with respect to paragraph (b) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats: *And provided further,* That paragraph (b) of this section shall not be construed to apply to movements of property: *And provided further,* That with respect to paragraph (b) of this section a person engaging less than the entire capacity of an aircraft as agent or representative of a group of persons pursuant to paragraph (b)(2) of this section may not engage any space on the same aircraft as an indirect air carrier operating one or more charters pursuant to paragraph (b)(3), (4), (5), or (6) of this section.

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

4. Amend § 214.7(b)(5) by adding a further proviso at the end thereof to read as follows:

§ 214.7 Charter flight limitations.

* * * * *

(b) * * *

(5) * * * *Provided,* That paragraph (b) of this section shall not apply with respect to any foreign air carrier to the extent that its permit authorizes it to engage in "planeload" charter foreign air transportation of persons: *And provided further,* That with respect

[1] See §§ 207.11(c), 208.6(c), 212.8(b), and 214.7(b).

[2] For example, as an overseas military personnel charter operator, under Part 372; or a travel group charter organizer, under Part 372a; or an inclusive tour operator, under Part 378.

[3] This type of charter, popularly known as an "affinity charter," is provided for in our general charter rules for direct air carriers and foreign air carriers, and does not involve the services of an indirect air carrier.

[4] We have recently adverted on various occasions to the broader problems entailed by our "prior affinity" charter rules. See, for example, the Preamble to our Travel Group Charter rule, (14 CFR Part 372a) SPR-61 (mimeo, p. 1); and the Explanatory Statement to our Proposed Rule to suspend Prior Affinity Charter Authority, EDR-237.

to paragraph (b) of this section each person engaging less than the entire capacity of the aircraft shall contract and pay for 40 or more seats: *And provided further*, That with respect to paragraph (b) of this section a person engaging less than the entire capacity of an aircraft as agent or representative of a group of persons pursuant to paragraph (b)(2) of this section may not engage any space on the same aircraft as an indirect air carrier operating one or more charters pursuant to paragraph (b)(3), (4), or (5) of this section.

[FR Doc.74-1233 Filed 1-14-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 74]

[Docket No. 19918, RM-2235]

FM RADIO BROADCAST TRANSLATOR STATIONS

Operation Requirements; Notice of Proposed Rule Making

1. The Commission has before it for consideration a petition, filed pursuant to § 1.401 of the rules, by the National Association of Broadcasters (NAB), on July 30, 1973, requesting that the Commission amend § 74.1232(d) of the Commission's rules, pertaining to FM radio broadcast translator stations, and comments filed in connection therewith.[1] Section 74.1232(d) of the Commission's rules prohibits operation of a commercial FM translator station by the licensee of the FM station whose programs are to be rebroadcast (primary station) or anyone connected therewith or financially supported directly or indirectly, by such licensee, if the translator station would provide reception to places beyond the primary station's predicted 1 mV/m contour and within the predicted 1 mV/m contour of another FM broadcast station assigned to a different community. Section 74.1201(b) of the Commission's rules defines a commercial FM translator as one which rebroadcasts the signals of a commercial FM broadcast station. By its terms, § 74.1232(d) is limited in its application to the licensees of primary stations, anyone financially supported, directly or indirectly, by such licensee, or anyone connected with such licensee. Any other applicant may be authorized to construct and operate an FM translator, wherever proposed, irrespective of the primary station's predicted 1 mV/m contour or the location of the predicted 1 mV/m contours of other FM stations.

2. NAB has expressed grave concern over the impact which FM translators, authorized to permittees who are not the licensees of their primary stations (so-called "community-type" or "non-licensee owned" translators) have on existing FM stations within whose predicted 1 mV/m contours such translators would provide reception. In essence, NAB asks that the same restrictions be applied to community-type commercial FM translators as now applies to licensee-owned translators. RMBA would go further; RMBA would enlarge the restricted zone to include the predicted 1 mV/m contour of any standard broadcast station as well as to FM broadcast stations and would make the rule applicable to all FM translators, whether commercial or noncommercial educational. All of the parties filing comments supported the petition; Communications Investment Corporation (CIC), licensee of stations KALL and KALL-FM, Salt Lake City, Utah, supported the petition to the extent that it would entail a review of the rule, but expressed reservations as to the proposed restrictions on community-type translators. CIC stated that it would frame the rule to provide that no FM translator would be authorized to provide reception to places outside its primary station's predicted 1 mV/m contour if such places would be within the predicted 1 mV/m contour of an FM station where 50 percent or more of the service area of the latter is within the predicted 1 mV/m contours of three or more FM stations. We think that the rule proposed by CIC would be unnecessarily complex and, in the end, would prove unworkable. It promises to impose an unreasonable burden on FM translator applicants, particularly on those who are not licensees of FM stations, and on the Commission's staff and would very likely provide fertile ground for litigation.

3. The situation which has given rise to the need to amend the rules evolved, we believe, from a basic difference between television translators and FM translators, a difference which we did not perceive at the time we promulgated the FM translator rules. The economics of broadcasting have generally confined construction and operation of television stations (except "satellite" stations) to major centers of population. FM stations, however, will be found in many small communities which could never hope to support a television station. In such communities, the economic status of FM stations is often marginal, at best. Consequently, FM translators in such communities pose a threat to the viability of the local FM stations which is not usually experienced with respect to television stations. It is neither our purpose nor function to protect a broadcaster against competition, for Congress intended that there be competition in the business of broadcasting ("Tele-Visual Corporation W70BC"), 34 FCC 2d 640, 24 RR 2d 145, and cases there cited; "Roger D. Olsen," FCC 73-905, 28 RR 2d 493, released September 14, 1973), but we are concerned about the viability of small community FM stations where the limited audience may be fragmented by translators carrying distant FM stations.

4. On September 23, 1970, the Commission adopted its "Report and Order" in Docket No. 17159 (FCC 70-1042, 20 RR 2d 1538, released September 29, 1970), amending Part 74 of the rules to add a new Subpart L, authorizing FM translator stations and FM booster stations.[2] These rules were based on the television translator rules with the modifications necessary to accommodate them to FM operation and to eliminate various ambiguities which appeared in the television translator rules. The new FM translator rules were fashioned largely on the basis of our experience over the years with television translators. Activity in the FM translator service was delayed for many months because of lack of application forms, lack of type-accepted equipment, and lack of awareness on the part of the public of the availability of the new service. Once these obstacles were overcome, however, application activity increased sharply.[3] A pattern began to emerge and it quickly became apparent that the FM translator service had not evolved along the same lines as the television translator service and, as a result, some of our assumptions proved to be erroneous. We believe that some modifications of the FM translator rules have now become necessary in order to rectify developing situations which we believe may not be in the public interest and do not reflect our intentions or expectations.

5. In paragraph 6 of the "Report and Order," supra, we said:

> Because we recognize that community-sponsored FM translators will be requested only where there is a real public demand, we will impose no restriction on the location of the areas they will serve.

Later, in that same paragraph, referring to restrictions which we were imposing on commercial translators, we said that we would not impose similar restrictions on the location of FM translators rebroadcasting the programs of noncommercial educational FM stations. It now appears that our assumption that community-type FM translators would be requested only where there was a real public demand was in error. It has become abundantly clear to us that FM translators are not being sought and used solely or primarily as "fill-in" devices nor as a means to provide service to unserved or underserved areas; instead, they are being sought in many cases to expand FM broadcast service far beyond the FM stations' predicted service contours and into major communities where there is already existing FM broadcast service. We are concerned about the disruptive effects of this practice as well

[1] The parties filing comments in connection with the petition are listed in Appendix I hereto.

[2] Since FM booster stations will not be authorized to anyone other than the licensee of the primary station and the area to be served is limited to that within the primary station's predicted 1 mV/m contour, FM boosters are not involved in this proceeding.

[3] As of July 1, 1971, three applications for new FM translator stations had been filed; as of July 1, 1972, 33 more had been filed; and as of July 1, 1973, an additional 82 applications for new FM translators or major changes in existing FM translators had been filed.

as possible elements of unfair competition. We do not see a problem where an FM translator is sought by a nonlicensee to provide reception to places within the primary station's predicted 1 mV/m contour, for clearly there is a legitimate interest in providing service to such areas. Where, however, the community or area to be served by the translator is beyond any area of legitimate interest of the primary station and that community or area is one which is served by more than one FM station, a serious question arises as to whether authorization of translators in such communities or areas serves or disserves the public interest.

6. Communications Investment Corporation has pointed out that, if we were to restrict all FM translators to their primary stations' predicted 1 mV/m contours except in cases where the communities to be served by the translators are not within the predicted 1 mV/m contour of any other FM stations assigned to different communities, we may be encouraging, if not promoting, monopolies in broadcasting which would be inimical to the public interest. For example, let us assume that a non-licensee seeks an FM translator to serve an area beyond primary station's predicted 1 mV/m contour and within the predicted 1 mV/m contour of an FM station which is the only radio station assigned to a community. CIC points out, correctly, we think, that the effect of such a rule would be to preserve to the lone FM station an inviolate sanctuary within which there could be no competition except from another FM station operating in that community. The rule which we would promulgate must, we think, allow the public a choice of radio signals, but should contain restrictions on translator service to areas where a choice of FM service already exits. Consequently, we propose to amend the rules to prohibit any FM translator station, whether licensee-owned or not, from serving an area beyond its primary station's predicted 1 mV/m contour where the translator would provide reception to any community or area which is within the predicted 1 mV/m contours of more than one FM broadcast station licensed to a community other than that of the primary station.

7. We have considered the plea of Rocky Mountain Broadcasters Association that the Commission examine, in this proceeding, the impact of FM translators on standard broadcast stations as well as on FM broadcast stations. Our primary concern in this proceeding is with the impact of FM translators on regular FM broadcast stations, but we do not mean to preclude consideration of the impact of FM translators on standard broadcast stations. Therefore, we invite comments with respect to whether the rule which we propose should be confined to FM stations or whether it should include all aural services. We further invite comments directed to the issue of whether the proposed restrictions should be applicable to all FM translators or whether they should be applicable only to commercial FM translators.

8. In proposing to amend these rules, we have also considered the possibility that a change of circumstances in a particular community may create a situation where retroactive application of the rules may become necessary. For example, where an FM translator is authorized to serve a community beyond its primary station's predicted 1 mV/m contour and there is no existing FM station assigned to a different community within whose predicted 1 mV/m contour the community to be served by the translator lies, but subsequently, more than one FM station commences operation in the latter community so that, at that time, the community served by the translator lies within the predicted 1 mV/m contours of the new stations, we think that we should consider whether the rules should provide for termination of operations of the translator. This concept is not novel, but rather, has long been a part of the television rules (§ 74.732(f)). We propose, therefore, to incorporate such a provision into the FM translator rules. Such a rule was not made a part of the FM translator rules originally simply because we did not visualize the need for it, but the need has now become apparent. If we adopt the proposed rule changes, we will "grandfather" those FM translator stations which were authorized prior to the date of release of this notice. Applications for FM translator stations to operate beyond their primary stations' predicted 1 mV/m contours which are pending as of the release date of this notice will be granted subject to the outcome of this proceeding and will not be "grandfathered".

9. Pursuant to this notice and the authority contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended, the Commission proposes the adoption of the rules and revisions set out below hereto.

10. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before February 19, 1974, and reply comments on or before February 28, 1974. All relevant and timely comments will be considered before final action is taken in this proceeding. The Commission, additionally, in reaching a decision in this proceeding, may also take into account other relevant information before it.

11. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

Adopted: January 3, 1974.

Released: January 10, 1974.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] VINCENT J. MULLINS, *Secretary.*

[1] Statement by Commissioner Robert E. Lee in which Chairman Burch joins filed as part of original document.

The following parties filed comments in this proceeding:

August 24, 1973: National Association of FM broadcasters (NAB)

September 13, 1973: Itasca Broadcasting Company (KOZY and KOZY-FM, Grand Rapids, Minnesota)

September 17, 1973: The Rocky Mountain Broadcasters Association (RMBA)

September 17, 1973: KFXM Broadcasting Company (KFXM, San Bernardino, California, and KDUO(FM), Riverside, California)

September 17, 1973: Communications Investment Corporation (KALL and KALL-FM, Salt Lake City, Utah) (CIC)

Section 74.1232 (d) and (h) are amended to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(d) No FM translator station will be authorized if it would provide reception to any community or area which is beyond its primary station's predicted 1 mV/m contour and within the predicted 1 mV/m contours of more than one commercial FM broadcast station assigned to a community other than that of the primary station.

NOTE 1. The 1 mV/m field strength contour of an FM radio broadcast station, for the purposes of this subpart, shall be the contour as predicted in accordance with § 73.313(a) through (d) of this chapter. See Note, § 74.1231(h).

NOTE 2. The provisions of this paragraph shall not apply to an FM translator station authorized prior to the effective date of this Order.

* * * * *

(h) Any authorization for an FM translator station issued to an applicant described in paragraph (d) of this section will be issued subject to the condition that it may be terminated at any time, upon not less than sixty (60) days written notice, where the circumstances in the community or area served are so altered as to have prohibted grant of the application had such circumstances existed at the time of its filing.

[FR Doc.74-1074 Filed 1-14-74;8:45 am]

SELECTIVE SERVICE SYSTEM

[32 CFR Part 1660]

ALTERNATE SERVICE

Termination of Proposed Rulemaking

The proposed amendments to §§ 1660.4 and 1660.7 of Selective Service Regulations (32 CFR 1660.4 and 1660.7) published in the FEDERAL REGISTER for November 7, 1973 at page 30749 will not be made effective.

BYRON V. PEPITONE, *Director.*

JANUARY 7, 1974.

[FR Doc.74-1079 Filed 1-14-74;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

STUDY GROUP 1 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Notice of Meeting

The Department of State announces a scheduled meeting of the United States Study Group on U.S. Government Regulatory Problems concerned with preparation for meetings of Study Groups of the International Telegraph and Telephone Consultative Committee of the International Telecommunication Union. The meeting will take place on Thursday, January 31, 1974, at 10 a.m. in Room 847 of the Federal Communications Commission, 1919 M Street NW., Washington, D.C.

The agenda of this first preparatory meeting following the meeting of CCITT Study Group III, "General tariff principles; lease of telecommunication circuits", held in Geneva, Switzerland January 7–11, 1974, will include a review of happenings at that meeting and in the light of that experience as well as the views developed in four preparatory meetings held between August and December, 1973 will look to the development of U.S. Contributions on questions assigned for study during the 1973–1976 study period and the development of U.S. positions on questions where it is decided not to submit U.S. Contributions. In particular, attention will be given to preparation of possible U.S. Contributions and of U.S. positions for a meeting of a Working Party of Study Group III to be devoted to possible revision of CCITT Recommendations D.1, D.2 and D.3 scheduled to be held June 10–14, 1974.

Members of the general public who desire to attend the meeting on January 31 will be admitted up to the limit of the capacity of the meeting room.

Dated: January 2, 1974.

RICHARD T. BLACK,
Chairman,
U.S. National Committee.

[FR Doc.74–1033 Filed 1–14–74;8:45 am]

[T. D. 74–22]

DEPARTMENT OF THE TREASURY

Customs Service

FOREIGN CURRENCIES

Certification of Exchange Rates

The appended table shows the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), which are applicable to the currencies of the countries listed in Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C), for December 31, 1973. This table is published for the information and use of Customs officers and others concerned, and denotes those currencies which vary by 5 per centum or more from the quarterly rate published in T.D. 73–294.

[SEAL] R. N. MARRA,
Director, Appraisement and Collections Division.

Country	Currency	December 31
Australia	Dollar	q
Austria	Schilling	$0.0503
Belgium	Franc	.024205
Canada	Dollar	q
Ceylon	Rupee	q
Denmark	Krone	.1589
Finland	Markka	q
France	Franc	.2128
Germany	Deutsche mark	.3697
India	Rupee	.1225
Ireland	Pound	q
Italy	Lira	.001644
Japan	Yen	.003568
Malaysia	Dollar	.4075
Mexico	Peso	q
Netherlands	Guilder	.3538
New Zealand	Dollar	q
Norway	Krone	q
Portugal	Escudo	.0388
Republic of South Africa	Rand	q
Spain	Peseta	q
Sweden	Krona	.2183
Switzerland	Franc	.3076
United Kingdom	Pound	q

q = Use quarterly rate published in T.D. 73–294.

[FR Doc.74–1245 Filed 1–14–74;8:45 am]

Office of the Secretary

HAND-OPERATED, PLASTIC PISTOL-GRIP TYPE LIQUID SPRAYERS, FROM JAPAN

Antidumping; Determination of Sales at Less Than Fair Value

JANUARY 14, 1974.

Information was received on January 23, 1973, that hand-operated plastic pistol-grip type liquid sprayers, from Japan were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

A Withholding of Appraisement Notice was published in the FEDERAL REGISTER of October 15, 1973 (38 FR 28576).

I hereby determine that for the reasons stated below, hand-operated, plastic pistol-grip type liquid sprayers, from Japan are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which This Determination is Based. The information before the U.S. Customs Service reveals that the proper basis for comparison is between purchase price or exporter's sales price, as appropriate, and the adjusted home market price of such or similar merchandise.

Purchase price was calculated on the basis of the f.o.b. Tokyo, Japan, unit price to the United States, with a deduction for foreign freight charges.

Exporter's sales price was calculated on the basis of the resale price to unrelated purchasers in the United States, with deductions for U.S. duties, brokerage fees, cash discount, freight charges, insurance, commissions, and selling expenses, as appropriate.

Home market price was calculated on the basis of a weighted-average delivered price, with deductions for inland freight and credit costs. Adjustments were made for differences in selling expenses, costs of packing, and in the merchandise compared, as appropriate.

Using the above criteria, purchase price and exporter's sales price, as applicable, were found to be lower than the adjusted home market price of such or similar merchandise.

The United States Tariff Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.74–1370 Filed 1–14–74;10:01 am]

DEPARTMENT OF DEFENSE

Department of the Army

U.S. ARMY COMMAND AND GENERAL STAFF COLLEGE ADVISORY COMMITTEE

Cancellation of Meeting

JANUARY 7, 1974.

The annual meeting of the U.S. Army Command and General Staff College Advisory Committee at Fort Leavenworth, Kansas, originally scheduled for 23–25 January 1974, has been postponed until further notice.

IVAN J. BIRRER,
Director, Evaluation and Review.

[FR Doc.74–1251 Filed 1–14–74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA STATE MULTIPLE-USE ADVISORY BOARD

Meeting

Notice is hereby given that the California State Multiple-Use Advisory

Board to the Bureau of Land Management will hold its annual meeting February 5–6, 1974, at the Woodlake Inn, 500 Leisure Lane, Sacramento, California. The agenda for the meeting will include consideration of wild horse and burro management, the geothermal steam program, recreation vehicle management program, King Range National Conservation Area, and progress on other Bureau programs in California.

The meeting will be open to the public Time will be available for a limited number of brief statements by members of the public. Those wishing to make an oral statement should inform the Advisory Board Chairman prior to the meeting of the Board. Any interested person may file a written statement with the Board for its consideration. The Advisory Board Chairman is Dr. G. N. Rostvold, P.O. Box 312, Claremont, CA 91711. Written statements should be submitted to the chairman, State Director (C–912), Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825.

Dated: January 8, 1974.

J. R. PENNY,
State Director.

[FR Doc.74–1046 Filed 1–14–74;8:45 am]

Geological Survey

NORTH DAKOTA

Coal Land Classification Order No. 66

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

FIFTH PRINCIPAL MERIDIAN, NORTH DAKOTA

COAL LANDS

T. 138 N., R. 87 W.,
Secs. 2 to 11, inclusive;
Secs. 14 to 23, inclusive.
T. 139 N., R. 87 W.,
Secs 7 to 11, inclusive;
Secs. 14 to 23, inclusive;
Secs. 26 to 35, inclusive.
T. 138 N., R. 88 W.,
Secs. 1 to 24, inclusive;
Secs. 26 to 35, inclusive.
T. 139 N., R. 88 W.,
Secs. 7 to 36, inclusive.
T. 139 N., R. 89 W.,
Secs. 11 to 14, inclusive;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.

The area described aggregates about 75,272 acres.

Dated: January 7, 1974.

W. A. RADLINSKI,
Acting Director.

[FR Doc.74–1072 Filed 1–14–74;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1973 CROP WHEAT LOANS

Notice of Accelerated Maturity Date

Pursuant to the provisions of §§ 1421.6 (e) and 1421.488 of 7 CFR, Part 1421, Commodity Credit Corporation hereby gives notice to producers that all 1973-crop wheat farm-stored and warehouse-stored loans outstanding on January 15, 1974, will mature on that date. CCC also gives notice that the final date of availability of 1973-crop wheat loans in all areas will be January 15, 1974, and that § 1421.485 will be amended to so state.

Unless, on or before the maturity date warehouse-stored loans are repaid, title to the unredeemed collateral shall immediately vest in CCC, without a sale thereof, on the date next succeeding the maturity date: *Provided*, That CCC will not acquire title to any commodity for which repayment has been mailed to the county ASCS office by letter postmarked (not patron postage meter date stamp) not later than the maturity date. CCC shall have no obligation to pay for any market value which the unredeemed collateral may have in excess of the loan indebtedness; i.e., the unpaid amount of the note plus interest and charges. Nothing herein shall preclude making payment to a producer of any amount by which the settlement value of the pledged commodity may exceed the principal amount of the loan. The settlement value as used herein is the loan value of the pledged commodity determined on the basis of the weight, grade, and other quality factors shown on the warehouse receipts or accompanying documents in accordance with the applicable loan rate provided in the program regulations.

This action was announced by press release on December 20, 1973. In view of the urgency of informing producers of the earlier final availability date and accelerated maturity date on such loans, compliance with the notice of proposed rulemaking would be impracticable and contrary to the public interest. Therefore, this notice is issued without compliance with such procedure.

Effective date: January 15, 1974.

Signed at Washington, D.C., on January 8, 1974.

GLENN A. WEIR,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.74–1249 Filed 1–14–74;8:45 am]

Office of the Secretary

MERCHANTS EXCHANGE OF ST. LOUIS

Order Vacating Designation as a Contract Market Under the Commodity Exchange Act

Pursuant to section 7 of the Commodity Exchange Act (7 U.S.C. 11), I hereby vacate the designation of the Merchants Exchange of St. Louis, Missouri, as a contract market for millfeeds effective April 1, 1974. The said exchange, which was designated as a contract market for millfeeds on April 13, 1962, has requested that such designation be vacated.

Issued this 10th day of January, 1974.

CLAYTON YEUTTER,
Assistant Secretary for Marketing and Consumer Services.

[FR Doc.74–1250 Filed 1–14–74;8:45 am]

Soil Conservation Service

CANBY CREEK WATERSHED PROJECT, MINN.

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a draft environmental statement for the Canby Creek Watershed Project, Lincoln, and Yellow Medicine Counties, Minnesota, USDA–SCS–ES–WS–(ADM)–74–5(D).

The environmental statement concerns a plan for watershed protection, flood prevention and recreation. The planned works of improvement include conservation land treatment, one multiple purpose floodwater retarding recreation development, two single purpose floodwater retarding structures and 0.8 mile of stream channel stabilization.

A limited supply is available at the following locations to fill single copy requests:

Soil Conservation Service, USDA, South Agricultural Building, Room 5227, 14th and Independence Avenue SW., Washington, D.C. 20250

Soil Conservation Service, USDA, 200 Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please use name and number of statement above when ordering. The estimated cost is $4.25.

Copies of the draft environmental statement have been sent for comment to various federal, state, and local agencies as outlined in the Council on Environmental Quality Guidelines. Comments are also invited from others having knowledge of or special expertise on environmental impacts.

Comments concerning the proposed action or requests for a additional information should be addressed to Mr. Harry M. Major, State Conservationist, Soil Conservation Service, 200 Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

Comments must be received on or before March 22, 1974, in order to be considered in the preparation of the final environmental statement.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

Dated: January 8, 1974.

EUGENE C. BUIE,
Acting Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.74–1078 Filed 1–14–74;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

OFFICE OF COASTAL ENVIRONMENT/ COASTAL ZONE MANAGEMENT

Notice of Meetings

Notice is hereby given that the Office of Coastal Environment, National Oce-

anic and Atmospheric Administration (NOAA), U.S. Department of Commerce, wishes to amend two locations published in the FEDERAL REGISTER on December 12, 1973, for a series of meetings for the purpose of hearing public comments on the criteria to be used by the Secretary of Commerce in approving State coastal zone management programs as specified in the Coastal Zone Management Act of 1972, P.L. 92–583. The amendments follow; there are no other changes.

Date, location and time

January 15, 1974, Conference Room, The Conrad Hilton, 720 South Michigan Avenue, Chicago, Illinois, 9 a.m. to 5 p.m.

January 24, 1974, Court of Appeals Building, Room 105, 600 Camp Street, New Orleans, Louisiana, 9 a.m. to 5 p.m.

T. P. GLEITER,
Assistant Administrator for Administration.

JANUARY 9, 1974.

[FR Doc.74–1076 Filed 1–14–74;8:45 am]

Office of the Secretary

ECONOMIC ADVISORY BOARD

Notice of Meeting

A meeting of the Department of Commerce Economic Advisory Board will be held on Thursday, January 24, 1974, from 10 a.m. to 3 p.m. in room 4832, Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C.

The purpose of the Board is to advise the Secretary of Commerce on economic policy matters. The intended agenda for this meeting is as follows:

Outlook for output and employment
1. Effects of shortages in key areas
2. Financial markets
3. Housing
4. Retail sales

A limited number of seats will be available to the public and the press. Public participation will be limited to requests for clarification of items under discussion; additional statements or inquiries may be submitted to the chairman before or after the meeting. Persons desiring to attend the meeting should advise Miss Ruby Gore, telephone 202–967–3727, by January 18, 1974.

For further information, inquiries may be directed to Mr. Basil R. Littin, Special Assistant to the Secretary for Public Affairs, room 5419, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone 202–967–3263.

SIDNEY L. JONES,
Assistant Secretary for Economic Affairs.

JANUARY 8, 1974.

[FR Doc.74–1180 Filed 1–14–74;8:45 am]

[Dept. Organization Order 40–10; revocation]

NATIONAL BUSINESS COUNCIL FOR CONSUMER AFFAIRS STAFF

Notice of Revocation

This order effective December 6, 1973, supersedes the material appearing at 37 FR 3460, February 16, 1972.

Revocation. Department Organization Order 40–10 of December 16, 1971 is hereby revoked.

Explanation. Funding for the National Business Council for Consumer Affairs Staff was not included in the Department's appropriations for 1974.

HENRY B. TURNER,
Assistant Secretary for Administration.

[FR Doc.74–1071 Filed 1–14–74;8:45 am]

[Dept. Organization Order 25–5B, Amdt. 3]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Organization and Functions

This order effective December 5, 1973, amends the material appearing at 38 FR 15980 of May 7, 1973; 38 FR 19267 of June 26, 1973; and 38 FR 26477 of September 21, 1973.

Department Organization Order 25–5B, effective May 7, 1973, is hereby further amended as follows:

Sec. 8. *Assistant Administrator for Administration,* Paragraph .06 is revised as follows:

.06 The Northwest Administrative Service Office shall provide administrative services responsive to the requirements of the National Marine Fisheries Service Northwest, Southwest, and Alaska Regions, the NOS Pacific Marine Center, and such other NOAA organizational units which can be accommodated. These services shall include personnel administration, procurement and contracting, property management, motor vehicle pool operation, and office services.

HENRY B. TURNER,
Assistant Secretary for Administration.

[FR Doc.74–1070 Filed 1–14–74;8:45 am]

[Order No. 40–1]

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Organization and Functions

This order effective November 12, 1973, supersedes the material appearing at 37 FR 25557 of December 1, 1972; 38 FR 12145 of May 9, 1973; 38 FR 26476 of September 21, 1973; and 38 FR 30015 of October 31, 1973.

SECTION 1. *PURPOSE.* .01 This order prescribes the organization and assignment of functions within the Domestic and International Business Administration (DIBA). Department Organization Order 10–3 prescribes the functions of DIBA and the scope of authority of the Assistant Secretary for Domestic and International Business.

.02 This revision places DIBA policy functions under the Deputy Assistant Secretary for International Economic Policy and Research; changes the name of the Bureau of Competitive Assessment and Business Policy to the Bureau of Domestic Commerce; and effects certain organizational realignments.

SEC. 2. *ORGANIZATION AND STRUCTURE.* The principal organization structure and line of authority of DIBA shall be as depicted in the attached organization chart (Exhibit 1). A copy of the organization chart is attached to the original of this document on file in the Office or the Federal Register.

SEC. 3. *OFFICE OF THE ASSISTANT SECRETARY FOR DOMESTIC AND INTERNATIONAL BUSINESS.* .01 The Assistant Secretary for Domestic and International Business determines policy, directs the programs and is responsible for all activities of DIBA.

0.2 The Deputy Assistant Secretary for Domestic and International Business shall perform such duties as the Assistant Secretary shall assign; shall carry out the Assistant Secretary's responsibilities in connection with the Defense Production Act of 1950 as amended and extended; and shall assume the duties of the Assistant Secretary during the latter's absence.

SEC. 4. *STAFF OFFICES.* .01 The Office of Field Operations shall serve as the Department's principal medium of contact with the business community at local levels for the functions listed below, most of which will be performed through Regional Offices and subordinate District Offices located throughout the country (Exhibit 2). A copy of this Exhibit 2 is attached to the original of this document on file in the Office of the Federal Register.

a. Ascertaining the needs and desires for information and assistance relevant to the private economy that fall within the scope of Commerce's responsibilities, arranging or participating in the effective delivery of Commerce's business-related information products, and assisting in the planning and design of additional business information;

b. Providing local assistance and service to business communities in utilizing information and related business aids of Commerce and of other agencies, and performing the field work and services involved in the programs of DIBA, and for other organizations of Commerce as may be arranged from time to time;

c. Promoting participation of the general business community in the resolution of economic and business problems of the Nation;

d. Publishing the "Commerce Business Daily";

e. Through the Regional or District Offices located in the ten Uniform Federal Regional Council Cities, serving as the Department's principal coordinator at the regional level for Federal Preparedness Planning, Crisis Management and Emergency Operations. Accordingly, the Office Directors in the ten cities (i.e., Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco and Seattle), having been designated Regional Emergency Coordinators, acting in accordance with instructions and guidance issued by the Director, Departmental Office of Emergency Readiness through the Office of Field Operations, shall represent the Secretary and shall be the principal advisory and contact point for the Department for emergency readiness matters in their respective areas; and

f. The DIBA field structure shall be as depicted in Exhibit 3 to this order. A copy of Exhibit 3 is attached to the original of this document on file in the Office of the Federal Register.

.02 The Office of Public Affairs shall advise DIBA officials and organizational elements on all public affairs and information service matters; provide centralized information services for DIBA; conduct and be responsible for all DIBA publications programs, consonant with the provisions of Departmental Organization Order 20–9, "Office of Publications"; provide speech writing and scheduling services for DIBA; and maintain liaison for DIBA with the Departmental Office of Publications, the Departmental Office of Communications, and the news and trade media consonant with the provisions of Department Organization Order 15–3, "Office of Communications."

Sec. 5. DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL ECONOMIC POLICY AND RESEARCH. The Deputy Assistant Secretary for International Economic Policy and Research who shall head the International Economic Policy and Research staff shall assist and advise the Assistant Secretary in the research, analysis and formulation of international economic and commercial programs and policies relating to trade, finance and investment, and competitive assessment; shall initiate and review research studies on developments affecting U.S. trade and commercial interests abroad and provide statistical information and analysis on the foreign trade of the U.S. and of foreign countries; shall be responsible for development and coordination of policy formulation within DIBA; represent the Department in international trade and other negotiations; and supervise the Department's interagency policy role in such organizations as the National Security Council, the Council on International Economic Policy, the Office of the Special Trade Representative, and the National Advisory Council on International Monetary and Financial Policies. The Deputy Assistant Secretary shall be assisted by a Deputy Staff Director who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The Deputy Assistant Secretary shall direct the activities of the following organizational units:

.01 The Office of International Trade Policy shall be responsible for the development and implementation of the Department's positions on all aspects of U.S. international trade policy, including trade legislation and Tariff Commission findings, trade negotiations, consultations with industry, and trade and commercial policy relations with individual countries, regional economic groupings, and international organizations. For all such trade policy matters the Office shall represent the Department on interagency committees and in international meetings on trade policy matters; analyze and comment on relevant legislative proposals; prepare the Department's positions on Tariff Commission findings, bilateral trade policy issues and bilateral trade negotiations; manage the consultations with U.S. industry in support of multilateral trade negotiations; analyze and act on international transportation and insurance problems affecting U.S. business; maintain relationships and representation with business and trade groups; and through appropriate channels make representations to foreign governments on behalf of U.S. business on the maintenance of their full rights under the terms of treaties and international agreements of the United States. In carrying out these responsibilities, the Office shall coordinate international trade policy issues among the DIBA components.

.02 The Office of International Finance and Investment shall be responsible for the development and implementation of the Department's policies (other than those assigned to the Office of Foreign Direct Investments) relating to international investment, finance, monetary affairs, U.S. and foreign taxation, standards, patent and copyright protection, and related matters arising from the international commercial and investment operations of U.S. firms.

.03 The Office of Competitive Assessment shall assess the competitiveness of American industry in domestic and international markets. This shall include studies of specific industries, sectors, and functions of the American economy and major foreign economies for the purpose of anticipating shifts in competitive conditions, and analyses of key competitive factors withn and across industries in the U.S. and abroad.

.04 The Office of Economic Research shall conduct research studies on developments affecting U.S. trade and commercial interests abroad; shall be responsible for the development and coordination of econometric models concerned with longer-term U.S. trade and investment projections; and shall serve as liaison with U.S. Government research and intelligence agencies as well as with private research groups.

SEC. 6. *Directorate of Administrative Management.* The Deputy Assistant Secretary for Administrative Management, DIBA, shall be the principal assistant and advisor to the head of DIBA on administrative management matters and shall direct the activities of the Directorate of Administrative Management—a mainline component of DIBA—which shall provide administrative management services for all DIBA organizational components. The Deputy Assistant Secretary shall be assisted by a Deputy Director who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The functions of the Directorate shall be carried out through the principal organizational elements as prescribed below:

.01 The Office of Personnel shall develop and administer personnel management programs including recruitment, placement, employee development, classification, labor-management relations, equal employment opportunity, and employee relations and provide liaison with the Departmental Office of Personnel.

.02 The Office of Management and Systems shall provide management, organization and systems analysis, including management studies and surveys and organizational planning studies; conduct a position management program; coordinate ADP systems development and the DIBA program management information system; perform the committee management, directives management, records disposition management, forms management, files management, and reports management functions for DIBA; coordinate GAO and Departmental audits within DIBA; and provide liaison with the Departmental Office of Organization and Management Systems.

.03 The Office of Administrative Services shall provide administrative and support services including personnel, physical, and document security; safety; correspondence control; parking and space management; shall provide procurement liaison and shall coordinate and process communications between the Department of Commerce and posts abroad, consistent with any administrative agreements between the Assistant Secretary for Domestic and International Business and the Assistant Secretary for Administration.

.04 The Office of Budget shall develop the DIBA program structure and program memorandum; assess program effectiveness; formulate, present, and execute the budget for DIBA; effect financial and budgetary controls; prepare budget reports; and provide liaison with the Departmental Office of Budget and Program Analysis.

SEC. 7. *BUREAU OF INTERNATIONAL COMMERCE (BIC).* The Deputy Assistant Secretary for International Commerce shall assist and advise the Assistant Secretary on export expansion, and shall serve as National Export Expansion Coordinator. Within the framework of overall DIBA goals, the Deputy Assistant Secretary shall determine the objectives of the Bureau—a mainline component of DIBA—formulate policies and programs for achieving those objectives, and direct the execution of Bureau programs. The Deputy Assistant Secretary shall be responsible for representing the interests of the Department to other agencies with regard to the official representation of U.S. commercial interests abroad. The Deputy Assistant Secretary shall be assisted by a Deputy Director who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The functions of the Bureau shall be carried out through its principal organizational elements as prescribed below:

.01 The Office of Export Development shall conduct activities in the United States designed to stimulate export marketing in all segments of the domestic economy which have the capability to export; shall develop promotional activities for increasing national awareness of export potentials and benefits, and for improving Government/business cooperation in export development; shall be the

focal point for the export expansion activities involving the DIBA district offices; shall provide information on commercial participants in world trade and furnish specific trade opportunities to U.S. businessmen; shall assist qualified U.S. firms in achieving maximum participation in major systems and development projects abroad; shall carry out the domestic trade fair and international expositions functions; and shall encourage foreign direct capital investments in the United States and licensing by foreign firms in the United States and shall provide information and other services consistent with U.S. balance of payments policies and objectives, to U.S. firms undertaking investments overseas.

.02 The Office of International Marketing shall provide overseas marketing assistance to U.S. companies through a variety of informational and promotional techniques; shall identify those product categories and industry segments that have the greatest export potential in overseas markets; shall develop and implement marketing strategies for individual countries and products, and maintain appropriate information services for all such activities; shall direct the exhibitions program at commercial trade fairs and U.S. trade centers; and shall be the focal point in DIBA for development and implementation of the country commercial program, designed to establish U.S. commercial objectives and priority programs for each country.

SEC. 8. *Bureau of Resources and Trade Assistance.* The Deputy Assistant Secretary for Resources and Trade Assistance shall determine the objectives of the Bureau—a mainline component of DIBA—formulate the policies and programs for achieving those objectives, and direct execution of the programs. The Deputy Assistant Secretary shall be assisted by a Deputy Director who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The functions of the Bureau shall be carried out through its principal organizational elements as prescribed below:

.01 The Office of Import Programs shall deal with import problems involving industries experiencing difficulties from import competition and on problems in the field of international trade in primary commodities. For such import-impacted industries, and as otherwise required, it shall maintain interagency relationships and coordinate legislative comment, international negotiations, and representation with business and trade groups. It shall process applications for duty free importation of educational, scientific and cultural materials; process applications to import foreign excess property into the United States; perform staff work pertaining to the allocation of watches and watch movements among producers in the Virgin Islands, Guam, and American Samoa; provide executive secretariat services and administrative support to the Foreign-Trade Zones Board; analyze information pertaining to international trade in selected industrial products and analyze developments affecting U.S. imports of or international trade in primary commodities; and represent the Department in U.S. Government participation in international agreements and arrangements on commodities and industrial products.

.02 The Office of Textiles shall conduct studies and analyses of the fiber, textile and apparel sector of the industrial economy; provide interpretive data on trends affecting the sector's economic stability, and recommend appropriate Government action to improve the economic position of the sector; participate in administration and negotiation of international and bilateral textile agreements; and coordinate interagency relations, legislative comment, and liaison with relevant industry and trade groups.

.03 The Office of Trade Adjustment Assistance shall recommend policies and procedures concerned with trade adjustment assistance matters and implementation of applicable provisions of the Trade Expansion Act of 1962; recommend policies and procedures of adjustment assistance to minimize the adverse effects of import competition on industry; and administer the Trade Adjustment Assistance program.

.04 The Office of Energy Programs shall be responsible for the Department's energy programs including energy policy-development, comment on legislative proposals, and coordination of existing and proposed Commerce energy programs; shall be the principal point of contact for development of policy and programs for the stimulation of domestic energy production and the development of new energy resources; and provide staff assistance to the Department's representative on the Oil Import Appeals Board.

SEC. 9. *The Bureau of Domestic Commerce.* The Deputy Assistant Secretary for Domestic Commerce shall determine the objectives of the Bureau—a mainline component of DIBA—formulate policies and programs for achieving those objectives, and direct execution of the Bureau's programs. The Deputy Assistant Secretary shall be assisted by a Deputy Director who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The functions of the Bureau shall be carried out through its principal organizational elements as prescribed below:

.01 The Office of Industrial Mobilization shall perform national defense and industrial mobilization functions, as follows: assist in achieving, through administration of priorities and allocations and other means, an adequate supply of strategic, critical, and other products and materials for defense and defense-supporting activities and essential civilian needs, including the timely completion of current military, atomic energy, and space programs for production, construction, and research development; and participate in the development of national plans to assure maximum readiness of the industrial resources of the United States, including the means for administering them, to meet any future demands of any national emergency.

.02 The Office of Domestic Business Policy shall provide a working forum of business and the Federal Government on domestic business policy issues, particularly economic and financial issues, consumer protection, labor-management relations, industrial development of marine resources and industrial pollution.

.03 The Office of Business Research and Analysis shall collect, analyze, and maintain factual data on U.S. industries, exclusive of data related to the fiber, textile, and apparel sector of the industrial economy (which is the responsibility of the Bureau of Resources and Trade Assistance). This information will be used in support of policy decisions and program actions by the Bureau of Domestic Commerce as well as other parts of the Department and the Government. The Office shall also certify U.S. firms as "bona fide motor-vehicle manufacturers" qualified to trade under the provisions of the U.S.-Canadian Automotive Agreement; prepare the President's Annual Report to Congress concerning implementation of the Automotive Products Trade Act of 1965; and monitor problem commodities for short-supply export controls.

.04 The Office of the Ombudsman for Business shall be headed by the Ombudsman for Business and shall receive and answer questions on Federal programs of interest to business; assist business by providing a focal point for receiving and handling communications involving information, complaints, criticisms and suggestions about Government activities relating to business; arrange conferences with appropriate officials within the Department and in other agencies, and follow up on referrals to determine whether further assistance is necessary and appropriate; and develop suggested changes to remedy the causes of business complaints about the Federal Government, as appropriate. In carrying out its functions, the Office shall not represent, intervene on behalf of or otherwise seek to assist business and individuals on specific matters, cases, or issues before Federal regulatory agencies or before Federal departments exercising a regulatory function with respect thereto; nor shall it participate in, intervene in regard to, or in any way seek to influence, the negotiation or renegotiation of the terms of contracts between business and the Government.

SEC. *10. THE BUREAU OF EAST-WEST TRADE.* The Deputy Assistant Secretary for East-West Trade, shall determine the objectives of the Bureau—a mainline component of DIBA—formulate policies and programs for achieving those objectives and direct execution of the programs. The Deputy Assistant Secretary shall be assisted by a *Deputy Director* who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The objectives, policies and programs of the Bureau of East-West Trade shall relate to the U.S.S.R., People's Republic of China, Poland,

Romania, Czechoslovakia, Hungary, Bulgaria, Albania, East Germany, the Soviet zone of Berlin, and certain other areas of the world with similar economic/political structures, and, where necessary for export control purposes, shall relate to other countries. The functions of the Bureau shall be carried out through its principal organizational elements as prescribed below:

.01 The Office of East-West Trade Development shall, with regard to the countries and areas specified, be responsible for the development and implementation of policy and program recommendations with regard to trade and other commercial relations; gathering information bearing on commercial relations and providing advisory services and information for U.S. firms or industrial groups; developing and disseminating studies of market potential for U.S. trade with these countries and areas; developing and executing programs, in cooperation with the Bureau of International Commerce and, as appropriate, other parts of the Department, for U.S. trade promotional events and trade missions to the specified countries and areas; coordinating activities relating to foreign commercial services and commercial representation in these countries; and providing country and area information and advice on trade and relations with such areas for the U.S. co-chairmen of joint trade commissions.

.02 The Office of East-West Trade Analysis shall, with regard to the specified countries and areas, carry out economic analyses of trade and other commercial relationships with such countries; provide analytical support for the development of trade policy and the conduct of trade negotiations; apply operations and systems analysis techniques to the problems faced by the United States in its trade with the specified countries and areas and to the impact of third country economic activities on such trade; provide for the collection, cataloging, and retrieval of relevant East-West trade information; and propose and monitor contracts for studies pertaining to East-West trade.

.03 The Office of the Joint Commission Secretariat shall provide executive secretariat services to U.S. joint commercial commissions with the U.S.S.R., Poland, and as may be established with other countries; maintain broad East-West trade contracts and two-way information flow with U.S. and foreign industry groups, trade associations, universities, and other non-governmental organizations; develop and maintain in accord with applicable department orders, and with the assistance of the Office of East-West Trade Analysis, storage and retrieval systems for information in the Bureau's areas of interest, and propose contracts for such systems; and provide coordination of Bureau-related publications, legislative comment and interagency studies.

.04 The Office of Export Administration shall administer and, in conjunction with the Departmental Office of the General Counsel, enforce the regulations and programs required to carry out Departmental responsibilities under the Export Administration Act of 1969, as amended and extended by the Equal Export Opportunity Act; develop policies and measures for the administration of U.S. exports of commodities and technical data; seek, in collaboration with other Federal agencies, the adoption by foreign countries of such controls over their exports as will assist the policies of the United States with respect to trade between the free world and the specified countries and areas, and with such other areas as national security and foreign policy may require; and provide secretariat and support services to the Advisory Committee on Export Policy and the Export Administration Review Board.

Effective: November 12, 1973.

HENRY B. TURNER,
Assistant Secretary for Administration.

[FR Doc.74-1069 Filed 1-14-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration

NATIONAL ADVISORY COUNCIL ON HEALTH MANPOWER SHORTAGE AREAS

Notice of Meeting; Correction

In FR Doc. 73-26690 appearing at page 34753 in the issue for Tuesday, December 18, 1973, the meeting dates for the National Advisory Council on Health Manpower Shortage Areas should be changed from "January 18-19" to "February 22."

Dated: January 9, 1974.

ANDREW J. CARDINALI,
Associate Administrator for Management, Health Services Administration.

[FR Doc.74-1073 Filed 1-14-74;8:45 am]

Office of Education

EDUCATION OF THE HANDICAPPED

Closing Dates for Receipt of Applications for Continuation Grants

Previous notification of closing date for receipt of applications (published at 38 FR 32153 on Wednesday, November 21, 1973), contained several errors. The purpose of this announcement is to clarify and expand that announcement pursuant to the authority contained in Part C, Part E, and Part G of the Education of the Handicapped Act (20 U.S.C. 1421-1425, 1441-1444, 1461).

1. No applications for new or continuation grants will be accepted under section 622, Centers and Services for Deaf-Blind Children.

2. Pursuant to the authority contained in Part C, Part E, and Part G of the Education of the Handicapped Act (20 U.S.C. 1423, 1441, 1442, 1461), notice is hereby given that the U.S. Commissioner of Education has established a final closing date for receipt of applications for continuation grants under sections 623, 641, 642, and 661 of the Act (early education for handicapped children; research in education, physical education and recreation for the handicapped; and model centers for children with learning disabilities).

3. Application for continuation grants must be received by the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets SW., Washington, D.C. 20202 (mailing address: U.S. Office of Education, Application Control Center, 400 Maryland Avenue, SW., Washington, D.C. 20202, Attention: 13.444 or 13.447 or 13.520), on or before February 19, 1974.

4. An application sent by mail will be considered to be received on time by the Application Control Center if:

(a) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidence by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(b) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

5. The regulations which govern assistance under these programs appear in the May 25, 1973 issue of the FEDERAL REGISTER at 38 FR 13739. A notice of proposed rulemaking which would revise these regulations was published in the FEDERAL REGISTER on October 11, 1973 at 38 FR 28230. These programs are also subject to the applicable sections of the Office of Education General Provisions Regulations, published in the FEDERAL REGISTER on November 6, 1973, at 38 FR 30654.

6. Applications may be obtained from the Bureau of Education for the Handicapped, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202 (20 U.S.C. 1423, 1441, 1442, 1461). (Catalog of Federal Domestic Assistance Program Nos. 13.443 Handicapped—Research and Demonstration; 13.444 Handicapped Early Education Assistance; 13.447 Handicapped Physical Education and Recreation Research; and 13.520 Special Programs for Children with Learning Disabilities.)

Dated: January 10, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

[FR Doc.74-1234 Filed 1-14-74;8:45 am]

Office of the Secretary

NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL SUBCOMMITTEE ON EVALUATION

Notice of Meeting

The National Professional Standards Review Council Subcommittee on Evaluation will meet on January 20, 1974. This Subcommittee was formed to review issues of importance in the implementation of Title XI, Part B, Social Security Act with respect to Evaluation. The meeting will be held at the Mayflower Hotel, Washington, D.C., from 8 p.m. to 10 p.m. Professional standards review is the procedure to assure that the services for which payment may be made under the Social Security Act are medically necessary and conform to appropriate professional standards for the provision of quality care. The Subcommittee's agenda will consist of issues related to the evaluation of performance of Professional Sandards Review Organizations. The meeting is open to the public.

Dated: January 4, 1974.

HENRY E. SIMMONS,
Executive Secretary, National Professional Standards Review Council.

[FR Doc.74-1191 Filed 1-14-74;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-74-213]

GAC PROPERTIES, INC., ET AL.

Notice of Hearing

In the matter of GAC Properties, Inc., et al. Administrative Division Docket No. 73-120.

Notice is hereby given that:

1. GAC Properties, Inc., GAC Properties, Inc. of Arizona, by S. H. Wills, Chief Executive Officer and Chairman of the Board of those corporations, their other officers and agents, hereinafter referred to as the "respondents," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1701 et seq.), received a notice of proceedings and opportunity for hearing dated December 11, 1973, which was sent to the respondents pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) informing respondents of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the Statements of Record for developments of GAC Properties, Inc. and GAC Properties, Inc. of Arizona and the failure of the respondents to amend the pertinent sections of the Statements of Record and Property Reports.

2. The respondents filed an answer received December 21, 1973, in answer to the allegations of the notice of proceedings and opportunity for a hearing.

3. In said answer the respondents requested a hearing on the allegations contained in the notice of proceedings and opportunity for a hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), *it is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the notice of proceedings and opportunity for hearing will be held before Administrative Law Judge Henry A. Milne, in Room 2153, Department of HUD, 451 7th Street SW., Washington, D.C. on January 23, 1974, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before January 18, 1974.

5. The respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceeding shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: January 9, 1974.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.74-1060 Filed 1-14-74;8:45 am]

[Docket No. N-74-214]

HILLTOP LAKES RESORT CITY, ET AL.

Notice of Hearing

In the matter of Hilltop Lakes Resort City, et al. Administrative Division Docket ED 73-8.

Notice is hereby given that:

1. Hilltop Lakes Resort City, a subdivision located in Leon County, Texas, and its agents, hereinafter referred to as "respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1701 et seq.), received a notice of suspension dated December 4, 1973, which was sent to the developer pursuant to 15 U.S.C. 1706(b) and 24 CFR 1710.45(a) informing the developer that an amendment to its statement of record submitted November 14, 1973, was not effective pursuant to the Act, and the regulations contained in 24 CFR Part 1710.

2. The respondent filed an answer December 21, 1973, in answer to the allegations of the notice of suspension dated December 4, 1973.

3. In said answer the respondent requested a hearing on the allegations contained in the notice of suspension.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(b) and 24 CFR 1720.155(b), it is hereby ordered that a public hearing for the purpose of taking evidence on the questions set forth in the notice of suspension will be held before J. Robert Brown, Administrative Law Judge, in room 2255, Department of HUD Building, 451 7th Street SW., Washington, D.C. on January 14, 1974, at 10 a.m. or as soon thereafter as the matter may be heard.

5. The Respondent is *hereby notified* that failure to appear at the above scheduled hearing shall be deemed a default and the suspension of the Statement of Record, herein identified, shall continue until vacated by order of the Secretary, pursuant to 24 CFR 1720.155.

This notice shall be served upon the respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: January 9, 1974.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.74-1061 Filed 1-14-74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-293]

BOSTON EDISON CO.

Issuance of Facility License Amendment

Notice is hereby given that the U.S. Atomic Energy Commission ("the Commission") has issued Amendment No. 2 to Facility Operating License No. DPR-35 to the Boston Edison Company to delete the unnecessary restrictive clause in section 2.B of the license which specifically itemizes each quantity of special nuclear material that may be used in connection with operation of Pilgrim Nuclear Power Station located in Plymouth County, Massachusetts. The amendment, effective as of its date of issuance, permits an increase (from 0.99 to 13.49 grams) in the amount of U-235 which Boston Edison may receive, possess, and use in the form of sealed sources in connection with operation of the facility, but does not increase the presently authorized possession limit, and is granted in accordance with Boston's application dated December 14, 1973.

The Boston Edison Company is the holder of Facility Operating License No. DPR-35 issued by the Commission for possession, use, and operation of the Pilgrim Nuclear Power Station (a boiling water type nuclear power reactor facility) at power levels up to 1998 MWt.

The Commission's Regulatory staff has found that the application complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations published in 10 CFR Chapter I, and that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The staff also has concluded that this action does not involve a significant hazards consideration since the deletion of the restrictive wording of section 2.B only permits a slightly greater amount of the U-235 to be in the form of sealed sources and does not alter the previously

approved uses and overall quantity of special nuclear material or previously approved facility operations and procedures. Consequently, public notice of proposed issuance of the amendment is not required. The Regulatory staff's evaluation of this action is contained in its Safety Evaluation that was concurrently issued with the amendment.

Copies of the application dated December 14, 1973, Amendment No. 2 to License No. DPR-35, and the Safety Evaluation are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. Single copies of the license amendment and Safety Evaluation may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 7th day of January 1974.

For the Atomic Energy Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Directorate of Licensing.

[FR Doc.74-1183 Filed 1-14-74;8:45 am]

[Docket Nos. 50-413; 50-414]

DUKE POWER CO.

Notice of Evidentiary Hearing

On December 1, 1972, a "notice of hearing on application for construction permits" in the above-entitled matter was published in the FEDERAL REGISTER (37 FR 25560). The notice advised that a hearing would be held upon the issues designated therein, at a time and place to be set by the Atomic Safety and Licensing Board, to consider the application filed by the Duke Power Company for construction permits for two pressurized water nuclear reactors, designated as the Catawba Nuclear Station, Units 1 and 2, which were proposed to be located on the shore of Lake Wylie in York County, South Carolina.

The matter having come before this Atomic Safety and Licensing Board at prehearing conferences heretofore held and in telephone conferences with the parties, it was agreed that the Evidentiary Hearing in this proceeding would commence in Rock Hill, South Carolina, on January 23, 1974.

Wherefore, *it is ordered*, In accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission, that evidentiary hearings in this proceeding shall convene at 10 a.m. local time, on Wednesday, January 23, 1974, at the Holiday Inn, Highway No. 21, Anderson Road in Rock Hill, South Carolina.

The public is invited to attend the hearing. The following persons and organizations, having been permitted by the Board's Order of September 6, 1973, to make limited appearances at the hearing in accordance with the provisions of § 2.715(a) of the Commission's rules (10 CFR 2.715(a)), will be afforded an opportunity to state their views or to file a written statement on the first day of the hearings, or at such other times as the Licensing Board may for good cause designate: The Greater Rock Hill Chamber of Commerce, Metrolina Environmental Concern Association, Mrs. Sandra Reed, the Supervisor of York County, S. M. Mendenhall, Mr. John A. Freeman, Mr. Benton Hamrick, and Mr. Melvin Burris.

In addition, the State of South Carolina will be permitted to participate in the proceeding in accordance with the provisions of § 2.715(c) of the rules (10 CFR 2.715(c)).

It is so ordered.

Issued at Washington, D.C., this 10th day of January, 1974.

ATOMIC SAFETY AND LICENSING BOARD,
MAX D. PAGLIN,
Chairman.

[FR Doc.74-1182 Filed 1-14-74;8:45 am]

PHILADELPHIA ELECTRIC CO. ET AL.

Peach Bottom Atomic Power Station; Order Extending Construction Completion Date

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company are the holders of Provisional Construction Permit No. CPPR-38 issued by the Commission on January 31, 1968, for construction of Unit 3 of the Peach Bottom Atomic Power Station presently under construction at the Companies' site in Peach Bottom, York County, Pennsylvania.

On October 23, 1973, the Philadelphia Electric Company filed a request for an extension of the completion date because construction has been delayed due to (1) increased project scope, and (2) extension of schedule for the Unit 2 construction and start-up activities. On November 20, 1973, and December 19, 1973, the Philadelphia Electric Company provided a more detailed breakdown of the factors which caused construction delays on Unit 3.

This action involves no significant hazards considerations; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in a staff's evaluation, dated January 4, 1974.

It is hereby ordered, That the latest completion date for CPPR-38 be extended from November 30, 1973, to May 31, 1974.

Date of Issuance: January 9, 1974.

FOR THE ATOMIC ENERGY COMMISSION.

RICHARD C. DEYOUNG,
Assistant Director for Light Water Reactors Projects Group 1, Directorate of Licensing.

[FR Doc.74-1184 Filed 1-14-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 25761]

HAWAIIAN AIRLINES, INC., AND ALOHA AIRLINES, INC.

Notice of Reassignment of Hearing

The hearing in this proceeding, heretofore assigned to be held before Administrative Law Judge Harry H. Schneider on January 29, 1974, at 10:00 a.m. (local time) in Federal Building Courtroom 329, at 335 Merchant Street, Honolulu, Hawaii (38 FR 32600, November 27, 1973), is hereby reassigned to be held before Administrative Law Judge Greer M. Murphy at the same time and place. Future communications concerning the proceeding should be addressed to Judge Murphy.

Dated at Washington, D.C., January 9, 1974.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.74-1232 Filed 1-14-74;8:45 am]

COST OF LIVING COUNCIL

FOOD INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on January 17, 1974.

The agenda will be divided into two subjects. The first segment, consisting of discussions of food industry wage cases, will be open to the public on a first-come, first-served basis, at 10 a.m., in Conference Room 8202, 2025 M Street, NW., Washington, D.C. The second part of the agenda, beginning at approximately 3:30 p.m., will consist exclusively of discussions of a specific document which I have determined falls within exemption (5) of 5 U.S.C. 552(b). The document is a Cost of Living Council staff paper containing opinions and recommendations with respect to future decontrol of the food industry.

Since the second part of this meeting will consist of discussions of a document which falls within exemption (5) of 5 U.S.C. 552(b), pursuant to authority granted me by Cost of Living Council Order 25, I have determined that this portion of the meeting, beginning at approximately 3:30 p.m., itself falls within exemption (5) of 5 U.S.C. 552(b) and it is essential to close this part of the meeting to protect the free exchange of internal views and to avoid interference with the operation of the Committee.

Issued in Washington, D.C., on January 11, 1974.

HENRY H. PERRITT, JR.,
Executive Secretary, Cost of Living Council.

[FR Doc.74-1339 Filed 1-11-74;4:45 pm]

DELAWARE RIVER BASIN COMMISSION

LIMERICK GENERATING STATION

Notice of Public Hearing [1]

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 23, 1974, in the grand ballroom of the Sheraton Valley Forge Hotel at the intersection of Route 363 and First Avenue, King of Prussia, Pa. (exit 24 from Pennsylvania Turnpike) beginning at 1:30 p.m. The subject of the hearing will be a proposal to amend the Commission's Comprehensive Plan so as to include the Limerick project. The focus of the Commission's interest will be on the water resources aspects as summarized below.

Limerick Generating Station: A nuclear-fueled electric generating station proposed by the Philadelphia Electric Company. Two generating units, with an electrical capacity of 1,100,000 kilowatts each, are scheduled for construction on the east bank of the Schuylkill River about two miles southwest of Pottstown in Limerick Township, Montgomery County, Pennsylvania. Each nuclear system includes a single cycle, forced circulation boiling water reactor, producing steam for direct use in the steam turbine. Two hyperbolic, natural draft cooling towers, each approximately 500 feet high, will provide the necessary cooling. Two water intake structures are proposed, one on the Perkiomen Creek and one on the Schuylkill River. Maximum water requirements are estimated at 55 million gallons per day, of which 42 million gallons per day will be evaporated to the atmosphere.

Documents relating to the Limerick Generating Station project may be examined at the Commission's offices. All persons wishing to testify are requested to notify the Secretary to the Commission prior to 5 p.m. on January 22. Written statements will be accepted into the record if submitted no later than February 13, 1974.

DAWES THOMPSON,
Acting Secretary.

JANUARY 4, 1974.

[FR Doc.74-1023 Filed 1-14-74;8:45 am]

[1] This supersedes the previous notice of December 27, 1973, which contained numerical errors in the description of the station and in volumes of water to be used.

FEDERAL MARITIME COMMISSION

IBERIAN/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Petition

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015 or at the Field Offices located at New York, N.Y., New Orleans, Louisiana and San Francisco, California. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1405 I Street N.W., Washington, D.C. 20573, on or before Monday, February 4, 1974. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition, (as indicated hereinafter), and the statement should indicate that this has been done.

IBERIAN/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Agreement Filed by:

Stanley O. Sher, Esq.
Billing, Sher & Jones, P. C.
Suite 300
1126 Sixteenth Street, NW.
Washington, D.C. 20036

Agreement No. 9615 D.R.-3 modifies the Conference's Merchant's Freight Contract to include cargo moving from points in Continental Europe.

By Order of the Federal Maritime Commission.

Dated: January 9, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-1188 Filed 1-14-74;8:45 am]

JUMPE FORWARDERS CORP. ET AL.

Applications for License

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Jumpe Forwarders Corp.
1225 S.W. 90th Avenue
Miami, Florida 33144

OFFICERS

Gerarde Martinez, President
Julie O. Martinez, Vice President/Treasurer
Julie Cesar Martinez, Secretary

Guy R. Porcella d/b/a
Porcella International
4471 N.W. 36th Street
Miami Springs, Florida 33166

International Freight Services, Inc.
6519 Eastland Road
Brook Park, Ohio 44142

OFFICER

Rafael Swift, President

Gerald Lewis Gumbert d/b/a
G. L. Gumbert Company
2360 Dayton Street
Aurora, Colorado 80010

La Borincana Travel Agency, Inc.
403 Massachusetts Avenue
Cambridge, Massachusetts 02139

OFFICERS AND DIRECTORS

Rafael Benzan, President
Altagracia Benzan, Clerk & Director
Maria Benzan, Director

Ralph Maldonado d/b/a
Glory International
259 Dover Green
Staten Island, New York 10312

By the Federal Maritime Commission.

Dated: January 7, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-1187 Filed 1-14-74;8:45 am]

[License No. 991]

J. P. HARLE FORWARDING CO.

Order of Revocation

On December 7, 1973, the Federal Maritime Commission received notification that J. P. Harle Forwarding Company Of La., Inc., 420 Richards Building, New Orleans, Louisiana 70112 wishes to voluntarily surrender its Independent Ocean Freight Forwarder License No. 991 for revocation, effective January 1, 1974.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) Section 7.04(f) (dated 9/15/73);

It is ordered, That Independent Ocean Freight Forwarder License No. 991 be returned to the Commission for cancellation.

It is further ordered, That the Independent Ocean Freight Forwarder License of J. P. Harle Forwarding Company Of La., Inc. be and is hereby revoked effective January 1, 1974, without prejudice to reapply for a license at a later date.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon J. P. Harle Forwarding Company Of La., Inc.

AARON W. REESE,
Managing Director.

[FR Doc.74-1190 Filed 1-14-74;8:45 am]

[License No. 1389]

TIMOTHY F. KANE

Order of Revocation

By letter of December 18, 1973, the Federal Maritime Commission received notification that Timothy F. Kane, 25 SE Second Avenue, Miami, Florida 33131 wishes to voluntarily surrender its Independent Ocean Freight Forwarder License No. 1389 for revocation, effective January 23, 1974.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) section 7.04(f) (dated 9/15/73);

It is ordered, That Independent Ocean Freight Forwarder License No. 1389 be returned to the Commission for cancellation.

It is further ordered, That the Independent Ocean Freight Forwarder License of Timothy F. Kane be and is hereby revoked effective January 23, 1974, without prejudice to reapply for a license at a later date.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Timothy F. Kane.

AARON W. REESE,
Managing Director.

[FR Doc.74-1189 Filed 1-14-74;8:45 am]

TRANSCONEX INTERNATIONAL INC. ET AL.

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1405 I Street, NW., Room 1015; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 4, 1974. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

Dean R. Putnam, President, International Tariff Services, Inc., 815 15th Street NW., Washington, D.C. 20005.

Transconex International, Inc. and Econocaribe Consolidators, Inc. describe themselves as a non-vessel operating common carriers by water, have filed the following agreements:

(1) Agreement No. 10101 will permit either to "accept and receipt shipments in the name of and on behalf of" the other, and to consolidate and forward such shipments with those of the receiving carrier in the trade from ports in the United States to ports in the Caribbean and Central America pursuant to the terms of the agreement; and

(2) Agreement No. 10104 will permit them to confer, discuss and agree upon "rates, charges, classifications, practices and related tariff provisions" with respect to their shipments moving between United States ports and Central America, the Dominican Republic, the Netherlands Antilles, Haiti and Jamaica. Each party retains the right to act independently of the other upon forty-eight hours' notice to the other.

Notice of agreements filed by:

J. D. Straton, Manager, Rates & Conferences, Moore-McCormack Lines, Incorporated, 2 Broadway, New York, New York 10004.

Agreement No. 10028-1, among Moore-McCormack Lines, Incorporated, Companhia de Navegacao Lloyd Brasileiro and Companhia de Navegacao Maritima Netumar S/A, modifies the approved basic agreement (a supplementary arrangement entered into pursuant to Agreement No. 10027, a pooling and sailing agreement) covering cargo moving in the northbound trade from Brazilian ports within the Porto Alegre/Recife range, both inclusive, to ports on the Atlantic Coast of the United States, by amending (1) the first paragraph thereof to provide that Companhia de Navegacao Lloyd Brasileiro and Companhia de Navegacao Maritima Netumar S/A will participate and operate as separate parties thereunder, rather than as one party as at present; (2) Article 1 to decrease and/or increase the number of minimum calls to be made by the parties at specified Brazilian ports, and to change the pool computation period from two to four months; (3) Article 3 to establish a separate accounting and scope for containerized cargoes; and (4) Article 4 to set the "carrying rate" at 50 percent for containerized cargo, and to change the formula for the settlement of revenues derived from the carriage of pooled general cargo and pooled containerized cargo.

Notice of agreement filed by:

Stanley O. Sher, Esq., Billig, Sher & Jones, P. C., Suite 300, 1126 Sixteenth Street, N.W., Washington, D.C. 20036.

Agreement No. 9615-9, Iberian U.S. North Atlantic Westbound Freight Conference, expands the geographic scope of the basic agreement of the above-named Conference to cover transportation from points in Continental Europe.

Notice of agreement filed by:

James P. Horn, President, American Export Lines, Inc., 17 Battery Place, New York, New York 10004.

Agreement No. 10106, American Export Lines, Inc., and Italian Lines, provides for the parties to discuss possible future cooperation with respect to the operation of their respective services in the U.S. Atlantic Mediterranean trade for the purpose of achieving maximum utilization of their container vessels, maximum rationalization of their respective services, and maximum efficiency in their use of fuel oil. It also provides for American Export Lines to assist Italian Lines in the establishment of its container service in this trade.

Notice of agreement filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Agreement No. 14-38, entered into by the member lines of the Trans Pacific Freight Conference (Hong Kong), amends (1) Article 7 of the approved conference agreement to eliminate the reference to cargo originating from China; and (2) Article 12(1) thereof entitled "Admission to Membership", to clarify the understanding of the member lines that (a) the term "common carrier by water", as used in that provision refers to "a vessel operating common carrier by water", and (b) the term "regularly operating in the trade" means "the operation of vessels by the common carrier applicant across the Pacific Ocean."

Notice of agreement filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Agreement No. 5700-18, entered into by the member lines of the New York Freight Bureau (Hong Kong) amends Paragraph 1 of Article 12(a) of the approved conference agreement entitled "Admission to Membership", to clarify the understanding of the member lines that (1) the term "common carrier by water", as used in that provision refers to "a vessel operating common carrier by water", and (2) that the term "regularly operating in the trade" means "the operation of vessels by the common carrier applicant across the Pacific Ocean."

By order of the Federal Maritime Commission.

Dated: January 10, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-1235 Filed 1-14-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-8550]

APPALACHIAN POWER CO., ET AL.

Notice of Changes in Rates and Charges

JANUARY 4, 1974.

American Electric Power Service Corporation (AEP) on December 12, 1973,

tendered for filing on behalf of its affiliates, Appalachian Power Company (Appalachian), Ohio Power Company (Ohio) and Wheeling Electric Company (Wheeling) an agreement among the three AEP affiliates and Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn) dated December 1, 1973. The agreement is entitled Modification No. 1 to Operating Agreement dated June 1, 1971. The Operating Agreement has been designated as Appalachian Rate Schedule FPC No. 55, Ohio Rate Schedule FPC No. 73, and Wheeling Rate Schedule FPC No. 5.

Modification No. 1, essentially, does two things. It increases demand charges for both Short Term Power under Schedule C and for Limited Term Power and Energy under Schedule D to the Operating Agreement, proposed to become effective January 1, 1974. It also adds a new Schedule F—Fuel Conservation Power and Energy, proposed to become effective as of December 15, 1973.

The demand charge for Short Term Power would be increased from $0.40 to $0.45 per kilowatt per week, and the demand charge for Limited Term Power would be increased from $2.15 to $2.50 per kilowatt per month. Applicants state that no comparison of transactions and revenues in the past twelve months is possible since there were no Short Term or Limited Term transactions between the parties that would be affected by the proposed rates.

In support of the new Schedule F, Applicants state that the 1971 Operating Agreement does not permit the degree of flexibility as to the transfer of power and energy for purposes of conserving fossil fuel which is now in short supply, particularly petroleum. The new schedule is designed to permit either of the parties that may be in a favorable position with respect to certain fuels at a given time, or from time to time, to transfer fuel "by wire" to the other and to interconnected third parties. The schedule which resulted from discussions and negotiations between the parties, provides a capacity charge of 20 cents per kilowatt-week for 72 hours of weekly service. Applicants state that the parties recognize that the service is (1) reciprocal and must result in the realization of mutual benefits, (2) subject to changing conditions and (3) to be provided only if the party requested to supply such service can provide it without an economic burden. Waiver is requested of any requirements not already complied with under § 35.13 of the Commission's regulations under the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 10, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1206 Filed 1-14-74;8:45 am]

[Docket No. CP74-170]

CASCADE NATURAL GAS CORP.

Notice of Application for Declaration of Exemption

JANUARY 4, 1974.

Take notice that on December 13, 1973, Cascade Natural Gas Corporation (Applicant), 222 Fairview Avenue North, Seattle, Washington 98109, filed in Docket No. CP74-170 an application pursuant to section 1(c) of the Natural Gas Act for an exemption from the provisions of the Natural Gas Act and the regulations of the Commission thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that Applicant is a corporation organized and existing under the laws of the State of Washington and is duly authorized to do business in the States of Washington, Oregon, Utah, and Colorado. In addition to its intrastate operations Applicant was authorized by Commission order issued October 21, 1965, in Docket No. CP64-220 (34 FPC 1181) to construct and operate an interstate pipeline system in the States of Colorado and Utah.

Applicant requests an exemption from Commission regulation as to its distribution operations in the States of Washington and Oregon. Applicant states the jurisdictional status of its intrastate pipeline system and operations will not by affected by the exemption sought herein.

The application states that Applicant is a public utility engaged in the operation of distribution systems which distribute and sell natural gas to ultimate consumers in 75 communities in Washington and Oregon. Applicant states it purchases its entire gas supply for its distribution operations from the Northwest Division System of El Paso Natural Gas Company, which gas is received by Applicant within the boundary of the States of Washington and Oregon, and consumed within the state where it is so received. Applicant states further that its public utility operations in the States of Washington and Oregon are subject to the jurisdiction of the Washington Utilities and Transportation Commission and the Oregon Public Utility Commissioner, respectively, which jurisdiction and regulation covers Applicant's rates, service, and facilities. Applicant states that such jurisdiction is being exercised and therefore requests the Commission to exempt Applicant's distribution operations in Washington and Oregon from the provisions of the Natural Gas Act and the rules and regulations thereunder.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1211 Filed 1-14-74;8:45 am]

[Project No. 201]

CITY OF PETERSBURG, ALASKA

Order Granting Extension of Time To File Application for License

JANUARY 2, 1974.

The City of Petersburg, Alaska, Licensee for its constructed Crystal Lake Project No. 201, filed with the Commission on October 25, 1973, a request to extend, for 3 years, until November 12, 1976, the deadline for submitting its application for relicensing, originally due November 12, 1973. The fifty year license for Project No. 201 expires November 12, 1974.

The Petersburg Electric Utility Board has initiated studies of the feasibility of further development of the hydroelectric potential of subject project. Consulting engineers have been authorized to undertake these studies.

Since Project No. 201 is constructed and studies have already begun, a two year extension should prove adequate for licensee to complete its survey and submit findings and its application for relicensing to the Commission.

If at the end of the time extension granted, circumstances and reasonable grounds exist for further extension, the Commission will consider an appropriate motion timely filed under § 1.13(d) of the Commission's rules of practice and procedure.

The Commission finds:

It is in the public interest to grant the City of Petersburg an extension of time, expiring on November 12, 1975, in which to file its application for relicensing of constructed Project No. 201.

The Commission orders:

The City of Petersburg, Alaska, is granted an extension of time, expiring on November 12, 1975, in which to file its

application for relicensing of constructed Project No. 201.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-1213 Filed 1-14-74;8:45 am]

[Docket Nos. CP73-223, CP73-342, CP74-4 and CP74-100]

COLUMBIA GAS TRANSMISSION CORP.

Order Granting Withdrawals, Granting Conditional Authorizations, Denying in Part Motion To Expedite Scheduling Formal Hearing, and Establishing Procedures

JANUARY 7, 1974.

On February 20, 1973, Columbia Gas Transmission Corporation (Columbia Gas) filed in Docket No. CP73-223 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and delivery of synthetic gas as mixed with natural gas. Columbia Gas' application reflects a restructuring of a proposal by Columbia LNG Corporation (Columbia LNG), a subsidiary of Columbia Gas, in Docket No. CP72-8 to sell and deliver synthetic gas to Columbia Gas. The gas therein was to be manufactured from liquid hydrocarbons at Columbia LNG's Green Springs, Ohio, reforming plant. On December 14, 1972, Columbia LNG, relying upon Commission Opinion No. 637,[1] which held that synthetic gas is not "natural gas" within the meaning of the Natural Gas Act, filed a notice of withdrawal of its application in Docket No. CP72-8. On July 20, 1973, the Presiding Administrative Law Judge, to whom the matter was referred by the Commission, issued an Initial Decision holding that the proposal in that docket was not subject to the Commission's jurisdiction. On October 26, 1973, the Commission issued Opinion No. 669, wherein it affirmed the Presiding Judge's Initial Decision.

In its application in Docket No. CP73-223, Columbia Gas proposes to accept for the account of its customers their respective shares of synthetic gas to be purchased by such customers from Columbia LNG at Green Springs, and to deliver equivalent volumes of a synthetic gas-natural gas mixture to the customers. The estimated annual deliveries by Columbia LNG are 75,600,000 Mcf at an average daily rate of 216,000 to commence January 1, 1974.

Columbia Gas proposes to charge a one-part rate, based on its average system-wide transmission and storage costs as reflected in its currently-effective rate, for the delivery of the mixed gas, and states that the applicant will be under no obligation to deliver gas to customers who are receiving their Total Daily Entitlement under the rate schedules contained in applicant's FPC Gas Tariff.

[1] Issued December 7, 1972, in *Algonquin SNG, Incorporated, et al.*, Docket Nos. CP72-35, *et al.*

Interventions were granted in Docket No. CP73-223 to all those who petitioned to intervene, by order issued August 3, 1973, which order also denied Columbia Gas' "Motion for Conference to Expedite Certification Without a Hearing," filed May 31, 1973.

Columbia Gas also filed in Docket Nos. CP73-342 and CP74-100 on June 27, 1973, and October 25, 1973, respectively, applications pursuant to section 7(c) of the Natural Gas Act for certificates authorizing the exchange and transportation of synthetic gas as mixed with natural gas, and construction of appurtenant facilities. These proposals, similar in nature to Columbia Gas' above-described proposal in Docket No. CP73-223, would have involved synthetic gas to be produced by reforming plants to be constructed and operated by subsidiaries of Apco Oil Corporation, and Crown Central Petroleum Corporation, respectively. On November 19, 1973, Columbia Gas filed a Notice of Withdrawal of Application, pursuant to § 1.11(d) of the Commission's rules of practice and procedure (Rules), in each of these two proceedings. Columbia Gas' notices of withdrawal request a Commission order permitting such withdrawals. Under § 1.11(d) of the rules, such a notice effects withdrawal within 30 days in a proceeding wherein no hearing has yet been convened, without the necessity of a Commission order. Although no hearing has been convened in Docket Nos. CP73-342 and CP74-100, we shall herein order that such withdrawal be effected so as to expedite the withdrawal of Columbia Gas' applications.

On November 21, 1973, Columbia Gas filed a Motion for Expedited Procedure in Docket Nos. CP73-223 and CP74-4.[2] In its motion, Columbia Gas requests the Commission to issue an order directing a prehearing conference to be convened on or before December 3, 1973, authorizing the Presiding Administrative Law Judge to incorporate the record of CP72-8 in the proceedings to the extent it is applicable, and directing the Presiding Administrative Law Judge to proceed in accordance with the shortened procedure provided for in Section 1.32 of the Rules. Columbia Gas' motion cites the current energy crisis as the primary reason for the need for expedition. In addition, the motion notes that Columbia LNG will incur take-or-pay obligations commencing January 1, 1974.

The Commission believes that the rate issue raised by the application in Docket No. CP73-223 requires that a hearing be convened in the above-entitled proceeding, and that Columbia Gas' request for shortened procedure with respect to this docket is inappropriate. We shall, however, grant authorization allowing Columbia Gas to commence the operation proposed in Docket No. CP73-223, conditional upon (1) Columbia Gas' transportation of mixed natural and artificial gas shall not impair Columbia Gas' present service to present customers and (2) the rate to be charged for such service shall be determined at the hearing hereinafter provided for.

[2] Insofar as the motion addressed matters involved in Docket No. CP74-4, authorization was granted by order issued November 30, 1973, in that docket.

The Commission finds:

(1) Good cause exists for ordering the withdrawal of Columbia Gas' applications in Docket Nos. CP73-342 and CP74-100.

(2) Columbia Gas' Motion for Expedited Procedure, filed November 21, 1973, in Docket Nos. CP73-223 and CP74-4, should be denied insofar as it requests expedition with respect to Docket No. CP73-223.

(3) It is necessary in the public interest that the consolidated proceeding involving rate issues involved in the application in Docket No. CP73-223 be set for hearing.

(4) Columbia Gas is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(5) The transportation of natural gas hereinbefore described, as more fully described in the applications in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission; and such transportation by applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The construction and operation of facilities by Columbia Gas and the transportation of natural gas by applicant is required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) Certificates of public convenience and necessity are issued authorizing Columbia Gas in Docket No. CP73-223 to transport natural gas in interstate commerce, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order and specifically limited to such transportation and facilities.

(B) The rates demanded, charged and received by Columbia Gas for the rendition of service authorized in paragraph (A) above shall be determined at a public hearing.

(C) The certificates granted by paragraph (A) above are conditioned upon applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and upon applicant's

rendition of the transportation service herein authorized without impairment of applicant's pre-existing service and sales.

(D) Permission is hereby granted for the withdrawal of the applications filed by Columbia Gas in Docket No. CP73–342 on June 27, 1973 and in Docket No. CP74–100 on October 25, 1973.

(E) Columbia Gas is hereby authorized to commence the operation proposed in Docket No. CP73–223, subject to its establishing at formal hearing scheduled herein that the rate to be charged therefor is just and reasonable and otherwise conforms to the requirements of Sections 4 and 5 of the Natural Gas Act.

(F) Columbia Gas' Motion for Expedited Procedure, filed in Docket Nos. CP73–223 and CP74–4 on November 21, 1973, is denied with respect to Docket No. CP73–223.

(G) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR I), a public hearing on the rate issues presented by the applications filed in CP73–223 will be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C., commencing at 10:00 a.m. on April 15, 1974.

(H) Applicant and any interveners will file and serve on all other parties, the Commission Staff, and the Presiding Administrative Law Judge their direct evidence and testimony on or before March 15, 1974.

(I) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose [See Delegation of Authority, 18 CFR 3.59(d)], shall preside at the hearing in this consolidated proceeding, and prescribe relevant procedural matters not herein provided.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1214 Filed 1–14–74;8:45 am]

[Docket No. CI74–102]

EXXON CORP.

Notice of Extension of Time and Postponement of Hearing

JANUARY 4, 1974.

On December 11, 1973, an order was issued fixing a hearing in the above-designated matter. On December 21, 1973, Exxon requested a postponement of the procedural dates. The request states that all parties including staff counsel concur in the motion.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of testimony and exhibits by applicant and supporting parties, January 28, 1974.

Hearing, February 13, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1228 Filed 1–14–74;8:45 am]

[Docket No. E–8121]

GULF STATES UTILITIES CO.

Notice of Further Extension of Time and Postponement of Hearing

JANUARY 4, 1974.

On December 20, 1973, Gulf States Utilities Company filed a motion to reschedule the service and hearing dates fixed by notice issued November 16, 1973, in the above-designated matter. At the prehearing conference held on December 13, 1973, the parties and Presiding Administrative Law Judge agreed upon a new schedule of dates.

Upon consideration, notice is hereby given that the procedural dates in the above matter are further modified as follows:

Company's Service Date re: Fixed Contract Rates Subject to § 206 Investigation, February 15, 1974.
Intervenors' Service Date, April 15, 1974.
Company Rebuttal Date, May 15, 1974.
Hearing, June 10, 1974 (10 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1212 Filed 1–14–74;8:45 am]

[Docket No. CI73–575]

HIGH CREST OILS, INC.

Notice of Petition To Amend

JANUARY 8, 1974.

Take notice that on December 6, 1973, High Crest Oils, Inc. (Petitioner), 2640 One Calgary Place, 330 5th Avenue, S.W., Calgary, Alberta T2p OL4 Canada, filed in Docket No. CI73–575 a petition to amend the Commission's order issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act by authorizing the sale of gas from the Shepard Area of Blaine and Chouteau Counties, Montana, to Northern Natural Gas Company (Northern) at a higher price than originally certificated, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner was issued a certificate of public convenience and necessity in the subject docket authorizing the sale of gas to Northern from the subject acreage at an initial rate of 23.5 cents per Mcf. Petitioner states that it has not started initial deliveries of gas from the Shepard Area but anticipates that they will commence in January 1974. Inasmuch as deliveries have not commenced Petitioner requests that it be permitted to collect an inititial rate of 40.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, plus tax reimbursement pursuant to an amendment dated October 1, 1973, with Northern. The total rate with tax reimbursement and Btu adjustment is estimated at 42.083 cents per Mcf. Monthly deliveries of gas are estimated at 90,000 Mcf.

Petitioner states that as part of the consideration for entering into this amendment for a higher price with Northern, it and other producers in the same area have agreed to: (1) drill 30 wells during the 1973–74 period in the Shepard Area, (2) drill 75 wells in the Tiger Ridge Bullhook Area during the period 1973–75, and (3) commit all newly discovered reserves found in the subject areas to Northern through December 31, 1976. Petitioner states that its agreement to undertake this drilling program is specifically conditioned upon the Commission's permitting the price increase to be collected without refund, and Petitioner has been given the option to terminate the drilling program if the Commission does not allow the increase to be collected without refund obligations. Petitioner additionally states that the subject price is significantly below those being offered by other pipelines in Montana and elsewhere and far below those apparently deemed acceptable by the Commission in recent cases.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1221 Filed 1–14–74;8:45 am]

[Docket No. CP74–169]

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC.

Notice of Application

JANUARY 4, 1974.

Take notice that on December 12, 1973, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), Hastings, Nebraska 68901, filed in Docket No. CP74–169 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Natural Gas Pipeline Company of America (Natural) and the construction and operation of facilities for use in the exchange with and purchase of natural gas from Natural, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to gas exchange and purchase agreements with Natural, both dated July 9, 1973, Natural will deliver to Applicant up to 25,000 Mcf of gas per day in Roger Mills County, Oklahoma, and Applicant will redeliver equivalent volumes of gas to Natural in Hemphill County, Texas. The application states that under the terms of said agreements during the first year of the gas exchange agreement 25 per cent of the volumes delivered by Natural will be

purchased by Applicant and the remaining 75 per cent of said volumes will be retained by Applicant for Natural's account.

Applicant states said purchase agreement provides for a price of 50.0 cents per Mcf, subject to upward and downward Btu adjustment from 1,000 Btu per cubic foot, to be charged for the subject 25 per cent gas volume. The remaining 75 per cent will be redelivered to Natural by Applicant in the second year of the exchange agreement, in addition to the exchange volumes delivered to Applicant in such second year. Applicant states that thereafter equal volumes of gas will be exchanged each year.

In order to implement this exchange arrangement Applicant proposes to construct and operate a measuring and regulating station located at the delivery point in Hemphill County, Texas, and an 8-inch tap on its 20-inch Buffalo Wallow pipeline located at the delivery point located in Roger Mills County, Oklahoma. Applicant proposes to deliver Natural's exchange gas by use of Applicant's Buffalo Wallow system. This is said to have the effect of reducing the haul for each company on the volumes being exchanged.

Applicant estimates the total cost of the proposed facilities is $20,100, which cost will be met out of current working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1225 Filed 1-14-74;8:45 am]

[Docket Nos. CP74-23, CP70-258]

KANSAS-NEBRASKA NATURAL GAS CO., INC. AND CITIES SERVICE GAS CO.

Findings and Order Setting Date for Formal Hearing, Consolidating Proceedings, Prescribing Procedures, and Granting Petitions To Intervene

JANUARY 7, 1974.

On July 31, 1973, Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) filed in Docket No. CP74-23 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing continued operation of existing intrastate pipeline, compressor and storage facilities in central Kansas, construction and operation of additional pipeline and compression facilities, establishment of a new redelivery point for the exchange of natural gas with Cities Service Gas Company (Cities Service) and continuation of service to certain customers for resale in interstate commerce; and on August 30, 1973, Cities Service filed in Docket No. CP70-258, a petition to amend Commission order issued July 22, 1973, in said docket (44 FPC 149), as amended (47 FPC 1747), pursuant to section 7(c) of the Natural Gas Act by authorizing Cities Service to construct and operate an additional point of delivery between Cities Service and Kansas-Nebraska, all as more fully set forth in the aforementioned application and petition to amend.

Kansas-Nebraska proposes to operate in interstate commerce the Adolph Storage facilities near Pawnee Rock, Kansas, including its 1,000 horsepower injection-withdrawal compressor, the Pawnee Rock Compressor Station with 1,275 compression horsepower and gas sweetening and dehydration facilities, the Otis Station with 960 horsepower of compression, approximately 105 miles of 2-inch to 12-inch pipeline, two town border stations and metering and appurtenant facilities by which Kansas-Nebraska makes both direct sales and sales for resale to its customers. These facilities are presently used only in intrastate commerce. Kansas-Nebraska further proposes to sell in interstate commerce for resale and to deliver natural gas, heretofore sold and delivered in intrastate commerce, to Central Kansas Power Company, Inc., at Toulon, Kansas, to Producers Gas Equities, Inc., at points in Ellis, Ness, and Rush Counties, Kansas, to Greeley Gas Company at Alexander, Bazine, McCraken and Ness City, Kansas, and to the city of Albert, Kansas. Nebraska proposes to make such sales according to its FPC Gas Tariff, Second Revised Volume No. 1 for Zone 1 customers. Direct sales by Kansas-Nebraska to the towns of Ruch Center and Munjor, Kansas, and to Protein Producers, Inc., Dundee, Kansas, and to Kansas Refined Helium Company near Otis, Kansas, will continue to be made pursuant to rate schedules on file with the State Corporation Commission of Kansas.[1] Cities Service proposes no change in presently effective rates or rate schedules as a result of the proposals herein and, upon receipt of the requested authorization, it will file the amendment of June 26, 1973, to the exchange agreement in order to add the proposed new delivery point.

Kansas-Nebraska also proposes to construct and operate approximately 600 feet of 6-inch interconnecting pipeline in Edwards County, Kansas, to facilitate the proposed new redelivery point and a 500 horsepower compressor station to be located in Rock County, Kansas. Kansas-Nebraska was authorized by order of July 22, 1970, as amended in Docket No. CP70-239 (44 FPC 149), among other things, to exchange gas with Cities Service. Kansas-Nebraska now proposes to establish a new redelivery point for said exchange in the vicinity of its gathering system and the pipeline of Cities Service in Edwards County, Kansas.

Cities Service proposes to construct and operate an additional measuring and regulating station in Edwards County, Kansas, for delivery of exchange gas to Kansas-Nebraska. This station will be designated Unruh Exchange Point.

Kansas-Nebraska estimates the total cost of the proposed new facilities to be $180,000, which will be financed from working capital and interim bank loans. Cities Service estimates the total cost of the proposed facilities to be $9,800, which will be financed from cash on hand.

The purpose of the proposals herein is to conserve gas reserves in central Kansas by making quantities available to Kansas-Nebraska's interstate system at times when the deliverable capacity of the area producing fields exceeds the area needs and, at the same time, assuring future reliable service to customers in central Kansas by the addition of an interconnecting point south of the area between Kansas-Nebraska's Pawnee Rock Unruh gathering system, and Cities Service's transmission line. The proposed Unruh Exchange Point will be utilized by Cities Service to deliver an average of 3,000 Mcf per day to Kansas-Nebraska in the Pawnee Rock-Unruh Area. Cities Service will receive equivalent volumes at the existing Haven Exchange Point in Reno County, Kansas.

After due notice by publication in the

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[1] Total actual peak day and annual sales for the market area were 27,942 Mcf and 7,838, 115 Mcf, respectively, for 1972. The annual sales volume for 1972 includes the sale of 653,006 Mcf to Natural Gas Pipeline Company of America pursuant to a limited term contract which expires September 24, 1973. Projected sales for the year of 1976 are estimated to be 28,000 Mcf peak day and 7,611,000 Mcf annually.

FEDERAL REGISTER on August 7, 1973, in Docket No. CP74–23 (38 FR 21312) and on September 19, 1973, in Docket No. CP70–258 (38 FR 26234), the State Corporation Commission of the State of Kansas filed on August 15, 1973, in Docket No. CP74–23, a notice of intervention, as amended November 18, 1973, requesting a hearing; and petitions to intervene also requesting a hearing were filed in Docket No. CP74–23 by Central Kansas Power Company (CKP) on August 22, 1973, as supplemented August 30, 1973, and by Producers Gas Equities Inc. (Producers) on August 22, 1973. Greeley Gas Company (Greeley) filed in Docket No. CP74–23 on August 23, 1973, a petition to intervene in the event of a formal hearing. No petition to intervene, notice of intervention, or protest to the granting of the petition to amend were filed in Docket No. CP70–258.

The Kansas Commission requests a hearing in order that it may properly discharge the duties imposed upon it by state law with respect to production, conservation, transportation and use of natural gas, so that the best interests of the people of the State of Kansas may be adequately protected.

The principle thrust of CKP's adverse intervention in this proceeding is directed toward the initial rate for jurisdictional service proposed by Kansas-Nebraska's application. CKP states that these proposed rates would require it to pay substantially more for the gas it presently purchases at Toulon than it pays under the intrastate schedule for such sales recently approved by the Kansas Commission. In addition to this rate issue, which also appears to be the basis for the request of Producers for a hearing, CKP points out that issuance of the requested certificate could affect its right to receive contract volumes in future gas purchases at Toulon, since that would then be subject to such curtailment or allocation restrictions which the Commission might impose pursuant to its current policies concerning such matters. Finally, CKP believes that, based upon the application filed by Kansas-Nebraska in this proceeding, it cannot be determined absent a hearing whether the basic proposal to integrate Kansas-Nebraska's intrastate system in Kansas into its interstate system is in the public interest.

In its answer to CKP's petition to intervene and request for hearing, Kansas-Nebraska rejects CKP's argument that a hearing is necessary in this proceeding. With respect to the proposed integration of its system, Kansas-Nebraska states that its Kansas intrastate system is already physically connected to its existing interstate system in Kansas. It states that when there are periods from time to time of excess gas deliverability from the Central Kansas producing area, gas from this area will flow northward into the interstate system. This flow of gas will be improved by installation of the new 500 horsepower compressor station in the vicinity of Stockton, Kansas, but the physical integration of the two systems already exists. As to CKP's contention that recognition of FPC jurisdiction by the grant of a certificate under Section 7 of the Natural Gas Act may result in the curtailment or allocation of the gas purchased from Kansas-Nebraska by CKP at Toulon, Kansas-Nebraska concedes that this is true; however, it contends that this constitutes an important reason why recognition of Commission jurisdiction over such sales will clearly be in the public interest, and that CKP should not be immunized against curtailment or other restrictions which may be applied to other customers of Kansas-Nebraska.

Kansas-Nebraska suggests that the proper proceeding in which to consider the rate issue raised by CKP is in Docket No. RP74–11, wherein Kansas-Nebraska filed on August 31, 1973, a general rate increase. In a subsequent reply to Kansas Nebraska's answer to CKP's intervention petition, the latter suggested a resolution to the rate issue. Such resolution would be for Kansas-Nebraska to amend its application or to agree to a Commission condition in the requested certificate which would specify that the rates to wholesale customers on the existing Kansas-Nebraska interstate system would continue to be the rates currently in effect pursuant to order of the Kansas State Commission, until such time as the rates proposed by Kansas-Nebraska in its filing in Docket No. RP74–11 become effective, subject to whatever refund obligation may be imposed by Commission order in said docket. By letter of November 1, 1973, filed in subject docket, Kansas-Nebraska's response to this proposal of CKP appears to be adequate and would apparently eliminate the rate issue in this proceeding insofar as Kansas-Nebraska and CKP are concerned. However, we regard this proposed resolution as being of dubious legality in view of our duty to make an independent determination of rates under sections 4 and 7 of the Natural Gas Act. In view of this, and the other issues presented in this proceeding, an evidentiary hearing directed to their resolution should be held.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the issues presented in this proceeding.

(2) Good cause exists to consolidate proceedings pending in Docket Nos. CP74–23 and CP70–258.

(3) Participation by the above-named petitioners to intervene in this proceeding may be in the public interest.

The Commission orders:

(A) Consolidation of the proceedings pending in Docket Nos. CP74–23, and CP70–258 is granted.

(B) The hereinabove named petitioners to intervene are permitted to intervene in this proceeding subject to the rules and regulation of the Commission; *Provided, however,* That participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and *Provided,* Further, that the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved, because of any order of the Commission entered in this proceeding.

(C) Pursuant to the authority of the Natural Gas Act, particularly section 7 and 15 thereof, the Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act [18 CFR I], a public hearing on the issues presented by the applications filed in the proceedings consolidated by ordering paragraph (A) will be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. commencing at 10:00 a.m. on February 13, 1974.

(D) All applicants and any interveners will file and serve on all other parties, the Commission Staff, and the Presiding Examiner their direct evidence and testimony on or before January 22, 1974.

(E) A Presiding Examiner to be designated by the Chief Examiner for that purpose [See Delegation of Authority, 18 CFR 3.59(d)], shall preside at the hearing in this consolidated proceeding, and prescribe relevant procedural matters not herein provided.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–1216 Filed 1–14–74;8:45 am]

[Docket No. RP73–43]

MID LOUISIANA GAS CO.

Notice of Proposed Change in Rates

JANUARY 4, 1974.

Take notice that Mid Louisiana Gas Company (Mid Louisiana), on December 13, 1973, tendered for filing as a part of First Revised Volume No. 1 of its FPC Gas Tariff, Sixth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing is to reflect a Purchased Gas Cost Current Adjustment to Mid Louisiana's Rate Schedules G–1, SG–1, I–1 and E–1; that the revised tariff sheet and supporting information are being filed forty-five (45) days prior to the effective date of February 1, 1974, in accordance with Section 19 of Mid Louisiana's FPC Gas Tariff and in compliance with Commission Order Nos. 452 and 452–A; and that copies of the filing were served on interested customers and state commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 17, 1974. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1207 Filed 1-14-74;8:45 am]

NATIONAL POWER SURVEY COORDINATING COMMITTEE

Meeting

Agenda for a meeting of the coordinating committee to be held at the Federal Power Commission Offices, 825 North Capital Street, NE., Washington, D.C., January 15, 1974, 1:30 p.m., room 5200.

1. Call to order by FPC Coordinating Representative.

2. Objectives and purposes of meeting.

A. Comments by Coordinating Committee Chairman Shearon Harris.

B. Review of status of TAC and Task Force reports.

C. Review of plans for EAC meeting to be held the following day.

D. Other Business.

3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1204 Filed 1-14-74;8:45 am]

[Docket Nos. CP74-165 and CP74-166]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

JANUARY 4, 1974.

Take notice that on December 4, 1973, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket Nos. CP74-166 and CP74-165 applications pursuant to section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the exchange of natural gas with and sale of gas to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), and the construction and operation of certain facilities for said exchange and for the sale of gas to Kansas-Nebraska, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant states in Docket No. CP74-166 that pursuant to a Gas Exchange Agreement with Kansas-Nebraska dated July 9, 1973, Applicant will deliver to Kansas-Nebraska up to 25,000 Mcf of gas per day in Roger Mills County, Oklahoma, and Kansas-Nebraska will redeliver equivalent volumes of gas to Applicant in Hemphill County, Texas. The application states that under the terms of said agreement during the first year of the gas exchange 25 percent of the volumes delivered by Applicant will be purchased by Kansas-Nebraska and the remaining 75 percent of said volumes will be retained by Kansas-Nebraska for Applicant's account.

In Docket No. CP74-165 Applicant requests authorization for the sale of 25 percent of the subject exchange volume pursuant to a Gas Purchase Agreement with Kansas-Nebraska, dated July 9, 1973, in which Applicant has agreed to sell said gas to Kansas-Nebraska for a period of one year at a price of 50 cents per Mcf, which price is the same price paid by Applicant for the subject gas and subject to the same upward and downward Btu adjustment from 1,000 Btu per cubic foot. Applicant requests pregranted abandonment authorization for the subject sale.

Applicant states in Docket No. CP74-166 that the remaining 75 percent of gas will be redelivered to it by Kansas-Nebraska in the second year of the Exchange Agreement, in addition to the exchange volumes delivered to Kansas-Nebraska in such second year. Applicant states further that thereafter equal volumes of gas will be exchanged each year.

The application in Docket No. CP74-166 states that the subject exchange is a straight gas-for-gas exchange transaction and as such no monetary compensation is provided for in the exchange agreement. All volumes of gas delivered under said agreement will be adjusted for Btu content and all gas balances will be on a volume weighted average Btu basis. The term of the exchange agreement is stated as a period of one year from the date of first delivery and will continue thereafter until cancelled by either party on twelve months notice.

Applicant states that the gas to be delivered to Kansas-Nebraska will be purchased by Applicant from Inexco Oil Company (Inexco) under a Gas Purchase Contract dated April 1, 1973, for which sale Inexco is seeking authorization in Docket No. CI73-747. The application in Docket No. CP74-166 states that the subject exchange is beneficial to Applicant by providing it with a more economical means of receiving said gas from Inexco. Applicant states that such exchange will obviate the necessity of installing approximately 20 miles of pipeline needed to connect Inexco's wells to Applicant's existing pipeline. In its stead Applicant proposes to construct approximately 7 miles of 4- and 8-inch pipeline, measuring facilities and other appurtenant facilities to effectuate leliveries of gas to Kansas-Nebraska at the Roger Mills County location and one mile of 6-inch pipeline at the point of redelivery of Applicant by Kansas-Nebraska in Hemphill County.

The application states that the estimated cost of the proposed facilities is $337,000, which cost will be met from funds on hand.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, hearings will be held without further notice before the Commission on these applications if no petitions to intervene are filed within the time required herein, if the Commission on its own review of the matters finds that grants of the certificates are required by the public convenience and necessity. If petitions for leave to intervene are timely filed, or if the Commission on its own motion believes that formal hearings are required, further notice of such hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearings.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1226 Filed 1-14-74;8:45 am]

[Docket Nos. RP71-107 (Phase II), and RP72-127]

NORTHERN NATURAL GAS CO.

Order Approving Rate Settlement With Conditions and Setting Procedural Dates for Reserved Issues

JANUARY 4, 1974.

On January 18, 1973, as amended on May 9, 1973, Northern Natural Gas Company (Northern) filed a proposed Stipulation and Agreement (Agreement) which would resolve most of the issues in the above-referenced proceedings, with certain issues to be reserved for decision by the Administrative Law Judge. The Agreement provides, inter alia, for a reduction of the annual revenues from jurisdictional sales and service collected by Northern, subject to refund, from $22,758,944 to $10,834,161 in Docket No. RP71-107 (Phase II) based upon the test year ended February 29, 1972, as adjusted. Northern's original proposal to establish uniform rates for jurisdictional field sales located within three operational areas south of its established rate zones, which entails an increase of

$292,738 over contract rates previously in effect, is unchanged by the Agreement.[1]

BACKGROUND

Docket No. RP71-107 (Phase II). The proceeding in Docket No. RP71-107 (Phase II) involves a general rate increase application filed by Northern on April 26, 1971, which was suspended by our order issued May 26, 1971, and became effective, subject to refund, on November 14, 1971.[2] The proceedings were phased such that all curtailment issues were included in Phase I and all rate matters in Phase II.[3]

On August 11, 1972, the Commission issued an order approving a PGA clause and that issue was removed from the proceedings in Docket No. RP71-107 (Phase II). The PGA clause was made effective as of November 14, 1971.

The hearing in Phase II of the proceedings commenced on November 30, 1971, and ended on February 24, 1972. Initial and Reply Briefs were filed with the Presiding Administrative Law Judge and the Phase II proceeding issues are now pending before the Presiding Administrative Law Judge.

On December 7, 1972, Northern tendered for filing First Revised Sheet No. 6a which proposed to combine the presently effective operational areas E and F into one new operational area designated E-F with a proposed effective date of January 5, 1973. By order issued January 5, 1973, the Commission accepted First Revised Sheet No. 6a for filing, suspended it for one day and deferred the use thereof until January 6, 1973, and also ordered that the issues raised by the filing be consolidated for hearing and decision with Docket No. RP72-127.

Docket No. RP72-127. On May 19, 1972, Northern filed revised tariff sheets to its FPC Gas Tariff which proposed a general increase in its annual jurisdictional revenues of $36,003,942 over the RP71-107 levels in effect subject to refund and an increase of $292,738 for the jurisdictional field sales revenues over then effective contract levels located within three operational areas south of the established rate zones. On June 30, 1972, the Commission issued an order, 47 FPC 1750, which accepted the revised sheets for filing and suspended the effective date thereof until December 3, 1972, and established service and hearing dates. On January 18, 1973, as amended on May 9, 1973, the instant settlement agreement was filed.

SUMMARY OF PROVISIONS

The settlement agreement is summarized as follows:

(1) Refunds in both dockets will be made entirely on the demand component of Northern's rates and such refunds will include 7 percent simple interest. The agreement states that as nearly as possible the unmodified Seaboard formula was used.

(2) Northern is permitted to include in its rate base $86,621,861 advance payments, take or pay deficiency payments, and capitalized carrying costs attributable to the Canadian Project involving projects in Montana and Alberta, Canada.

(3) Northern shall be permitted to include in rate base $5,875,712 of advances made pursuant to agreements with Scurry-Rainbow Oil, Ltd., BP Alaska, Inc. and Panarctic (Frontier Advance) for exploration, lease acquisition, development and production in Alaska and Canada. Northern is also permitted to include in rate base any additional amounts advanced pursuant to these agreements without further Commission review thereof.

(4) Northern is permitted to track advance payments and R&D expenditures by provisions which operate in a manner similar to Northern's PGA clause. The R&D tracking provision provides, inter alia, that a project must involve expenditures of at least $1 million in order to be tracked under the provision.

(5) Northern shall increase its depreciation rates as of January 1, 1972, such that all property previously depreciated at 3.5 percent shall be depreciated at 3.68 percent, *provided, however,* That all additions as replacements made on or after January 1, 1972, to the "3.5 percent" property shall be depreciated at a rate of 4 percent. The 4 percent and 4.5 percent rates used for the remainder of Northern's jurisdictional property are not changed by the Agreement. Northern shall not put into effect higher depreciation rates, subject to refund or otherwise, before December 27, 1974.

(6) Northern shall receive cost-of-service treatment for preliminary lease expenditures applicable to gas produced from leases in the Hugoton-Anadarko Area on all projects commenced or contracts made before December 31, 1974.[4]

(7) Northern shall be permitted to conditionally adopt liberalized depreciation with normalization on its pre-1970 property and post-1969 non-expansion property.

(8) Northern shall allocate costs relating to the Bushton extractions plant using the "modified BTU Method", and shall provide a cost allowance for storing and marketing liquids extracted at the Bushton plant.

(9) The "interest capitalized" issues and the "apportionment of increases in contract demand" issue are reserved for determination by the Presiding Administrative Law Judge.

(10) The group (conjunctive) billing, demand charge adjustment and overrun penalty increase issues will be deferred.

(11) Northern shall withdraw Section 9.1 of First Revised Sheet No. 59 which proposed an amendment to Northern's curtailment plan approved in Docket No. RP71-107 (Phase IO without prejudice to the refiling of the proposal in a future proceeding.

DISCUSSION

The Commission Staff and eleven parties filed comments upon the Agreement, as amended. The Northern Distributor Group; (NDG),[5] Minnesota Natural Gas Company (Minnesota Natural) and the Manilla Municipal Gas Department of Manilla, Iowa (Manilla)[6] supported the Agreement without reservation. The remaining parties filed comments which expressed reservations and objections to certain parts of the Agreement, but which did not express, in any instance, objection to the Agreement as a whole. Northern filed responses to each of the objections.

The Northern Municipal Defense Group (MDG) objects to the inclusion of amounts related to the Alberta, Canada portion of the "Canadian Project" since the proven reserves of gas discovered as a result of that project will be sold to Canadian consumers and thus will not be available for use by Northern's U.S. consumers. MDG alleges that this is contrary to the Commission's policy in Order No. 465 of not charging a pipeline's customers for advance payments which result in gas reserves which do not accrue to the benefit of the advancing pipeline's customers. MDG further notes that after eight or nine years, Northern will begin to make a profit on the project.

MDG's arguments are not persuasive. Although the gas from the project will, in all probability, never flow to the United States, the profits which Northern realizes from the project (less $25,000 per year net of taxes which goes to Northern's Canadian subsidiary) will be credited to Northern's cost-of-service as a benefit to its United States cutomers over the 23 year period of the contract covering the sale of the gas to Trans-Canada. Over the life of the project, Northern's customers will be made more than whole on the return and taxes paid on the Alberta advances. Thus, this project is distinguishable from Texas Eastern's project near Sable Island off the eastern shore of Canada where this Commission rejected rate base treatment for an advance payment since, inter alia, that advance payment agreement guaranteed neither gas nor other economic consideration to the ratepayers of Texas Eastern.[7] Moreover, as noted by Northern, Staff, and the NDG, the Alberta and

[1] See Appendices A, B, and C, filed as part of the original document, for cost of service and rate of return data.

[2] Because of the intervening Presidential Price Freeze, promulgated in Executive Order No. 11615, the rates did not become effective at the end of the 5 month suspension period.

[3] Phase I was resolved by an order issued October 2, 1972, 48 FPC 669, which approved a settlement agreement.

[4] Northern agrees to follow the principle of Full Cost Accounting on these projects as promulgated by Orders Nos. 440, 46 FPC 1148 (1971) and 440-A, 47 FPC 39 (1972).

[5] See Appendix D.

[6] Manilla, although a member of the Northern Municipal Defense Group, (MDG), dissented to the NDG's objections to the Agreement.

[7] *Texas Eastern Transmission Corporation,* Opinion No. 672, issued November 1, 1973.

Montana projects received prior Commission approval as to reasonableness and prudency [8] and had it not been for adverse N.E.B. action, the gas from Alberta would be flowing to Northern's customers today. For these reasons, we find it reasonable and appropriate to include the Alberta advances and associated charges in Northern's rate base as proposed in the Agreement.

MDG objects to the Scurry Rainbow, Panarctic, and BP Alaska advances on the grounds that the gas from these projects may never flow to the lower 48 states for use by Northern's customers because of possible adverse N.E.B. action and/or transportation of gas problems. Moreover MDG is joined by Michigan Power in objecting to the fact that the Agreement provides that the accounting and rate treatment of any present or future amounts proposed to be included in Northern's rate base pursuant to any of the three advance payment agreements, shall not be challenged in any future proceeding before the Commission involving Northern.

Staff analyzed the three advances from the perspective of the orders issued in Docket Nos. R–380 and R–411 which covered advances within the lower 48 states and found that the Scurry-Rainbow advance was generally consistent with Orders Nos. 410 and 410–A. However, Staff noted that the Panarctic advance was inconsistent with Orders Nos. 410 and 410–A because the advance payment agreement provides for the acquisition of a working interest by Northern as a result of the advance and does not provide for a five year repayment period. But, Staff notes that the customers receive a credit to cost-of-service of all revenues resulting from the working interest and staff recommends a condition to rate base treatment as a solution to the 5 year repayment problem. Staff notes further that under the criteria of Order No. 441, large amounts of the BP Alaska, Inc. advance would be excluded since such amounts are advances for exploration and lease acquisition, which are not includible in rate base under that order.

Our review of the three advances indicates that, in general, they involve prudent expenditures which will, in all probability, result in proven reserves of gas flowing from the projects to the lower 48 states. Moreover, we note that all cost benefits derived these projects shall be credited to Northern's cost-of-service. Nevertheless, in order to protect Northern's customers within the lower 48 states from undue risk, we find it appropriate to attach certain conditions to rate base treatment of these three advances. These conditions, which were set forth in Order No. 465 issued December 29, 1972, in Docket No. R–411, were adopted in *El Paso Natural Gas Company*, Opinion No. 673, issued November 6, 1973, in Docket No. RP72–116 and *Columbia Gas Transmission Corporation*, Opinion No. 674, issued November 6, 1973, in Docket No. RP72–36 which dealt with Alaskan advances and we find that they are appropriate for Northern's three advances outside the lower 48 states.

In order to prevent undue "lag time" prior to the commencement of recoupment of the advance, we shall provide that if any of the aforementioned advances has been included in Account 166 for five years and during such time no gas deliveries have commenced or no determination has been made that the recovery will be in economic consideration other than gas, the pipeline shall at the end of the 5 year period remove the advance from Account 166, cease rate base treatment thereof, and Northern's rates shall be adjusted to reflect such exclusion, unless otherwise directed by the Commission. We find that this condition is appropriate for the Scurry-Rainbow, BP Alaska and Panarctic advances because it will require Northern, should it desire continued rate base treatment of an advance under these circumstances, to present the Commission with evidence at the end of the 5 year period to show: (1) why recoupment of the advance has not commenced and (2) whether the project warrants continued rate base treatment for the advance with the attendant costs to Northern's customers within the lower 48 states.

In order to ensure that Northern's ratepayers within the lower 48 states are not required to absorb the principal of any nonrecovered amounts related to the three advances, we shall provide that any amounts of an advance not fully recovered from the producers within 5 years after deliveries have commenced or it has been determined that the recovery will be in economic consideration other than gas, shall be removed from Account 166 and Northern's rate base, and Northern's rates shall be adjusted to reflect such exclusion, unless otherwise directed by the Commission.

Moreover, we believe that it is necessary and appropriate to further condition rate base treatment of the three advances to prevent Northern's rate payers from paying return and taxes on an advance which results in the finding of proven reserves, but with the gas therefrom flowing to a party other than the advancing pipeline. Therefore, we shall further condition the three advances to provide that in the event proven reserves of gas are found and deliveries thereof commence, but no gas flows to Northern for use by its customers within the lower 48 states, the advance shall be removed from rate base and Account 166 immediately, if not already removed, and any revenues collected as a result of the advance being included in rate base shall be refunded by Northern to its jurisdictional customers, unless otherwise directed by the Commission. Moreover, in the event that enough gas flows to Northern's customers within the lower 48 states to recoup the advance, but some of the gas found as a result of the advance is diverted to other parties, we reserve the right in future rate cases involving Northern to determine whether the gas diverted is of sufficient quantity to require a partial refund of revenues paid by Northern's lower 48 states' customers as a result of the advance being included in Northern's rate base.[9]

We also note that Order No. 465 re-allowed advances for exploration. We believe that it is appropriate to permit Northern to include amounts advanced to BP Alaska, Inc. for exploration, but to exclude amounts related to lease acquisition (see Order No. 465, mimeo p. 9). As to the working interest acquired by Northern as a result of the Panarctic advance, we note that we permitted El Paso Natural Gas Company [10] to acquire a working interest as a result of an advance payment in Alaska based upon our finding that this was consistent with our policy of "encouraging intensified exploration by the pipeline producers" set forth in Opinion No. 568, 42 FPC 743 at 752. We find that permitting Northern to acquire a working interest as a result of the Panarctic advance and to permit the inclusion of that advance in Northern's rate base is consistent with that policy.

MDG and Michigan Power object to the "permanent" inclusion in rate base of the Scurry Rainbow, Panarctic and BP Alaska advances as well as the amounts associated with the Alberta, Canada portion of Northern's Canadian Project. By providing for further review of the three non-Alberta advances, as described above, we have, in effect, eliminated that provision of the Agreement which provides for "permanent" inclusion of such amounts in Northern's rate base. As to the permanency of the inclusion of the Alberta, Canada advances, we reject that provision insofar as it precludes any further review thereof by this Commission in light of changed circumstances.

Inter-City Gas, Ltd. (Inter-City) protests the inclusion of the Canadian advances in rate base because, it is alleged, there is no guarantee that the gas resulting from the Canadian advances will be distributed according to the costs borne by the present customers. Inter-City also expresses concern that the distribution of Canadian gas supplies will be on the basis of load factor or end-use considerations rather than in proportion to the costs that have been assessed. Inter-City's arguments are not persuasive. The arguments put forth by Inter-City could be used to challenge the inclusion of any advance payment in a pipeline's rate base. Implicit in our approval of rate base treatment for advances within the lower 48 states was our finding that it is reasonable and appropriate for present customers to pay return and taxes on advances for gas in the future.

Our review of the advance payment agreements covering advances within the

[8] *Northern Natural Gas Company*, Opinion No. 618, 47 FPC 1202; Northern Natural Gas Company 46 FPC 285 (1971) in Docket No. RP73–40.

[9] See: Order No. 465 (mimeo, p. 8); Opinion No. 673 (mimeo, pp. 6–7).

[10] Opinion No. 673 (mimeo, p. 4).

lower 48 states which are on file with the Commission pursuant to the Commission's orders in Docket Nos. R–380 and R–411 indicates that there are several advance payment agreements covering advances made within the lower 48 states which were executed prior to the issuance of Orders Nos. 410 and 410–A including the Montana project advances mentioned previously, which contain no repayment provisions. We find that it is not in the public interest for amounts advanced pursuant to these "pre-Order 410" advance payment contracts to remain in rate base indefinitely. Accordingly, we shall make such advances subject to the ratemaking and accounting recoupment, as well as other, provisions set forth in Order Nos. 410 and 410–A in Docket No. R–380.

MDG objects to the "permanent" tracking provisions for advance payments and for R&D expenditures set forth in Sections V and VI, respectively, of the Agreement which can be terminated only by further order of the Commission. MDG objects to the tracking provisions because, it is alleged, they are poor ratemaking devices which don't allow for unknowns and variables in costs, and they in this instance, require a party to come forth within 60 days of a filing to track an item of cost and challenge such item by requesting a one day suspension and a hearing on the item, which, it is claimed, shifts the burden of proof from Northern to the challenging party. These arguments are not persuasive. The Agreement provision for a 60 day notice period provides ample time for parties to protest a tracking and the provision for a one day suspension and a hearing adequately protests Northern's ratepayers against excessive charges. Moreover, the Agreement provides for a coordination of the tracking filings made for purchased gas, R&D expenditures and advance payments to allow for offsets of varying upward and downward rate adjustments.

We note that since the filing of Northern's proposed Agreement, the Commission issued Order 483 ____ FPC ____, on April 30, 1973, in Docket No. R–462, rehearing denied ____ FPC ____, issued June 28, 1973. We find that the R&D tracking provision in the Agreement is in substantial compliance with Order No. 483 with the exception that Northern classifies "the preliminary cost of locating new Storage Fields" as R&D expenditures. Amounts for storage field development are, in general, not the types of innovative and novel projects contemplated by the Commission's definition of R&D expenditures promulgated in Order No. 483. Accordingly, we shall provide that Northern's R&D tracking provision in section VI of the Agreement to be approved subject to the removal of subsection (c) of paragraph 11 which includes the preliminary costs of locating new storage fields in the definition of R&D expenditures which may be tracked by the R&D tracking provision in the Agreement.

MDG also objects to the fact that the R&D and advance payments tracking provisions do not expire when the Agreement does, but continue in force until terminated by further order of the Commission. This objection has been mooted as to the R&D tracking provision by the issuance of Order No. 483 which permits the inclusion of such provisions in a pipeline's tariff. However, we agree that the advance payment tracking provision should terminate when the Agreement itself terminates at the time Northern's next Section 4(e) rate increase takes effect, subject to refund. However, this is without prejudice to Northern's right to request continuation of the advance payment tracking provision in its next Section 4(e) rate increase filing.

MDG and Michigan Power protest the provision in sections V and VI of the Agreement requiring Northern to obtain the prior approval of customers representing at least 75 percent of Northern's contract demand obligations before requesting rate base treatment for any new "frontier area" advance payment project or new R&D project. Michigan Power objects to the provision on the grounds that it may deprive Michigan Power of the right to object to the inclusion in rate base of a particular project, while MDG objects on the basis that this provision implies a higher degree of legality than would be the case if such 75 percent approval were not obtained. Our review of this provision indicates that it is merely a means by which Northern is seeking to work with its customers in obtaining their consent for rate treatment for a particular project and it in no way implies a higher legality or deprives any party of any rights to object to any project under sections V and VI of the Agreement.

Michigan Power and MDG object to the provision in section VIII of the Agreement for cost-of-service treatment for preliminary lease expenditures by Northern applicable to gas produced from leases in the Hugoton-Anadarko area. MDG objects to the fact that the projects covered by the Agreement "shall always receive cost-of-service" treatment, while Michigan Power states that cost-of-service treatment is not proper for post-October 7, 1969, leases under Opinion No. 568 and states its fears that Northern may spin off the reserves discovered by the project as it did to Mobil in 1964. Staff does not object to nor support the provision but merely points out that in order to receive cost-of-service treatment on its post-October 7, 1969, leases, a pipeline must show "special circumstances". Northern claims that it has shown such "special circumstances" by indicating (1) that the Hugoton-Anadarko area rate is too low to encourage intensified exploration by producers alone and (2) that it is advantageous for Northern to acquire gas in this area since it is close to Northern's existing pipeline system. Our review of this provision indicates that there is insufficient record support upon which to determine whether or not Northern has shown the requisite "special circumstances" under Opinion No. 568 in order to receive cost-of-service treatment for expenditures relating to post-October 7, 1969, leases. Accordingly, we shall set this issue for hearing.

Michigan Power and Terra Chemicals object to the resolution of the demand charge adjustment which provides that no adjustment in demand charge shall be made by Northern during periods of curtailment. Michigan Power opposes the resolution since it is not based upon an evidentiary proceeding while Terra Chemicals suggests that the issue be deferred until it is determined by this Commission what modifications will have to be made in Northern's curtailment plan approved in Phase I of Docket No. RP71–107 to conform it to Order Nos. 467 and 467–A issued in Docket No. R–469. The arguments of Michigan Power and Terra Chemicals are not persuasive. Our review of the resolution of the demand-charge adjustment provision indicates that it is reasonable and appropriate because it provides for no demand charge billing reductions in periods of curtailment. If such adjustments were permitted, Northern might not recover all of its fixed costs.[11]

The City of Coon Rapids, Minnesota (Coon Rapids) objects to the Agreement because it ignores Coon Rapids' request to revise the boundary established between Rate Zone B and Rate Zone 3 so as to move Coon Rapids from the former to the latter, which has a lower rate. Northern replies that this matter was considered in the Commission in Opinion No. 324, 22 FPC 164, 178 (1959) which established the boundary line between the two zones. We agree with Northern that present circumstances indicate that Coon Rapids is not part of the integrated distribution system of Zone 3 and thus no change in the boundary between the two zones is warranted.

High Plains Natural Gas Company (High Plains) alleges that the rate increase which it has been assessed is higher percentage-wise than the allocated system-wide cost increase. High Plains is one of eight customers purchasing under special contracts for jurisdictional filed sales in three operational areas south of the established rate zones. Northern has established uniform rates for each of the three operational areas, in lieu of the present individual contract rates, which accounts for the varying percentages of rate increase. Moreover, our review of Northern's cost-of-service (Appendix H, page 3 to the Agreement) indicates that the field sales customers in general, as well as High Plains in particular, are not being charged excessive rates. Accordingly, High Plains' protest is denied.

[11] See: *Texas Eastern Transmission Corporation, et al.*, ____ FPC ____, issued December 1, 1972, in Docket No. RP71–130, *et al*, rehearing denied, ____ FPC ____, issued January 24, 1973.

MDG objects to the characterization of (but not the level of) the Agreement depreciation rates set forth in section VII as being "proper" and "adequate" while the Agreement makes no such finding as to other cost-of-service items. Northern responds that it is only conforming the Agreement to section 9 of the Natural Gas Act which requires a natural gas company to conform its depreciation accounts to the depreciation rates found to be "proper" and "adequate" for such company. Northern states that the use of the terms "proper" and "adequate" is to make the Agreement depreciation rates the legal rates under section 9 of the Natural Gas Act. Our review of the Agreement depreciation rates indicates that they are "proper" and "adequate" within the meaning of section 9 of the Natural Gas Act.

Michigan Power reserves the right to challenge section X of the Agreement in a future proceeding. That section provides for the use by Northern of the "modified BTU" allocation for allocation of costs to the gas sold to the Bushton extraction plant and for the cost allowance for the storing and marketing of extracted liquids. Since section X, read in conjunction with section XVII of the Agreement, indicates that no customer or Staff is prohibited from challenging the section X formula in a future proceeding, no further comment upon Michigan Power's statement is necessary.

We note that the issue of group (conjunctive) billing, which was supposed to have been tried in Docket No. RP72-127 [12] has been permitted to continue via an indefinite deferral of a trial of the issue, without prejudice to any party's right to raise the issue in a subsequent proceeding. We note that we have required that this issue be raised in several proceedings.[13] Accordingly, we shall initiate a proceeding under sections 4, 5 and 7 of the Natural Gas Act to try the issue of group (conjunctive) billing as it relates to Northern's system and set service and hearing dates accordingly.

As noted previously, Northern's Agreement rates reflect an unmodified Seaboard cost classification, cost allocation and rate design for the period commencber 14, 1971, and December 3, 1972 127). For the period between November 14, 1971, and December 3, 1972, (Docket No. RP71-107), Northern's rates reflect the closest that Northern could get to the unmodified Seaboard formula via refunds on the demand component only without suffering undercollections. Minnesota Natural, Staff and MDG strongly support, and Terra Chemicals has no objection to, the Agreement treatment of cost classification, cost allocation and rate design in conformity with the Commission's stated policy in *Michigan-Wisconsin Pipeline Company*, issued April 10, 1973, in Docket No. RP72-118 which set the Seaboard formula as the minimum standard for pipeline rate settlement agreements and noted that, after a hearing, the Commission may set rates with commodity rate levels and more in line with the price of competitive fuels. In *Natural Gas Pipeline Company*, issued July 18, 1973, in Docket No. RP72-132, the Commission clarified this statement to set the Seaboard formula as the minimum standard for all pipeline rate cases. On October 31, 1973, the Commission issued *United Gas Pipeline Company*, Opinion No. 671, in Docket No. RP72-75 which strongly endorsed the volumetric cost allocation formula and uniform one-part rate design while adopting, as an interim measure, two-part rates based upon the classification of 75% of fixed costs to commodity and 25% of fixed costs to demand.

Northern Illinois Gas Company (NI-Gas) strongly objects to the use of the unmodified Seaboard formula for Northern's system and requests a hearing to determine the proper cost classification, cost allocation, and rate design for use thereon. Michigan Power and United States Steel Corporation (U.S. Steel) object to rate design as a means of achieving end-use objectives.

As noted above, the Commission has already determined on a policy basis that rates reflecting commodity rate levels lower than Seaboard levels are unacceptable to this Commission. Therefore, a hearing on the issue is unnecessary. Moreover, in light of our policy of considering competitive fuel levels in setting commodity rate levels, the burden shall be upon Northern in its next Section 4(e) rate increase filing to justify any commodity rate levels reflecting inclusion of less than 75 percent of Seaboard fixed costs therein as prescribed in the United cost formula (United formula). We find that this approach is reasonable in light of our finding in United, supra, that in times of a natural gas shortage, "rate structures which yield different average prices are per se discriminatory". (mimeo, p. 9)

Based upon our review of the terms and provisions of the Agreement, the objections and responses thereto, and the record in these proceedings, we conclude that the proposed settlement, as hereinafter conditioned, provides a reasonable and appropriate resolution of the issues herein and that the public interest would be served by our approval of the settlement, as conditioned below.

The Commission finds:

(1) The settlement of these proceedings on the basis of the Agreement filed January 18, 1973, as amended on May 9, 1973, and subject to the terms and conditions of this order is reasonable and appropriate in the public interest.

(2) It is necessary and appropriate in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the provision permitting group (conjunctive) billing as set forth in Paragraph 6.2 of Rate Schedule CD-1 in Northern's FPC Gas Tariff, Original Volume No. 1 and upon the issue of whether or not Northern has shown "special circumstances" to receive cost-of-service treatment on post-October 7, 1969, leases in the Hugoton-Anadarko area.

(3) Good cause has been shown to reserve for determination by the Administrative Law Judge the issues of the proper accounting treatment of the "Interest Capitalized" issues set forth in Section XI of the Agreement as well as the "apportionment of increases in contract demand" issue set forth in Section XII of the Agreement based upon the record and briefs in Docket No. RP71-107 (Phase I).

The Commission orders:

(A) The Agreement filed by Northern on January 18, 1973, as amended on May 9, 1973, is incorporated herein by reference and is approved and made effective subject to the conditions set forth below.

(B) Northern shall fully comply with each of the provisions of the Agreement, as conditioned, and with the terms of this order.

(C) This order is without prejudice to any findings or orders which have been made or will hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Northern, or any party or person affected by this order, in any proceeding now pending or hereinafter instituted by or against Northern or any other person or party.

(D) Northern's advances to Scurry-Rainbow, BP Alaska, Inc. and Panarctic (Frontier Advances) may be included in Northern's rate base, subject to further review by the Commission, and subject to the conditions set forth in ordering paragraphs (E), (F) and (G) below.

(E) If 5 years elapse from the time any of Northern's Frontier Advances has been included in Account 166 and during such time no gas deliveries have commenced or no determination has been made that the recovery will be in economic consideration other than gas, Northern shall at the end of the 5-year period, transfer the advance from Account 166 to Account 167, cease rate base treatment thereof and reduce its jurisdictional rates to reflect such exclusion, unless otherwise directed by the Commission.

(F) If any of Northern's Frontier Advances results in the commencement of gas deliveries, but no gas flows to Northern for use by its jurisdictional customers within the lower 48 states, the amount of the advance shall be removed from Account 166 and from Northern's

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[12] *Northern Natural Gas Company*, Docket No. RP71-107 (Phase I) issued October 2, 1972.

[13] *El Paso Natural Gas Company*, Docket Nos. RP71-137 and RP72-151, issued November 7, 1972; *Texas Eastern Transmission Company*, Docket No. RP72-98, issued June 28, 1973; *Columbia Gas Transmission Corporation, et al.*, Docket No. RP73-86, *et al.*, issued November 23, 1973.

rate base, a jurisdictional rate adjustment reflecting such exclusion shall be made, and any and all revenues collected by Northern as a result of the advance being included in its rate base shall be refunded to its jurisdictional customers within the lower 48 states within 12 months, unless otherwise directed by the Commission.

(G) Any amounts of any of the three Frontier Advances not fully recovered within 5 years of the date that gas deliveries commence or the date it is determined that recovery will be in economic consideration other than gas, whichever occurs earlier, shall be removed from Account 166 and Northern's rate base, absorbed by Northern's shareholders, and Northern's jurisdictional rates shall be adjusted to reflect such exclusion, unless otherwise directed by the Commission.

(H) The amounts in Northern's rate base relating to the Montana portion of the Canadian Project as well as amounts in Northern's rate base relating to advances made pursuant to contracts entered into before the issuance of Order No. 410 are hereby made subject to the accounting and ratemaking provision of Orders Nos. 410 and 410–A.

(I) Northern's advance payment tracking provision set forth in Section V of the Agreement shall terminate at the time Northern's next section 4(e) rate increase takes effect, subject to refund. This is without prejudice to Northern's right to request an extension of the tracking provision in the Section 4(e) rate increase filing.

(J) The "interest capitalized" issues set forth in Section XI of the Agreement and the "apportionment of increases in contract demand" issue in Part 4 of section XII of the Agreement shall be reserved for determination by the Presiding Administrative Law Judge, as provided in the Agreement.

(K) No provision in the Agreement relating to "permanent" resolution of any issue discussed therein shall limit this Commission's authority under the Natural Gas Act and its regulations thereunder, to review such issues in a future proceeding involving Northern.

(L) The R&D tracking Provision set forth in section VI of the Agreement is approved subject to the elimination of subsection (c) of paragraph 11 of that section which includes the preliminary cost of locating new storage fields within the definition of R&D expenditures.

(M) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5 and 7 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held concerning group billing and cost-of-service treatment for post-October 7, 1969, leases in the Hugoton-Anadarko area (reserved issues) on April 29, 1974, at 10:00 A.M., e.s.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

(N) On or before February 4, 1974, Northern shall serve its evidence on the reserved issues. On or before March 4, 1974, the Commission Staff shall serve its prepared testimony and exhibits on the reserved issues. Any intervenor evidence on the reserved issues shall be served on or before March 25, 1974. Any rebuttal evidence by Northern on the reserved issues shall be served on or before April 15, 1974.

(O) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in Section 2.59 of the Commission's Rules of Practice and Procedure.

(P) Within 30 days of the issuance of this order, Northern shall file tariff sheets in compliance with the terms and conditions of this order.

By the Commission.[14]

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1230 Filed 1–14–74;8:45 am]

[Docket No. E–8540]

OHIO POWER CO.

Notice of Application

JANUARY 4, 1974.

Take notice that on December 6, 1973, Ohio Power Company (Applicant) tendered for filing pursuant to section 205 of the Federal Power Act and Part 35 of the regulations issued thereunder, a supplemental Modification No. 4, dated November 1, 1973, to the Interconnection Agreement with Columbus & Southern Ohio Electric Company, dated December 1, 1963 and designated Ohio Power Rate Schedule FPC No. 32.

Section 1 of Modification No. 4 provides for an increase in the Demand Charge for Short-Term Power from $0.40 to $0.45 per kilowatt per week, while Section 2 thereof increases the Demand Charge for Limited-Term Power from $2.15 to $2.50 per kilowatt per month. Modification No. 4 is to take effect January 1, 1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 23, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1227 Filed 1–14–74;8:45 am]

[Project No. 2687]

PACIFIC GAS AND ELECTRIC CO.

Notice of Application for Approval of Revised Exhibits R and S

JANUARY 7, 1974.

Public notice is hereby given that application was filed May 8, 1972, under the Federal Power Act (16 U.S.C. 791a–825r) by Pacific Gas and Electric Company (Licensee) (Correspondence to: Mr. J. F. Roberts, Jr., Vice President, Pacific Gas and Electric Company, 245 Market Street, San Francisco, California 94106) for Amendment of License for its constructed Projects No. 2687, known as the Pit 1 Project, located on the Tule, Little Tule, Fall, and Pit Rivers in Shasta County, California. The project affects interstate commerce.

Major license for Project No. 2687 was issued November 6, 1970, (44 F.P.C. 1365). Under license Articles 28 and 29 thereof, licensee has filed supplements to Exhibits R and S for Commission approval.

The Exhibit R supplement includes a schedule of development of recreation facilities. According to the application, a five unit campground with a portable water system and sanitary facilities is scheduled for initial construction. The existing unimproved boat launch would be graded and compacted when the campground is constructed; development of a more extensive boat launch facility is presently under study. Additional recreation facilities and improvements would include an enlarged parking area and a viewing platform to be constructed after the successful initiation of the Big Lake Wildlife Habitat Improvement Plan, which is a part of this filing.

The Exhibit S supplement includes a Wildlife Habitat Improvement Plan, a schedule of water releases, and a lease with the California Department of Fish and Game for an experimental hatchery.

Any person desiring to be heard or to make protest with reference to said application should on or before March 7, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become

[14] Commissioner Brooke concurs for the purpose of accepting settlement. His concurrence does not extend to the unmodified Seaboard policy recitation nor to the directive that Northern's commodity rate "floor" in its next 4(e) rate filing reflect United's 75 percent prescription.

parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1217 Filed 1-14-74;8:45 am]

[Project No. 2105]

PACIFIC GAS AND ELECTRIC CO.
Notice of Application for Change in Land Rights

JANUARY 8, 1974.

Public notice is hereby given that application was filed October 3, 1973, under the Federal Power Act (16 U.S.C. 791a-825r) by the Pacific Gas and Electric Company (Correspondence to: Mr. J. F. Roberts, Jr., Vice President—Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106) for change in land rights for Project No. 2105, located on the North Fork Feather River, near the town of Almanor County, California, affecting lands of the United States in Plumas and Lassen National Forests.

Applicant proposes to grant an easement over project lands at Lake Almanor to the U.S. Forest Service for construction operation and maintenance of a boat launching ramp and appurtenant recreation facilities. The easement involves approximately 13 acres of land located in sections 2 and 3 in T. 27 N., R. 7 E., in the Lassen National Forest. The Forest Service proposes to construct (1) a 2-lane concrete boat launching ramp, (2) a boarding dock, (3) a parking lot for cars and boat trailers, (4) comfort stations, (5) landscaping, and (6) area lighting.

Any person desiring to be heard or to make protest with reference to said application should on or before February 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1223 Filed 1-14-74;8:45 am]

[Docket Nos. RP74-31-15, RP74-31-16, RP74-31-17]

PANHANDLE EASTERN PIPE LINE CO., ET AL.
Notice of Petitions for Extraordinary Relief

JANUARY 4, 1974.

In the matter of Panhandle Eastern Pipe Line Company (Anderson Clayton & Company), Panhandle Eastern Pipe Line Company (City of Monroe City, Missouri), and Panhandle Eastern Pipe Line Company (Hayes-Albion Corporation).

The Commission in its order issued on November 6, 1973, in the proceeding relating to a permanent plan for Panhandle Eastern Pipe Line Company (Panhandle) in Docket No. RP71-119 (50 FPC ____) accepted and made effective, as of November 1, 1973, revised tariff sheets submitted by Panhandle on October 1, 1973, proposing a curtailment plan for that pipeline which conformed to the curtailment procedures contained in the Commission's Statement of Policy issued in Docket No. R-469, Order No. 467-B.

On December 13, 1973, the Commission issued an order in which it noted that numerous petitions for extraordinary relief had been filed by Panhandle's customers.[1] In the aforementioned order it granted temporary extraordinary relief to certain petitioners and set all of petitions docketed in the caption of that order for formal hearing. The Commission in that order further noted its desire to institute one forum in which to determine the propriety of these requests for relief from curtailment on the Panhandle system. Additional requests for extraordinary relief have been filed subsequent to those petitions set forth in the aforementioned order.

Take notice that on November 29, 1973, that Anderson Clayton and Company (ACCO) and the City of Monroe City, Missouri (Monroe City) filed respectively in Docket Nos. RP74-31-15 and RP74-31-16 and on December 13, 1973, Hayes-Albion Corporation (Albion) filed in Docket No. RP74-31-17 petitions pursuant to § 1.7 of the Commission's rules of practice and procedure (18 CFR 1.7) for extraordinary relief from the above-described new curtailment plan made effective as of November 1, 1973, all as more fully described in the petitions which are on file with the Commission and open to public inspection.

In its petition for extraordinary relief ACCO requests that Panhandle be required to deliver to its Jacksonville plant a minimum of 12,000 Mcf per month. In its petition ACCO contends that it is engaged in the business of processing industrial and consumers foods and that it normally purchases natural gas directly from Panhandle at a rate of approximately 840,000 Mcf per year. ACCO asserts that its Jacksonville, Illinois, food processing plant utilizes the aforementioned gas purchased from Panhandle as boiler fuel, for process purposes, and as feed stock. It notes that during the course of the year 1972 through 1973 it purchased approximately 75,000 Mcf per month from Panhandle of which only 11,000 to 12,000 Mcf per month was used to meet its feed stock and process needs. Under Panhandle's presently effective curtailment plan ACCO anticipates that more than 50 percent of the feed stock and process gas utilized at the Jacksonville facility will be curtailed in January and February of 1974. It stresses that the Jacksonville Plant may have to shutdown entirely without the 12,000 Mcf of natural gas needed to meet its feed stock and process requirements. It contends that the economic impact upon the local community would be disastrous.

On November 29, 1973, Monroe City filed a petition for extraordinary relief requesting (1) the restoration of the 600 Mcf standby emergency allocation of gas over its contract demand authorized by the Commission for a 60-day period in its order of February 9, 1973, to meet the needs of the City's power plant, and (2) a request for emergency relief to permit the City to take up to 400 Mcf per day over its curtailed allotment on a standby basis to serve certain schools and other essential requirements within a community. Monroe City contends that without the emergency relief requested vital municipal services and certain local industries may be forced to shut down.

On December 13, 1973, Albion filed its petition for extraordinary relief from the anticipated curtailment to be imposed on Panhandle's system. In its petition Albion notes that under Panhandle's currently effective curtailment plan, its Albion, Michigan plant will receive 232,755 Mcf during the period January 1974 through April 1974 on the basis of the anticipated curtailment levels, distributed by Panhandle to its customers on November 21, 1973. It notes in its petition that it is one of three principal independent producers of malleable iron in the United States and that its production represents approximately 13.5 percent of the total "for sale" shipments of the United States malleable castings industry. It notes that the automobile industry utilizes its products and that in the case of American Motors, each failure of its Albion plant to deliver a differential carrier could mean one less car or truck manufactured by that company. It also points out that Panhandle's failure to deliver certain minimum volumes will not only injure the plant's production but will also force unemployment and cause economic hardship to the local community. It, therefore, requests that the Commission direct Panhandle to deliver a total of 298,400 Mcf to the Albion plant during the period January 1974 through April 1974 and a daily volume of 3800 Mcf.

It appears reasonable and consistent with the public interest in this proceeding to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said petitions should on or before January 14, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any

[1] The order is entitled *Panhandle Eastern Pipe Line Company, et al.*, in docket No. RP 71-119, *et al.* The specific proceedings were captioned by a series of docket numbers commencing with RP74-31-1.

person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1208 Filed 1-14-74;8:45 am]

[Project No. 405]

PHILADELPHIA ELECTRIC POWER CO. AND SUSQUEHANNA POWER CO.

Notice of Application for Change in Land Rights

JANUARY 8, 1974.

Public notice is hereby given that application was filed September 10, 1973, under the Federal Power Act (16 U.S.C. 791a-825r) by the Philadelphia Electric Power Company (Pepco) (Correspondence to: Mr. Edward G. Bauer, Jr., Vice President and General Counsel, Philadelphia Electric Power Company, 2301 Market Street, Philadelphia, Pennsylvania 19101) and The Susquehanna Power Company, (Susquehanna) for change in land rights for constructed Project No. 405, known as the Conowingo Project, located on the Susquehanna River, in Harford and Cecil Counties, Maryland and York and Lancaster Counties, Pennsylvania. The project affects navigable waters of the United States.

Pepco and Susquehanna are joint licensees for Project No. 405; according to the application, Pepco owns the particular project property involved. Pepco executed a lease dated August 22, 1973, with the Pennsylvania Fish Commission (Lessee) term extending twenty-five (25) years or to the year in which Pepco ceases to be a joint licensee for Project No. 405. The lease provides that it shall be effective ten days after notice of approval by the Federal Power Commission.

Philadelphia Electric Power Company proposes to lease to Lessee 9.4 acres of project land in the vicinity of Muddy Creek on the westerly side of the Susquehanna River in Lower Chanceford Township, York County, Pennsylvania. Lessee would utilize the subject land for a public boat launching facility. Proposed development includes: (1) a paved parking area, (2) a boat ramp, (3) an access road, and (4) comfort stations. Lessee agrees to use the area for recreation purposes only.

Any person desiring to be heard or to make protest with reference to said application should on or before March 15, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR-1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1224 Filed 1-14-74;8:45 am]

[Project Nos. 2225 and 2526]

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON

Notice of Extension of Time

JANUARY 7, 1974.

On December 20, 1973, Public Utility District No. 1 of Pend Oreille County, Washington, requested an extension of time to answer the motion to dismiss filed by the staff.

Upon consideration, notice is hereby given that the time is extended to January 20, 1974, within which answers may be filed to the above motion.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1220 Filed 1-14-74;8:45 am]

[Docket No. E-8542]

SOUTHERN INDIANA GAS AND ELECTRIC CO.

Notice of Application

JANUARY 4, 1974.

Take notice that on December 7, 1973, Southern Indiana Gas and Electric Company (Applicant) tendered for filing pursuant to section 205 of the Federal Power Act and Part 35 of the regulations issued thereunder, an Interconnection Agreement dated July 5, 1973 with Big Rivers Rural Electric Cooperative Corporation, establishing a single point of interconnection therewith at the Henderson, Kentucky 161-138 kv Substation.

Services to be rendered pursuant to the Interconnection Agreement include (1) provision of mutual energy and standby assistance, (2) transfer of electric energy through the transmission system of one party for the other's benefit, (3) interchange, sale and purchase of energy to effect operating economies, (4) sale and purchase of available short-term electric power to fulfill the needs of one party, and (5) coordination and definition of maintenance schedules for generation and transmission facilities. The Agreement is to take effect upon the date of Commission acceptance thereof.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 25, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1205 Filed 1-14-74;8:45 am]

[Docket No. CP70-7 (Phase II)]

SOUTHERN NATURAL GAS CO.

Notice of Petition To Amend

JANUARY 8, 1974.

Take notice that on December 7, 1973, Southern Natural Gas Company (Petitioner), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7 (Phase II) a petition pursuant to section 7(c) of the Natural Gas Act to amend the Commission's order issued October 29, 1969, in said docket (42 FPC 944) so as to authorize Petitioner to increase the aggregate of Alabama Gas Corporation's (Alagasco) Contract Demands with Petitioner by 6,490 Mcf of gas per day and allow Petitioner to deliver gas to Alagasco at additional delivery points while eliminating Petitioner's authorization to sell gas to the Town of Brent (Brent), City of Greensboro (Greensboro), City of Marion (Marion) and Town of Uniontown (Uniontown), all located in the State of Alabama, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the order issued October 29, 1969, in Phase II of this docket the Commission, among other things, authorized Petitioner to sell and deliver to Alagasco daily Contract Demand aggregating 408,725 Mcf of gas, which authorization was amended by order issued October 20, 1971 (46 FPC 861) reducing this Contract Demand authorization to 408,475 Mcf per day. In the October 29, 1969, order Petitioner was also authorized to sell and deliver daily Contract Demands, or Maximum Delivery Obligations, of 1,560 Mcf of gas to Brent, 1,580 Mcf of gas to Greensboro, 2,100 Mcf of gas to Marion, and 1,000 Mcf of gas to Uniontown. The Contract Demand to Brent was subsequently increased to 1,810 Mcf of gas by the order issued October 20, 1971.

The petition to amend states that on November 1, 1973, Alagasco received approval from the Alabama Public Service Commission (APSC) of its purchase of Greensboro and Uniontown's gas transmission facilities and the assignment by Petitioner to Alagasco of Petitioner's service agreements with said communities, as well as, ASPC's approval of certain hauling agreements between Alagasco and the communities of Brent and Marion and the assignment of their respective service agreements with Petitioner to Alagasco.

Petitioner states that Alagasco has requested that the increase of 6,490 Mcf per day of Contract Demand be included in its aggregate Contract Demand with Petitioner to reflect Alagasco's assumption of said service agreements. Petitioner

states that this increase in Alagasco's aggregate Contract Demand will be offset by the elimination of Petitioner's authorization to sell gas to the four communities. Petitioner therefore, requests the Commission to amend its certificate authorization in the instant docket so as to increase the aggregate of Alagasco's Contract Demand from 408,475 Mcf to 414,964 Mcf, as well as authorize delivery of gas to Alagasco at Petitioner's delivery points of Brent, Greensboro, Marion, and Uniontown, and eliminate Petitioner's authorization to sell gas to these four communities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1210 Filed 1-14-74;8:45 am]

[Docket No. RP74-55]

SOUTHERN NATURAL GAS CO.

Order Instituting Hearing

JANUARY 7, 1974.

By letter dated December 1, 1972, Southern Natural Gas Company (Southern) applied to this Commission for authorization to include transportation charges as a part of the capitalized cost of cushion gas used in Southern's Muldon Field Storage Project located in Monroe County, Mississippi. On May 25, 1973, the Commission by letter order denied Southern's request and directed Southern to reduce the cost of Muldon Field cushion gas by the amount of claimed transportation charges in excess of the incremental cost of compression incurred by Southern in moving the cushion gas from the source of supply to the storage project. The incremental compression cost amounts to .3665 cents per Mcf.

On June 22, 1973, Southern filed with the Commission a response in opposition to the proposed disposition and requested that the Commission reconsider its position according to the procedures set forth in section 158 of the regulations. In its pleading Southern states that the Commission has apparently considered this matter without a full understanding of the facts. Southern also states that if it were required to price its cushion gas on the basis of the Commission's May 25, 1973, letter order, the result would not be consistent with accepted accounting procedures and would have a substantial adverse impact on Southern's reported net income.

Based on our review of the record in this matter, including Southern's response of June 22, 1973, we find that a hearing should be held for purposes of determining the proper transportation charges to be included in the cost of the cushion gas in the Muldon storage project.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing for purposes of determining the proper cost accounting procedures for cushion gas in the Muldon storage project.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 8 and 15 thereof and §§ 1.20 and 158.7 of the Commission's rules and regulations, a public hearing shall be held on February 26, 1974, at 10:00 A.M., e.d.t. in a hearing room of the Federal Power Commission, Washington, D.C. 20426, for purposes of determining the proper transportation charges to be included in the cost of the cushion gas in the Muldon storage project.

(B) Southern shall serve its prepared testimony and exhibits on all parties on or before January 18, 1974. The Commission Staff shall serve its prepared testimony and exhibits on or before February 1, 1974. Southern shall serve its rebuttal testimony and exhibits on all parties on or before February 15, 1974.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)) shall preside at the hearing initiated by this order, and shall conduct such hearing in accordance with the Natural Gas Act, the Commission's rules and regulations, and the terms of this order.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1219 Filed 1-14-74;8:45 am]

[Docket No. RP74-5]

TEXAS EASTERN TRANSMISSION CORP.

Notice Deferring Procedural Dates

JANUARY 7, 1974.

On September 13, 1973, an order was issued accepting for filing and suspending proposed rates, permitting intervention and establishing hearing procedures in the above matter. On November 30, 1973, Texas Eastern Transmission Corporation filed a notice of withdrawal of the filing in the above docket. On December 21, 1973, Staff Counsel filed a motion to extend the dates indefinitely.

Upon consideration, notice is hereby given that the procedural dates in the above matter are deferred until the notice of withdrawal by Texas Eastern becomes effective.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1222 Filed 1-14-74;8:45 am]

[Docket No. RP72-98]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Proposed Changes in FPC Gas Tariff

JANUARY 7, 1974.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 17, 1973, tendered for filing proposed changes in its FPC Gas Tariff, Third Revised Volume No. 1, the following sheets:

Fifth Revised Sheet No. 13
Fifth Revised Sheet No. 13A
Fifth Revised Sheet No. 13B
Fifth Revised Sheet No. 13C
Fifth Revised Sheet No. 13D

Texas Eastern states that these sheets are issued pursuant to the purchased gas cost adjustment provision contained in section 23 of the General Terms and Conditions of Texas Eastern's FPC Gas Tariff, Third Revised Volume No. 1. This provision was made effective by Federal Power Commission order dated November 26, 1973 approving Texas Eastern's Stipulation and Agreement dated July 25, 1973 in Docket No. RP72-98. The change in Texas Eastern's rates proposed by this filing, according to the company, reflects a cost of gas adjustment to track rate increases of Texas Eastern's pipeline suppliers, Texas Gas Transmission Corporation, Southern Natural Gas Company and United Gas Pipe Line Company. The proposed effective date of the above tariff sheets is February 1, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1215 Filed 1-14-74;8:45 am]

[Docket No. RP72-99]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Filing of Proposed Substitute Tariff Sheet

JANUARY 7, 1974.

Take notice that on December 18, 1973, Transcontinental Gas Pipe Line

Corporation filed in Docket No. RP72–99 second substitute fifth revised sheet No. 5 to its FPC gas tariff, first revised volume No. 1, in substitution for the tariff sheet designated as third substitute fifth revised sheet No. 5 and previously filed in this docket on November 26, 1973.

Transco states the purpose of this substitute sheet is to eliminate from the GSS rates the effect of the proposed tracking, effective December 1, 1973, of increased costs from Consolidated Gas Supply Corporation. By letter order dated November 23, 1973, in Docket No. RP74–30, the Commission rejected that proposed tracking increase.

Any person desiring to be heard or to protest Transco's filing herein should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene, provided, however, that parties who have previously intervened in Docket No. RP72–99 need not file additional petitions to intervene. Copies of Transco's filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1209 Filed 1–14–74;8:45 am]

UNION ELECTRIC CO.

[Docket No. E–7698]

Notice of Application

JANUARY 8, 1974.

The FPC issues notice of the filing of a supplemental application by Union Electric Company (Applicant) in Docket No. E–7698 seeking authority pursuant to Section 204 of the Federal Power Act to increase from $150,000,000 to $200,000,000 the amount of short-term promissory notes it may issue, of which aggregate amount a maximum of $100,000,000 could be in the form of commercial paper, and to extend from December 31, 1974 to December 31, 1976 the final maturity date of said notes, with no notes to be issued after March 31, 1976.

The interest rate applicable to the promissory notes will be, in the case of demand notes issued to commercial banks, the prime rate in effect during the period they are: in the case of notes issued to commercial paper dealers, the market rate (or discount rate) at the date of issuance for commercial paper of comparable quality and of the particular maturity sold to commercial paper dealers; and in the case of commercial paper placed directly with purchasers of such commercial paper for their own accounts, the market rate (or discount rate) at the date of issuance for commercial paper of comparable quality and of the particular maturity placed directly by the issuer thereof. The Applicant contemplates the issuance of promissory notes, including the "rollover" of commercial paper promissory notes, without further application to this Commission, at any time and from time to time, each of such notes to have a maturity date of not later than December 31, 1976.

The proceeds will be used to finance in part Applicant's construction program to December 31, 1976. The construction program of Applicant, as now scheduled, calls for plant expenditures of approximately $341,633,000 in 1975 and 1976.

Any person desiring to be heard or to make any protest with reference to the application should on or before January 25, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1218 Filed 1–14–74;8:45 am]

[Docket No. RP74–32]

CONSOLIDATED GAS SUPPLY CORP.

Order Establishing Hearing

ISSUED JANUARY 7, 1974.

On November 5, 1973, as corrected November 9 and 14, 1973, Consolidated Gas Supply Corporation (Consolidated) filed in this docket certain proposed Tariff Sheets (Proposed Sheets)[1] which purportedly are designed to implement the recovery of certain fixed costs which would otherwise be recoverable only through additional rate filings. These Proposed Sheets provide for a Curtailment Increase clause which Consolidated states will not affect its cost of service but will alleviate the problems of failure to recover fixed costs due to shifts in deliveries to various customers classes as a result of curtailments. Consolidated requests a waiver of the proscriptions of § 154.38(d) of the regulations with regard to the filing of rate schedules and proposes that the Proposed Sheets become effective on December 20, 1973.

The filing was noticed on December 26, 1973, with petitions to intervene and comments due on or before January 7, 1974. To this date, no comments or petitions to intervene have been received.

[1] First Revised Sheets Nos. 10, 11, 12, 14, 16, 17, 18, 19, 20, and 21: Second Revised Sheet No. 13.

Consolidated alleges that it would not recover all of its fixed costs in the event of a gas shortage curtailment because a large part of Consolidated's sales are made at commodity-only rates. Furthermore, Consolidated states that to the extent the the volumes of such sales are less because of gas shortage curtailment than the volumes used to allocate costs and design rates in Consolidated's most recent rate filing, the revenues from such recent sales volume will fail to recover all of the fixed costs which are incurred to make such sales. We are not convinced that the format proposed by Consolidated to include a curtailment increase clause in its tariff is appropriate at this time. However, because the proposal appears worthy of further consideration, we shall establish a hearing for that purpose under Section 4 of the Natural Gas Act to determine if Consolidated's Proposed Sheets are in the public interest and if such Proposed Sheets should be given prospective effect. Accordingly, Consolidated's request for an effective date of December 20, 1973, will be denied.

The Commission finds:

Good cause has been shown to establish a hearing regarding the justness and reasonableness of Consolidated Proposed Sheets and to determine if such Proposed Sheets should be accepted by the Commission to be given prospective effect.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Section 4 and the Commission's Rules and Regulations, a public hearing shall be held on May 27, 1974, at 10:00 A.M., EST, in a hearing room of the Federal Power Commission, Washington, D.C. 20426, concerning the justness and reasonableness of Consolidated's Proposed Sheets.

(B) On or before April 15, 1974, the Commission staff shall serve its prepared testimony and exhibits. Any intervenor testimony and exhibits shall be served on or before April 29, 1974. Any rebuttal evidence by Consolidated shall be served on or before May 13, 1974. Cross-examination of the evidence filed, including the Company's direct case, shall commence at 10:00 A.M., EST, on May 27, 1974, in a hearing room of the Federal Power Commission.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)) shall preside at the hearing initiated by this order, and shall conduct such hearing in accordance with the Natural Gas Act, the Commission's Rules and Regulations, and the terms of this order.

(D) Consolidated's request for an effective date of December 20, 1973, is hereby denied.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.74–1196 Filed 1–14–74;8:45 am]

[Docket No. CP74–125]

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC.

Notice of Application

JANUARY 8, 1974.

Take notice that on November 8, 1973, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), P.O. Box 608, Hastings, Nebraska 68901, filed in Docket No. CP 74–125 an application pursuant to sections 7(b) and (c) of the Natural Gas Act as implemented by sections 157.7(b), (e), and (g) of the Regulations thereunder (18 CFR 157.7(b), (e), and (g)), for a certificate of public convenience and necessity authorizing the construction and for permission and approval of the abandonment, during the calendar year 1974, and operation of natural gas facilities, all as more fully set forth in the application which is on file in this proceeding and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its certificated main pipeline system supplies of natural gas in various producing areas generally coextensive with said system; in abandoning service and removing direct sales measuring, regulating, and related facilities; and in the construction and abandonment of compression facilities which will not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

The total cost of the gas purchase facilities will not exceed $3,800,000, and the cost of any single project will not exceed $950,000. The total cost of the construction and abandonment of the compression facilities will not exceed $2 million, and the cost of any single project will not exceed $500,000. These costs will be financed out of current working capital or will be obtained by interim bank loans which at a later date will be funded by a security issue.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1201 Filed 1–14–74;8:45 am]

[Docket No. RP71–16, et al.]

MIDWESTERN GAS TRANSMISSION CO.

Notice of Proposed PGA Rate Adjustment

JANUARY 8, 1974.

Take notice that on December 14, 1973, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 1 and Second Revised Sheet No. 5, to be effective Febraury 1, 1974.

Midwestern states that the sole purpose of filing Second Revised Sheet No. 5 is to reflect PGA rate adjustments pursuant to the PGA Clauses in Articles XVII and XVIII of the General Terms and Conditions. Midwestern further states that as to the Southern System, the Current Purchased Gas Cost Rate Adjustment Pursuant to Section 2 of Article XVII reflects the rate increases filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), to be effective on January 1, 1974, and that such rates of Tennessee are the revised rates of Tennessee filed on November 30, 1973, in Docket No. RP73–113 which also reflect Tennessee's PGA rate increase filed November 16, 1973, to be effective on January 1, 1974. Midwestern also states that as to the Northern System, the PGA rate adjustment consists of a Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Northern System pursuant to Section 3 of Article XVIII based on the balance in such account as of October 31, 1973.

Midwestern states that First Revised Sheet No. 1 is filed to revise the Table of Contents to eliminate Rate Schedule TWS which was cancelled, effective November 9, 1973, by Midwestern's filing in Docket No. RP74–29.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 17, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–1200 Filed 1–14–74;8:45 am]

[Project No. 2709]

MONONGAHELA POWER CO. ET AL.

Order Ruling on Staff Motion for Extension of Time

JANUARY 4, 1974.

By motion filed December 21, 1973, Staff has requested an extension of time for the filing of the final environmental impact statement, its direct testimony, Intervenor's direct testimony and all subsequent dates in the hearing schedule for this proceeding.[1]

In its motion Staff points out that the comments received to the draft environmental impact statement necessitated gathering additional information regarding the Davis Project for purposes of both the final environmental impact statement and for formulation of Staff members' positions. This additional information involved areas of wildlife, land use and the placement of Corridor "H" in relation to the project.

After receiving the last comment to the draft on November 8, 1973, Staff requested this information from various governmental agencies and parties to this proceeding. As of the date of the filing of Staff's motion, not all of the requested information had been supplied.

Further, Staff points out that the material which was supplied has required reevaluations of areas previously not subject to comment. The additional time requested, if granted, would change the filing date for the final environmental statement, and all other testimony of Staff and Intervenors from January 8, 1974, to February 14, 1974, and the commencement of the hearing from February 12, 1974, to March 18, 1974.

No answers to Staff's motion have been filed.

We are aware that this request would be the third delay of this proceeding, however we cannot overlook the importance of satifying the National Environmental Policy Act of 1969 and our need

[1] The hearing scheduled was initially set by our Order of March 9, 1973 and has been amended by Orders of June 14, 1973 and October 16, 1973.

for a complete record in this proceeding.

The Commission finds:

For the reasons set forth above, Staff's motion for extension of time should be granted.

The Commission orders:

The dates set forth in ordering paragraph (D) of our Order of March 9, 1973, amended June 14, 1973 and October 16, 1973, are changed insofar as necessary to grant Staff's Motion as follows:

(1) On February 14, 1974, the Commission Staff and Intervenors, respectively, shall file, with the Secretary, an original and 10 copies of all direct testimony and exhibits, including qualifications of witnesses with copies served on all parties.

(2) On February 14, 1974, the Commission Staff shall also file an original and 10 copies of the Commission Staff's final environmental impact statement. Copies of the final environmental impact statement shall be served on all participants.

(3) In order that the parties may have a sufficient period of time in which to prepare cross-examination on the Staff's final environmental impact statement, the hearing in this proceeding shall commence on March 18, 1974, at least 30 days after the Commission Staff files its final environmental impact statement with the Secretary.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-1203 Filed 1-14-74;8:45 am]

[Docket Nos. E-8465, E-8389 and E-8482]

NEW YORK STATE ELECTRIC AND GAS CORP.

Order Amending Prior Order

JANUARY 4, 1974.

On November 30, 1973, the Commission issued an Order Accepting for Filing and Suspending Proposed Rate Schedule Change, Consolidating Proceedings, Providing for Hearing and Establishing Procedures in the dockets above. Footnote symbol number 2 should be placed at the end of the last paragraph on page one of the November 30 order. Footnote number 2 should read as follows:

Designated as Supplement 4 to New York State Electric and Gas Corporation Rate Schedule FPC No. 55 cancelling Rate Schedule FPC No. 55 as supplemented.

The Commission finds:

It is reasonable and appropriate in the public interest and to aid in the enforcement of the Federal Power Act that our order issued November 30, 1973, in this proceeding be amended as hereinafter provided.

The Commission orders:

(A) Our order issued November 30, 1973, in this proceeding is hereby amended to include at the end of the last paragraph on page one footnote number 2 which will read as follows:

Designated as Supplement 4 to New York State Electric and Gas Corporation Rate Schedule FPC No. 55 cancelling Rate Schedule FPC No. 55 as supplemented.

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

[SEAL] MARY B. KIDD, *Acting Secretary.*

[FR Doc.74-1195 Filed 1-14-74;8:45 am]

[Docket No. RP74-49]

NORTHWEST PIPELINE CORP.

Notice of Certificate of Adoption and of Proposed Changes in FPC Gas Tariff

JANUARY 4, 1974.

Take notice that Northwest Pipeline Corporation ("Northwest"), on December 19, 1973, tendered for filing with the Federal Power Commisison its Certificate of Adoption of El Paso Natural Gas Company's FPC Gas Tariff, First Revised Volume No. 3 (together with the Service Agreements identified at pages 80-82 of said Volume) and Original Volume No. 4.

Northwest states that by orders issued September 21, 1973, and November 23, 1973, in Northwest Pipeline Corporation, et al., Docket Nos. CP73-331, et al., Northwest was issued the requisite certificate authority to acquire and operate El Paso's Northwest Division System, together with the related import authority and Presidential Permit. It is anticipated that the closing on the transfer of the assets to be divested by El Paso to Northwest will occur on or about January 31, 1974. Northwest requests that the tendered Certificate of Adoption be made effective thirty (30) days after the filing date, or in the alternative, the date of the transfer of the assets, whichever is the later. Northwest states that in accordance with Section 154.65 of the Commission's Regulations, Northwest will file its restated tariff to replace the tariff adopted from El Paso within ninety (90) days of the date of closing on the transfer of assets.

Northwest also filed with the Commission on December 19, 1973, proposed revisions to First Revised Volume No. 3 pursuant to sections 2.70 and 2.78 of the Commisison's Rules of Practice and Procedure and section 154.63 of the Commission's Regulations under the Act. Northwest requests, pursuant to section 154.51 of the Commission's Regulations, waiver of the notice requirements of section 154.22 of said Regulations so that the tariff revisions proposed can be made effective, without suspension, on the date that Northwest commences operations, or thirty (30) days after filing, whichever is the later.

Northwest states that the purpose of the proposed tariff revisions is to provide an interim emergency curtailment plan designed to amend the curtailment procedures now included in First Revised Volume No. 3, so as to continue to assure adequate and reliable service to the firm high priority requirements of its customers. It is stated that such revisions are necessary at this time because Westcoast Transmission Company Limited, the Northwest Division's sole Canadian supplier has commenced curtailing the Northwest Division by approximately 120,000 Mcf per day at the Sumas, Washington import point.

Northwest also proposes to eliminate the demand charge adjustment provided for in Rate Schedules ODL-1 and PL-1 for failure to deliver the contract quantity if the delivery failure is due to a supply deficiency.

Copies of the filing were served upon Northwest's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-1202 Filed 1-14-74;8:45 am]

[Docket No. E-7658]

POTOMAC EDISON CO. ET AL.

Order Establishing Hearing Procedures

ISSUED JANUARY 7, 1974.

Potomac Edison Company (Edison), the Potomac Edison Company of Virgina (Virginia), the Potomac Edison Company of West Virginia (West Virginia), and the Potomac Edison Company of Pennsylvania (Pennsylvania), on July 9, 1971, tendered for filing new supplemental rate schedules to change certain provisions of FPC Rate Schedules designated in Appendix A attached hereto. The new supplements change the rate of return used to determine capacity charges from 6 percent to a computed amount of 150 percent of the imbedded cost of debt associated with pool facilities. The above formula results in a current rate of return of 8.67 percent.

By order of August 6, 1971, the Commission suspended the rate schedules for one day, to become effective subject to refund on August 10, 1971. The Commission provided for a hearing into the justness and reasonableness of the proposed rate schedules. To that end, we shall establish dates for the service of testimony and a hearing thereon as provided below.

The Commission finds:

Pursuant to the Commission's order of August 6, 1971, the dates for service of testimony and commencement of hearing into the matters described should be established.

The Commission orders:

(A) The direct testimony and exhibits of Edison, Virginia, West Virginia, and Pennsylvania shall be served, if not previously filed, on or before February 15, 1974. The Commission Staff shall serve its testimony and exhibits, if any, on or before March 5, 1974. The prepared testimony and exhibits of intervenors, if any, shall be served on or before March 20, 1974.

(B) Cross-examination of the evidence shall commence at 10:00 a.m. on April 2, 1974, in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control the proceeding in accordance with the policies expressed in Section 2.59 of the Commission's Rules of Practice and Procedure.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

APPENDIX A

RATE SCHEDULE DESIGNATIONS

Parties: The Potomac Edison Co.; The Potomac Edison Co. of Pennsylvania, The Potomac Edison Co. of Virginia, and The Potomac Edison Co. of West Virginia.

COMPANY	
The Potomac Edison Company	
(1) Supplement No. 1 to Rate Schedule	FPC No. 18.
The Potomac Edison Company of Virginia	
(2) Supplement No. 1 to Rate Schedule	FPC No. 10.
The Potomac Edison Company of West Virginia	
(3) Supplement No. 1 to Rate Schedule	FPC No. 20.
The Potomac Edison Company of Pennsylvania	
(4) Supplement No. 1 to Rate Schedule	FPC No. 14.

[FR Doc.74-1197 Filed 1-14-74;8:45 am]

[Docket No. CP74-167]

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO, INC.

Notice of Application

JANUARY 4, 1974.

Take notice that on December 7, 1973, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), filed in Docket No. CP74-167 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide natural gas service to Connecticut Natural Gas Corporation (Connecticut Natural) in the New Britain, Connecticut, area under Applicant's CD-6 Rate Schedule in lieu of its G-6 Rate Schedule; authorizing Applicant to combine said service with CD-6 service currently being rendered by Applicant to Connecticut Natural in the Hartford, Connecticut, area under a single gas sales contract; and authorizing the existing New Britain delivery point be used as an additional delivery point for providing natural gas storage service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that Connecticut Natural has been planning to connect its Hartford and New Britain distribution systems since its inception, as a result of the merger of the Hartford Gas Company and The New Britain Gas Light Company into a single entity, known as Connecticut National on September 1, 1968. In this regard Applicant states that Connecticut Natural has requested that Applicant provide natural gas service to Connecticut Natural's New Britain Service Area presently provided for in the gas sales contract dated September 1, 1968, under Applicant's CD-6 Rate Schedule in lieu of Applicant's G-6 Rate Schedule. Connecticut Natural has requested Applicant to render such CD-6 service, along with the CD-6 service presently being rendered to Connecticut Natural in the Hartford service area pursuant to the gas sales contract dated November 1, 1968, under a single new Gas sales contract providing for the sale and delivery of a contracted demand of 24,685 Mcf of natural gas per day at 14.73 psia, which would cancel and supersede these presently effective gas sales contracts.

The application states further that Applicant and Connecticut Natural desire to supersede and cancel the gas sales contract dated July 1, 1970, and to enter into the new gas sales contract which will provide additionally for a natural gas storage service to Connecticut Natural with a Daily Storage Quantity of 6,018 Mcf and a Winter Storage Quantity of 541,620 Mcf under the terms and conditions of Applicant's Rate Schedule SS-NE. Applicant states that said new agreement provides for the utilization by Applicant of its existing New Britain point of delivery as an additional point of delivery to Connecticut Natural to effect such gas storage service.

The application states that Connecticut Natural's requests for CD-6 service and consolidation of such CD-6 service along with the CD-6 service for the Hartford area under a single new gas sales contract would permit Connecticut Natural to utilize effectively its takes from Applicant for Connecticut National's LNG operations and overall service in these two areas. Applicant states that Applicant is not obligated to deliver to Connecticut Natural daily volumes in excess of the 30,703 Mcf presently authorized, including a Maximum Daily Quantity of 24,685 Mcf under its CD-6 Schedule and a Daily Storage Quantity of 6,018 Mcf under its SS-NE Rate Schedule.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1199 Filed 1-14-74;8:45 am]

[Docket No. RP74-39-3]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Extension of Time and Postponement of Hearing

JANUARY 4, 1974.

On January 2, 1974, Carnegie Natural Gas Company filed a motion for a modification of the procedural dates set by the order issued December 28, 1973, in the above-designated matter.

Upon consideration, notice is hereby given that the procedural dates in the above-designated matter are modified as follows:

Service of Testimony and exhibits by petitioner and all parties supporting or opposing petitioner's request, January 15, 1974.
Hearing, January 18, 1974 (10:00 a.m.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-1198 Filed 1-14-74;8:45 am]

FEDERAL RESERVE SYSTEM

ATLANTIC BANCORPORATION

Acquisition of Bank

Atlantic Bancorporation, Jacksonville, Florida, has applied for the Board's approval under Section 3(a)(3) of the

Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire not less than 54 percent and up to 100 percent of the voting shares of Mid-County Commercial Bank, Largo, Florida. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 3, 1974.

Board of Governors of the Federal Reserve System, January 7, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-1036 Filed 1-14-74;8:45 am]

BAYSTATE CORP.

Acquisition of Bank

Baystate Corporation, Boston, Massachusetts, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to The First National Bank of Easthampton, Easthampton, Massachusetts. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 3, 1974.

Board of Governors of the Federal Reserve System, January 7, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-1038 Filed 1-14-74;8:45 am]

FIRST PENNSYLVANIA CORP.

Proposed Acquisition of Cowart Finance Center, Inc.; Correction

In FR Doc. 73-26142 appearing on page 34027 of the issue for Monday, December 10, 1973 the first sentence should have read:

First Pennsylvania Corporation, Philadelphia, Pennsylvania, has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission for the purchase of the notes receivable and fixed assets of Cowart Finance Center, Inc., Opelousas, Louisiana, by its wholly-owned subsidiary, Industrial Finance and Thrift Corporation, New Orleans, Louisiana, through its wholly-owned subsidiary, Termplan Caddo, Inc., Shreveport, Louisiana. Notice of the application was published on September 6, 1973, in the Daily News, a newspaper circulated in Opelousas, Louisiana.

The time for comment or request for hearing is extended to January 22, 1974.

Board of Governors of the Federal Reserve System, January 8, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-1039 Filed 1-14-74;8:45 am]

THIRD NATIONAL CORP.

Acquisition of Bank

Third National Corporation, Nashville, Tennessee, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 40 per cent or more of the voting shares of The Bank of Sevierville, Sevierville, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 31, 1974.

Board of Governors of the Federal Reserve System, January 7, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-1037 Filed 1-14-74;8:45 am]

RENEGOTIATION BOARD

EXCESSIVE PROFITS AND REFUNDS

Notice of Interest Rate

Notice is hereby given that, pursuant to section 105 (b)(2) of the Renegotiation Act of 1951, as amended, the Secretary of the Treasury has determined that the rate of interest applicable, for the purposes of said section 105 (b)(2) and section 108 of such act, to the period beginning on January 1, 1974, and ending on June 30, 1974, is 7⅞ per centum per annum.

Dated: January 10, 1974.

W. S. WHITEHEAD,
Chairman.

[FR Doc. 74-1186 Filed 1-14-74;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 15; Amdt. 1]

ASSISTANT ADMINISTRATOR FOR ADMINISTRATION

Delegation of Administrative and Financial Activities

Delegation of Authority No. 15 (37 FR 20753) is hereby amended to include authority to affix the Seal of the Small Business Administration to the certification of certain documents. Section D is therefore added to read as follows:

* * * * *

D. *Use of Seal of the Small Business Administration.* To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

* * * * *

Effective date: January 2, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-1016 Filed 1-14-74;8:45 am]

[Application 09/09-5167]

CHINESE INVESTMENT CORPORATION OF CALIFORNIA

Application for a License as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 461 et seq.), has been filed by Chinese Investment Corporation of California (applicant) with the Small Business Administration (SBA) pursuant to § 107.102 (38 F.R. 30838, November 7, 1973).

The officers and director of the applicant are as follows:

Rosa Leong, 308 North Las Palmas Avenue, Los Angeles, California 90004, President, Vice President, Director.

Linda N. Stone, 1549 North Ogden Drive, Hollywood, California 90046, Treasurer, Secretary.

The applicant, a California corporation with its principal place of business located at 1017 Wilshire Boulevard, Los Angeles, California 90017, will begin operations with $300,000 of paid-in capital and paid-in surplus, consisting of 30,000 shares of common stock having all voting rights. The voting common stock will be owned by Mrs. Rosa Leong.

The applicant will not concentrate its investments in any particular industry. As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the applicant under their management,

including adequate profitabilty and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Any person may, on or before January 30, 1974, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Los Angeles, California.

Dated: December 20, 1973.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.74-1018 Filed 1-14-74;8:45 am]

[Declaration of Disaster Loan Area 1030]

GEORGIA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of December 1973, because of the effects of a certain disaster, damage resulted to business property located in the State of Georgia;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Hall County, Georgia, and adjacent affected areas, suffered damage or destruction resulting from a tornado which struck on December 13, 1973.

Applications will be processed under the provisions of Public Law 93-24.

OFFICE SMALL BUSINESS ADMINISTRATION, REGIONAL OFFICE, 1401 PEACHTREE STREET, NE., ATLANTA, GEORGIA 30309.

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to March 5, 1974.

Dated: January 4, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-1019 Filed 1-14-74;8:45 am]

[Declaration of Disaster Loan Area 1028]

KENTUCKY

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of November 1973, because of the effects of a certain disaster, damage resulted to homes and business property located in the State of Kentucky;

Whereas, the Small Business Administration has investigated and received reports of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Knox and Bell Counties, Kentucky, suffered damage or destruction resulting from floods which occurred November 26, 1973.

Applications will be processed under the provision of Public Law 93-24.

OFFICE SMALL BUSINESS ADMINISTRATION DISTRICT OFFICE, FEDERAL OFFICE BUILDING, ROOM 188, 600 FEDERAL PLACE, LOUISVILLE, KENTUCKY 40202.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to February 27, 1974.

Dated: December 27, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-1020 Filed 1-14-74;8:45 am]

[Declaration of Disaster Loan Area 1027]

MISSISSIPPI

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of November 1973, because of the effects of a certain disaster, damage resulted to business property located in the State of Mississippi;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in DeSoto County, Mississippi, suffered damage or destruction resulting from a tornado on November 27, 1973.

Applications will be processed under the provisions of Public Law 93-24.

OFFICE

Small Business Administration, District Office, Petroleum Building, 6th Floor, Pascagoula & Amite Streets, Jackson, Mississippi 39205.

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to February 22, 1974.

Dated: December 19, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-1021 Filed 1-14-74;8:45 am]

[Delegation of Authority 30; Revision 14; Amdt. 6]

REGIONAL DIRECTORS

Delegation of Authority

Delegation of Authority No. 30 (Revision 14) (37 FR 12651), as amended (37 FR 14840, 37 FR 19405, 37 FR 21466, 37 FR 23594, and 38 FR 32984), is hereby further amended to include authority to affix the Seal of the Small Business Administration to the certification of certain documents. Part VIII is revised by adding paragraph 5 reading as follows:

* * * * *

5. *Use of Seal of the Small Business Administration.* To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

* * * * *

Effective Date: January 2, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-1017 Filed 1-14-74;8:45 am]

[Declaration of Disaster Loan Area 1029]

SOUTH CAROLINA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of December 1973, because of the effects of a certain disaster, damage resulted to homes and business property located in the State of South Carolina.

Whereas, the Small Business Administration has investigated and received reports of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Greenwood and Newberry Counties, South Carolina, and adjacent affected areas, suffered damage or destruction resulting from a tornado which occurred December 13, 1973.

Applications will be processed under the provisions of Public Law 93-24.

OFFICE

Small Business Administration District Office, 1801 Assembly Street, Columbia, South Carolina 29201.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to March 5, 1974.

Dated: January 3, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-1022 Filed 1-14-74;8:45 am]

OFFICE OF SPECIAL ADVISOR TO THE ADMINISTRATOR ON ENERGY AND MATERIALS PROGRAMS

Notice of Establishment

Notice is hereby given that pursuant to section 2 of the Small Business Act (72 Stat. 384, as amended), which provides that "the Government should aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise . . . and to maintain and strengthen the overall economy of the Nation," the Small Business Administration has established an Office of Energy and Materials Programs.

This Office will operate on a temporary basis for a period of 120 days from the date of this notice. It will reside within the Office of the Administrator, Small Business Administration, and shall, at the end of this 120-day period, report to the Administrator all pertinent details of its operations and activities and make recommendations regarding the long term management response for the Agency.

As presently constituted, the Office shall have three major objectives: First, it shall contact and establish representation, and working relationships with other Federal agencies and other organizations engaged in the development of energy and materials related policies, regulations, legislation or programs, in order to adequately represent the interests of SBA and the small business sector.

Second, it will assist each operating unit of SBA in analyzing energy and materials related problems and in identifying the impact of all regulations and legislation on specific SBA program areas. In conjunction with SBA program offices, it will assist with the development of programs and policies for consideration by the SBA Management Board.

Third, it will collect and analyze incoming data, correspondence, records, etc., in order to assist program offices in the development of appropriate SBA responses.

Stephen Mollett
Acting Director
Office of Energy & Materials Programs
Small Business Administration
Room 1034
1441 L Street, N.W.
Washington, D.C. 20416
(202) 382-8156

Dated: January 11, 1974.

RONALD G. COLEMAN,
Acting Administrator.

[FR Doc.74-1379 Filed 1-14-74;10:19 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 423]

ASSIGNMENT OF HEARINGS

JANUARY 10, 1974.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after January 15, 1974.

MC-114897 Sub 107, Whitfield Tank Lines, Inc., now assigned February 5, 1974, at Santa Fe, N. Mex., is cancelled and reassigned February 5, 1974 (2 days), in the Holiday Inn Airport-Interstate, 6655 Gateway Road, El Paso, Tex.

MC-107012 Sub 187, North American Van Lines, Inc., now being assigned hearing March 4, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC-105375 Sub 46, Dahlen Transport of Iowa, Inc., now being assigned hearing March 6, 1974 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC-138813, Daniel K. Fisk, DBA Dan-A-Way Charter Line, now being assigned hearing March 11, 1974 (1 week), at Peoria, Ill., in a hearing room to be later designated.

MC 136183 Sub 2, Joe Costa, DBA Trinidad Freight Service, now being assigned March 25, 1974 (1 week), at Albuquerque, New Mexico, in a hearing room to be later designated.

MC 109397 Sub 286, Tri-State Motor Transit Co., now being assigned April 1, 1974 (1 week), at San Francisco, Calif., in a hearing room to be later designated.

MC 101219 Sub 50, Merit Dress Delivery, Inc., now being assigned hearing March 4, 1974 (1 day), at New York, N.Y., in a hearing room to be later designated.

MC 130103, Musiker Student Tours, Inc., now being assigned hearing March 5, 1974 (1 day), at New York, N.Y., in a hearing room to be later designated.

MC 138948, John L. Cannada, Dba Cannada Bus Service, now being assigned hearing March 6, 1974 (3 days), at Hartford, Conn., in a hearing room to be later designated.

MC-C-8095, Kerek Air Freight Corporation, et al. vs. S. Bertz & Sons, Inc., Et al., MC-F-11936, Pinto Trucking Service, Inc.—Purchase (Portion)—S. S. Bertz & Sons, Inc., and MC-128383 Sub 33, Pinto Trucking Service, Inc., now being assigned hearing March 11, 1974 (1 week), at Philadelphia, Pa., in a hearing room to be later designated.

MCC-8191, Belger Cartage Service, Inc., Investigation of Operations and Revocation of Certificates, now being assigned hearing March 18, 1974 (2 days), at Kansas City, Mo., in a hearing room to be later designated.

MC 133802 Sub 1, Empak Transportation Company, now being assigned hearing March 20, 1974 (3 days), at Kansas City, Mo., in a hearing room to be later designated.

MC-F-11963, Churchill Truck Lines, Inc.—Purchase (Portion)—Stevens Express, Inc., now being assigned hearing March 25, 1974 (1 week), at Kansas City, Mo., in a hearing room to be later designated.

MC-C-8073, Piggy-Back Service Co. and C. L. "Bill" Shupe—Investigation of Operations and Practices, now being assigned March 18, 1974 (1 day), at Denver, Colo., in a hearing room to be later designated.

MC 113651 Sub 158, Indiana Refrigerator Lines, Inc., now being assigned March 19, 1974 (2 days), at Denver, Colo., in a hearing room to be later designated.

MC 113678 Sub 500, Curtis, Inc., now being assigned March 21, 1974 (2 days), at Denver, Colo., in a hearing room to be later designated.

MC 107012 Sub 188, North American Van Lines, Inc., now being assigned hearing March 18, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 105501 Sub 9, Terminal Warehouse Company, now being assigned hearing March 20, 1974 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC-F-11887, Hilt Truck Line, Inc.—Purchase—West Suburban Motor, and MC 124211 Sub 227, Hilt Truck Line, Inc., now being assigned hearing March 25, 1974 (1 week), at Chicago, Ill., in a hearing room to be later designated.

MC 79525 Sub 2, The Norris Brothers Company, now being assigned March 18, 1974 (1 week), at Cleveland, Ohio, in a hearing room to be later designated.

MC-113678 Sub 504, Curtis, Inc., now being assigned hearing March 25, 1974 (2 weeks), at Columbus, Ohio, in a hearing room to be later designated.

MC 80430 Sub 126, Gateway Transportation Co., Inc., now being assigned hearing March 18, 1974 (1 week), at Nashville, Tenn., in a hearing room to be later designated.

MC-128677 Sub 2, Portland Express, Inc., now assigned February 11, 1974, will be held in the Sheraton Hotel, 920 Broadway, Nashville, Tenn.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-1239 Filed 1-14-74;8:45 am]

[Amdt. to Special Permission No. 74-1825]

COMMON CARRIERS OF PASSENGERS, EXPRESS AND PROPERTY AND FREIGHT FORWARDERS

Rate Increases Account Increases in Fuel Cost

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 10th day of January, 1974.

It appearing, that on December 13, 1973, we entered an order herein (served on the same date) authorizing common carriers and freight forwarders subject to the Interstate Commerce Act to publish schedules of increased rates and

charges, to become effective upon not less than 10 days' notice, to recoup lawful increases in fuel costs, subject to certain procedures therein set forth;

It further appearing, that on December 21, 1973, the nation's railroads and certain motor carrier tariff publishing agencies, on behalf of their members, filed a petition for amendment of the said order in the following respects:

1. Amend ordering paragraph numbered "1"—

(a) To permit increases in rates, fares, and charges, other than accessorial charges, omitting the "linehaul" restriction, so as to include terminal services which consume fuel, and

(b) To change the fuel price criterion to consider increases not taken into account in the last authorized general increase;

2. Amend ordering paragraph numbered "2"—

(a) To recognize that regulations of the Cost of Living Council may not continue to govern fuel prices, and do not now in the case of foreign producers, and

(b) By adding the following sentence to that paragraph (related to a proposed amendment to paragraph numbered "3", below):

The full increase in revenue derived from surcharges published hereunder shall be paid to the person actually responsible, by contract or otherwise, for the payment of fuel charges.

3. Amend ordering paragraph numbered "3"—

(a) To change the certification required thereunder to relieve the responsibility of the tariff agent to certify for each carrier member, and to include passenger revenues also, and

(b) To change the table to reflect the proposed amendments to ordering paragraph numbered "1";

4. Amend ordering paragraph numbered "7"—

(a) To reduce the burden of providing notice by telegraphic summaries to thousands of tariff subscribers;

5. Amend ordering paragraph numbered "8"—

(a) To reflect amendment proposed to paragraph numbered "1"; and

6. Amend ordering paragraph numbered "10"—

(a) To modify all outstanding orders to permit the filing of proposed surcharges hereunder, and specifically the procedures prescribed in Ex Parte No. MC–82, "New Procedures in Motor Carrier Rev. Proc.", 340 I.C.C. 1, to accomplish the purpose of expeditious establishment of increases to offset rapidly-increasing fuel costs;

It further appearing, that by letters dated December 19, 26, and 28, an individual, Mr. Arthur F. Killey, a motor common carrier, Herman Bros., Inc., and the Pacific Northwest Grain and Grain Products Association, addressed themselves to the Commission's order of December 13, 1973, herein, and that such letters have been accepted as requests for consideration herein; that Mr. Killey, in effect, and Herman Bros. suggest the construction of a formula or indices to simplify the determination and application of increases to recoup inflating fuel costs; and that the grain association, fearing an unstable rate structure, urges withholding any further action and requiring carriers to seek additional revenues in the normal manner;

It further appearing, that since sufficient and reliable data are not available to establish indices or a formula to simplify the determination of appropriate increases, and that, considering the extraordinary nature of the fuel price situation, the withholding of action in the meantime would not be justified;

It further appearing, that, on the Commission's own motion, certain other modifications in the procedures are deemed desirable;

And it further appearing, that on January 4, 1974, the National Small Shipments Traffic Conference, the Drug and Toilet Preparation Traffic Conference, and the Eastern Industrial Traffic League filed a joint petition for amendment to differentiate, in the case of motor carriers, between truckload and less-than-truckload shipments in authorizing increases hereunder; therefore,

It is ordered, That the said petitions and the requests, except as herein indicated, be, and they are hereby, denied.

It is further ordered, that the said order entered herein on December 13, 1973, be, and it is hereby, modified to the extent set forth below, with no other changes in that order:

1. Strike ordering paragraph numbered "1" thereof and substitute the following:

Common carriers and freight forwarders subject to the Interstate Commerce Act and their tariff publishing agents are hereby authorized to depart from the terms of the governing tariff circulars to file and post on not less than 10 days' notice increases in rates, fares, and charges for line-haul transportation and charges for other services which consume fuel, such as switching and pickup and delivery, and which must be specified in the tariffs, by means of surcharges stated in percentages to produce additional revenue in an amount not to exceed increases in fuel costs, based on the difference in the price of fuel on May 15, 1973, on the one hand, and the lawful price of fuel on a specified date which is not later than the date of filing of the surcharge hereunder, on the other hand, except that fuel price increases relied upon in support of increases published and filed since May 15, 1973, must be excluded from any increases filed under the authority herein.

The surcharge provisions must include a rule for disposition of fractions of one cent or other stated amounts, or refer to a conversion table of increased rates or fares.

2. Strike paragraph numbered "2" thereof, and substitute the following:

The surcharges may only provide for the recoupment on a dollar-for-dollar pass through basis of increased fuel costs resulting from increases in fuel prices that are not unlawful under the applicable regulations of the Cost of Living Council, and in no event shall the surcharge recover increased fuel costs retroactively. The full increase in revenue derived from surcharges published hereunder shall be paid to the person actually responsible, by contract or otherwise, for the payment of fuel charges.

3. Strike paragraph numbered "3" thereof, including the table, and substitute the following:

The carriers, individually, or by tariff publishing bureaus, as appropriate, shall submit with the schedules of proposed increases, the amount of additional revenues in dollars (stated on a monthly basis and on the currently prevailing level of productivity) to be derived from the proposed increase, and the following data, appropriately explained and supported, as well as execute the following certification (which certification must be published in the tariff):

This is to certify that each carrier party to this tariff has been notified that: Special Permission No. 74–1825 requires that the person actually responsible, by contract or otherwise, for the payment of fuel charges is to receive the full increase in revenue derived from surcharges published thereunder, and that a carrier's participation in a tariff filed thereunder constitutes an undertaking to comply with that requirement.

Line No.	Item [1]	First nine months 1973	October 1973	November 1973 [2]	Present (specify date)
		(1)	(2)	(3)	(4)
	A. *Specified Traffic or Carrier(s) System-Wide, As Applicable*				
1	Fuel Expenses	xxx			
2	Fuel Taxes	xxx			
3	Total	xxx			
4	Gallons Consumed	xxx			
5	Expense per gallon (3.4)	xxx			
6	Applicable Revenues	xxx			
7	Average lawful expense per gallon on May 15, 1973				
8	Average lawful expense per gallon on last day of study period relied upon to support last general rate (fare) increase or surcharge subsequent to May 15, 1973 (Specify date)				
	B. *Carrier(s) System-Wide*				
9	Total operating expenses	xxx			
10	Total operating revenues	xxx			

[1] Use appropriate accounts for respective modes and specify account numbers included in the designated item. In the case of carriers using purchased transportation, specify separately the dollar amounts paid for service performed by other than regulated carriers, and the cost per gallon of fuel including taxes and the total dollars of fuel expense paid by the latter. Derivation of purchased transportation expenses must be fully explained and supported.

[2] Results for months subsequent to November should be shown separately, and the month immediately preceding the date of filing should be included.

x indicates no information required.

4. Strike paragraph numbered "7" thereof, and substitute the following:

A telegraphic summary of the proposal and a copy of the publication issued and filed hereunder shall be transmitted to each tariff subscriber on the same date that the copies for official filing are transmitted to this Commission.

OR

Alternatively, in the case of a motor carrier rate bureau functioning under an agreement approved by this Commission pursuant to Section 5a of the Interstate Commerce Act, notice to the public of proposals to file surcharges hereunder shall be given by causing the disposition advice (required by its procedures) to be transmitted to all subscribers to the affected tariff(s) by first class mail not less than 15 days prior to the effective date of the tariffs, and to include a summary of the proposal and the data specified in Lines 1 through 10 of the Third Ordering Paragraph. In all other cases notice to the public of proposals to file surcharges hereunder shall be given to all subscribers to the affected tariff(s) by first class mail not less than 15 days prior to the effective date of the tariffs, and to include a summary of the proposal and the data specified in Lines 1 through 10 of the Third Ordering Paragraph. As used herein, the term "subscriber" means a party who voluntarily or upon a reasonable request is furnished copies of a particular tariff or tariffs and amendments thereto (including reissues thereof) by the publishing carrier or agent. The term does not, however, pertain to requests for a copy or copies of a tariff without a request for future amendments thereto.

The letter of transmittal accompanying the proposed schedules must contain a certification to the effect that one or the other of the alternative forms of notice has been complied with.

5. Strike paragraph numbered "8" thereof, and substitute the following:

Any surcharge established hereunder may be again increased upon not less than 10 days' notice to produce additional revenue in an amount not to exceed increases in fuel costs resulting from increases in the lawful price of fuel over and above increases reflected in the evidence relied upon in support of the last effective general rate increase or in the surcharge being increased, whichever is later. Any surcharge established hereunder may be reduced or cancelled upon not less than 10 days' notice to the public. Only one surcharge as to a tariff may be in effect at one time. No surcharge may be increased more than once in any calendar month. The provisions of the Third Ordering Paragraph herein must be fully complied with each time a surcharge is proposed to be increased.

6. Strike paragraph numbered "10" thereof, and substitute the following:

All outstanding orders of the Commission are hereby modified to the extent necessary to permit the filing of the tariffs authorized herein. Increases filed hereunder shall not be deemed general increases or general adjustments as defined in §§ 1102.1 and 1104.1(a) of Chapter X of Title 49 of the Code of Federal Regulations.

Notice of these amendments shall be given to the general public by mailing a copy of this order to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Division of the Federal Register, for publication therein.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-1240 Filed 1-14-74;8:45 am]

[Nos. MC-F-11817, MC-105881 (Sub-No. 48)]

MR&R TRUCKING CO. AND PERKINS FREIGHT LINES, INC.

At a Session of the Interstate Commerce Commission, Review Board Number 5, held at its office in Washington, D.C., on the 6th day of December, 1973.

Supplemental Order

Upon consideration of the record in the above-entitled proceedings and of the petition filed September 17, 1973, by applicants for reconsideration and modification of the order of the Commission, Review Board Number 5, decided August 1, 1973; and

It appearing, that in its order of August 1, 1973, the Board authorized, among other things, under section 5 of the Interstate Commerce Act, the acquisition by MR&R Trucking Company (MR&R), of Crestview, Fla., of control of Perkins Freight Lines, Inc. (Perkins), of Atlanta, Ga., through the exchange of 60 shares of MR&R common stock for all the outstanding capital stock of Perkins held by its sole stockholder, A. J. Abernathy, and for the acquisition in turn, by W. Guy McKenzie, Sr., Carl E. Bjorklund, John E. McCaskill, and W. Guy McKenzie, Jr., of control of Perkins through the transaction;

It further appearing, that the evidence now presented discloses that the parties intended to seek Commission approval of the merger of the operating rights and properties of Perkins into MR&R as well as the acquisition by MR&R of all the capital stock of Perkins; that the request to merge the two companies was inadvertently omitted from the application; and that petitioners now request the Commission to modify the order of August 1, 1973, to authorize the merger of the operating rights and properties of Perkins into MR&R;

It further appearing, that the interstate operating rights sought to be merged into MR&R are those described in certificates issued in Nos. MC-66098, MC-66098 (Sub-Nos. 1 and 2), authorizing the transportation of general commodities, with certain exceptions, over regular routes, and specified commodities, over irregular routes, between designated points in Georgia; and

It further appearing, that MR&R is able, financially and otherwise, to consummate the above-described merger and to conduct operations in interstate or foreign commerce under the rights; that the terms and conditions of the transaction as set forth in the application and the agreement of record, as supplemented by the petition, would be just and reasonable; that the fixed charges to be assumed would not be contrary to the public interest and that carrier employees would not be adversely affected; that the transaction is within the scope of section 5(2)(a) of the Act, and will be consistent with the public interest; and that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969:

It is ordered, That the petition be, and it is hereby, granted; that the proceeding be, and it is hereby, reopened, and that the order of August 1, 1973, be, and it is hereby, modified to authorize the merger of the operating rights and properties of Perkins Freight Lines, Inc., into MR&R Trucking Company for ownership, management, and operation, and for the acquisition, in turn, by W. Guy McKenzie, Sr., Carl E. Bjorklund, John E. McCaskill, and W. Guy McKenzie, Jr., of control of the operating rights and property through the merger; and that, if the transaction is consummated, MR&R Trucking Company will be entitled to operate under the operating rights granted in Nos. MC-66098, MC-66098 (Sub-Nos. 1 and 2) which rights are herein authorized to be unified with rights otherwise confirmed in it and to be embraced in a certificate to be issued in its name, with duplications eliminated.

It is further ordered, That since the authority granted herein differs from the notice published in the FEDERAL REGISTER, a supplemental notice is required to be published, and the effective date of this order shall be deferred until 35 days after the publication of such notice; that if any persons have an interest in or would be prejudiced by, the merger authorized herein, they may file an original and six copies of a petition or other pleading within 30 days from the date of publication with appropriate service on applicants; and that such petition, if any, should set forth the precise manner in which they have been prejudiced by the grant of authority herein.

It is further ordered, That if the parties to the transaction herein authorized desire to consummate the same, they shall (1) take such steps as will insure compliance with sections 215, 217, and 221(c) of the Act and the rules, regulations, and requirements prescribed thereunder, and (2) confirm in writing, to the Commission, immediately after consummation, the date on which consummation has actually taken place.

It is further ordered, That, if the authority herein granted is exercised, MR&R Trucking Company shall submit for consideration a sworn statement and one copy thereof, herein required within 60 days after consummation of the transaction, showing all expenditures made, by dates, or to be made, in connection with the transaction authorized, including the consideration, legal and other fees, commissions, and any other costs incidental to the transaction, the assets acquired and liabilities assumed, indicating the account number and title to which each item has been, or is to be, debited or credited.

It is further ordered, That the authority granted herein shall not be exercised prior to the effective date, and that this order shall be effective 35 days after notice is published in the FEDERAL REGISTER.

It is further ordered, That unless the authority herein granted is exercised

within 180 days from the effective date hereof, this order shall be of no further force and effect; and

It is further ordered, That the order of August 1, 1973, except as herein modified, shall remain in full force and effect.

By the Commission, Review Board Number 5.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-1238 Filed 1-14-74;8:45 am]

[Ex Parte No. 241; Rule 19, Exemption No. 59]

RAILROADS SERVING CALIFORNIA AND ARIZONA

Exemption Under Mandatory Car Service Rules

It appearing, that there are substantial movements of lumber and other commodities moving in plain, forty-foot, wide-door boxcars or in plain fifty-foot boxcars, originating at points in northern California and southern Oregon; that railroads serving southern California and Arizona frequently develop surpluses of these cars; that loadings in the directions of the car owners are often not available on the lines having such cars available in surplus quantities; that return of these surplus cars to owners results in excessive empty car miles and loss of effective car utilization; that the carriers serving northern California and southern Oregon have regular needs for such cars for eastbound loading; and that such loadings will relocate such cars in areas on or close to car owners' lines with a minimum of empty car mileage, thereby increasing car utilization.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, except as otherwise provided herein, railroads serving the States of California and Arizona may interchange empty plain boxcars described in the Official Railway Equipment Register, I.C.C. R.E.R. No. 389, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation XM, with inside length 44 ft. 6 in. or less and equipped with doors 9 feet or wider, or with inside length in excess of 44 ft. 6 in. regardless of door width without regard to the provisions of Car Service Rule 2(c), 2 (d), or 2(e).

It is further ordered, That the final carrier receiving such cars empty from another carrier in the States of California or Arizona, under authority of this exemption, shall be subject to the requirements of Car Service Rules 1 or 2 in its subsequent movements of such cars.

It is further ordered, That the billing on all such empty cars requiring movement over an intermediate carrier shall clearly show the name of the carrier to which such cars are being sent for loading; and that all waybills authorizing the movements of such empty cars shall carry a reference to this exemption.

Exception. This exemption shall not apply to empty cars subject to Car Service Rule 1; to empty cars subject to an applicable service order of this Commission requiring specific handling of designated cars; to cars subject to car relocation directives issued by the Car Service Division of the Association of American Railroads; nor to cars of Canadian or Mexican ownership.

Effective: January 3, 1974.

Expires: December 31, 1974.

Issued at Washington, D.C., January 31, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-1241 Filed 1-14-74;8:45 am]

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PART II

ENVIRONMENTAL PROTECTION AGENCY

■

Pulp, Paper and Paperboard Manufacturing Point Source Category

Proposed Guidelines and Standards

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 430]

PULP, PAPER AND PAPERBOARD MANUFACTURING POINT SOURCE CATEGORY

Proposed Guidelines and Standards

Notice is hereby given that effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources set forth in tentative form below are proposed by the Environmental Protection Agency (EPA) for the unbleached kraft subcategory (Subpart A), sodium base neutral sulfite semi-chemical subcategory (Subpart B), ammonia base neutral sulfite semi-chemical subcategory (Subpart C), unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory (Subpart D), and paperboard from waste paper subcategory (Subpart E) of the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing category of point sources pursuant to sections 301, 304(b) and (c), 306(b) and 307(c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92–500) (the Act).

(a) *Legal authority.* (1) *Existing point sources.* Section 301(b) of the Act requires the achievement by not later than July 1, 1977, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of the Act. Section 301(b) also requires the achievement by not later than July 1, 1983, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of best available technology economically achievable which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) of the Act.

Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of the best practicable control technology currently available and the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods and other alternatives. The regulations proposed herein set forth effluent limitations guidelines, pursuant to section 304(b) of the Act, for the unbleached kraft subcategory (Subpart A), sodium base neutral sulfite semi-chemical subcategory (Subpart B), ammonia base neutral sulfite semi-chemical subcategory (Subpart C), unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory (Subpart D), and paperboard from waste paper subcategory (Subpart E) of the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing category.

(2) *New sources.* Section 306 of the Act requires the achievement by new sources of a Federal standard of performance providing for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Section 306(b)(1)(B) of the Act requires the Administrator to propose regulations establishing Federal standards of performance for categories of new sources included in a list published pursuant to section 306(b)(1)(A) of the Act. The Administrator published in the FEDERAL REGISTER of January 16, 1973 (38 FR 1624), a list of 27 source categories, including the pulp, paper and paperboard manufacturing category. The regulations proposed herein set forth the standards of performance applicable to new sources for the unbleached kraft subcategory (Subpart A), sodium base neutral sulfite semi-chemical subcategory (Subpart B), ammonia base neutral sulfite semi-chemical subcategory (Subpart C), unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory (Subpart D), and paperboard from waste paper subcategory (Subpart E) of the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing category.

Section 307(c) of the Act requires the Administrator to promulgate pretreatment standards for new sources at the same time that standards of performance for new sources are promulgated pursuant to section 306. Sections 430.15, 430.25, 430.35, 430.45, and 430.55, proposed below, provide pretreatment standards for new sources within the unbleached kraft subcategory (Subpart A), sodium base neutral sulfite semi-chemical subcategory (Subpart B), ammonia base neutral sulfite semi-chemical subcategory (Subpart C), unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory (Subpart D), and paperboard from waste paper category (Subpart E) of the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing category.

Section 304(c) of the Act requires the Administrator to issue to the States and appropriate water pollution control agencies information on the processes, procedures or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of the Act. The Development Document referred to below provides, pursuant to section 304(c) of the Act, information on such processes, procedures or operating methods.

(b) *Summary and basis of proposed effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources.*

(1) *General methodology.* The effluent limitations guidelines and standards of performance proposed herein were developed in the following manner. The point source category was first studied for the purpose of determining whether separate limitations and standards are appropriate for different segments within the category. This analysis included a determination of whether differences in raw material used, product produced, manufacturing process employed, age, size, waste water constituents and other factors require development of separate limitations and standards for different segments of the point source category. The raw waste characteristics for each such segment were then identified. This included an analysis of (1) the source, flow and volume of water used in the process employed and the sources of waste and waste waters in the operation, and (2) the constituents of all waste waters. The constituents of the waste waters which should be subject to effluent limitations guidelines and standards of performance were identified.

The control and treatment technologies existing within each segment were identified. This included an identification of each distinct control and treatment technology, including both in-plant and end-of-process technologies, which are existent or capable of being designed for each segment. It also included an identification, in terms of the amount of constituents and the chemical, physical, and biological characteristics of pollutants, of the effluent level resulting from the application of each of the technologies. The problems, limitations and reliability of each treatment and control technology were also identified. In addition, the non-water quality environmental impacts, such as the effects of the application of such technologies upon other pollution problems, including air, solid waste, noise and radiation, were identified. The energy requirements of each control and treatment technology were determined as well as the cost of the application of such technologies.

The information, as outlined above, was then evaluated in order to determine what levels of technology constitute the "best practicable control technology currently available", the "best available technology economically achievable" and the "best available demonstrated control technology, processes, operating methods, or other alternatives." In identifying such technologies, various factors were considered. These included the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements) and other factors.

The data upon which the above analysis was performed included EPA permit applications, EPA sampling and inspections, consultant reports, and industry submissions.

The pretreatment standards proposed herein are intended to be complementary to the pretreatment standards proposed for existing sources under 40 CFR Part 128. The bases for such standards are set forth in the FEDERAL REGISTER of July 19, 1973, 38 FR 19236. The provisions of Part 128 are equally applicable to sources which would constitute "new sources" under section 306 if they were to discharge pollutants directly to navigable waters, except for § 128.133. That section provides a pretreatment standard for "incompatible pollutants" which requires application of the "best practicable control technology currently available," subject to an adjustment for amounts of pollutants removed by the publicly owned treatment works. Since the pretreatment standards proposed herein apply to new sources, §§ 430.15, 430.25, 430.35, 430.45 and 430.55 below amend section 128.133 to require application of the standard of performance for new sources rather than the "best practicable" standard applicable to existing sources under sections 301 and 304(b) of the Act.

(2) Summary of conclusions with respect to the unbleached kraft subcategory (Subpart A), sodium base neutral sulfite semi-chemical subcategory (Subpart B), ammonia base neutral sulfite semi-chemical subcategory (Subpart C), unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory (Subpart D), and paperboard from waste paper subcategory (Subpart E) of the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing category of point sources.

(i) *Categorization.* For the purpose of studying waste treatment and effluent limitations, the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing industry category were divided into five discrete subcategories, primarily based on a consideration of the raw materials utilized, production processes employed, products produced, size and age of mills, waste water characteristics and treatability, and geographical location as outlined in the Development Document for the unbleached kraft, semi-chemical and paperboard segments of the pulp, paper and paperboard manufacturing industry category of point sources. When a plant is subject to effluent limitations covering more than one subcategory, the discharge limitation shall be the aggregate of the limitations applicable to the total production covered by each subcategory.

(1) *Subpart A—Unbleached Kraft Subcategory.* This subcategory includes mills which produce pulp and paper without bleaching by a "full cook" process, utilizing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. The principal product made by this process is linerboard, the smooth facing in corrugated boxes.

Subpart B—Sodium Base Neutral Sulfite Semi-Chemical Subcategory. This subcategory includes mills which produce pulp and paper without bleaching by utilization of a neutral sulfite semi-chemical cooking liquor with a sodium base. Mechanical fiberizing follows the cooking stage. The principal product made by this process is the corrugated medium or inner layer in corrugated boxes.

Subpart C—Ammonia Base Neutral Sulfite Semi-Chemical Subcategory. This subcategory includes mills which produce pulp and paper without bleaching by utilization of a neutral sulfite cooking liquor with an ammonia base. The principal product made by this process is the corrugating medium or inner layer in corrugated boxes.

Subpart D—Unbleached Kraft—Neutral Sulfite Semi-Chemical (Cross Recovery) Subcategory. This subcategory includes mills which produce pulp and paper without bleaching by the unbleached kraft and neutral sulfite semi-chemical processes wherein the spent neutral sulfite semi-chemical cooking liquor is burned within the unbleached kraft chemical recovery system. The principal products include both linerboard and corrugating medium for the production of boxes.

Subpart E—Paperboard from Waste Paper Subcategory. This subcategory includes mills which produce paperboard products without bleaching from a wide variety of waste papers such as corrugated boxes, box board, and newspapers. Mills which produce paperboard products principally or exclusively from virgin fiber are not included within this subcategory, which only includes those mills using waste paper for 80 percent or more of their fibrous raw materials. The principal products include a wide variety of items in commercial packaging, such as bottle cartons.

(ii) *Waste characteristics.* The significant pollutant parameters in waste waters resulting from the unbleached kraft subcategory, sodium base neutral sulfite semi-chemical subcategory, ammonia base neutral sulfite semi-chemical subcategory, unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory, and the paperboard from waste paper subcategory of the pulp, paper and paperboard manufacturing category includes five day biochemical oxygen demand (BOD5), total suspended non-filterable solids (TSS), pH, color (excluding the paperboard from waste paper subcategory), and in one subcategory, ammonia nitrogen.

Effluent limitation guidelines and standards of performance are established below to control each of the above pollutants. No limitations have been established for several other waste water pollutants which are considered to be of lesser importance because (a) available data has indicated these pollutants are normally removed when BOD5 or TSS are removed, (b) they occur in insignificant quantities, or (c) technology is not available to control the pollutant discharges.

(iii) *Origin of waste water pollutants in the pulp, paper, and paperboard manufacturing category.*

Chemical pulping subcategories: The origin of waste water pollutants in the unbleached kraft, ammonia base neutral sulfite semi-chemical, sodium base neutral sulfite semi-chemical, and unbleached kraft-neutral sulfite semi-chemical (cross recorery) subcategories result from the chemical pulping process of papermaking. The primary continuous sources of waste water pollutants are (a) the white water from the paper machine, (b) evaporator and digester condensates, and (c) pulp washing operations. Major intermittent sources of waste water pollutants are (d) spills from cooking liquor preparation areas, (e) spills of spent cooking liquor from the evaporator and recovery systems, and (f) papermaking system spills and washups.

Paperboard from waste paper subcategory: Waste water pollutants result primarily from the stock preparation and paperboard manufacturing processes. Losses occur in both the "white water" and stock cleaning rejects which are continuously discharged. In addition to these continuous discharges, losses also occur when the unit operations are periodically cleaned. These cleanups produce surges of both BOD5 and suspended solids.

(iv) *Treatment and control technology.* In-plant procedures to control pollution include strict management control over housekeeping and water use practices, minimization of the intake of water by re-use and recirculation of waste waters.

"End-of-process" waste water treatment processes include preliminary screening, primary sedimentation, biological treatment, and some physical-chemical treatment.

Solid waste control should be considered. Solid residue and sludge are potential problems because of the need for periodic disposal. Solid waste must be handled properly to assure that no landfill or associated problems develop.

Waste water treatment and control technologies have been studied for each subcategory of the industry to determine what is (a) the best practicable control technology currently available; (b) the best available technology economically achievable; and (c) the best demonstrated control technology, processes, operating methods or other alternatives.

Best practicable control technology currently available for all subcategories includes one or two stage biological treatment.

The most commonly employed biological treatment systems presently used by mills within al of the subcategories include (1) aerated stabilization basins and (2) storage oxidation lagoons. Activated sludge treatment systems are

presently only used by several mills within the paperboard from waste paper subcategory. Many mills within the subcategories practice two stage biological treatment with the above treatment systems. For example, an aerated stabilization basin may be followed by a storage oxidation lagoon or two aerated stabilization basins may be operated in series.

Reduction of pollutant parameters levels by either one- or two-stage biological treatment can achieve the best practicable control technology currently available effluent limitations guidelines. A specific level of effluent quality can generally be achieved by either one- or two-stage biological treatment depending upon the design and operation of the treatment system. Two-stage biological treatment includes systems with two biological treatment units operated in series such as an activated sludge plant followed by an aerated stabilization basin.

Best available control technology economically achievable for all subcategories includes two stage biological treatment and mixed media filtration with, if necessary, chemical addition and coagulation. In addition, the following technologies are included for the subcategories specified.

Color may be removed from mill effluents within the unbleached kraft and unbleached kraft neutral sulfite semi-chemical (cross recovery) subcategories by lime treatment. Color may be removed from mill effluents within the sodium base neutral sulfite semichemical and ammonia base neutral sulfite semi-chemical subcategories by reverse osmosis.

Treatment required to achieve the best available demonstrated control technology, processes, operating methods or other alternatives for new sources is the same as the best available control technology economically achievable except color removal for the subcategories of sodium base neutral sulfite semi-chemical and ammonia base neutral sulfite semichemical is not required because the reverse osmosis system has not been documented in full scale at this time.

(v) *Economic impact analysis.* A significant portion of the industry has already instituted some of the waste management alternatives, particularly biological treatment systems.

The investment cost (August 1971 prices) of meeting the 1977 level of effluent reduction by the use of biological treatment systems for a model mill within each subcategory is estimated to be $10.3 million for the unbleached kraft subcategory with increases in product prices of approximately 6 percent; $3.5 million for the sodium base (neutral sulfite semi-chemical) subcategory with increases in product prices of approximately 5 percent; $1.4 million for the ammonia (neutral sulfite semi-chemical) subcategory with increases in product prices of approximately 5 percent; $8.9 million for the unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory; $0.98 million for the paperboard from waste paper subcategory with increases in product prices of approximately 5.5 percent.

The incremental investment cost (August 1971 prices) of meeting the 1983 level of effluent reduction by the use of biological and physical-chemical treatment systems for a model mill within each subcategory is estimated to be $4.5 million for the unbleached kraft subcategory with increases in product prices of approximately 3 percent; $1.2 million for the sodium base neutral sulfite semi-chemical subcategory with increases in product prices of approximately 4.5 percent; $0.8 million for the ammonia base neutral sulfite semi-chemical subcategory with increases in product prices of approximately 4.5 percent; $5.6 million for the unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory; $0.24 million for the paperboard from waste paper (neutral sulfite semi-chemical) subcategory with increases in product prices of approximately 1 percent.

The total investment cost (August 1971 prices) for new mills to meet the new source performance standards for a model mill within each subcategory is estimated to be $10.7 million for the unbleached kraft subcategory; $1.6 million for the sodium base (neutral sulfite semi-chemical) subcategory; $2.0 million for the ammonia base (neutral sulfite semi-chemical) subcategory; $9.9 million for the unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory; and $0.42 million for the paperboard from waste paper subcategory.

Non-water quality impacts of the pollution control systems were analyzed and found to be of little consequence. Energy requirements of the industry are relatively low: power required to operate the internal controls and the mechanically aerated biological systems will increase consumption by considerably less than 10.0 percent. Solid wastes from treatment sludges and some odor from treatment systems are encountered, but no substantial impact can be identified.

It should be noted that a precise study of economic impact is difficult due to numerous other economic forces at work within an industry, and because of the great variability experienced from plant-to-plant in such factors as pollution control costs, profitability, and return on investment. In a study of economic impact, it is difficult to deal with these factors on an individual plant basis.

It is not expected that any significant economic impact would result from imposing the effluent limitation requirements of discharge of process waste water pollutants to navigable waters on all covered segments of this category by 1977 (best practicable control technology for most industry segments). Because of this conclusion, the proposed guidelines for 1977, 1983 and new sources are economically achievable. The small price increases projected will probably be fully passed on to the consuming public.

The report entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Unbleached Kraft and Semi-Chemical Pulp Segments of the Pulp, Paper, and Paperboard Manufacturing Point Source Category" details the analysis undertaken in support of the regulations being proposed herein and is available for inspection in the EPA Information Center, Room 227, West Tower, Waterside Mall, Washington, D.C., at all EPA regional offices, and at State water pollution control offices. A supplementary analysis prepared for EPA of the possible economic effects of the proposed regulations is also available for inspection at these locations. Copies of both of these documents are being sent to persons or institutions affected by the proposed regulations, or who have placed themselves on a mailing list for this purpose (see EPA's Advance Notice of Public Review Procedures, 38 FR 21202, August 6, 1973). An additional limited number of copies of both reports are available. Persons wishing to obtain a copy may write the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman.

(c) *Summary of public participation.* Prior to this publication, the agencies and groups listed below were consulted and given an opportunity to participate in the development of effluent limitations guidelines and standards proposed for the pulp, paper, and paperboard manufacturing category. All participating agencies have been informed of project developments. An initial draft of the Development Document was sent to all participants and comments were solicited on that report. The following are the principal agencies and groups consulted: (1) Effluent Standards and Water Quality Information Advisory Committee (established under Section 515 of the Act); (2) All State and U.S. Territory Pollution Control Agencies; (3) Technical Association of the Pulp and Paper Industry; (4) National Council of the Paper Industry for Air and Stream Improvement, Inc.; (5) National Forest Products Association; (6) American Paper Institute; (7) U.S. Dept. of the Treasury; (8) Government of Guam and Government of Samoa, Trust Territories of the Pacific Islands; (9) Puerto Rico; (10) The Conservation Foundation; (11) American Society of Mechanical Engineers; (12) Hudson River Sloop Restoration, Inc.; (13) Conservation Foundation; (14) Businessmen for the Public Interest; (15) Environmental Defense Fund, Inc.; (16) Natural Resources Defense Council; (17) American Society of Civil Engineers; (18) National Wildlife Federation; (19) Water Pollution Control Federation; (20) Ohio River Valley Sanitation Commission; (21) New England Interstate Water Pollution Control Commission; (22) Delaware River Basin Commission; (23) U.S. Dept. of Health, Education, and Welfare; (24) U.S. Dept. of Commerce; (25) U.S. Dept. of Agriculture; (26) Water Resources Council; and (27) U.S. Dept. of the Interior.

The following organizations responded with comments: Flambeau Paper Company; Office of Secretary of the Treasury; P. H. Glatfelter Co.; U.S. Dept. of Commerce; Sierra Club; Hudson River Sloop Restoration, Inc.; U.S. Dept. of Agriculture; State of South Carolina; U.S. Dept. of the Interior; State of Illinois; State of Michigan; Hammermill Paper Co.; National Council for Air and Stream Improvement, Inc.; U.S. Water Resources Council; State of Georgia; State of Wisconsin; State of Florida; Water Pollution Control Federation; State of Alaska; State of North Carolina; State of Texas; State of Kentucky; Mead Corp.; State of California; and American Paper Institute.

The comments were highly variable, ranging from full approval to rejection.

The primary issues raised in the development of the proposed effluent limitations guidelines and standards of performance and the treatment of these issues herein are as follows:

(1) Some comments were to the effect that the limitations were too stringent and not substantiated by data used in the study. Furthermore, the criticism was made that the sampling program was inadequate and unable to quantify the variability of waste loads. As explained in the Development Document, the degree of effluent reduction required by the applicable limitations currently is being attained by plants in all subcategories. Additionally, established alternative in-plant control and waste treatment procedures are readily available for application by the industry. As also explained in the Development Document, the sampling program was used to supplement and confirm data supplied by the industries (or other sources).

(2) A number of commentors took the position that the limitations were not stringent enough and were developed from only a fraction of the industry discharging to waterways. Limitations required by the implementation of best practicable control technology currently available are less stringent than the limitations for best available control technology economically achievable because the total cost of application of the latter technologies under the time limitations is too large in relation to the effluent reduction benefits to be achieved from such application. A prohibition of discharges to navigable waterways has not been required because technologies of complete water reuse have not been demonstrated.

(3) The criticism was made that the performances of the biological systems used to develop the limitations were based on optimum performance, and that effects of cold weather upon biological treatment were not considered. In most cases, the performance represents average results from a full year's operation. The effects of cold weather upon biological treatment efficiencies have been considered, and a variance has been allowed for mills operating in cold weather. Unfortunately, a large amount of data is lacking, and additional data on treatment system operations during cold weather is desired.

(4) Many commentors criticized the suspended solids guidelines as being too stringent in that biological solids generated in biological treatment of pulp and paper mill effluents do not flocculate and settle out, so that final effluents have relatively high suspended solids contents. Many commentors from industry provided data on suspended solids levels in final effluents and the data was incorporated in revised suspended solids guidelines.

(5) Many comments were received questioning the basis for 1983 color limitations. Some comments stated that color removal should be required for 1977 while others stated that color removal should not be required for any level of technology. Color is considered objectionable in receiving waters mainly from an esthetic standpoint. However, color can also retard sunlight transmission into receiving waters and thereby interfere with normal biological activity. Thus, color removal is required. Even though lime treatment technology for color removal is persently available, color removal is not required until 1983 because of the large amount of time necessary for planning, design, and construction of lime treatment facilities. Color removal by reverse osmosis technology will be further demonstrated in the very near future and should be available for installation to meet the 1983 guidelines.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460. Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. Comments which criticize the adequacy of available data, or which provide additional data, should indicate why consideration of further data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing an effluent limitation guideline or standard of performance, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304(b), 306 and 307 of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, S.W., Washington D.C. A copy of preliminary draft contractor reports, the Development Document and economic study referred to above, and certain supplementary materials supporting the study of the industry concerned will also be maintained at this location for public review and copying. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

All comments received on or before February 14, 1974, will be considered. Steps previously taken by the Environmental Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on August 6, 1973 (38 FR 21202).

Dated December 28, 1973.

JOHN QUARLES,
Acting Administrator.

PART 430—EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES AND STANDARDS OF PERFORMANCE AND PRETREATMENT STANDARDS FOR NEW SOURCES FOR THE PULP, PAPER AND PAPERBOARD MANUFACTURING POINT SOURCE CATEGORY

Subpart A—Unbleached Kraft Subcategory

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Subpart A—Unbleached Kraft Subcategory

§ 430.10 Applicability; description of unbleached kraft subcategory.

The provisions of this subpart are applicable to the discharges resulting from the production of pulp and paper by unbleached kraft mills. When a plant is subject to effluent limitations covering more than one subcategory, the discharge limitation shall be the aggregate of the limitations applicable to the total production covered by each subcategory.

§ 430.11 Specialized definitions.

For the purpose of this subpart:

(a) the following abbreviations shall have the following meanings: (1) "BOD5" shall mean five day biochemical oxygen demand; (2) "TSS" shall mean total suspended non-filterable solids; (3) "kg" shall mean kilogram(s); (4) "kkg" shall mean 1,000 kilograms; and (5) "lb" shall mean pound(s).

(b) Color shall mean that color as measured by the testing method presented in the National Council for Air and Stream Improvement, (Inc.) "Technical Bulletin 253, December 1971.

(c) Total suspended non-filterable solids (TSS) shall mean TSS as measured by the technique utilizing glass fiber disks as specified in "Standard Methods for the Examination of Water and Wastewater" (13th Edition).

§ 430.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 4.0 kg/kkg of product (8.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 2.2 kg/kkg of product (4.4 lb/ton).
TSS	Maximum for any one day 11.1 kg/kkg of product (22.2 lb/ton). Maximum average of daily values for any period of thirty consecutive days 4.6 kg/kkg of product (9.2 lb/ton).
pH	Within the range of 6.0 to 9.0.

(b) Additional allocations equal to the above guidelines, (excluding pH), are allowed during periods when the waste water temperature within the treatment system is 2° C (35° F) or lower. If 2° C (35° F) is the maximum temperature which occurs in the waste water within the treatment system for one day or for 30 consecutive days, the allocation may be applied to the daily maximum and 30 day maximum guidelines, respectively.

(c) An additional allocation to the above BOD5 guidelines of 0.05 kg/kkg (0.1 lb/ton) is allowed for mills practicing hydraulic debarking.

§ 430.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.5 kg/kkg of product (5.0 lb/ton). Maximum average daily values for any period of thirty consecutive days 1.375 kg/kkg of product (.275 lb/ton).
TSS	Maximum for any one day 0.4 kg/kkg of product (7.9 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.85 kg/kkg of product (3.7 lb/ton).
Color	Maximum for any one day. 15.0 kg/kkg of product (30.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 10.0 kg/kkg of product (20.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.14 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.5 kg/kkg of product (5.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.375 kg/kkg of product (2.75 lb/ton).
TSS	Maximum for any one day 0.4 kg/kkg of product (0.8 lb/ton). Maximum average of daily values for any period of thirty consecutive days 0.1 kg/kkg of product (3.7 lb/ton).
Color	Maximum for any one day 15.0 kg/kkg of product (30.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 10.0 kg/kkg of product (20.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.15 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the unbleached kraft subcategory, which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this title, except that for the purposes of this section, § 128.133 of this title, shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this title, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 430.14: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart B—Sodium Base Neutral Sulfite Semi-Chemical Subcategory

§ 430.20 Applicability; description of the sodium base neutral sulfite semi-chemical subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper by sodium

base neutral sulfite semi-chemical mills. When a plant is subject to effluent limitations covering more than one subcategory, the discharge limitation shall be the aggregate of the limitations applicable to the total production covered by each subcategory.

§ 430.21 Specialized definitions.

For the purposes of this subpart:

(a) the following abbreviations shall have the following meanings: (1) "BOD5" shall mean five day biochemical oxygen demand; (2) "TSS" shall mean total suspended non-filterable solids; (3) "kg" shall mean kilogram(s); (4) "kkg" shall mean 1,000 kilograms; and (5) "lb" shall mean pound(s).

(b) Color shall mean that color as measured by the testing method presented in the National Council for Air and Stream Improvement (Inc.) "Technical Bulletin" 253, December 1971.

(c) Total suspended non-filterable solids (TSS) shall mean TSS as measured by the technique utilizing glass fiber filter disks as specified in "Standard Methods for the Examination of Water and Wastewater" (13th Edition).

§ 430.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 4.5 kg/kkg of product (9.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 3.25 kg/kkg of product (6.5 lb/ton).
TSS	Maximum for any one day 8.5 kg/kkg of product (17.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 5.0 kg/kkg of product (10.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

(b) Additional allocations equal to the above guidelines, (excluding pH), are allowed during periods when the waste water temperature within the treatment system is 2°C (35°F) or lower. If 2°C (35°F) is the maximum temperature which occurs in the waste water within the treatment system for one day or for 30 consecutive days, the allocation may be applied to the daily maximum and 30 day maximum guidelines, respectively.

(c) An additional allocation to the above BOD5 guidelines of 0.05 kg/kkg (0.1 lb/ton) is allowed for mills practicing hydraulic debarking.

§ 430.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.1 kg/kkg of product (4.2 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.5 kg/kkg of product (3.0 lb/ton).
TSS	Maximum for any one day 4.5 kg/kkg of product (9.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 2.0 kg/kkg of product (4.0 lb/ton).
Color	Maximum average of daily values, expressed in kg/kkg of product (lb/ton), shall achieve 75 percent removal for any period of thirty consecutive days.
pH	Within the range of 6.0 to 9.0.

§ 430.24 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.1 kg/kkg of product (4.2 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.5 kg/kkg of product (3.0 lb/ton).
TSS	Maximum for any one day 4.5 kg/kkg of product (9.0 ton). Maximum average of daily values for any period of thirty consecutive days 2.0 kg/kkg of product (4.0 lb/ton).
pH	Within the range of 6.0 to 9.0

§ 430.25 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the sodium bas neutral sulfite semi-chemical subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this title, except that for the purposes of this section, § 128.133 of this title shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this title the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 430.24. *Provided* That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart C—Ammonia Base Neutral Sulfite Semi-Chemical Subcategory

§ 430.30 Applicability; description of ammonia base neutral sulfite semi-chemical subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper by ammonia base neutral sulfite semi-chemical mills. When a plant is subject to effluent limitations covering more than one subcategory, the discharge limitation shall be the aggregate of the limitations applicable to the total production covered by each subcategory.

§ 430.31 Specialized definitions.

For the purposes of this subpart;

(a) the following abbreviations shall have the following meanings: (1) "BOD5" shall mean five day biochemical oxygen demand; (2) "TSS" shall mean total suspended non-filterable solids; (3) "kg" shall mean kilogram(s); (4) "kkg" shall mean 1,000 kilograms; and (5) "lb" shall mean pound(s).

(b) Color shall mean that color as measured by the testing method presented in the National Council for Air and Stream Improvement (Inc.) "Technical Bulletin" 253, December 1971.

(c) Total suspended non-filterable solids (TSS) shall mean TSS as measured by the technique utilizing glass fiber filter disks as specified in "Standard Methods for the Examination of Water and Wastewater" (13th Edition).

§ 430.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 8.75 kg/kkg of product (17.5 lb/ton). Maximum average of daily values for any period of thirty consecutive days 5.25 kg/kkg of product (10.5 lb/ton).
TSS	Maximum for any one day 8.5 kg/kkg of product (17.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 5.0 kg/kkg of product (10.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

(b) Additional allocations equal to the above guidelines, (excluding pH), are allowed during periods when the waste water temperature within the treatment system is 2°C (35°F) or lower. If 2°C (35°F) is the maximum temperature which occurs in the waste water within the treatment system for one day or for 30 consecutive days, the allocation may be applied to the daily maximum and 30 day maximum guidelines, respectively.

(c) An additional allocation to the above BOD5 guidelines of 0.05 kg/kkg (0.1 lb/ton) is allowed for mills practicing hydraulic debarking.

§ 430.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 5.875 kg/kkg of product (11.75 lb/ton). Maximum average of daily values for any period of thirty consecutive days 3.5 kg/kkg of product (7.0 lb/ton).
TSS	Maximum average of daily 4.5 kg/kkg of product (9.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 2.0 kg/kkg of product (4.0 lb/ton).
Color	Maximum average of daily values, expressed in kg/kkg of product (lb/ton), shall achieve 75 percent removal for any period of thirty consecutive days.
pH	Within the range of 6.0 to 9.0.

§ 430.34 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 5.875 kg/kkg of product (11.75 lb/ton). Maximum average of daily values for any period of thirty consecutive days 3.5 kg/kkg of product (7.0 lb/ton).
TSS	Maximum for any one day 4.5 kg/kkg of product (9.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 2.0 kg/kkg of product (4.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.35 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the ammonia base neutral sulfite semi-chemical subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this title, except that for the purpose of this section, § 128.133, of this title shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 430.34; *provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart D—Unbleached Kraft—Neutral Sulfite Semi-Chemical (Cross Recovery) Subcategory

§ 430.40 Applicability; description of unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper by combined unbleached kraft and neutral sulfite semi-chemical (NSSC) mills, wherein the spent NSSC cooking liquor is burned within the unbleached kraft chemical recovery system. When a plant is subject to effluent limitations covering more than one subcategory, the discharge limitation shall be the aggregate of the limitations applicable to the total production covered by each subcategory.

§ 430.41 Specialized definitions.

For the purpose of this subpart:

(a) the following abbreviations shall have the following meanings: (1) "BOD5" shall mean five day biochemical oxygen demand; (2) "TSS" shall mean total suspended non-filterable solids; (3) "kg" shall mean kilogram(s); (4) "kkg" shall mean 1,000 kilograms; and (5) "lb" shall mean pound(s).

(b) Color shall mean that color as measured by the testing method presented in the National Council for Air and Stream Improvement (Inc.) "Technical Bulletin" 253, December 1971.

(c) Total suspended non-filterable solids (TSS) shall mean TSS as measured by the technique utilizing glass fiber filter disks as specified in "Standard Methods for the Examination of Water and Wastewater" (13th Edition).

§ 430.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 6.35 kg/kkg of product (12.7 lb/ton). Maximum average of daily values for any period of thirty consecutive days 3.05 kg/kkg of product (6.1 lb/ton).
TSS	Maximum for any one day 12.5 kg/kkg of product (25.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 5.3 kg/kkg of product (10.6 lb/ton).
pH	Within the range of 6.0 to 9.0.

(b) Additional allocations equal to the above guidelines, (excluding pH), are allowed during periods when the waste water temperature within the treatment system is 2°C (35°F) or lower. If 2°C (35°F) is the maximum temperature which occurs in the waste water within the treatment system for one day or for 30 consecutive days, the allocation may be applied to the daily maximum and 30 day maximum guidelines, respectively.

(c) An additional allocation to the above BOD5 guidelines of 0.05 kg/kkg (0.1 lb/ton) is allowed for mills practicing hydraulic debarking.

§ 430.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.95 kg/kkg of product (5.9 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.5 kg/kkg of product (3.0 lb/ton).
TSS	Maximum for any one day 5.0 kg/kkg of product (10.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 2.1 kg/kkg of product (4.2 lb/ton).
Color	Maximum for any one day 15.0 kg/kkg of product (30.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 10.0 kg/kkg of product (20.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.44 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart.

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.95 kg/kkg of product (5.9 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.5 kg/kkg of product (3.0 lb/ton).
TSS	Maximum for any one day 5.0 kg/kkg of product (10.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 2.1 kg/kkg of product (4.2 lb/ton).
Color	Maximum for any one day 15.0 kg/kkg of product (30.0 lb/ton). Maximum average of daily values for any period of thirty consecutive days 10.0 kg/kkg of product (20.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.45 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the unbleached kraft—neutral sulfite semi-chemical (cross recovery) subcategory, which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this title, except that for the purpose of this section § 128.133 of this title shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this title the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 434.44, *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart E—Paperboard From Waste Paper Subcategory

§ 430.50 Applicability; description of paperboard from waste paper subcategory.

The provisions of this subpart are applicable to the discharges resulting from the production of paperboard from waste paper. When a plant is subject to effluent limitations covering more than one subcategory, the discharge limitation shall be the aggregate of the limitations applicable to the total production covered by each subcategory.

§ 430.51 Specialized definitions.

For the purpose of this subpart:

(a) the following abbreviations shall have the following meanings: (1) "BOD5" shall mean five day biochemical oxygen demand; (2) "TSS" shall mean total suspended non-filterable solids; (3) "kg" shall mean kilogram(s); (4) "kkg" shall mean 1,000 kilograms; and (5) "lb" shall mean pound(s).

(b) Total suspended non-filterable solids (TSS) shall mean TSS as measured by the technique utilizing glass fiber filter disks as specified in "Standard Methods for the Examination of Water and Wastewater" (13th Edition).

§ 430.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 2.2 kg/kkg of product (4.4 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.25 kg/kkg of product (2.5 lb/ton).
TSS	Maximum for any one day 2.8 kg/kkg of product (5.6 lb/ton). Maximum average of daily values for any period of thirty consecutive days 1.5 kg/kkg of product (3.0 lb/ton).
pH	Within the range of 6.0 to 9.0.

(b) Additional allocations equal to the above guidelines, (excluding pH), are allowed during periods when the waste water temperature within the treatment system is 2°C (35°F) or lower. If 2°C (35°F) is the maximum temperature which occurs in the waste water within the treatment system for one day or for 30 consecutive days, the allocation may be applied to the daily maximum and 30 day maximum guidelines, respectively.

§ 430.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 1.25 kg/kkg of product (2.5 lb/ton). Maximum average of daily values for any period of thirty consecutive days 0.65 kg/kkg of product (1.3 lb/ton).
TSS	Maximum for any one day 1.1 kg/kkg of product (2.2 lb/ton). Maximum average of daily values for any period of thirty consecutive days 0.6 kg/kkg of product (1.2 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.54 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any one day 1.25 kg/kkg of product (2.5 lb/ton). Maximum average of daily values for any period of thirty consecutive days 0.65 kg/kkg of product (1.3 lb/ton).
TSS	Maximum for any one day 1.1 kg/kkg of product (2.2 lb/ton). Maximum average of daily values for any period of thirty consecutive days 0.6 kg/kkg of product (1.5 lb/ton).
pH	Within the range of 6.0 to 9.0.

§ 430.55 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source

within the paperboard from waste paper subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this title, except that for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this title the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 430.54. *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed in its NPDES permit to remove a specified percentage of any incompatible pollutant, the pretreatment standards applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

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PART III

FEDERAL ENERGY OFFICE

■

PETROLEUM ALLOCATION AND PRICE REGULATIONS

Title 10—Energy

CHAPTER II—FEDERAL ENERGY OFFICE

ALLOCATION AND PROCEDURAL REGULATIONS

The purpose of this amendment is to revise Chapter II of Title 10 of the Code of Federal Regulations.

A notice of proposed rulemaking containing a Proposed Mandatory Petroleum Products Allocation Program was issued on December 12, 1973 (38 FR 34414, December 13, 1973). Revised regulations were issued on December 27, 1973 (39 FR 744, January 2, 1974), which were not to be implemented until January 15, 1973. Publication of those subparts controlling the allocation of propane, motor gasoline and middle distillates was deferred until January 11, 1973 with a further delayed implementation date.

The new mandatory allocation program for these petroleum products is contained in Subparts D, F and G of Part 211. In addition, Parts 200, 201 and 202 of the December 27, 1973 regulations are revoked and new parts issued which contain the material previously located in Parts 200, 201 and 202. The regulations published herein constitute a total revision of the Mandatory Petroleum Products Allocation Program and supersedes all the provisions of this chapter which were effective prior to January 15, 1973.

Part 205 contains the procedural regulations previously located in Part 202. The changes in the administrative procedures which have been adopted in Part 205 should simplify the procedural process and provide a vehicle for the public to interact with the FEO and participate in the decision-making process.

The Freedom of Information Act regulations which were previously combined with the porcedural regulations in Part 202 have been separated from these regulations in this revision. The Federal Energy Office will issue a new Part 202 in a few days which will contain the rules governing public access to information.

A new Part 210 has been created establishing the general rules which apply to both the price control and allocation programs. This part extracts sections previously located in Subpart A of Part 200 and in the Phase IV Price regulations in 6 CFR Part 150.

The creation of Part 210 recognizes the compelling necessity of viewing both allocation and price problems within the context of a single regulatory framework.

Part 211 contains all the purely allocation provisions which had previously been located in Part 200. Whereas Part 201 previously incorporated by reference the Phase IV pricing regulations found 6 CFR Part 150, the new Part 212 republishes these regulations in full. Persons subject to the price and allocation regulations will now be able to have a single readily available source of information as to the rules established to govern this program.

Due to the fact that a substantial revision of the regulatory scheme has occurred and the Federal Energy Office realizes that unanticipated problems with the regulations will surely arise, the Federal Energy Office is inviting comment on these regulations. Although no specific future changes are currently anticipated, the Federal Energy Office would appreciate all comments or suggestions which might assist in future improvements to the program. Comments should be submitted in at least ten copies, clearly labeled on the envelope "Comments on Regulations." The mailing address is Executive Secretariat, Federal Energy Office, Washington, D.C. 20461. Submission of comments before January 31, 1974 is encouraged.

(Emergency Petroleum Allocation Act of 1973, P.L. 93-159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 38 FR 24)

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is revised as set out herein, effective 11:59 p.m., d.s.t., January 14, 1974.

Issued in Washington, D.C. on January 14, 1974.

JOHN C. SAWHILL,
Deputy Administrator,
Federal Energy Office.

PART 200—[REVOKED]

PART 201—[REVOKED]

PART 202—[REVOKED]

1. Parts 200, 201, and 202 of 10 CFR Chapter II (39 FR 744, Jan. 2, 1974 are revoked.

2. Parts 205, 210, 211, and 212 are added to 10 CFR Chapter II to read as follows:

PART 205—ADMINISTRATIVE PROCEDURES

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205.224 Acceptance of offer to compromise.
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AUTHORITY: Emergency Petroleum Allocation Act of 1973, P.L. 93-159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 38 FR 24.

Subpart A—General Provisions

§ 205.1 Purpose and scope.

This part establishes procedures to be utilized in proceedings before the Federal Energy Office (FEO) relating to petroleum allocation and price stabilization matters under Parts 210, 211 and 212 of this chapter.

§ 205.2 Definitions.

The definitions set forth in other parts of this chapter shall apply to this part, unless otherwise provided. In addition, as used in this part, the term:

"Adverse action" means an action issued by the FEO which is contrary to the position asserted by the applicant.

"Exception" means a waiver in a particular case of the requirements of any rule, regulation, or order issued pursuant to the Act.

"Exemption" means a general waiver of the requirements of any or all rules, regulations, and orders issued pursuant to the Act.

"Hearing officer" means a person appointed by the Administrator of FEO or his delegate to conduct a hearing.

"Interpretation" means a written statement issued by the FEO in response to an inquiry by an individual or an organization, which applies, to the particular facts involved, the principles and precedents previously announced by the FEO. Interpretations are issued only where a determination can be made on the basis of established rules as set forth in the regulations and guidelines of the FEO or by rulings or court decisions.

"Notice of probable violation" means a written statement issued to a person by the FEO setting forth one or more charges of alleged violation of the provisions of this chapter.

"Person" means any firm, individual, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution; however, the term does not include a foreign government or instrumentality thereof or international organizations established by treaty or by agreement among participating governments.

"Person aggrieved" means a person with a substantial interest sought to be protected under the Act which is adversely affected by an order or interpretation issued by the FEO.

"Remedial order" means an order requiring a person to cease a violation or to take action to eliminate or compensate for the effects of a violation, or both, or which imposes other sanctions.

"Ruling" means an official interpretation by the General Counsel published in the FEDERAL REGISTER, which applies the regulations and guidelines of the FEO to a specific set of facts.

"State office" means the office designated by the state to administer the state allocation program established under this chapter.

§ 205.3 Appearances before the FEO.

(a) A person may take any action or make any appearance which is required or permitted by this chapter in his own behalf, or he may be represented by any natural person, age 21 years or older, whom he has designated to represent him. This designation shall be in writing and signed by the person legally authorized to so designate and shall be filed with the FEO.

(b) Persons appearing before the FEO may be barred therefrom for disreputable conduct which includes, but is not limited to, the following:

(1) Filing false or altered documents, affidavits, and other papers;

(2) Making false or misleading represenations either orally or in writing; or

(3) Using intemperate or abusive language or engaging in disruptive conduct before the FEO.

§ 205.4 Filing of documents.

A document required to be filed with the FEO under this chapter is considered filed when it has been received at the appropriate office. Documents received after regular business hours are deemed filed on the next regular business day. A document submitted by registered or certified mail is deemed to be received upon mailing.

§ 205.5 Computation of time.

(a) *Days.* (1) Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by this part for the doing of any act, the day of the act, event, or default on which the designated period of time begins to run shall not be counted.

(2) If the last day of the period falls on a Saturday, Sunday, or Federal legal holiday, the period shall be extended to the next day which is not a Saturday, Sunday, or Federal legal holiday.

(3) If the period prescribed or allowed is seven days or less, an intervening Saturday, Sunday or Federal legal holiday shall not be counted.

(b) *Hours.* If the period of time prescribed or allowed in an order is stated in hours rather than days, the period of time shall begin to run upon issuance of the order and shall run without interruption, unless otherwise provided in the order and unless stayed, modified, suspended, or revoked.

§ 205.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time will be granted by the office with which the document is required to be filed only upon good cause shown.

§ 205.7 Service.

(a) All documents required to be served under this part, except as otherwise provided, shall be served personally or by registered or certified mail or by regular U.S. mail (this option available only for service by the FEO) on the person specified in this part.

(b) Whenever a person is represented by a duly authorized representative, service on the representative constitutes service on the person.

(c) Service by registered or certified mail is complete upon mailing.

§ 205.8 Subpoenas; witness fees.

(a) The Administrator of the FEO, his duly authorized agent, or the General Counsel, may sign or issue subpoenas.

(b) A subpoena may require the attendance of witnesses or the production of relevant papers, books, and documents in the possession or under the control of the person served, or both.

(c) A subpoena may be served by any person who is not a party and is not less than 18 years of age.

(d) The original subpoena bearing a certificate of service shall be filed with the appropriate office of the FEO.

(e) A witness subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the subpoena was issued.

(f) In case of refusal to obey a subpoena served upon any person under the provisions of this part, the FEO may request the Attorney General to seek the aid of the District Court of the United States for the district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce documents.

§ 205.9 Request for a determination.

(a) Each request for a determination must be submitted in writing to the appropriate office and contain a complete statement of all relevant facts relating to the act or transactions. Such facts include names and addresses of all affected parties (if reasonably ascertainable); a full and precise statement of the business reasons for the act or transaction (where appropriate); and a carefully detailed description of the act or transaction. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. However, relevant facts reflected in documents submitted must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the applicant or his representative, the identical issue is being considered by any other FEO office (or other governmental agency) in connection with a possible violation of these regulations by the person who is the subject of the requested determination. The request must also contain a statement as to whether the applicant or his representative has previously requested a determination with respect to the subject matter of the requested determination from any FEO office or any other governmental agency, detailing the disposition of any such previous request, or has filed an application for an exception or an exemption. Where the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. As documents and exhibits become a part of the file and cannot be returned, the original documents should not be submitted.

(b) If the applicant is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the applicant is urging no particular determination with regard to an act or transaction, he must state his views as to the effect of regulations and guidelines upon the action and furnish a statement of relevant authorities to support such views.

(c) A request by or for an applicant must be signed by the applicant or his authorized representative. If the request is signed by a representative of the applicant, or if the representative is to appear before FEO in connection with the request, he must be a person who complies with the appearance requirements of this part. Such representative must not be under disbarment or suspension to practice before the FEO.

(d) An applicant or his representative who desires an oral discussion of the issue or issues involved should indicate such desire in writing when filing the request or soon thereafter in order that a conference or hearing, if granted, may be arranged at that stage of consideration when it will be most helpful.

(e) It is the practice of the FEO to process requests for determinations in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing in a separate letter submitted with the request or subsequent thereto and showing clear need for such treatment will be given consideration as the particular circumstances warrant. However, no assurance can be given that any request for determination will be processed by the time requested. For example, the scheduling of a closing date for transaction or a meeting of the board of directors or shareholders of a corporation without due regard to the time it may take to obtain such a determination will not be deemed sufficient reason for handling a request ahead of its regular order. Neither will the possible effect of fluctuation in the market price of goods or commodities on a transaction be deemed sufficient reason for handling a request out of order. Requests by telegram will be treated in the same manner as requests by letter. Determinations ordinarily will not be issued by telegram.

(f) A request for an interpretation which includes, or could be construed to include, an application for an exception or exemption will nonetheless be treated solely as a request for an interpretation, as appropriate, and processed as such.

§ 205.10 Effective date of orders.

Any order issued by the FEO under this chapter is effective upon issuance, in accordance with its terms, unless and until it is stayed, modified, suspended, or revoked.

§ 205.11 Order of precedence.

In case of any conflict or inconsistency between the provisions of this part and any other provision of this chapter, the provisions of this part control as to procedure.

§ 205.12 Addresses for filing documents with the FEO.

(a) All petitions and appeals to the National Office, FEO should be addressed to P.O. Box 2893, Washington, D.C. 20013. Reports, notifications, and other correspondence intended for the National Office, FEO, should be addressed to the following Post Office Boxes, as appropriate:

Crude Oil	P.O. Box 19407, Washington, D.C. 20036.
Propane & Butane	P.O. Box 19500, Washington, D.C. 20036.
Petrochemical Feedstocks	P.O. Box 2885, Washington, D.C. 20013.
Bunker Fuel	P.O. Box 2886, Washington, D.C. 20013.
Electrical Utilities	P.O. Box 2887, Washington, D.C. 20013.
Aviation Fuels	P.O. Box 2888, Washington, D.C. 20013.
Other Products	P.O. Box 2889, Washington, D.C. 20013.
General Counsel	P.O. Box 2894, Washington, D.C. 20013.

(b) All petitions, appeals, complaints and reports submitted to the Regional Office should be directed to the following address, as appropriate:

REGION 1	
Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut.	Regional Director, Office of Oil and Gas, 150 Causeway St., Boston, Mass. 02114.
REGION 2	
New York, New Jersey, Virgin Islands, Puerto Rico.	Regional Administrator, Office of Oil and Gas, 252 Seventh Ave., 4th Floor, New York, N.Y. 10011.

REGION 3	
Pennsylvania, Delaware, Virginia, West Virginia, Maryland, District of Columbia.	Regional Administrator, Office of Oil and Gas, Federal Office Building, 600 Arch Street, Rm. 7248, Philadelphia, Pa. 19106.
REGION 4	
North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Canal Zone.	Regional Administrator, Office of Oil and Gas, Suite 750, 1375 Peachtree St. NW., Atlanta, Ga. 30309.
REGION 5	
Michigan, Illinois, Wisconsin, Minnesota, Indiana, Ohio.	Regional Administrator, Office of Oil and Gas, Insurance Exchange Building, 175 West Jackson St., Chicago, Ill. 60606.
REGION 6	
Texas, Louisiana, Arkansas, Oklahoma, New Mexico.	Regional Administrator, Office of Oil and Gas, 2320 La Branch St., Houston, Tex. 77004.
REGION 7	
Iowa, Nebraska, Missouri, Kansas.	Regional Administrator, Office of Oil and Gas, Federal Office Bulildng, Rm. 2511, 911 Walnut St., Kansas City, Mo. 64106.
REGION 8	
Montana, Wyoming, North Dakota, South Dakota, Colorado, Utah.	Regional Administrator, Office of Oil and Gas, Bldg. 67, Rm. 1470, Denver Federal Center, Denver, Colo. 80225.
REGION 9	
California, Nevada, Arizona, Hawaii, American Samoa, Guam, Trust Territory of the Pacific Islands.	Regional Administrator, Office of Oil and Gas, Federal Office Building, 450 Office Building, Box 36032, San Francisco, Calif. 94102.
REGION 10	
Washington, Alaska, Oregon, Idaho.	Regional Administrator, Office of Oil and Gas, Federal Office Building, 909 First Avenue, Rm. 3098, Seattle, Wash. 98104.

§ 205.13 Where to file.

(a) Except as otherwise specifically provided, documents which may be filed with FEO by suppliers or wholesale purchasers pursuant to this part shall be filed with the appropriate Regional Office of FEO except that documents shall be filed with the National Office of FEO which relate to:

(1) The allocation and pricing of crude oil pursuant to Subpart C of Part 211 and Part 212 of this chapter.

(2) Refinery mix controls imposed pursuant to Subpart C of Part 211.

(3) The allocation and pricing of aviation fuel pursuant to Subpart G of Part 211 and Part 212 which are filed by civil air carriers and public air carriers.

(4) The allocation and pricing of residual fuel oil pursuant to Subpart H of Part 211, and Part 212 of this chapter, which are filed by electrical utilities.

(5) The allocation and pricing of Bunker fuel pursuant to Subpart H of Part 211, and Part 212 of this chapter, which are filed by members of the maritime shipping industry.

(6) The allocation and pricing of petrochemical feedstocks pursuant to Subpart I of Part 211 and Part 212 of this chapter.

(7) The allocation and pricing of other fuels pursuant to Subpart J of Part 211 and Part 212 of this chapter.

(b) All petitions by end-users not qualifying as wholesale purchasers for an adjustment or assignment of any product shall be filed with the appropriate state office.

(c) Petitions for allocations under the state set-aside program to alleviate exceptional hardships experienced by end-users must be filed with the appropriate state office.

(d) Petitions to a state or FEO Regional Office must be directed to the office located in the state or region in which the allocated product will be physically delivered. A petitioner operating in more than one state or regior must apply separately to each state or region in which a product will be physically delivered unless the state or regional offices involved agree otherwise.

Subpart B—Adjustments and Assignments

§ 205.21 Purpose and scope.

This subpart establishes rules governing the disposition of requests for adjustment or assignment. All such requests shall take the form of a petition and shall be clearly labeled on the outside of the envelope.

§ 205.22 Contents.

Petitions for adjustment or assignment shall conform to the provisions of § 205.9 relating to a request for determination. Each such petition shall be accompanied by a properly completed Form FEO–17 (1–74) together with a concise statement of the following:

(a) Data on petitioner's business or end-use, detailing the structure of ownership and affiliation during the preceding 12 months.

(b) Information relating to the anticipated use of the product in petitioner's operation, including the present and anticipated needs of priority customers, if applicable.

(c) An estimate of the anticipated effect which denial of the requested adjustment would have on petitioner's operations.

(d) A statement of the extent to which the petitioner has investigated the possibilities of converting to an alternative fuel or product, and the petitioner's conclusion as to the feasibility of making such a conversation.

(e) A statement as to whether any previous order has been issued to the petitioner or a related business entity under this chapter.

(f) With regard to requests for assignments, a statement to the effect that the petitioner had no supplier during the requisite base period, or that the petitioner's previous supplier does not have the capacity to supply his needs.

§ 205.23 FEO consideration of petitions.

FEO may investigate any allegation in a petition and take into consideration any relevant factual findings resulting from the investigation. FEO may accept submissions from third parties relevant to any petition provided that the petitioner is afforded the opportunity to respond to all third party submissions. FEO may also consider any other source of relevant information in deciding a petition. The FEO may order hearing or conference, if, in its discretion, it considers such action advisable. If FEO determines that there is insufficient information upon which to base a decision, and if upon request required additional information is not furnished, FEO may dismiss the application without prejudice.

§ 205.24 FEO criteria.

A petition for adjustment or assignment shall be granted for the purpose of assuring allocation which, to the maximum extent practicable, shall provide for—

(a) Protection of public health, safety, and welfare, (including maintenance of residential heating, such as individual homes, apartments, and similar occupied dwelling units) and the national defense;

(b) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(c) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(d) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(e) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(f) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(g) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of, fuels, and for required transportation related thereto;

(h) economic efficiency; and

(i) minimization of economic distortion, inflexibility, and unnecessary interference market mechanisms.

§ 205.25 Decision and order.

After considering the matter, FEO will make a decision and enter an appropriate order which will contain a statement of the grounds for the decision. FEO will serve a copy of its order upon the petitioner and any other person, including any supplier, directly affected by the terms of the order. The order shall advise that any person aggrieved thereby may file an appeal pursuant to Subpart H of this part.

§ 205.26 Interim relief.

Prior to issuance of a final decision and order pursuant to this subpart, FEO may issue an interim order, for a period not to exceed 60 days, granting in whole or in part a petition for adjustment or assignment where the FEO deems such action consistent with the purposes and objectives of the Acts. Such an interim order shall be effective in accordance with its terms or until modified or revoked by FEO notwithstanding the filing of an appeal pursuant to the provisions of this subpart.

§ 205.27 Appeals.

Any person aggrieved by an action of FEO pursuant to this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before FEO has not exhausted his administrative remedies until he has filed an appeal pursuant to Subpart H and final action has taken thereon by FEO.

Subpart C—Exceptions

§ 205.41 Purpose and scope.

Exceptions from the provisions of Parts 210, 211 and 212 may be granted for the purpose of preventing or correcting a serious hardship or gross inequity. This Subpart establishes the rules governing the disposition of requests for exceptions.

§ 205.42 Initial action by FEO.

After considering the matter, FEO will make a decision and issue an appropriate order:

(a) When FEO grants an exception it will serve upon the applicant a copy of its order.

(b) When FEO denies an exception in whole or in part, it will serve upon the petitioner a copy of its order, which will contain a statement of the grounds for denial, and advise the applicant that he may file an appeal pursuant to Subpart H of this Part.

§ 205.43 Appeals.

Any person aggrieved by an initial action of FEO under this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before FEO has not exhausted his administrative remedies until he has filed an appeal under Subpart H and final action has been taken thereon by FEO.

Subpart D—Exemptions

§ 205.61 Purpose and scope.

This subpart establishes the rules of the FEO governing disposition of requests for exemption.

§ 205.62 Initial action by FEO.

After considering the matter FEO will make a decision and issue an order:

(a) When FEO grants an exemption it will serve upon the appellant a copy of its order.

(b) When FEO denies an exemption in whole or in part, it will serve upon the petitioner a copy of its order, which will contain a statement of the grounds for denial, and advise the applicant that he may file an appeal pursuant to Subpart H of this part.

§ 205.63 Appeals.

Any person aggrieved by an initial action of FEO under this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before FEO has not exhausted his administrative remedies until he has filed an appeal under Subpart H and final action has been taken thereon by FEO.

Subpart E—Notices of Probable Violation; Remedial Orders

§ 205.81 Purpose and scope.

This subpart establishes the procedures for determining the nature and extent of violations and the procedures for the issuance of remedial orders.

§ 205.82 General.

When any report required by FEO or any audit or investigation discloses, or FEO otherwise discovers, that a person appears to be in violation of the Act or any provision of this chapter, FEO may conduct proceedings to determine the nature and extent of the violations and issue remedial orders. FEO may commence proceedings by serving a notice of probable violation or by issuing a remedial order.

§ 205.83 Issuance of notice of probable violation to begin proceedings.

FEO may begin proceedings under this subpart by issuing a notice of probable violation if FEO has reason to believe that a violation has occurred or is about to occur.

§ 205.84 Issuance of remedial orders to begin proceedings in unusual circumstances.

Remedial orders may be issued to begin proceedings under this subpart if FEO finds on preliminary examination that the violations are patent or repetitive, that their immediate cessation is required to avoid irreparable injury to others or unjust enrichment to the person to whom the order is issued, or for any other unusual circumstance FEO deems sufficient.

§ 205.85 Reply.

(a) Within 10 days of receipt of a notice of probable violation issued under § 205.83 or a remedial order issued under § 205.84, the person to whom the notice or order is issued may file a reply. The reply must be in writing. He may also request an appointment for a personal appearance, which must be held within the 10-day period provided for reply. He may be represented or accompanied by counsel at the personal appearance. FEO will extend the 10-day reply period for good cause shown.

(b) If a person does not reply within the time allowed by a notice of probable violation, the violation will be considered admitted as alleged and FEO may issue whatever remedial order would be appropriate.

(c) If a person has not replied to FEO within the 10-day period provided and a remedial order issued to begin proceedings, the order will go into effect or remain in effect, in accordance with its terms as the case may be.

(d) An order which goes into effect or is permitted to remain in effect under paragraph (c) of this section or an order issued under paragraph (b) of this section is not subject to judicial or any other review with respect to any finding of fact or conclusion of law which could have been raised in the proceedings before FEO by the filing of a reply.

§ 205.86 Order.

(a) If FEO finds, after the person has filed a reply under § 205.85, that no violation has occurred or is about to occur or that for any other reason the issuance of a remedial order would not be appropriate, it will issue an order so stating and, if necessary, revoke or modify any remedial order which already may be outstanding.

(b) If FEO finds that a violation has occurred or is about to occur and that a remedial order is appropriate, it will issue an order so stating and, if necessary, direct remedial action, vacate the suspension of any outstanding remedial order, or modify as appropriate, any outstanding remedial order. The order will state the grounds upon which it is based.

§ 205.87 Appeals.

Any person aggrieved by an initial action of FEO under this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before the FEO has not exhausted his administrative remedies until he has filed a request for reconsideration under Subpart H and final action has been taken thereon by FEO.

Subpart F—Interpretations

§205.101 Purpose and scope.

This subpart establishes rules governing the disposition of requests for interpretations. All requests for interpreta-

tions shall be in writing. Responses to telephone inquiries are neither interpretations nor rulings and merely provide general information.

§ 205.102 Initial action by FEO.

Interpretations shall be issued on prospective or completed acts or transactions, and shall be in writing. Only those persons to whom an interpretation is specifically addressed may rely upon it. No person entitled to rely on an interpretation shall be subject to sanctions or penalties under the Acts or this chapter solely by reason of his reliance upon an interpretation notwithstanding that the interpretation shall thereafter be declared by judicial or other competent authority to be invalid. An interpretation may be revoked or modified at any time. Revocation or modification may be effected by notifying parties entitled to rely on the interpretations that it is revoked or modified. This notification shall include a statement as to the reasons for the revocation or modification and, in the case of a modification, a statement of the interpretation as so modified. Interpretations are also modified by subsequent rulings to the extent they are inconsistent.

§ 205.103 Appeals.

Any person aggrieved by an initial action of FEO under this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before FEO has not exhausted his administrative remedies until he has filed an appeal to Subpart H and final action has been taken thereon by FEO.

Subpart G—Modification of Orders

§ 205.121 Purpose and scope.

This subpart establishes the rules governing the disposition of requests for modification or rescission of FEO orders.

§ 205.122 Initial action by FEO.

FEO will modify or rescind orders issued under this chapter upon a showing that such action is consistent with the purposes of this chapter and is warranted by significantly changed circumstances. After considering the matter, FEO will make a decision and issue an order:

(a) When the FEO grants a modification or rescission, it will serve upon the applicant a copy of its order.

(b) When the FEO denies a petition for modification or a rescission a holder in part will serve upon the applicant a copy of its order which will contain a statement of the grounds for denial and advise the applicant that he may file an appeal pursuant to Subpart H.

§ 205.123 Appeals.

Any person aggrieved by an initial action of FEO under this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before FEO has not exhausted his administrative remedies until he has filed an appeal to Subpart H and final action has been taken thereon by FEO.

Subpart H—Appeals

§ 205.141 Purpose and scope.

(a) This subpart establishes the procedures governing appeals of initial actions taken under Subparts B, C, D, E, F, G or I of this part.

(b) A person who has appeared before FEO in connection with a matter arising under Subparts B, C, D, E, F, G or I of this part has not exhausted his administrative remedies until he has filed an appeal under this subpart and final action thereon has been taken by FEO.

§ 205.142 Who may file an appeal.

Any person aggrieved by an initial action of the FEO under Subpart B, C, D, E, F, G or I of this part may file an appeal under this subpart.

§ 205.143 Where to file.

An appeal shall be filed with the FEO office which issued the initial action or decision from which appeal is made.

§ 205.144 When to file.

An appeal must be filed within 30 days of service of the initial action or decision from which appeal is made.

§ 205.145 Contents of request.

An appeal shall:

(a) Be in writing and signed by the appellant;

(b) Be designated clearly as an appeal;

(c) Contain a concise statement of the grounds for appeal and the requested relief;

(d) Be accompanied by briefs, if any; and

(e) Be marked on the outside of the envelope "Appeal".

§ 205.146 Reconsideration.

(a) FEO will modify its initial action taken under Subparts B, C, D, E, F, G, or I of this part if an appeal:

(1) Is made by a person aggrieved by the initial action;

(2) Is timely; and

(3) Makes a prima facie showing that FEO's initial action was erroneous in fact or in law.

(b) FEO may summarily reject an appeal which is not timely.

(c) FEO may summarily reject an appeal which fails to make a prima facie showing that FEO's initial action was erroneous in fact or in law, in which case it will notify the appellant of its action. Such appellant may seek judicial review under the Act.

(d) When an appeal meets the requirements set forth in paragraph (a) of this section FEO will proceed in accordance with §§ 205.147 and 205.148 of this subpart.

(e) FEO on its own motion may consider any additional evidence that it deems relevant and which in its opinion the appellant did not have a reasonable opportunity to present previously.

§ 205.147 Hearing.

(a) If FEO in its discretion deems that a hearing or conference is advisable, it will, as expeditiously as possible after receiving an appeal, direct that a hearing or conference be held before a Hearing Officer or other agency official.

(b) When a hearing or conference has been directed in accordance with paragraph (a) of this section it will be conducted promptly after written notice has been served on the appellant, at such time and place as FEO may direct.

(c) When a hearing is conducted in accordance with this section, the appellant may present oral argument and submit such additional documentary evidence as the Hearing Officer or other official allows.

(d) When administratively feasible, within 30 days after the close of the hearing, the Hearing Officer or other official will submit to FEO a report and any recommendation he deems appropriate with respect to the appellant's appeal.

§ 205.148 Decision by FEO.

(a) After considering the matter FEO will make a decision and issue an appropriate order.

(b) When an order grants the requested relief, a copy of the order will be served upon each party to the proceedings.

(c) When the order denies the requested relief in whole or in part, FEO will set forth the grounds therefor, and advise appellant that he has exhausted his administrative remedies.

§ 205.149 Stays pending appeal.

As part of an appeal, any person may request a stay of the initial action for which appeal is sought pending final disposition of the appeal. FEO may grant a request for stay for good cause shown.

§ 205.150 Judicial review.

A final decision of an appeal taken pursuant to this subpart shall be subject to judicial review in the manner prescribed by section 211 of the Economic Stabilization Act of 1970, as amended (12 U.S.C. 1904 (Note)).

Subpart I—Rules Relating to Petitions at the State Level

§ 205.161 Purpose and scope.

This part establishes the rules for the allocation of the state set-aside, and petitions for an adjustment or assignment by an end-user who is not a wholesale purchaser.

§ 205.162 Who may file.

(a) The state set-aside is intended for use in allevating temporary hardships experienced by end-users or wholesale purchases.

(1) Any end-user who is experiencing a temporary hardship may petition the state for an allocation from the state set-aside.

(2) Any wholesale purchaser who is serving end-users experiencing temporary hardships or who is an end-user and is himself experiencing a temporary hardship may petition for an allocation from the state set-aside.

(b) After seeking relief under § 211.13 of this chapter, an end-user who is not

a wholesale purchaser may file a petition with the appropriate state office for an adjustment or an assignment for any product to a supplier and request the state office to forward the petition to FEO with the recommendation that it be granted pursuant to § 205.166 of this subpart.

§ 205.163 Where to file.

Petitions must be filed with the designated state office of the state in which the product will be physically delivered.

§ 205.164 Consideration of petitions.

(a) Petitions for allocations from the state set-aside shall be processed according to rules and procedures established by the state office.

(b) Petitions for an adjustment or assignment of base period volume shall be processed promptly by the appropriate state office. All requests shall take the form of a petition and be clearly labelled as such. The appropriate state official may investigate any factual allegation contained in a petition and take into consideration in its decision any relevant factual findings resulting from such investigation. The state official may accept submissions from third parties relevant to any petition it is considering, provided, however, that the petitioner is afforded the opportunity to respond to such third party submissions. The state official may also consider any other sources of relevant information in deciding the petition before it. The state official may order an informal hearing, if, in his opinion, such a hearing would be advisable. If the state official determines that there is insufficient information upon which to base a decision, and if upon request the required additional information is not furnished, the application may be dismissed without prejudice. Upon a determination that a denial, a recommendation of award, or dismissal should issue, the state official shall so notify the petitioner in writing, stating the reasons for his decision.

§ 205.165 State criteria.

A recommendation that a petition for adjustment or assignment be granted shall be made in accordance with the purposes of assuring allocation set forth in Subpart B of § 205.26.

§ 205.166 Recommendations to the FEO.

The state shall recommend to the FEO in writing those petitions which in the opinion of the state warrant an adjustment or assignment. Such recommendation shall state the reasons for the decision. The FEO shall consider recommendations for adjustment or assignments submitted by the state. After considering the matter, the FEO will make a decision and enter an appropriate order which will contain a statement of the grounds for the decision. The FEO will serve a copy of its order upon the petitioner, the state, and any other person, including any supplier, directly affected by the terms of the order. The order shall advise that any person aggrieved thereby may file an appeal pursuant to Subpart H of this part.

§ 205.167 Appeal.

(a) Any person aggrieved by a decision issued pursuant to the state set-aside program may appeal according to the procedures established by the appropriate state office.

(b) Any person aggrieved by a decision denying a recommendation of a petition for an adjustment or an assignment may appeal pursuant to the procedures established by the appropriate state office.

(c) Any person aggrieved by an initial order of the FEO under this subpart may file an appeal pursuant to Subpart H of this part. A person appearing before the FEO has not exhausted his administrative remedies until he has filed an appeal under Subpart H and final action has been taken by the FEO.

Subpart J—Rulings for Publication

§ 205.181 Rulings for publication.

From time to time, the General Counsel of the FEO will issue rulings for publication in the Federal Register which are:

(a) of general applicability;

(b) illustrative of a general principle; or

(c) of assistance to the public in applying the Act, regulations, or guidelines to a specific situation.

Subpart K—Petition and Comment on Rulemaking

§ 205.201 Purpose and scope.

(a) The provisions of 5 U.S.C. 553 will be followed for the issuance of all regulations or amendments to regulations by the FEO to the extent such provisions apply.

(b) In addition, FEO will accept from interested persons written objections to its regulations or its published rulings at any time. If in the opinion of the FEO such comments or objections warrant a proceeding similar to a rule making proceeding as provided by 5 U.S.C. 553, the FEO will conduct such a proceeding pursuant to notice published in the FEDERAL REGISTER.

§ 205.202 Who may file.

Any interested person may file a comment on or objection to a regulation or published ruling at any time.

§ 205.203 Where to file.

A written comment or objection to a regulation or published ruling shall be filed with the General Counsel, FEO, at the address specified in § 205.12.

Subpart L—Compromise of Civil Penalties

§ 205.221 Purpose and scope.

(a) Under section 208(b) of the Economic Stabilization Act of 1970, as amended, and section 5(a) of the Mandatory Petroleum Allocation Act of 1973, whoever violates an order or regulation issued by the FEO is subject to a civil penalty of not more than $2,500 for each violation. This subpart prescribes procedures governing the compromise and collection of those civil penalties which the FEO considers appropriate or advisable to settle through compromise.

§ 205.222 Notice of possible compromise of penalties.

If the FEO considers it appropriate or advisable under the circumstances of a particular civil penalty case to settle it through compromise, the General Counsel of the FEO or his delegate, may send a letter to the person charged with the violation advising him of the charges against him, the order or regulation that he is charged with violating, and the total amount of penalty involved, and that the FEO is willing to consider an offer in compromise of the amount of the penalty.

§ 205.223 Response to notice.

(a) A person who receives a notice pursuant to § 205.222 may present to the General Counsel any information or material bearing on the charges that denies, explains, or mitigates the violation. The person charged with the violation may present the information or materials in writing or he may request an informal conference for the purpose of presenting them. Information or materials so presented will be considered in making a final determination as to the amount for which a civil penalty is to be compromised.

(b) A person who receives such a notice may offer to compromise the civil penalty for a specific amount by delivering to the General Counsel or his delegate a certified check for that amount payable to the Treasurer of the United States. An offer to compromise does not admit or deny the violation.

§ 205.224 Acceptance of offer to compromise.

(a) The General Counsel may accept or reject an offer to compromise a civil penalty. If he accepts it, he sends a letter to the person charged with the violation advising him of the acceptance.

(b) If the General Counsel accepts an offer to compromise, that acceptance is in full settlement on behalf of the United States of the civil penalty for the violation. It is not a determination as to the merits of the charges. A compromise settlement does not constitute an admission of violation by the person concerned.

§ 205.225 No compromise.

If a compromise settlement of a civil penalty cannot be reached, the General Counsel may refer the matter to the Attorney General for the initiation of proceedings in a U.S. district court to collect the full amount of the penalty, or take such action as is necessary.

PART 210—GENERAL ALLOCATION AND PRICE RULES

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AUTHORITY: Emergency Petroleum Allocation Act of 1973, P.L. 93-159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 38 FR 24.

Subpart A—Scope

§ 210.1 Purpose.

The purpose of this part is to set forth the provisions applicable to both Parts 211—Mandatory Petroleum Allocation Regulations and Part 212—Mandatory Petroleum Price Regulations, appearing in this chapter.

§ 210.2 Applicability.

Effective 11:59 p.m. e.s.t. January 14, 1974, the provisions of this part apply to all covered products produced, refined or imported into the United States. This part does not apply to sales of natural gas.

§ 210.3 Exceptions and exemptions.

When necessary to accomplish the purposes of the Act, the Federal Energy Office may permit an exception or an exemption to the regulation of this part. Requests for exception and exemption shall be submitted in accordance with the provisions of Part 205 of this chapter.

§ 210.4 Ratification of prior directives, orders and actions.

Subpart B—Definitions

Unless modified by any provisions of this chapter, any directive, order or action in effect pursuant to the Act shall remain in effect:

(a) Until its expiration by its own terms; or

(b) Until its revocation or amendment by any directive or order or superseding regulation issued under the provisions of this chapter.

§ 210.21 Definitions.

"Act" means the Emergency Petroleum Allocation Act of 1973, or the Economic Stabilization Act of 1970, as amended, or both.

"Covered products" means all products described in the 1972 Standard Industrial Classification Manual Industry Code 1311 (except natural gas), 1321 or 2911.

"FEO" means the Federal Energy Office or its delegate.

"United States" means the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States other than the Panama Canal Zone.

Subpart C—Exemptions

§ 210.31 Scope.

(a) Except as provided in paragraph (b) of the section, price adjustments and allocation provisions with respect to items and transactions set forth in this Subpart are exempt from and not included within the coverage of this title.

(b) Revenues received from the sales of exempt items or from exempt sales are included in a firm's annual sales or revenues, as defined in Part 212 of this chapter, for purposes of computing profit margin in Part 212 of this chapter. Covered products exempt from the allocation provisions are to the extent specified and in Part 211 of this chapter, included in inventory calculations.

§ 210.32 Stripper well leases.

(a) The first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids produced from any stripper well lease is exempt from the provisions of Parts 211 and 212 of this title.

(b) *Definitions.* "Average daily production" means the qualified maximum total production of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from a property during the preceding calendar month, divided by a number equal to the number of days in that month times the number of wells which produced crude petroleum and petroleum condensates, including natural gas liquids, from that property in that month. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

"Domestic crude petroleum" means crude petroleum produced in the United States or from the "outer continental shelf" as defined in 43 U.S.C. 1331.

"First sale" means the first transfer for value by the producer or royalty owner.

"Property" is the right which arises from a lease in existence in 1972 or from a fee interest to produce domestic crude petroleum in existence in 1972 and is coextensive with that property used in Section 212 for purposes of determining "base production control level."

"Stripper well lease" means a "property" whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids, per well did not exceed 10 barrels per day during the preceding calendar month.

§ 210.33 Exports and imports.

Bonded covered products are exempt from the provisions of this part.

Subpart D—General Rules

§ 210.61 Retaliatory actions.

No firm (including an individual) may take retaliatory action against any other firm (including an individual) that files or manifests an intent to file a complaint of alleged violation of, or that otherwise exercises any rights conferred by the Act, any provision of this part, or any order issued under this Chapter. For the purposes of this paragraph, "retaliatory action" means any action contrary to the purpose or intent of the Economic Stabilization Program or the Federal Energy Office and may include a refusal to continue to sell or lease, any reduction in quality, any reduction in quantity of services or products customarily available for sale or lease, any violation of privacy, any form of harassment, or any inducement of others to retaliate.

§ 210.62 Normal business practices.

Suppliers will deal with purchasers according to normal business practices. Nothing in this program shall be construed to require suppliers to sell to purchasers who do not arrange proper credit or payments for products. However, no supplier may require or impose more stringent credit terms or payment schedules on purchasers than the normal business practice of the supplier for that class of purchaser (e.g. COD purchasers) during the base period, nor may any supplier modify any other normal business practice so as to result in circumvention of any provision of this chapter.

§ 210.63 Sales of allocated product.

Quantities of an allocated product required by an allocation order to be sold shall be sold at the price for that substance on the date the order was issued or such other date specified in the order for this purpose.

Subpart E—Antitrust Applicability

§ 210.71 Scope.

The purpose of this subpart is to set forth the relationship between the requirements of the Mandatory Petroleum Products Allocation Program and the antitrust laws of the United States.

§ 210.72 General rule.

Notwithstanding any provision to the contrary elsewhere in this part, except as specifically provided in this subpart, the provisions of this subpart neither provide immunity from civil or criminal liability under the antitrust laws to any person subject to the provisions of this chapter, nor create a defense to any action under the antitrust laws.

§ 210.73 Definitions.

For the purposes of this subpart, "antitrust laws" includes:

(1) The Sherman Antitrust Act (15 U.S.C. 1 et seq., July 2, 1890, as amended);

(2) The Clayton Act (15 U.S.C. 12 et seq., October 13, 1914, as amended);

(3) The Federal Trade Commission Act (15 U.S.C. 41 et seq.);

§ 210.74 Meetings.

By order of the FEO, whenever it becomes necessary in order to comply with the provisions of these regulations, that owners, directors, officers, agents, employees, or representatives of two or more persons engaged in the business of producing, refining, marketing, or distributing of any product subject to the requirements of these regulations must meet, confer, or communicate in such fashion and to such ends that might otherwise be construed to constitute a violation of the antitrust laws, such activities may be permitted; provided, the criteria of § 210.75 are met.

§ 210.75 Criteria for meetings.

Persons permitted by order to so meet, confer, or otherwise communicate shall:

(a) Obtain from the FEO an order which specifies and limits the subject matter to be discussed, and the objectives of such meeting, conference or other communication;

(b) Meet only in the presence of a representative of the Antitrust Division of the Department of Justice;

(c) Take a verbatim transcript of such meeting, conference, or other communication; and

(d) Submit such verbatim transcript and any agreement resulting from such meeting, conference, or other communication to the Attorney General and to the Federal Trade Commission.

§ 210.76 Defense antitrust.

Compliance with the provisions of § 210.75 shall make available to the affected parties a defense to any action brought under the antitrust laws arising from any meeting, conference, or communication, or agreement arising therefrom; provided, that such meeting, conference, or other communication was held and any resulting agreement was made solely for the purpose of complying with the provisions of this chapter.

§ 210.77 Defenses; antitrust and breach of contract.

Compliance with the provisions of the regulations of this chapter shall make available a defense to any action brought under the antitrust laws or for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange any product subject to these regulations; provided, that such defense shall be available only if such delay or failure was caused solely by compliance with the provisions of this chapter.

Subpart F—Violations, Sanctions, and Judicial Actions

§ 210.81 Violations.

Any practice which circumvents or results in the circumvention of the requirements of any provision of the regulations of this chapter or any order issued pursuant thereto is a violation of the regulations of this chapter.

§ 210.82 Sanctions.

(a) *General.* Any person who violates any provision of this chapter or any order issued pursuant thereto shall be subject to penalties and sanctions as provided herein.

(1) The provisions herein for penalties and sanctions shall be deemed cumulative and not mutually exclusive.

(2) Each day that a violation of the provision of this chapter or any order issued pursuant thereto continues there shall be deemed to be a separate relation within the meaning of the provisions of this chapter relating to criminal fines and civil penalties.

(b) *Criminal penalties.* Any person who willfully violates any provision of this chapter or any order related pursuant thereto shall be subject to a fine of not more than $5,000.00 for each violation. Criminal violations will be prosecuted by the Department of Justice upon referral by the Administrator, FEO.

(c) *Civil Penalties.* Any person who violates any provision of this chapter or any order issued pursuant thereto shall be subject to a civil penalty of not more than $2,500.00 for each violation.

(d) *Other Penalties.* Willful concealment of material facts, or false or fictitious or fraudulent statements or representations, or willful use of any false writing or document containing false, fictitious or fraudulent statements pertaining to matters within the scope of the Act shall be subject to the criminal penalties provided by 62 Stat. 749, 18 U.S.C. 1001.

§ 210.83 Injunctions and other relief.

(a) Whenever it appears to the Administrator, or his delegate, that any person has engaged, is engaged, or is about to engage in any act or practices constituting a violation of any order or regulation under this chapter, the Administrator, or his delegate may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include a mandatory injunction commanding any person to comply with any such order or regulation of money received in violation of any such order or regulation.

(b) Any person suffering legal wrong because of any act or practice arising out of the provisions of this chapter or any order issued pursuant thereto shall be entitled to the relief provided in section 210 of the Economic Stabilization Act of 1970, as amended.

Subpart G—Reports and Recordkeeping

§ 210.91 Reports.

Whenever the FEO considers it necessary for the effective administration of the FEO, it may order any firm to file special or separate reports, setting forth information relating to the FEO regulations in addition to any other reports required in Part 211 or Part 212 of this chapter.

§ 210.92 Records.

(a) *General.* Each firm subject to this part shall keep such records as are sufficient to demonstrate that the prices charged or the amounts sold by the firm are in compliance with the requirements of this part.

(b) *Inspection.* Records required to be kept under paragraph (a) shall be made available for inspection at any time upon the request of a representative of the FEO.

(c) *Justification.* Upon the request of a representative of the FEO any firm which has filed a notice of a proposed price increase, increases a price pursuant to this subpart, or takes any action pursuant to the allocation provisions of this Chapter, shall:

(1) Specify the records that it is maintaining to comply with this paragraph; and

(2) Justify that proposed price increase, increased price, or action pursuant to the allocation provision of this Chapter.

(d) *Period for keeping records.* Each firm required to keep a record under this paragraph shall maintain and preserve that record for at least 4 years after the last day of the calendar year in which the transactions or other events recorded in that record occurred or the property was acquired by that firm whichever is later.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

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AUTHORITY: Emergency Petroleum Allocation Act of 1973, P.L. 93-159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 38 FR 24.

Subpart A—General Provisions

§ 211.1 Scope.

(a) *General.* This part applies to the mandatory allocation of crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States.

(b) *Exclusions.* (1) Exports of crude petroleum and petroleum products subject to Subchapter B of Chapter III of Title 15 of the Code of Federal Regulations are excluded from this part.

(2) The first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from any stripper well lease as defined in § 210.32 is excluded from this part.

(3) Petroleum refinery products such as paraffin wax, petroleum coke, asphalt, road oil, and refinery gases which are not crude oil, refined petroleum products, or residual fuel oils are excluded from this part.

(4) Natural gas is excluded.

(c) *State set-asides.* State set-asides are provided for middled istillates, residual fuel oil, motor gasoline and propane.

§ 211.11 Method of allocation.

Unless otherwise specified in subparts D through K of this part the method of allocation for each product shall be as follows:

(a) *Allocable supply.* Each supplier's total allocable supply for each allocated product shall be equal to the sum of its estimated production, imports, and purchases and its inventory adjustments for the allocated product less the quantities set aside for distribution by the State Offices if they, as a prime supplier, are required by § 211.17 to establish a State set-aside volume.

(b) *Sales to wholesale purchasers.* Suppliers shall allocate their total allocable supply among their wholesale purchasers in proportion to their wholesale purchaser's base period volumes, or adjusted base period volumes, where applicable.

(1) A supplier's allocation fraction for any allocable product shall be equal to his total allocable supply of the product divided by his base period volume, or adjusted base period volume.

(2) Each wholesale purchaser's base period volume (or adjusted base period volume) for any allocated product shall be equal to his base period purchases of that product adjusted as provided in section 211.13.

(3) The volume of any product allocated to a wholesale purchaser shall be the sum of the volumes allocated to him from each of his suppliers. The volume supplied to a wholesale purchaser by each of his suppliers shall equal the part of the wholesale purchaser's base period volume (or adjusted base period volume) purchased from that supplier multiplied by that supplier's allocation fraction.

(4) Suppliers shall adjust their allocation fractions on a monthly basis to reflect adjustments in their own or their purchasers' base period volumes and in their allocable supply.

(5) In allocating allocable supplies of any product among wholesale purchasers, no supplier may use an allocation fraction greater than one (1.0) without approval of the FEO. If a supplier's total allocable supply is of sufficient magnitude that the allocation fraction exceeds one (1.0), the supplier shall make allocations based on an allocation fraction of one (1.0) and shall separately report by certified mail to the National FEO and the appropriate Regional FEO, the volume of surplus product available. The National FEO may direct that the product be distributed among other suppliers, sold to designated wholesale purchasers or end-users, or be accumulated in inventory. If the reporting supplier is not notified to the contrary by the FEO within fifteen (15) days of reporting to the FEO, he may distribute these volumes at his discretion.

(c) *Sales to end-users.* Wholesale purchasers (or suppliers) who sell to end-users to the extent practicable, shall meet the requirements of their end-users as specified in the allocation level section provided in the appropriate subpart for each allocated product. End-users with allocation levels at one hundred (100) percent of current requirements (other than agricultural production) may receive pro rata reductions when their supplier's allocation fraction is less than one (1.0) so that partial requirements of other end-users can be met.

(d) *Recordkeeping requirements.* Wholesale purchasers (or suppliers) who sell to end-users shall maintain records on FEO forms, the subject to FEO audit, which demonstrate the basis for distribution of allocable supplies among their various customers. These records shall contain the following information for each allocated product and for each customer, on a monthly basis:

(1) Customer identification
(2) Base period volume
(3) Adjusted base period volume
(4) Allocation level
(5) Allocation requirements (item (3) multiplied by item (4))
(6) Customer's share of allocable supply (item (5) multiplied by supplier's allocation fraction)
(7) Actual volume supplied

(e) *Quality characteristics.* The FEO may specify quality characteristics, such as sulphur content, of any allocated product.

§ 211.12 Determination of base period volumes.

By February 1, 1974, each supplier who sells an allocated product to a wholesale purchaser shall report to each of his wholesale purchasers with respect to each allocated product, the volume of product sold to that wholesale purchaser in each month of the base period year.

(a) If, after receipt of supplier's report, a wholesale purchaser questions the accuracy of a supplier's report, he shall notify this supplier, and attempt to resolve the disagreement as to base period purchases of the wholesale purchaser.

(b) If the supplier and wholesale purchaser are unable to resolve their differences, the supplier shall commence allocations based on the supplier's records, in accordance with the allocation provisions in this part, and the wholesale purchaser should make application to the appropriate FEO regional office for a corrected base period volume. Copies of the wholesale purchaser's records for base period purchases should be included with the application.

(c) If the FEO determines that the wholesale purchaser's application for a corrected base period volume is valid, it

shall order the supplier to increase the wholesale purchaser's base period volume and to supply the wholesale purchaser with additional volumes of the allocated product equal to the additional amount the wholesale purchaser should have received if allocation had been based on the corrected base period volume.

§ 211.13 Adjustments to the allocation program.

(a) *Scope.* The adjustment procedures under this section are applicable to the allocation of propane and butane, motor gasoline, middle distillates, aviation gasoline except for civil aviation, and residual fuel oil except allocations to utilities.

(b) *Unusual growth since base period.* Wholesale purchasers who have had unusual growth between the base period and the effective date of these regulations may apply to their supplier, to be assigned an adjustment to their base period volume.

(1) For the purpose of this paragraph, unusual growth is defined as more than ten (10) percent per year for gasoline, or more than five (5) percent per year for all other products.

(2) Applications for increased base period volumes made under this section shall be filed with a supplier by June 1, 1974.

(3) If the supplier does not agree that the application submitted under this section is valid, he may request that the FEO determine the validity of the application before increased deliveries are made. In this event, the wholesale purchaser shall certify to the FEO documented evidence of actual increases in sales volumes, on an annual average basis, since the base period. Only actual certified historical sales volumes in excess of the growth percentages specified shall be considered by the FEO in determining whether or not unusual growth has occurred.

(4) If the supplier agrees that the application is valid, or if the FEO validates the application, the supplier shall then increase the base period volume such that if the growth since the base period exceeds ten (10) percent for gasoline or five (5) percent for other refined products per year considering seasonal factors for all other products, the supplier shall grant an increase in base period volume that is equal to the actual yearly growth percentage in excess of ten (10) percent for gasoline or five (5) percent for other refined products, multiplied by the wholesale purchaser's adjusted base period volume at that time.

(5) If a supplier receives an application for unusual growth since the base period which is twenty (20) percent or greater, he shall request that the FEO validate the application before any increase in the base period volume is made.

(c) *New customers.* Suppliers and wholesale purchasers shall accept new customers without an historical supplier where such new customer, under normal business practices, could logically have been served by the supplier or the wholesale purchaser. New customers shall apply to their suppliers to be assigned a base period volume. If the supplier and customer cannot agree on a base period volume, the new customer may apply to be assigned a base period volume by the FEO. In this event, the new customer shall certify to the FEO documented evidence justifying the base period volume as normal and reasonable for the intended use. Whenever the total base period volume of all such new customers added together exceeds five (5) percent of the total adjusted base period volume of his customers as of the effective date of this part, on an annualized basis considering seasonal factors, the wholesale purchaser may apply to his supplier and be assigned an adjustment to his base period volume. Suppliers or wholesale purchasers accepting new customers as provided in this subsection shall then allocate allocable supplies among all their customers (both new and existing) consistent with the allocation procedures set forth in this Part.

(1) If a supplier's total base period volume for new customers subsequent to the effective date of these regulations exceeds five (5) percent of the total base period volumes and adjusted base period volume of his existing customers, his own supplier shall grant a percentage increase in base period volume equal to the base period volumes of new customers in that calendar year less five (5) percent of the total base period volume of his existing customers.

(2) The supplier shall refer applications to the FEO for approval for cases where the base period volume of new customers in any calendar year exceeds twenty (20) percent of the wholesale purchaser's base period volume.

(d) *Allocation levels of one hundred percent of current requirements.* (1) Wholesale purchasers or suppliers serving end-users who utilize the products for uses allocated one hundred (100) percent of current requirements shall apply to their supplier and be assigned an adjustment to their base period volume to cover certified increases in volume for this purpose.

(2) All other suppliers shall apply to their supplier and be assigned an adjustment to their base period volume to cover certified increases in volumes of their customers for this purpose.

(3) The supplier shall grant an increase in base period volume in gallons equal to the increased needs of the wholesale purchaser for sales to customers for priority uses granted an allocation level of one hundred (100) percent of current requirements provided for in Subparts C–K of this part.

(e) *Allocation levels as a percent of base period volumes.* Wholesale purchasers and suppliers may apply to the FEO for adjustments to their base period volumes to cover unusual growth since the effective date of this part. In processing such applications, the FEO may consider unusual conditions that indicate a need for increased amounts over base period volumes, such as plant expansions, new population, industrial growth in an area, or unusual growth problems such as could occur at truck stops on new highways.

(f) If the supplier does not agree that an application submitted under this section is valid he may request that the FEO review the application. The FEO may then accept, reject, or adjust the application depending upon the results of its investigation.

(g) In granting increases to base period volumes under this section the supplier shall not discriminate against independent wholesale purchasers in favor of either affiliated wholesale purchasers or its own wholesale or retail outlets selling directly to end-users.

(h) Any wholesale purchaser applying to a supplier or to the FEO, for an adjustment to his base period volume under this section, shall file such application on FEO Form 17. Such application shall be certified for accuracy by the chief executive officer or his delegate of the wholesale purchaser filing the application. Applications filed for increased base period volumes under this section shall contain a statement that increased allocations shall be used only for the purpose stated in the application, shall not be diverted for other uses, and that if the needs decline, the wholesale purchaser shall file an amended application for a downward adjustment to his base period volume.

(i) Any wholesale purchaser may appeal to the FEO if it appears that a valid application for an adjustment in base period volume has not been approved by a supplier, or if it appears that competing wholesale purchasers are receiving unjustified increased base period volumes.

(j) Any end-user who has been unable either to locate a supplier as a new end-user or to obtain an increased allocation of products after presenting a valid, certified request to a supplier in accordance with the provisions of § 211.13(b)–(e) may apply to the State office for assistance.

(k) Any end-user who has been denied access to a source of energy other than crude oil, residual fuel oil and refined petroleum products as a consequence of curtailment by, or pursuant to a plan filed in compliance with a rule or order of a Federal or State agency, or where the end-user's supply of such fuel is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency may apply to a supplier, or the FEO, under the provisions of this section as a new customer for crude oil products. If such applications are approved, a base period volume shall be assigned on an equivalent BTU basis for the energy source denied and the amount of assigned allocated product shall be corrected for differences in use efficiency.

(l) Class applications for increases in base period volumes may be filed with the FEO on behalf of two or more wholesale purchasers. The FEO will not consider a class application for increased base period volumes that represents a growth rate of less than ten (10) percent per year for motor gasoline or five

(5) percent per year for other allocated products.

(m) Any wholesale purchaser who did not have a supplier during 1973, or whose base period supplier(s) is unable to supply him currently or who was not in business during the entire year of 1973, may apply to the FEO Regional Office to be assigned a supplier. However, prior to applying, all such wholesale purchasers are expected to explore all reasonable supplier possibilities. To the extent practicable the FEO shall continue any existing supplier-wholesale purchaser relationship in making such assignments. Any wholesale purchaser who is assigned to a supplier under the provisions of this regulation shall be accepted by the supplier for the duration of the program or until otherwise directed by the FEO.

§ 211.14 Redirection of products.

(a) To meet imbalances that may occur in the supplies of any product subject to this part, the FEO may order the transfer of specified amounts of any such product from one region or area to another. Further, the FEO may allocate any such supplies of such products among suppliers in order to remedy supply imbalances.

(b) Refiners and importers are authorized to reduce the monthly total allocable supply to purchasers of products covered under subparts D, E, F, G, H (except Civil Air Carriers) and I (except utilities) for any region or State by up to five (5) percent and to increase the total quantity of any of these products available in another region or State experiencing shortages significantly greater than are being experienced elsewhere in the nation to meet regional imbalances due to weather variation, seasonal demand, or other circumstances beyond their control. Such action may be accomplished without prior approval from the Administrator, FEO, but must be reported to the National FEO and the appropiate Regional FEO within thirty (30) days after the adjustment occurs. Redistribution involving reduction of product volumes greater than five (5) percent from any State shall require approval from the Administrator, FEO, prior to any action by any refiner or importer. The adjustment provided for in this section shall not be cumulative. Allocation levels within a region or State shall be returned to prereduction levels as soon as practicable.

(c) Shifts or base period volume supply adjustments made pursuant to this section shall be employed solely to effect a better regional distribution of allocated substances and shall not discriminate against branded or nonbranded independent marketers, independent refiners, or small refiners.

(d) Any refiner, importer or wholesale purchaser who has significantly reduced marketing or distribution activities in any region and who is obligated to supply his previous customers in that region under the terms of this program shall apply to the National FEO to seek adjustment in the method of supplying such customers. The FEO may authorize reassignment of wholesale purchasers in a region from one supplier to another provided that the supplier receiving such reassigned wholesale purchasers is compensated for the allocations to such wholesale purchasers by product transfers from the supplier no longer supplying such wholesale purchasers.

§ 211.15 State offices of petroleum allocation.

(a) Any state may apply to the National Office of the FEO, to create a State Office of Petroleum Allocation within the State.

(b) Upon certification by the FEO, such State Office of Petroleum Allocation will be delegated authority to administer the State set-aside program, to provide assistance in obtaining adjustments specified in § 211.13 and such other authorities specified in this part, or in orders issued by the FEO.

§ 211.17 State set-aside.

A state set-aside system shall be established for propane, middle distillates, motor gasoline, and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). Authority will be delegated to the State Office to meet hardship and emergency allocation requirements of all wholesale purchasers and end users within their respective states from the State set-aside volumes, including wholesale purchasers and end users which are part of any governmental organization, including the Federal Government. The set-aside volume shall be a percentage of the estimated volume of allocable product for which the prime supplier makes the first sale of products into the State distribution system for consumption within the State (hereafter "estimated volume"). For the month of February 1974, the set-aside will be determined as specified in § 211.222(a).

(a) The "prime supplier" for motor gasoline, middle distillate, and residual fuel oil, and the supplier (as defined in subpart D) for propane (hereafter known as the prime supplier) shall inform each State and the appropriate regional FEO office monthly, by product, (as specified in § 211.222(b)) of estimated volume to be sold into that State for the forthcoming month.

(1) Estimated volume of allocated product shall include adjustments by the FEO.

(2) The State set-aside for each allocable product shall be stated as both a percentage of estimated volume and as total estimated volume.

(3) The FEO shall determine the State set-aside percentage for each product. This specifies the initial percentage by product for the State set-aside system. The FEO will publish any changes in these percentages.

(4) Prime suppliers shall provide State set-aside information in accordance with § 211.222(b).

(b) The State Office may direct allocations from State set-aside volumes reported by prime suppliers, not to exceed the total volume set-aside by each prime supplier each month. Unused State set-aside for each allocated product shall become a part of each prime supplier's total product supply for the subsequent month and shall be distributed according to the allocation procedures for each product.

(c) The State set-aside may be utilized by State Offices to resolve emergencies and hardships due to fuel shortages. The State Office shall review each emergency and hardship case and, if approved, shall assign a supplier and shall provide a copy of the authorizing document to the purchaser granted an allocation. Suppliers are required to provide product when presented with an authorizing document. The authorizing document shall entitle the purchaser to receive product from any convenient local distributor of the prime supplier from whom the set-aside allocation has been made. The State Office may coordinate with the regional distribution office of the prime supplier to locate appropriate local distributors. A copy of the authorizing document (or a summary) shall also be provided by the State Office to the regional or local distribution offices of prime suppliers. To facilitate assignment by State Offices of purchasers to suppliers, purchasers shall be required to identify their existing supplier, or if they do not have a supplier, to identify at least two suppliers who could provide the allocated product and who they have contacted to provide the allocated product.

(d) Any non-prime supplier who provides an allocated product at the direction of the State from the State set-aside shall receive from his supplier an equivalent volume of product in excess of his regular allocation.

(e) All prime suppliers are required to supply products from that volume reserved for the State set-aside, as directed by the State Offices, not to exceed the total set-aside volume for each product reported for the month.

(f) The State set-aside cannot be accumulated or deferred; it shall be made available from stocks of suppliers and their wholesale purchasers.

(g) All hardship and emergency appeals, as specified in the various allocable product subparts and in § 211.11 shall be resolved by the State Office. The final decision afforded by the State Office on a hardship or emergency appeal shall be subject to judicial review in the manner prescribed by Section 211 of the Economic Stabilization Act of 1970.

§ 211.21 Energy conservation.

To promote the goal of increased energy conservation, every wholesale purchaser or end user receiving a base period supply volume, assignment of supplier, or hardship allocation from the FEO or State Office shall certify that he has an energy conservation program in effect. Every end user whose allocation level is one hundred (100) percent of current requirements for any fuel shall make a similar certification to his supplier.

§ 211.22 Administrative actions.

(a) *Inventories of crude oil or products.* No refiner, importer, wholesale purchaser or end user shall accumulate inventories of any crude oil or product which exceed customary inventories maintained by that refiner, importer, wholesale purchaser or end-user in the conduct of his normal business practices unless otherwise directed by the FEO. Normal inventory practices shall be observed in determining allocable supplies of allocated products each month. The FEO may review inventory practices and direct an increase or decrease in inventories if:

(1) The inventory practices employed are inconsistent with the provisions of this part;

(2) The inventory practices circumvent or otherwise violate other provisions of this part; or

(3) The FEO determines that an adjustment is necessary in order to allocate product supplies consistent with the objectives of the allocation program.

(b) *Adjustment to calculations.* Upon a finding that incorrect or otherwise inaccurate data have been used in calculating the allocation of any crude oil or product subject to this part, the FEO may take appropriate action to adjust any such figures or data and any allocations based thereon to account for the error.

§ 211.23 Normal business practices.

Nothing in this part is intended to exclude or supersede exchange or borrow/payback operations which are normal operating procedures provided these procedures are not used to circumvent the intent of this part.

§ 211.24 Supplier/purchaser relationships.

(a) Changes in ownership of a supplier or wholesale purchaser shall not alter supplier/purchaser relationships defined by specific dates or base periods in this part. The right to receive an allocation is non-assignable unless that right is transferred as an internal part of an on-going business or an established end-use.

(b) Suppliers and purchasers who have gone out of business shall not be eligible for allocations based upon volumes of purchases, sales or exchanges prior to going out of business.

(c) No end-user shall be supplied or shall accept quantities of allocated substances which exceed one hundred (100) percent of his current requirements unless otherwise allowed in this part as directed by the FEO.

(d) Any parties mutually terminating their supplier/purchaser relationship pursuant to this part shall reduce their agreement to writing and shall provide prior written notification to those wholesale purchasers affected thereby.

§ 211.25 Supplier substitution.

(a) Any supplier may arrange to supply any purchaser for whom he has an allocation responsibility via another supplier or suppliers in accordance with normal business practice.

(b) In order to alleviate imbalance, suppliers and refiners may make normal business exchanges among themselves.

(c) To accommodate seasonal and other fluctuations in both supply and demand such as requirements for agricultural production, suppliers and wholesale purchasers may agree between and among themselves either to borrow on future allocations or to defer current allocations or both within the total allocations for one calendar year as long as such arrangements do not result in an involuntary reduction in allocations to other wholesale purchasers.

§ 211.26 Department of Defense allocations.

Allocations of crude oil, residual fuel oil, or any refined petroleum product to the Department of Defense shall be based on current requirements except for space heating and housekeeping requirements. All such requirements shall be reported to the President on a quarterly basis and shall take effect only following his approval.

§ 211.27 Construction Industry.

Any person, firm, or government agency planning to award a construction contract under competitive bidding to contractors, who may be wholesale purchasers, may apply to a supplier as a new end-user. The volume shall be estimated in an amount sufficient to complete the project. Upon awarding of the contract, the allocation must then be transferred to the successful bidder, providing that the bidder does not have a sufficient base period volume established with suppliers serving the area in which the contract is to be performed. If the successful bidder has a sufficient base period volume established with suppliers serving that area, or construction plans are terminated, any provisional allocation obtained by the person, firm, or government shall be cancelled. Contractors and suppliers are encouraged to arrange for exchange agreements between suppliers.

§ 211.28 Price.

The pricing provisions applicable to this part are provided in Part 212 of this chapter including provisions which allow any importer who imports an allocated product solely for his own end-use, and not for resale, to charge a margin for any volumes of that imported product he is required to sell under the provisions of this part.

Subpart B—Definitions

§ 211.51 General Definitions.

"Adjusted base period volume" means, for a purchaser, his base period volume plus any adjustment to his base period volume made as prescribed under § 211.13 or as directed by the FEO. The "adjusted base period volume" of a supplier for any allocated product means the sum of the adjusted base period volume of all his purchasers (including the adjusted base period volumes of his own retail outlets, if any).

"Adverse action" means an action by the Regional Administrator, the Administrator of FEO, or an authorized State official, denying in whole or in part a requested interpretation, ruling or other action on the merits.

"Agricultural production" means commercial farming, dairy, poultry, livestock, horticulture, forestry and fishing activities and services directly related to the planting, cultivation, harvesting, processing and distribution of fiber, timber, tobacco and food intended for human consumption and animal feed.

"Allocable supply" is the total supply of allocated substance, both imported and domestic, of any supplier, less the State set-aside quantities if applicable.

"Allocated substance" means crude oil or any product subject to allocation to this regulation.

"Allocation fraction" means a fraction calculated as described in this part, which each supplier shall use to apportion his allocable supply among his purchasers.

"Allocation level" means the proportion of an end-user's base period volume, adjusted base period volume, or current requirement, as appropriate, that his supplier is authorized by this part to deliver to him if sufficient amounts are available. The allocation level varies with the class of purchaser or the end-use to be made of the allocated substance.

"Allocation requirement" means the product of a purchaser's base period volume, adjusted base period volume, or current requirement, as appropriate, multiplied by the applicable allocation level.

"API" means American Petroleum Institute.

"ASTM" means American Society for Testing Materials.

"Assigned customer" means any purchaser of an allocated substance who is assigned a supplier by the FEO and whom the supplier must supply for the duration of this program unless otherwise directed.

"Assignment" means an action taken by the FEO, or an authorized State official, designating that an authorized purchaser be supplied at an allocation level determined by the FEO or authorized State official, by a specified supplier.

"Base period" means the historical period designated in Subparts C through J of this part.

"Based period use" means base period volume or adjusted base period volume.

"Base period volume" means, for a purchaser, for any allocated product, his volume of purchases from his suppliers during the base period. The "base period volume" of a supplier, for any allocated product, means the sum of the base period volumes of all of his purchasers.

"Bonded fuels" means those fuels produced outside the customs limits of the United States, held in bond under continuous United States customs custody in accordance with Treasury Department Regulations, and destined for use outside of the United States, its territories or possessions.

"Branded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products pursuant to—

(1) An agreement or contract with a refiner (or a person who controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such person), or

(2) An agreement or contract under which any such person engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or person who controls, is controlled by, or is under common control with such refiner), but who is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in paragraph (1) or (2) of this definition, and who does not control such refiner.

"Bulk purchaser" means any end-user who is a corporation, partnership, sole proprietorship, or business or trade association who purchases, receives through transfer, or otherwise obtains an allocated substance from a supplier for storage in a tank container substantially under the control of the bulk purchaser.

"Coker feedstock" means may crude oil or unfinished oil, as defined by Oil Import Regulation 1, Revision 5, which is used as a feedstock to any of the various types of process units in a refinery known as cokers.

"Commercial use" means usage by those customers engaged primarily in the sale of goods or services and for uses other than those involving industrial activities and electrical generation."

"Complaint" means an allegation, supported by relevant facts, of a violation of the regulations.

"Crude oil" means a mixture of liquid hydrocarbons including lease condensate that exist in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

"Degree-day formula" means any one of the various systems in use by retailers to provide end-users with automatic delivery service or an allocated substance for space-heating.

"°API" or "Degrees API", is the hydrometer scale established by the American Petroleum Institute and used to measure the specific gravity of liquids.

"District"—see PAD.

"End-user" is any ultimate consumer of petroleum products.

"Energy production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels, and electrical energy by hydroelectric and nuclear means. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods. Excluded from this definition are synthetic natural gas manufacturing and electrical generation whose power source is petroleum based.

"Emergency services" are law enforcement, fire fighting, and emergency medical services.

"Excluded products" means:

(a) Paraffin wax as herein defined: Wax removed from petroleum distillates and residues by chilling, dewaxing, and de-oiling. When separating from solutions, it is a colorless, more or less translucent, crystalline mass, slightly greasy to touch, and consisting of a mixture of solid hydrocarbons in which the paraffin series predominates. Included is all marketable wax whether crude scale or refined in three grades as follows:

(1) *Microcystalline.* Wax extracted from certain petroleum residues and having a finer and less apparent crystalline structure than paraffin wax, and having the following physical characteristics:

(i) Penetration at 77° F. (D–1321)—60 maximum.

(ii) Viscosity at 210° F.S.U.S. (D–88)—60 minimum (10.22 CS)—150 maximum (31.8).

(iii) Oil content (D–721)—5 percent maximum.

(2) *Crystalline—Fully Refined.* A paraffin wax having the following physical characteristics:

(i) Viscosity at 210° F.S.U.S. (D–88)—59.9 maximum (10.18 CS).

(ii) Oil Content (D–721)—0.5 percent maximum.

(iii) Other—+20 Color, Sayboit, Min.

(3) *Crystalline—Other.* A paraffin wax having the following physical characteristics:

(i) Viscosity at 210° F.S.U.S. (D–88)—59.9 maximum (10.18 CS).

(b) Petroleum Coke, as herein defined: A solid residue; the final product of the condensation process in cracking; consisting mainly of highly polycyclic aromatic hydrocarbons very poor in hydrogen, including petroleum coke which when calcinated yields almost pure carbon or artificial graphite suitable for production of carbon or graphite electrodes, structural graphite, motor brushes, dry cells, etc. It includes both forms listed below:

(1) *Marketable.* Those grades of coke produced in delayed or fluid cokers which may be recovered as relatively pure carbon. This "green" coke may be further purified by calcining or may be sold in the "green" state.

(2) *Catalyst.* In many catalytic operations (i.e., catalytic cracking) carbon is deposited on the catalyst, deactivating the catalyst. The catalyst is reactivated by burning off the carbon, using it as a fuel in the refinery process. This carbon or coke is not recoverable in a concentrated form. For statistical purposes, the amount of catalyst coke may be estimated by using an average weight percent (1.5%–8.5%) of charging stock.

(c) Asphalt, as herein defined: A dark brown to black cementitious material in which the predominating constituents are bitumens, which occur in nature or are obtained in petroleum processing. Consistency can vary from a liquid to a solid. Essentially, it is totally soluble in carbon disulfide and prepared as the residue from the distillation of an asphaltic crude oil or as the insoluble portion of an asphaltic crude oil or as the insoluble portion of an extraction process utilizing propane or other suitable solvent. The definition includes crude asphalt as well as finished products such as: cements, fluxes, the asphalt content of emulsions exclusive of water, and petroleum distillates blended with asphalt to make cutback asphalts. Included within this definition are the following forms of asphalt:

(1) *Asphalt—Emulsified.* A fluid asphalt and product composed of asphalt and water compounded and processed with emulsification agents to produce a stable suspension of minute globules of asphalt in water, or alternatively, a suspension of minute globules of water in a liquid asphalt. Emulsified asphalts may be either the anionic or cationic types.

(2) *Asphalt—Cement.* A solid or semisolid asphalt which has not been modified by the addition of a low or intermediate boiling range solvent, emulsification, or by the addition of inorganic fillers, and has been especially prepared as to quality and consistency for direct use in the manufacture of bituminous pavements, or in manufacture of rooting materials or other industrial products. It can be fluxed or unfluxed.

(3) *Asphalt*—Flux. A high boiling hydrocarbon liquid or liquid asphalt used to reduce the consistency or viscosity of hard asphalt to the point required for use. More commonly used to designate soft asphalts for the roofing industry.

(4) *Asphalt—Cutback.* Asphalt products produced by blending asphalt with solvents such as naphtha, kerosene, No. 2 fuel oil, diesel oil or other volatile solvents. Upon exposure to the atmospheres, the volatile product evaporate leaving the asphalt.

(d) Road oil (slow curing oil), as herein defined: Any heavy petroleum oil, including residual asphaltic oils, used as a dust palliative and surface treatment of roads and highways. It is generally produced in six grades from 0, the most liquid, to 5, the most viscous.

(e) Refinery gas, as herein defined: A form of gas normally produced in the refining of crude oil which is predominately used for refinery fuel. If these refinery gases are further refined or separated into component products, these products are subject to allocation under Subpart 1 of this part unless specifically excluded therein.

"Gas processing plant" means a facility which recovers ethane, propane, butane, and/or other natural gas products by a process of absorption, adsorption, compression, refrigeration cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a reservoir.

"Gasoline production fraction" means a number, issued by the FEO, which, if multiplied by a refiner's base period gasoline production results in the volume which that refiner is permitted to produce during the period in question.

"Hardship" means a situation involving or potentially involving substantial

discomfort or danger and/or economic dislocation, caused by a shortage of an allocated substance due to maldistribution of that substance.

"Importer" means any firm, corporation, cooperative, governmental unit (excluding the Department of Defense) or other person that receives any allocated substance into this country to the first place of storage, not necessarily the holder of the import license.

"Independent marketer" for purposes of this regulation means either a branded independent marketer or a non-branded independent marketer:

"Independent refiner" means a refiner who (a) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973, more than 70 percent of his refinery input of domestic crude oil for 70 percent of his refinery input of domestic and imported crude oil from producers who do not control, are not controlled by, and are not under common control with such refiner, and (b) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by him through branded independent marketers or nonbranded independent marketers.

"Industry" means those primarily engaged in a process which creates or changes raw or unfinished materials into another form or product.

"Interruptible contracts" are those contracts between suppliers and purchasers which by their terms can be abrogated unilaterally by the supplier.

"LPG" means liquefied petroleum gas, and includes propane and butane, and propane/butane mixes, but not ethane.

"Local governmental unit" means any country, city, or other political subdivision of a State, and any special purpose district.

"Lubricants" means all grades of Lubricating oils for industrial, commercial and automotive use, and lubricating greases which are sold to semifluid products consisting of a dispersion of a thickening agent in a liquid lubricant. This product includes all lubricants reported to the Bureau of Mines, United States Department of Interior as such, with the exception of a product controlled under Subparts other than "Other Products".

"Medical and nursing buildings" are building that house medical, dental and nursing practices including the use of clinics, hospitals, nursing homes and other facilities including but not limited to those listed in Appendix I of 6 CFR 300.18 and 300.19.

"Middle distillate" means any derivatives of petroleum including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371° and 700° F. Products specifically excluded from this definition are kerosene-base and naptha-base jet fuel, heavy fuel oils as defined in VV–F–815C or ASTM D–396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes, and process oil.

"Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° to 390° F and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties.

"Natural gas" means natural gas as defined by the Federal Power Commission.

"Nonbranded independent marketer" means a person who is engaged in the marketing or distribution of refined petroleum products, but who (1) is not a refiner, (2) is not a person who controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and (3) is not a branded independent marketer.

"Passenger Transportation Services" are (a) Surface, including water and rail, facilities and services for carrying passengers whether publicly or privately owned, including tour and charter buses which serve the general public; and (b) Transportation of pupils to and from school in a school bus.

"Peak shaving" means the use of propane-air or butane-air mixtures to supplement supplies of pipeline gas for distribution by gas utilities during periods of high demand.

"PAD District" or "District" means any of the Petroleum Administration for Defense (PAD) Districts.

"Petrochemical precursors" are any hydrocarbon compounds which are produced in any facility through the chemical conversion of propane or butane, and which are further processed either directly or through intermediate steps into petrochemicals.

"Prime supplier" means the entity, be it gas processing plant, refiner, importer, or any reseller that makes the first sale of any product that is subject to State set-aside into the State distribution system for consumption within the State.

"Products" means all refined petroleum products as defined in the Act and residual fuel oil.

"Purchaser" means a wholesale purchaser or end user.

"Refined petroleum product" means gasoline, kerosene, middle distillates, (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

"Refineries" are those industrial plants, regardless of capacity processing crude oil feedstock and manufacturing refined petroleum products, except when such plant is a petrochemical plant.

"Refiners" are those persons, companies, or other corporate entities that own, operate or control the operations of one or more refineries.

"Region" means one of the ten regions served by FEO's regional offices.

"Regional office" means for the purpose of this part, a Regional Office of the FEO. The Regional Offices are located in Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Kansas City, Missouri; Denver, Colorado; San Francisco, California and Seattle, Washington.

"Reseller" means any person, firm, corporation or subdivision thereof that carries on the trade or business of purchasing any allocated substance and reselling it without substantially changing its form.

"Residential use" means direct usage in a residential dwelling for space heating, refrigeration, cooking, water heating, and other residential uses.

"Residual fuel oil" means the fuel oils commonly known as: (1) No. 4, No. 5 and No. 6 fuel oils; (2) Bunker C; (3) Navy Special Fuel Oil; (4) crude oil when burned directly as a fuel; and all other fuel oils which have a fifty-percent boiling point over 700°F. in the ASTM D–86 standard distillation test.

"Retail Sales Outlet" means the place of business of a retail supplier.

"Retail Supplier" means someone who sells any allocated substance directly to any end-user.

"Sanction" means the penalties as described in Subpart F, of part 202 of this chapter.

"Sanitation services" means the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities during emergency conditions.

"School" means an educational institution up through the secondary level that maintains a regular facility and curriculum and has a regularly organized body of students in attendance at the place where its educational activities are regularly carried on. It does not include post-secondary education facilities.

"Shortfall" means the difference between the supply and the demand for any allocated substance during any period.

"Small Refiner" means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

"State" means each of the 50 States, the District of Columbia, Puerto Rico, possessions and territories of the United States, other than the Panama Canal Zone.

"State set-aside" means a percentage of the total supply (or of the portion of total supply of residual fuel oil for non-utility uses) of any allocated substance for which a state set-aside is provided in these regulations which prime suppliers intend to distribute within that State during the following month. It cannot be accumulated or deferred. It is made available by States for hardships and emergencies from stock importers.

"Supplier" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation (including any broker), cooperative, Federal, State or local governmental unit (excluding the Department of Defense) or other person who supplies, sells, consigns, transfers or otherwise furnishes any allocated substance either to end-users or

for resale. A supplier may also be a wholesale purchaser.

"State office" means the State Petroleum Allocation Office certified by FEO pursuant to § 211.15.

"Telecommunications services" means the repair, operations, and maintenance of telephone, telegraph, and similar facilities, during periods of substantial disruption of normal service.

"Total supply" means the total supply of each allocated substance of a supplier. This includes supplies produced and/or received during the allocation month, plus a portion of inventory prorated so as to assure a fairly constant allocation fraction.

"Total allocable supply" means for prime suppliers, total supply of each allocated substance less State set-aside quantities.

"Utility" means a facility that generates electricity, by any means, and sells it to the public.

"Wholesale purchaser" means any person, firm, corporation, cooperative, or government unit which purchases, receives through transfer, or otherwise obtains an allocated substance in bulk or under contract at the wholesale level, including: (1) only those agricultural users who consumer more than 20,000 gallons per year; (2) only those multifamily residences consuming more than 50,000 gallons per year; and (3) all other purchasers who normally purchase more than 84,000 gallons of the product per year.

"Wholesale supplier" means a supplier who supplies wholesale purchasers.

Subpart C—Crude Oil and Refinery Yield Control

§ 211.61 Scope.

(a) This subpart provides for the mandatory allocation of all crude oil produced in or imported into the United States other than (1) amounts of crude oil in excess of 1973 levels, determined on a quarterly basis, except that such amounts must be included in reports required under § 211.66, and (2) crude oil exempted pursuant to the provisions of 10 CFR 210.32. It also establishes a program for refinery yield control. This subpart is applicable to all producers, refiners, and others who purchase crude oil for resale, transfer, or use,

(b) There shall be no State set-aside for the crude oil allocation and refinery yield control program.

(c) For purposes of this subpart, Puerto Rico and the Virgin Islands are included in PAD Districts I–IV and Guam is included in PAD District V.

§ 211.62 Definitions.

For purposes of this subpart—"New crude petroleum" means new crude petroleum as defined in § 212.72 of this chapter.

"Processing Agreement" means any agreement pursuant to which an owner of crude oil agrees to have that crude oil processed or refined by another person and retains ownership in some or all of the petroleum products so processed or refined from the crude oil.

"Calendar quarter" means a consecutive three-month calendar period.

"Crude oil sales period" means a consecutive three (3) month calendar period which commences one month after the start of each calendar quarter.

"Refining Capacity" means, for each refinery, the greater of that capacity reported to the Bureau of Mines as of January 1, 1973, or the actual crude oil runs (on a calendar day average basis) as reported monthly to the Bureau of Mines for January through October, 1973. A refiner who has received a starter allocation under section 25 of the Oil Import Regulations, (32A CFR OI Reg. 1–25) and/or who has requested and received certification of his incremental refinery capacity from the FEO pertaining to a new refinery expansion or reactivation subsequent to the January 1, 1973 capacity report to the Bureau of Mines, may elect to have his net new capacity added to the capacity as reported to the Bureau of Mines on January 1, 1973: provided, however, that for the first reporting period, FEO certification shall not be required as provided in § 211.66. Any refiner's capacity which has become inoperable since the January 1973 report to the Bureau of Mines shall be deducted from refinery capacity.

"Refiner" means a refiner as defined in Subpart B of this part, and includes any person who owns or purchases crude oil for processing.

"Refiner-buyer" means any refiner who is given the opportunity to purchase crude oil during a crude oil sales period under this subpart, and whose supply/capacity ratio is more than 0.02 below the national supply/capacity ratio.

"Refiner capacity" means for each refiner, the sum of the refining capacity of its refineries plus the amount of crude oil processed by other refiners for its account less the amount of crude oil refined in its refineries for the account of other refiners.

"Refiner-Seller" means any refiner who is required to sell crude oil pursuant to the operation of this subpart.

"Supply/Capacity Ratio" means the ratio which total supply of non-exempt crude oil bears to total refiner capacity.

§ 211.63 Allocation Levels.

Allocation of crude oil is based on a national refiner supply/capacity ratio which shall be calculated and announced by the FEO.

§ 211.64 Supplier/Purchaser Relationships.

(a) All contracts for sales, purchasers, and exchanges of domestic crude oil in effect on December 1, 1973, shall remain in effect for the duration of this program except purchases and sales made to comply with this program; provided, however, that (1) any contract or agreement for the sale, purchase, or exchange of domestic crude oil may be terminated by the mutual consent of both parties; (2) the provisions of this paragraph do not apply to an exempt sale of crude oil pursuant to § 210.32 of this chapter; and (3) the provisions of this paragraph shall not apply to the seller of any crude oil if the present purchaser of such crude oil refuses, after notice by the seller, to meet any bona-fide offer made by another purchaser to buy such crude oil at a lawful price above the price paid by the present purchaser.

(b) New domestic crude petroleum may be sold to any person. Once the sale is made the seller of such new crude petroleum shall continue to sell to that purchaser subject to the provisions of paragraph (a)(1), (2), and (3) of this section, provided that the purchaser agrees to meet any bona-fide price which the seller could obtain by selling the crude oil to another purchaser.

§ 211.65 Method of Allocation.

(a) Refiner-sellers must offer for sale crude oil, directly or through exchange, to refiner-buyers. The crude oil offered must be suitable for processing in and practical for delivery to the refiner-buyer.

(b) The terms and conditions of each sale of crude oil, other than the prices which shall be determined pursuant to Part 212 of this Chapter shall be consistent with normal business practices.

(c) Exchanges of crude oil may be utilized to comply with the purchase and sell provisions of this program, provided they are on a barrel-for-barrel basis. Normal quality exchange differentials are allowed.

(d) Refiner-buyers who are unable to negotiate a contract to purchase crude oil within the time period allotted pursuant to § 211.66(g) may request that the FEO compel a refiner-seller to sell an acceptable type of crude oil to the refiner-buyer. Upon such request, the FEO may direct a refiner who has not sold its required volume to sell crude oil to the refiner-buyer. Should the refiner-buyer decline to purchase the crude oil specified by the FEO, any of that refiner's rights to purchase that volume of crude oil based on the allocation program are forfeited during that crude oil sales period, provided that all other terms of the allocation program have been met by the seller.

(e) Refiner-sellers who have not negotiated sales with refiner-buyers of the required volume of crude oil within fifteen (15) days of the publication of the refiner-seller and refiner-buyer lists specified in paragraph (i) of this section shall so notify the FEO, which may then direct such sales.

(f) Each refiner shall estimate the total supplies of crude oil (including crude oil produced from a stripper well lease defined in § 210.32 of this chapter) to become available for his processing during a given quarter. This estimate, the supply of domestic crude oil and imported crude oil available during the corresponding quarter of 1973, as described in § 211.66, and the refiner capacity, shall be reported to FEO. Based on these estimates, and the refiner capacities as reported, a national refiner supply/capacity ratio shall be calculated and published by the FEO. In calculating a national refiner supply/capacity ratio, and the supply/capacity ratio for each refiner, the maximum allocable supply attributed

to any refiner by the FEO shall be the lesser of estimated supply available for the forthcoming quarter or the amount of crude oil available during the corresponding period of 1973 considering the provisions of § 211.13.

(g) Each refiner who has crude oil processed by another refiner shall report that volume of crude oil in his estimate of the available supply of crude oil. Refiners who process crude oil for others shall report that volume of crude oil to the FEO. However, the FEO shall not include such supply in the estimate of available crude oil for purposes of determining the processing refiner's supply-capacity ratio.

(h) Each refiner whose estimate of allocable crude supplies to become available during the quarter would result in a supply/capacity ratio exceeding the FEO's published ratio is required to offer for sale and to sell crude oil to refiner-buyers in amounts sufficient to reduce its supply/capacity ratio to the national supply/capacity ratio.

(i) A refiner buyer and refiner-seller listing shall be published by the FEO. A refiner-buyer so listed may purchase from listed refiner-sellers a quantity of crude oil during the quarter which will result in a supply/capacity ratio for that refiner-buyer equal to the national supply/capacity ratio.

(j) The volumes on the refiner-buyer and refiner-seller lists shall be modified in a subsequent quarter, by adding or subtracting, as appropriate, the difference between the estimated crude oil runs during the preceding quarter and the actual volumes of crude oil run by refiners during the preceding quarter.

(k) All crude oil transferred pursuant to this subpart shall be priced in accordance with § 212.88 of this chapter.

§ 211.66 Procedures and Reporting Requirements.

(a) All matters pertaining to the allocation of crude oil and the refinery yield control program shall be addressed to the Administrator, Federal Energy Office, P.O. Box 19407, Washington, D.C. 20036.

(b) A monthly report shall be required from refiners, on forms and instructions issued by the FEO on crude oil runs and products produced.

(c) Initial Report. By January 15, 1974, each refiner shall provide the FEO with a report showing the following:

(1) The capacity of each of his refineries as defined in § 211.62.

(2) Estimated runs of all domestic and imported crude oil for the refiner's own account at each of his refineries during the period from February 1, 1974, through April 30, 1974.

(3) The estimated amount of crude oil to be delivered to other refiner for processing for his own account under a processing agreement during the same period.

(4) The estimated amount of crude oil processed in each of his refineries for other refiners under a processing agreement during the same period.

(5) The amount of crude oil processed at his refineries for his own account and the amount of crude oil processed by other refiners for his account during the corresponding period in 1973.

(d) Quarterly reports. At the end of each calendar quarter, beginning with the first quarter of 1974, each refiner shall provide to the FEO a report showing the following:

(1) Estimated runs of all domestic and foreign crude oil for the forthcoming calendar quarter.

(2) Actual runs of all domestic and foreign crude oil for the preceding calendar quarter.

(3) Any change in refinery capacity since the previous report. In order for reported new refinery capacity, expansion, or reactivation to be eligible for use in determining a refiner's supply/capacity ratio, it shall be necessary for such capacity to qualify for allocation under the proceedings provided in section 25 of the Oil Import Regulations (32A CFR O.I. Reg. 1–25). Further, at the time that notice in advance of anticipated startup is provided under section 25 of the Oil Import Regulations (32A CFR O.I. Reg. 1–25), application for certification of the net operating rate of such increased capacity shall be filed with the FEO. The FEO or its duly designated agent shall, within thirty (30) days of receipt of such application, conduct a physical inspection of the subject facilities and upon verification of the new capacity operating rate, shall certify such capacity. This new capacity shall be eligible for use in determining crude oil allocations only after FEO certification. In determining capacity for the first reporting period of 1974, only the stream day inputs of crude oil certified for purposes of earning an oil import allocation under section 25 of the Oil Import Regulations (32A CFR O.I. Reg. 1–25) shall be considered to be an increase in operating capacity as defined in these regulations. Applications for permanent certification of the capacity must be filed with the FEO (P.O. Box 19407, Washington, D.C. 20036) before March 20, 1974, if such capacity is to be included in subsequent quarters.

(4) Capacity which has become inoperable (as defined by the Bureau of Mines) during the current allocation quarter shall be reported and shall be deducted from operable refinery capacity for the subsequent quarters. This includes those refineries or portions of those refineries processing crude oil which operate only for certain portions of the year.

(5) The estimated amount of crude oil to be delivered to other refiners during the quarter for processing for the account of the reporting refiner under a processing agreement.

(6) The actual amount of crude oil delivered to other refiners for processing for the account of the reporting refiner during the preceding quarter.

(7) The amount of crude oil runs at his refineries for his own account and the amount of crude oil processed by other refiners for his account during the corresponding period in 1973.

(e) All reports required by paragraphs (c) and (d) of this section shall identify domestic and foreign crude oil and give the average daily volume run or estimated to be run by each refiner.

(f) On January 18, 1974, and on the fifteenth (15th) day following the end of each calendar quarter, the FEO shall publish the required sales volumes and purchase opportunities for each refiner in Districts I–V and shall issue instructions to the refiners to sell the required volumes of crude oil or inform them of their opportunities to purchase additional supplies. The commencement date for starting deliveries under sales agreements as required under this program shall be twelve (12) days from the date the initial lists are published and fifteen (15) days following the date that subsequent lists are published. Any agreements for the sale or purchase of crude oil after the commencement date shall be retroactive to the starting delivery date.

(g) Sale/Purchase Transaction Report. Within fifteen (15) days of the publication of required sales volumes and purchase opportunities, under paragraph (f) of this section, each transaction made to comply with this program shall be reported by the buyer and seller to the FEO. This report shall indicate the selling and purchasing refiner and the identity and volumes of the crude oil sold.

(h) The crude oil sales period shall lag the calendar quarter by thirty (30) days. The first crude oil sale period shall be for the three month period from February 1, 1974, through April 30, 1974. Subsequent crude oil sales shall be for three months allocation quarters beginning May 1, 1974.

§ 211.71 Mandatory Refinery Yield Control Program.

(a) *Purpose.* The refinery yield control program is designed to require refiners to maximize production of aviation fuels, distillate, residual fuels, and petrochemical feedstocks by reducing the total production of gasoline.

(b) *Scope.* This program shall apply to the production of gasoline and petroleum fractions from crude oil used in blending in all cases where the final finished product is gasoline produced by all refiners located in the United States.

(c) *Basis of product control.* (1) Each refiner shall be permitted to produce for sale a fraction of the gasoline produced from crude oil at all his refineries during the period, equal to his historical ratio of gasoline produced per barrel of crude run at his refineries during the corresponding quarter of 1972 multiplied by a gasoline production fraction. The FEO shall develop the gasoline production fraction based on reported refinery production and actual production required to most nearly meet the needs of the various product allocation programs. The FEO shall establish and publish, after reasonable prior notice, the gasoline production fraction and adjust this fraction on a quarterly basis as circumstances warrant. Each refiner shall sell or distribute

gasoline to all his customers in accordance with the gasoline allocation program.

(2) Two (2) or more refiners may, with the consent of the FEO, agree to meet the specified assigned gasoline fractions on a pooled basis such that the combined relative gasoline production of these refineries shall be reduced by an amount equal to the gasoline fraction specified by the FEO.

(d) *Exceptions.* Any application for an exception applicable to refiners because of refinery equipment limitations, quality of crude feedstocks available, or other reason, may be submitted to the FEO in accordance with the requirements of Part 205 of this Chapter for expeditious treatment.

Subpart D—Propane

§ 211.81 Scope.

(a) This subpart describes the allocation program for propane-butane mixes produced in or imported into the United States. This subpart does not apply to:

(1) Ethane;

(2) Sales of bottled propane; and

(3) Propane in mixtures of light hydrocarbons produced in a refinery and used in that refinery for use other than a feedstock.

(b) This subpart provides for a State set-aside.

§ 211.82 Definitions.

For purposes of this subpart:

"Base period" means the period October 3, 1972 through April 30, 1973.

"Bottled propane" means propane bottled in cylinders with a capacity of one hundred (100) pounds or less, provided that the cylinders are not manifolded at the time of sale.

"Commercial use of propane" means direct usage by persons engaged primarily in the sale of goods or services for uses other than those involving manufacturing or electrical generation.

"Ethane" means a hydrocarbon whose chemical composition is C_2H_6.

"Industrial use of propane" means the use of propane in a process which creates or changes raw or unfinished materials into another form or product.

"Merchant storage facility" means any facility which is utilized to store propane for persons other than the owner or operator of such a facility.

"Person" means an individual, firm, corporation or subdivision thereof and all other entities affiliated therewith or that control them or are controlled by them.

"Plant protection fuel" means the use of propane in the minimum volume requiring to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material as would otherwise be damaged, but does not include sufficient quantities of propane required to maintain plant production.

"Process fuel" means propane used to convert a substance from one form to another for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls or precise flame characteristics.

"Propane" means a hydrocarbon whose chemical composition is predominantly C_3H_8, including propane (i) in raw mixed streams of natural gas liquids, whether or not further fractionated or processed to recover propane, and (ii) propane-butane mixes.

"Propane-butane mix" means a mix containing ten (10) percent or more by weight of propane.

"Reseller" means any person that carries on the trade or business of purchasing propane and reselling it without substantially changing its form, other than that marketing activity which qualifies as the sale of bottled gas. Reseller includes any person which imports less than 500,000 gallons per year for sale direct to end-use customers but does not produce or fractionate propane.

"Supplier" means any person which produces propane in a natural gas processing plant, refinery, fractionating plant, or elsewhere, or imports propane for sale, transfer, or exchange to another supplier, reseller or end-user. "Supplier" includes those producers of natural gas who have their gas processed for their account by others but retain title to the liquids produced. Any person, that qualifies as both a supplier and a reseller shall be deemed a supplier for purposes of this subpart.

"Where no substitute for propane is available" means uses such as plant protection fuel, process fuel, or in plants which depend solely on propane as the fuel source.

"Priority customers" means those end-users that consume propane (but only to the extent they consume) for the uses listed in § 211.83. Those that can use an alternate fuel are excluded from "priority customers".

§ 211.83 Allocation Levels.

The allocation levels listed below are not arranged in sequence of priority. Suppliers shall distribute available supplies of propane to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to order of listing.

(a) One hundred (100) percent of current requirements for:

(1) Agricultural production;

(2) Dispensing stations and resellers which sell only bottled propane in quantities up to 15,000 gallons per year;

(3) Emergency services;

(4) Energy production;

(5) Sanitation services;

(6) Telecommunications services;

(7) Passenger transportation services; and,

(8) Medical and nursing buildings.

(b) Ninety-five (95) percent of base period volume for all residential use.

(c) Ninety (90) percent of base period volume for Commercial use or 210,000 gallons per year, whichever is less.

(d) Ninety (90) percent of base period for industrial use (where no substitute for propane is available) or (1) standby volume consumed during the base period, or (2) 210,000 gallons per year, whichever is less.

(e) Ninety (90) percent of the base period for:

(1) Other transportation, for those vehicles equipped to use propane as of the effective date of this part;

(2) Petrochemical and petrochemical precursor production; and

(3) Schools.

(f) The use of propane for peak shaving by gas utilities is limited to the volumes of propane equal to those amounts contracted for or purchased for delivery during the base period, regardless of whether those volumes were used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible non-priority industrial customers (other than for process fuel plant protection fuel, or raw material) or to any customer who can use an alternate fuel other than natural gas.

§ 211.84 Supplier/Purchaser Relationships.

(a) Suppliers who produce or otherwise supply propane shall deliver to other suppliers either (1) the same proportion of their total propane available for sale, transfer, or internal use as a raw material feedstock as they delivered in the base period or (2) the actual supplier/supplier contractual volume during such period, whichever is less. If the contractual volume to any one of the suppliers is less than the calculated proportional volume, the supplier may sell that excess volume to all or any one of the suppliers at his discretion. The requirements of this paragraph shall be met before those of § 211.85 (a), (b), and (c).

(b) No reseller may refuse to supply a priority customer whose requirements correspond to the normal commercial practices of the reseller. However, no reseller may be required to serve a customer whose method, location, or terms of delivery differ significantly from the reseller's established business practices.

(c) Unless otherwise specified, the provisions of §§ 211.13, 211.15 and 211.24 shall apply to this subpart.

§ 211.85 Method of Allocation.

(a) The initial State set-aside level is three (3) percent of all propane produced in or imported into the United States. Subsequent adjustments to this percentage unit will be published by FEO.

(b) Priority allocation of propane shall be made in accordance with the provisions of this paragraph:

(1) Subject to the provisions of § 211.84(a), propane suppliers and resellers must provide propane for the priority requirements, as set forth in § 211.83 of their priority customers to whom they sold, or with whom they had a contract to sell propane at any time subsequent to August 31, 1973, and priority customers assigned by the FEO. No priority customer or reseller shall receive product from more than one reseller or supplier without advising each such reseller or

supplier as to the identity of all others and the share of the priority use each will supply.

(2) Suppliers or other resellers must provide to those resellers to whom they sold or transferred propane during the base period the volume of propane that those resellers need to meet the requirements of their priority customers subject to the limitations of § 211.86(b). In those instances where a reseller was supplied by more than one supplier, or other reseller, his needs for his priority customers shall be supplied to him in the same proportion as those sources sold to him in the base period.

(c) Non-priority allocations of propane shall be made in accordance with the provisions of this paragraph:

(1) Each month during the period October 3, 1973, through April 30, 1974, suppliers shall determine their supplies of propane available for nonpriority use by determining their total supply of propane for sale, state set-aside, transfer, or internal use as a raw material feedstock and subtracting from this amount the projected requirements of their and their resellers' current priority customers, State set-aside, and their own priority requirements.

(2) During the period October 3, 1973, through April 30, 1974, subject to the provisions of § 211.84(a) and paragraph (b)(1) and (2) of this section, suppliers shall allocate to non-priority end-users on the basis of a non-priority allocation fraction which shall be calculated by dividing the supplies of propane available for non-priority use by the suppliers' base period sales to non-priority customers, internal non-priority raw material uses, and non-priority sales to resellers.

(3) The quantity of propane which shall be offered to any particular reseller for sale to his non-priority customers or which may be used as a raw material by a supplier during the period October 3, 1973 through April 30, 1974, is the volume of such sale or internal non-priority use during the base period, multiplied by the supplier's allocation fraction.

(d) Propane in merchant storage facilities shall be handled such that:

(1) Operators of merchant storage facilities shall release propane to non-priority customers for shipment between October 3, 1973, and April 30, 1974, only such quantities of propane as the non-priority customer certifies to the operator of the merchant storage facility will result in a total certified volume, when combined with direct imports, with other withdrawals under paragraph (d)(3) of this section and with deliveries to customers pursuant to paragraph (c) of this section of not more than that consumed during the base period.

(2) Non-priority customers who own volumes of propane in merchant storage facilities may, and are encouraged to secure, release of such volumes by sale to suppliers or resellers with allocation fractions of less than one (1.0).

(3) Non-priority customers who own volumes of propane in or moved to merchant storage facilities on or after October 3, 1973, in excess of those volumes consumed during the base period, are not entitled to an allocation under this program other than described in paragraph (d)(1) of this section, until such excess volumes have been exhausted by allowed withdrawal.

(4) Operators of merchant storage facilities shall not release for shipment to gas utilities after October 3, 1973, any quantity of propane which, taken together with amounts of propane committed to that utility by purchase or contract after September 1, 1973, exceeds that quantity of propane which is designated as priority use for that utility under the provisions of § 211.83(d).

(5) Operators of such storage facilities may request the Administrator, FEO, to determine the priority or non-priority status of owners of propane in storage.

(e) No restrictions other than reporting to the Administrator, FEO, are imposed on the release of propane for shipment (1) to priority customers, (2) to resellers for sale to priority customers, (3) to resellers who report in the same manner as suppliers, for sale to non-priority customers, (4) to suppliers, or (5) to hardship cases. In the event that propane not permitted to be released from storage is purchased by suppliers or resellers, the volume purchased must be included in the suppliers' or resellers' total available propane supply.

(f) Suppliers or resellers with two or more distribution subsystems or regions independent of one another may separately calculate an allocation fraction for each such area provided that the Administrator is satisfied that the effect of using separate calculations does not contravene the intent of this part and that any supplier in so doing has made every effort to meet priority needs within each area.

(g) Suppliers who expect to have insufficient supplies throughout the period October 3, 1973, to April 30, 1974, to meet priority needs shall immediately advise the Administrator, FEO, of their anticipated shortfall, and their efforts to correct it. The Administrator may assign the supplier to another source of supply.

(h) In the event that a supplier's or a seller's immediate supplies may be insufficient to meet the needs of priority customers, the supplier/reseller shall supply all resellers or priority customers on a pro rata basis, excepting agricultural production, until the full requirement can be met.

§ 211.86 Procedures and Reporting Requirements.

(a) The reporting requirements for propane are as follows:

(1) Each reseller to priority customers shall certify to his suppliers or resellers his best estimate of the requirements for priority customers, and that to the best of his knowledge each customer's alleged priority use is in fact a priority use. Such certifications shall be in the hands of suppliers twelve (12) days prior to the end of each month, and shall give reasonable estimates of the reseller's priority customer's needs through April 30, 1974, provided no supplier shall be required to supply to resellers or to priority customers or to resellers for sale to priority customers all of the estimated quantity if actual consumption is less than estimated.

(2) Each reseller to non-priority customers shall certify to his suppliers or resellers the amount of propane sold to non-priority customers during the base period no later than fifteen (15) days from the date this allocation program becomes effective. In those instances where a reseller was supplied by more than one supplier or reseller in that period he shall apportion his purchases among them in the same ratio as he bought from them in that same period.

(3) Each supplier shall certify monthly his allocation fraction as defined in § 211.85(c) (1), (2), and (3) for non-priority supply and send it to the Administrator, FEO, postmarked no later than two (2) days prior to the end of each month.

(4) All owners of storage facilities (or operators thereof) with a capacity in excess of 500,000 gallons who store propane shall report to the Administrator, FEO, within ten (10) days of the effective date of this part the total volume, locations, and ownership of propane in storage including that owned by the storage owner or operator or affiliated companies, and that held in transit. If it is not possible to report each separate account of "in transit" storage, then the total volume shall be reported. This same information shall be reported as of the end of each month postmarked fifteen (15) working days after the close of that month.

(b) Any reseller who certifies priority volumes in excess of one hundred (100) percent of last year's priority requirements shall provide verification to his supplier by supplying supporting information. In the event that the supplier deems that information inadequate, the supplier shall supply not more than one hundred (100) percent of last year's priority requirements subject to § 211.85 (h) and the reseller may petition the Administrator for a ruling on the requested extra volume.

(c) Resellers with several sources of supply or with inventories in merchant storage or who engage in frequent exchange or otherwise have complex distribution systems shall report monthly in the same fashion as required of suppliers.

(d) Non-priority users who have propane in a merchant storage facility shall report the amounts consumed of certified volume and withdrawals to the owner or operator of such facility within ten (10) days of the effective date of this part. Thereafter, reports shall be postmarked within five (5) working days of the close of each month.

(e) Any supplier/reseller who cannot meet the needs of his priority customers regionally or nationally shall report the percentage of priority needs expected to be met at the end of every month for the subsequent month.

Subpart E—Butane

§ 211.91 Scope.

This subpart applies to the mandatory allocation of butane and certain mix-

tures containing butane produced in or imported into the United States, except bottled butane.

§ 211.92 Definitions.

For purposes of this subpart:

"Base Period" means the calendar quarter of 1972 which corresponds to the current quarter.

"Butane" means a hydrocarbon whose chemical composition is predominantly C_4H_{10}, including isobutane and normal butane, as well as any mixture of butane containing ninety (90) per cent or more of butane. Butane also includes butane in raw mixed streams of natural gas liquids, whether or not further fractionated or processed to recover butane.

"Bottled butane" means butane bottled in cylinders with a capacity of one hundred (100) pounds or less, provided that the cylinders are not manifolded at the time of sale.

"Industrial use of butane" means the use of butane in a process which creates or changes raw or unfinished materials into another form or product, excluding gasoline blending.

"Merchant storage facility" means any facility which is utilized to store butane for persons other than the owner or operator of such facility.

"Person" means an indiviudal, firm, corporation or subdivision thereof and all other entities affiliated therewith or that control them or are controlled by them.

"Plant protection fuel" means the use of butane in minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material as would otherwise be damaged, but does not include sufficient quantities of butane required to maintain plant production.

"Process fuel" means the use of butane to convert a substance from one form to another form for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls or precise flame characteristics.

"Priority customer" means those end users which consume butane (but only to the extent they consume) for the uses listed in § 211.93. Those end users which can use an alternate fuel are not considered "priority customers".

"Reseller" means any person that carries on the trade or business of purchasing butane and reselling it without substantially changing its form, other than that marketing activity which qualifies as the sale of bottled butane.

"Supplier" means any person which produces butane in a natural gas processing plant, refinery, fractionating plant or elsewhere, or which imports butane, for sale, transfer, or exchange to another supplier, reseller or end user. "Supplier" includes those producers of natural gas which have their gas processed for their account by others and retain title to the liquids produced. Any person which qualifies as both a supplier and a reseller shall be deemed to be a supplier.

§ 211.93 Allocation Levels.

The following identifies the amounts of butane required under this subpart to be sold to priority customers.

The percentage allocation levels listed below are not arranged in sequence of priority. Suppliers shall distribute available supplies of butane to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to order of listing.

(a) One hundred percent (100%) of current requirements for:

(1) Agricultural production;

(2) Dispensing stations and resellers which sell only bottled butane in quantities up to 15,000 gallons per year;

(3) Emergency services;

(4) Energy production;

(5) Petrochemical production;

(6) Sanitation services;

(7) Telecommunication services;

(8) Passenger transportation services; and

(9) Medical and nursing buildings.

(b) One hundred percent (100%) of base period use for industrial use where no substitute for butane is available or (1) standby volumes of butane consumed during the base period, or (2) 210,000 gallons per year, whichever is less.

(c) Ninety-five percent (95%) of base period use for all residential uses.

(d) Ninety percent (90%) of base period use for (1) commercial uses, or 210,000 gallons per year, whichever is less; (2) other transportation; and (3) schools.

(e) The use of butane for peak shaving by a gas utility is limited to the volume of butane equal to those amounts of butane contracted for or purchased for delivery during the base period, regardless of whether those volumes were used during the period. Butane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible nonpriority industrial customers (other than for process fuel, plant protection fuel, or raw material) or any customer who can use an alternate fuel other than natural gas.

§ 211.94 Supplier/Purchaser Relationships.

(a) All suppliers of butane shall deliver to other suppliers either (1) the same proportion of their total butane available for-sale, transfer or internal use as a raw material feedstock as they delivered in the base period or (2) the actual supplier-supplier contractual volume during such period, whichever is less.

(b) All suppliers of butane shall continue to supply all of their purchasers of record of the base period, and all of the purchasers assigned to them by the FEO.

(c) Unless otherwise specified, the provisions of § 211.13 and § 211.24 shall apply to this subpart.

§ 211.95 Method of Allocation.

(a) Priority allocation of butane shall be made such that:

(1) Each supplier shall determine his total available supply of butane, including inventories (subject to normal inventory management), expected imports, purchases, production, and any required sales, less any butane used as refinery fuel.

(2) Butane suppliers and resellers shall provide butane for priority requirements of their priority customers to whom they sold, or with whom there existed a contract to sell, butane, during the base period. In those instances where a reseller was supplied by more than one supplier, or other reseller his needs for his priority customers shall be supplied to him in the same proportion as those sources sold to him in the base period.

(b) Nonpriority allocation of butane shall be made such that:

(1) Prior to the end of each quarter suppliers of butane shall determine their total supplies of butane available for sale or transfer for the succeeding quarter. From this amount they shall subtract the projected requirements of their own and their resellers' priority customers. In those instances where a reseller was supplied by more than one supplier or reseller in that period he shall apportion his purchases among them in the same ratio as his purchases in that period.

(2) Suppliers shall allocate to nonpriority end users on the basis of an estimated non-priority allocation fraction which shall be calculated by dividing the non-priority available supply determined in paragraph (b)(1) of this section, by the sum of the sales to nonpriority customers, internal non-priority raw material uses, and non-priority sales to resellers during the base period.

(3) The quantity of butane which shall be offered for sale to any particular reseller for sale to non-priority customers or which may be used as a raw material by a supplier during a current quarter is the volume of such sale or internal use during the base period, multiplied by the supplier's allocation fraction.

(c) Suppliers or resellers with two (2) or more distribution subsystems or regions independent of one another, may separately calculate an allocation fraction for each such area, provided that the Administrator is satisfied that the effect of using separate calculations does not contravene the intent of this part, and that any supplier in so doing has made every effort to meet priority needs within each area.

(d) In the event that a supplier's or a reseller's immediate supplies may be insufficient to meet the needs of priority customers, the supplier or reseller shall supply all such priority needs on a pro rata basis until the full requirement can be met.

§ 211.96 Procedures and Reporting Requirements.

(a) All matters pertaining to the allocation of butane shall be directed to

the Administrator, FEO, Washington, D.C.

(b) The general reporting and record keeping requirements of Subpart L of this Part shall apply to this Subpart.

Subpart F—Motor Gasoline

§ 211.101 Scope.

(a) This subpart applies to the mandatory allocation at the wholesale level of all motor gasoline produced in or imported into the United States.

(b) This subpart provides for a State set-aside of motor gasoline.

§ 211.102 Definitions.

For the purposes of this subpart—

(a) "Base period" for motor gasoline means the month of 1972 corresponding to the current month.

§ 211.103 Allocation levels.

(a) The percentage allocation levels listed in this paragraph are for end-users who are bulk purchasers or wholesale purchasers and are not arranged in sequence of priority. Suppliers shall distribute available supplies of motor gasoline to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to the order of listing.

(1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production;

(ii) Emergency services;

(iii) Energy production;

(iv) Sanitation services;

(v) Telecommunication services;

(vi) Passenger transportation services.

(2) One hundred (100) percent of base period volumes use for all other business activities.

(b) There shall be no allocation levels for end-users not described in subsection (a).

§ 211.104 Supplier/purchaser relationships.

(a) All suppliers of motor gasoline shall supply their wholesale purchasers of record as of the base period.

(b) Unless otherwise specified, supplier/purchaser relationships are set forth in § 211.24.

§ 211.105 Method of allocation.

(a) The initial State set-aside level for motor gasoline is three (3) percent of all motor gasoline produced in or imported into the United States. Subsequent adjustments to the percentage unit will be published by the FEO.

(b) Allocation of motor gasoline shall be made as specified in § 211.11.

(c) Provisions to increase a supplier's or a wholesale purchaser's base period volume to allow for new customers, and the increased requirements of his customers, are specified in § 211.13.

§ 211.106 Procedures and reporting requirements.

(a) All matters pertaining to the allocation of motor gasoline shall be addressed to the appropriate State office or regional FEO office as specified within this part.

(b) The general reporting and record-keeping requirements contained in § 211.222 shall apply to this subpart.

(c) If undue hardship to any wholesale purchaser or end-user results from the provisions of this subpart, a hardship application shall be submitted to the appropriate State office as provided in § 211.16.

Subpart G—Middle Distillate

§ 211.121 Scope.

(a) This subpart applies to all middle distillate fuels produced in or imported into the United States.

(b) This subpart provides for a State set-aside.

§ 211.122 Definitions.

For the purposes of this subpart—

"Base period" for middle distillates means the month of 1972 corresponding to the current month.

§ 211.123 Allocation levels.

The percentage allocation levels specified in this section are not arranged in sequence of priority. Suppliers shall distribute available supplies of middle distillate fuels to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to the order of listing.

(a) Allocation levels for end-users other than electric utilities shall be:

(1) One hundred (100) percent of current requirements—

(i) For the following non-space heating uses:

(*a*) Agricultural production;

(*b*) Emergency services;

(*c*) Energy production;

(*d*) Manufacture of ethical drugs and related research;

(*e*) Sanitation services;

(*f*) Telecommunications; and

(*g*) Passenger transportation services.

(ii) For the following heating uses:

(*a*) Residences and schools, calculated upon a 6° F reduction in ambient indoor temperature, and,

(*b*) All other space heating uses, except those described in § 211.123(a)(1)(iii), calculated upon a 10° F reduction in ambient indoor temperature.

(iii) For medical and nursing buildings for all purposes.

(2) One hundred ten (110) percent of base period volume for:

(i) Industrial use except for space heating; and

(ii) Cargo, freight, and mail handling, except as set forth elsewhere in this section.

(3) One hundred (100) percent of base period volumes for all other non-space heating uses.

(b)(1) The allocation levels to electric utilities shall be one hundred (100) percent of base period volume or as otherwise determined by the FEO upon recommendation of the Federal Power Commission (FPC), but not less than one hundred (100) percent of current requirements for nuclear plants, start-up, testing, and flame stability of coal-fired plants (except for peaking uses).

(2) In determining the middle distillate allocation for each utility, the FEO may take into account but is not limited to the following considerations:

(i) The fact that electric generating plants which now burn middle distillate fuel oil have been identified by the FEO as candidates for conversion to coal and the maximum possible extent to which such plants could be utilized after conversion;

(ii) The extent to which any electric generating plants which burn coal may be utilized more fully than at present;

(iii) The extent to which it is possible for electric utilities to obtain necessary supplies of coal;

(iv) The extent to which certain minimal levels of middle distillate consumption are essential, as determined by the FEO upon recommendation of the FPC, to supply portions of a power system that cannot be supplied by non-middle distillate-fired generation, or for other special considerations. (Any volumes so identified shall be counted as part of the utility's total allocation.)

(v) The extent to which utilities currently utilizing natural gas supplied under interruptible contracts experience gas service interruptions.

(vi) Available stocks of middle distillate held by each utility.

§ 211.124 Supplier/purchaser relationships.

(a) All suppliers of middle distillate shall supply all of their wholesale purchasers of record during the base period within the limitations imposed by this part.

(b) Unless otherwise specified, supplier/purchaser relationships are set forth in § 211.24.

§ 211.125 Method of allocation.

(a) The initial State set-aside percentage level is four (4) percent of all middle distillate produced in or imported into the United States. Subsequent adjustments to the percentage unit will be published by the FEO.

(b) Allocation of middle distillate shall be made as specified in § 211.11.

(c) Suppliers shall, to the extent practicable, make deliveries to all space-heating end users on the basis of certified need. Certified need for space-heating is the calculated quantity of fuel needed to maintain the ambient indoor temperature of a building at the reduced temperature required in § 211.123(a)(1)(ii).

(1) This calculation of certified need shall be done using historical usage factors for each building heated. Where suppliers do not have an historical usage factor for a building, this factor shall be calculated based on gallons of fuel consumed and actual degree-days exposure during the latest thirty (30) day period of normal heating usage before January 15, 1974. If no such period exists, a usage factor for that unit shall be established by an initial period of normal space-heating operations, subject to review by the State Office.

(i) Historical usage factors shall be associated with units and not with purchasers.

(ii) If this calculation of certified need results in undue hardship, the owners or occupants may apply to their State Office to obtain relief.

(2) To the extent practicable, the following procedure shall be followed by heating oil suppliers:

(i) Each space-heating end user shall be entitled to an initial fill-up at his first delivery after these regulations become effective, if sufficient supplies available.

(ii) At the next delivery, the supplier shall again provide a full tank and determine, to the extent possible, compliance with this part. If the heating user has clearly not complied, the supplier shall present a warning notice to the end-user. The warning notice shall indicate that the user faces the danger of running out of fuel if he does not reduce his ambient indoor temperature by the required amount or take equivalent actions to conserve fuel.

(iii) For each subsequent delivery, the supplier shall continue to deliver only the calculated certified need regardless of the quantity required to fill the tank, unless otherwise directed by the State Office.

§ 211.126 Procedures and Reporting Requirements.

(a) All matters pertaining to the allocation of middle distillate shall be addressed to the appropriate State or Regional FEO office as specified within this part.

(b) The general reporting and recordkeeping requirements contained in Subpart L of this part apply to this subpart.

(c) If undue hardship results from the provisions of this subpart, hardship applications may be submitted to the appropriate State Office.

(d) Requests by suppliers, wholesale purchasers or end-users for adjusted base period volumes shall be submitted to their suppliers or the appropriate regional FEO or State office as specified in § 211.13.

Subpart H—Aviation Fuels

§ 211.141 Scope.

(a) This subpart applies to the mandatory allocation of aviation fuels produced in or imported into the United States.

(b) Bonded aviation fuel is excluded from allocation; provision for bonded fuel shortfalls is addressed in § 211.145 (d).

(c) No state-set-aside is provided for in this subpart.

§ 211.142 Definitions.

For purposes of this subpart—

(a) "Agricultural production flying" means the use of general aviation aircraft under 14 CFR Parts 91, 133, and 137 in agricultural production, including seeding, spraying, fertilizing, and dusting of food and forestry crops by air, the use of aircraft by those engaged in agricultural production to transport priority supplies and personnel to sustain or increase crop and animal yields, to transport crop, forestry, and animal products to distribution points, and in commercial fishing.

"Air taxi"—See "Other air carrier."

"Air travel club flying" means any use of aircraft operated under 14 CFR Part 123.

"Aircraft manufacturing uses" means the consumption of aviation fuels for aircraft production, major overhaul of aircraft, static and flight testing of aircraft and components, and the ferrying of aircraft from the manufacturer.

"Aviation fuels" means aviation gasoline and aviation turbine fuel.

"Aviation gasoline" means petroleum based fuels designed for use in aircraft internal combustion engines and complying with MIL–G–5572 specification (ASTM—specification D–910–70).

"Aviation turbine fuel" means all refined petroleum fuel designed to operate aircraft turbine engines. The basic specification is ASTM D–1655 which covers both Type A (kerosene base) and type B (naphtha base).

"Base period" means the calendar month of 1972 corresponding to the current month.

"Business flying" means any use of aircraft under 14 CFR Parts 91 and 133 not for compensation or hire by an individual for the purpose of transportation required by a business in which he is engaged and any use of an aircraft by a corporation, company or other organization for the purpose of transporting its employees and/or property not for compensation or hire. Business flying includes such aerial uses as photography, advertising, survey and helicopter operations.

"Civil air carrier" means (1) domestic, supplemental, and scheduled cargo air carrier; (2) international air carrier; (3) intrastate air carrier; (4) local service air carrier; (5) other air carrier.

"Commercial operator" see "Other air carrier."

"Commuter air carrier" see "Other air carrier".

"Domestic, supplemental, and scheduled cargo air carrier" means those air carriers holding a certificate of public convenience and necessity providing for interstate and overseas air transportation, issued pursuant to section 401 of the Federal Aviation Act of 1958, as amended and operating under 14 CFR Part 121.

"Emergency aviation services, safety, and mercy missions" means public or private aircraft dedicated to emergency operations, safety and mercy missions operating under 14 CFR Parts 91 or 137, except however, it does not include mercy missions of the Civil Air Patrol.

"Energy production flying" means the use of general aviation aircraft operating under 14 CFR Parts 91 and 133 in the production of energy sources, including pipeline and powerline patrol, oil and gas exploration activities, necessary movement of supplies and personnel for the production of energy resources, and other essential flying for energy production.

"FAR" means the Federal Aviation Regulations, Title 14, Chapter I, of the Code of Federal Regulations.

"General aviation" means (1) Agricultural Production Flying; (2) Air Travel Club Flying; (3) Business Flying; (4) Emergency Aviation Services, Safety and Mercy Missions; (5) Instructional Flying; (6) Personal Non-Business Flying; (7) Energy Production Flying; (8) Aircraft Manufacturing Uses.

"Instructional flying" means any use of aircraft operating under 14 CFR Parts 91, 121, 127, and 141 for the purpose of formal instruction.

"International air carrier" means those United States air carriers operating under 14 CFR Part 121 holding a certificate of public convenience and necessity, providing for foreign air transportation, issued pursuant to section 401 of the Federal Aviation Act of 1958, and foreign air carriers operating under 14 CFR Part 129 holding permits issued pursuant to section 402 of the Federal Aviation Act of 1958, but excluding those with permits which restrict operation to the use of aircraft not exceeding 12,500 pounds gross take-off weight.

"Intrastate air carriers" means those carriers operating under 14 CFR Part 121 licensed by a state regulatory agency, and operating equipment having more than thirty (30) seats or a pay load of at least 7,500 pounds.

"Local service air carriers" means those carriers operating under Part 121 or 127 holding a certificate pursuant to section 401 of the Federal Aviation Act of 1958, and (i) receiving Federal subsidy, or (ii) operating solely within the States of Hawaii or Alaska, or (iii) operating scheduled helicopter service.

"Non-aviation use of aviation fuels" means that consumption of aviation fuels associated with gas turbine engines in industry, utilities and surface transportation.

"Other air carriers" means (1) those carriers holding a Federal Aviation Administration Air Taxi/Commercial Operator Certificate issued under 14 CFR Part 135 and operating under the exemption authority of 14 CFR Part 298 of the Civil Aeronautical Board Regulations, including operations by scheduled commuter airlines, and non-scheduled air taxi operations; (2) those foreign carriers operating under Part 129 of the FAR holding permits under section 402 of the Federal Aviation Act of 1958 authorizing casual and infrequent service with aircraft not exceeding 12,500 pounds gross take-off weight; (3) those commercial operators of large aircraft under Federal Aviation Regulations 14 CFR Part 121, except Intrastate carriers.

"Personal non-business flying" means any use of aircraft under 14 CFR Part 91 for personal purposes not associated with a business or profession and not for hire.

"Public aviation" means any aircraft operating under 14 CFR, Parts 91, 133 or 137 used exclusively in the service of the government of any state, territory, or possession of the United States or the District of Columbia and any political subdivisions thereof, excluding military aircraft.

"Scheduled cargo air carrier" see "Domestic, supplemental and scheduled cargo air carrier."

"Supplemental air carrier" see "Domestic, supplemental, and scheduled cargo air carrier."

§ 211.143 Allocation levels.

The percentage allocation levels listed below are not arranged in sequence of priority. Suppliers shall distribute available supplies of aviation fuels to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to order of listing:

(a) *Emergency Aviation services, safety and mercy missions:* One hundred (100%) of current requirements.

(b) *Civil air carriers.* (1) One hundred (100) percent of base period use for:

(i) local service air carriers;

(ii) other air carriers.

(2) Ninety-five percent (95%) of base period use for:

(i) Domestic, supplemental and scheduled cargo air carrier;

(ii) International air carriers—The total of both bonded and non-bonded fuel;

(iii) Intra-state carriers.

(c) *General aviation.* Ninety-five (95) percent of total base period use, as follows:

(1) One hundred (100) percent of current requirements for:

(i) Agricultural production flying;

(ii) Energy production flying;

(iii) Aircraft manufacturing, but not to exceed one hundred thirty (130) percent of base period use.

(2) Ninety (90) percent of base period use for business flying.

(3) Seventy-five percent (75%) of base period use for:

(i) Personal non-business flying;

(ii) Instructional flying;

(iii) Air travel club flying.

(d) *Public Aviation.* Eighty-five percent (85%) of base period use.

(e) *Non-Aviation use of aviation fuels.* One hundred percent (100%) of base period use.

§ 211.144 Supplier/Purchaser Relationships.

(a) All suppliers of aviation fuel shall supply their wholesale purchasers of record as of the base period.

(b) All suppliers of aviation fuel used in general aviation shall supply their end use customers of record in the base period.

(c) Unless otherwise specified, the provisions of § 211.13 and § 211.24 apply to this subpart.

§ 211.145 Method of Allocation.

(a) The FEO shall estimate the total national supply of aviation fuels by type of fuel.

(b) The FEO will determine the portion of allocable supply for Civil air carriers (less air taxi/commercial operators) to be made in accordance with § 211.143. The FEO will calculate each civil air carrier's (less Air taxi/commercial operators) allocation based on the portion of allocable supply for civil air carrier use.

(c) Aviation fuel for international flights shall be allocated on a non-discriminatory basis among international carriers, subject to modification by the FEO following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of aviation fuel for U.S. carriers engaged in international flights.

(d) International Air Carriers which have traditionally used bonded aviation fuel for international flights shall be allocated non-bonded naphtha-based jet fuel on a case-by-case basis to reduce their shortages of bonded fuel. Upon certification by the international carrier that his supplier is unable to provide sufficient bonded fuel at a desired location, the FEO may authorize that supplier to provide non-bonded naphtha based jet fuel to that carrier. Non-bonded fuel so authorized by the FEO shall be in amounts which, when added to the bonded fuel available to that carrier, shall not exceed the allocation levels assigned to the U.S. Civil Air Carriers.

(e) Allocation of aviation fuels for suppliers, resellers and end-users for General Aviation shall be made in accordance with § 211.143.

(1) There shall be no hardship allocation applications for general aviation.

(f) Allocation of aviation fuels for public aviation shall be made the highest governmental level as appropriate, i.e., Federal Departments and Agencies, States, etc., for further allocation within sions.

their administrative or political subdivi-

(1) There shall be no hardship allocations for public aviation.

(2) All matters concerning Public Aviation allocation shall be directed to the Administrator, FEO, Washington, D.C.

(3) Civil Air Patrol assigned to mercy missions shall be provided aviation fuel from the Department of Defense allocation.

(g) Notwithstanding the provision of § 211.143(e), the use of aviation fuel for non-aviation purposes by a utility may not exceed those volumes of aviation fuel contracted for or purchased during the base period. Aviation fuel shall not be used for peaking as long as the utility continues service during such peaking to interruptible non-priority industrial users (except where no suitable substitute fuel is available to the user) or to any customer who can use a fuel other than aviation fuel.

§ 211.146 Procedures and reporting requirements.

(a) All matters pertaining to the allocation of aviation fuel to Civil Air Carriers (except air taxi commercial operators) and public aviation shall be addressed to the Administrator, FEO, Washington, D.C. unless otherwise provided.

(b) All matters pertaining to the allocation of aviation fuel for general aviation and for non-aviation uses of aviation fuels shall be addressed to the appropriate supplier. Any matters unresolved at the supplier (retailer, wholesaler or refinery) levels and any matters involving air taxi/commercial operators may be referred directly to the appropriate Regional FEO office.

(c) The general reporting and record-keeping requirements contained in § 211.222 shall apply to this subpart. In addition Civil Air Carriers (excluding Air taxi/commercial operators) and public aviation shall make a "one time only report" to the Administrator, FEO, of their base period volume, or adjusted base period volume, of aviation gasoline and of both naptha-base and kerosene-base jet fuel broken down by month. This report shall indicate purchases of non-bonded fuel on domestic flights, non-bonded fuel on international flights, and/or bonded fuel on international flights as applicable. For the purpose of this report, international flights are those flights departing from the United States on international routes.

Subpart I—Residual Fuel Oil

§ 211.161 Scope.

(a) This subpart applies to the mandatory allocation of residual fuel oil produced in or imported into the United States.

(b) This subpart provides for a state set-aside.

§ 211.162 Definitions.

For the purposes of this subpart—

"Base period" means the month of 1973 corresponding to the current month for all non-utility users.

§ 211.163 Allocation levels.

The percentage allocation levels listed below are not arranged in sequence of priority. Suppliers shall distribute available supplies of residual fuel oil to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to order of listing.

(a) *Certain non-utility uses.* The allocation levels for the following end-users are:

(1) One hundred (100) percent of current requirement for the following non-space heating uses:

(i) Agricultural production;

(ii) Emergency services;

(iii) Energy production;

(iv) Manufacture of ethical drugs and related research;

(v) Non-military marine shipping, foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a non-discriminatory basis in regard to flag of registration, subject to modification by the FEO following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of bunker fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States;

(vi) Sanitation Services;

(vii) Telecommunications; and

(viii) Passenger Transportation Services.

(2) One hundred (100) percent of current requirement for space heating adjusted to the following specifications:

(i) No reduction for medical and nursing buildings for all uses;

(ii) Six (6) degree F reduction for residences and schools; or

(iii) Ten (10) degree F reduction for all others; or

(iv) Reduction of the ambient indoor temperature by the appropriate amount, or other actions which result in fuel saving equivalent to that which would otherwise result under paragraph (a)(2)(i)–(iii) of this section.

(b) *Utility uses.* (1) The allocation levels to utilities shall be specified by the FEO each month;

(2) In specifying the allocation levels for each utility the FEO may include but is not limited to the following considerations:

(i) Each utility within appropriate groupings shall absorb an equal percentage cut back in electricity generation, to the maximum extent possible.

(ii) The fact that electric generating plants which now burn residual fuel oil that have been identified by the FEO as candidates for conversion to coal, and the maximum possible extent to which such plants could be utilized after conversion.

(iii) The extent to which any electric generating plants which burn coal may be utilized more fully than at present.

(iv) The extent to which certain minimal levels of residual fuel oil consumption are essential, as determined by the FEO upon recommendation of the Federal Power Commission (FPC) to supply portions of a power system requirement that cannot be supplied by non-oil-fired generation, or for other special considerations. Any volumes so identified shall be counted as part of a utility's total allocation.

(v) The extent to which utilities currently utilize natural gas supplies under interruptible contracts and which have been interrupted.

(vi) Available stocks of residual fuel oil held by each utility.

(c) *All other uses.* One hundred (100) percent of base period volume for industrial users and all other users and uses of residual fuel oil not included in paragraphs (a) or (b) of this section.

§ 211.164 Supplier/Purchaser Relationships.

(a) Except by order of FEO, or as otherwise provided in this part, all suppliers of residual fuel oil shall supply all of their wholesale purchasers of record as of the base period.

(b) Unless otherwise specified, supplier/purchaser relationships are set forth in § 211.24.

§ 211.165 Method of Allocation.

(a) *State set-aside.* The initial State set-aside percentage is one and one-half percent of all residual fuel oil produced in or imported into the United States. Subsequent changes in this percentage will be published by the FEO.

(b) *General.* Based on the estimated total supply of residual fuel oil, on allocation levels set forth in § 211.163, the State set-aside percentage, and other relevant considerations, the FEO shall determine the portion of total supply for non-utility use, and the portion of total supply for utility use.

(c) *Non-Utility.* The portion of each supplier's allocable supply not directed by the FEO for utility use shall be allocated pursuant to § 211.24 provided, however, that with respect to space heat uses, the provisions of paragraph (e) of this section are met to the extent possible.

(d) *Utilities.* (1) The FEO shall compute and notify each utility of its allocation of residual fuel for the month, and shall notify each supplier of a utility of the volume that supplier must supply each utility for the following month. Notification shall be at least fifteen (15) days prior to the beginning of the month.

(2) Utilities may and are encouraged by mutual agreement to apportion their respective allocated residual fuel oil volumes, or other fuel volumes, or generated power among themselves.

(3) The volume of residual fuel oil allocated to each utility in a particular month shall be based upon the total supply available for utilities, the considerations specified in § 211.163(b) and other relevant considerations including consultation with FPC, or governing bodies in territories and possessions of the United States. The minimum volume of residual fuel oil allocated to any utility shall be the critical volumes identified in § 211.163(b)(1)(v) plus any crude oil burned directly for power generation during the base period.

(e) *Space heating uses.* To the extent practicable, suppliers shall use the following procedure for residual fuel oil distributed for space heating use. Suppliers to end-users shall calculate the quarterly allotment of their customers for space heating using the most recently available usage factors on or before November 1, 1973, for each building or complex heated, assuming a normal winter, and notify the end-user of his allotment. Where suppliers do not have an historical usage factor for a building, a usage factor shall be calculated based on gallons of fuel consumed and actual degree-days exposure in the base period. For new buildings, the usage factor shall be determined based on gallons of fuel consumed and actual degree-days exposure during the latest thirty (30) day period of normal heating usage before January 15, 1974. If no such period exists, a usage factor of that unit shall be established by an initial period of normal space heating operations, subject to review by the State Office. Suppliers to end-users shall recalculate monthly the quarterly allotment for each space heating user by applying his usage factor to actual degree-days, less an adjustment for the required reduction in ambient indoor temperature. The supplier shall notify the end-user monthly of the end-user's adjusted allotment, and shall inform the end-user whether and by how much his usage rate exceeds that required to achieve the required reduction in ambient indoor temperature, and that he faces the danger of running out of fuel if he does not reduce his ambient indoor temperature as required by § 211.163(a)(2)(iv). The supplier shall notify the appropriate Regional FEO of any customer whose usage is excessive for two successive months. Suppliers' usage factors shall be associated with units (e.g., an apartment house) and not with end-users. The usage factor of record for a unit shall be used for that unit throughout the duration of this program regardless of changes in occupants or ownership.

§ 211.166 Procedures and Reporting Requirements.

(a) All matters pertaining to the allocation of residual fuel oil for the electric utility industry shall be addressed separately to the Administrator, FEO, Washington, D.C., and to the Chairman, Federal Power Commission.

(b) All matters pertaining to the allocation of residual fuel oil to non-utility users of residual fuel oil shall be addressed to the appropriate State or Regional FEO offices as specified within this part. All matters pertaining to the allocation of residual fuel oil for bunkering purposes shall be addressed to the Administrator, FEO, Washington, D.C., with an information copy to the appropriate Regional FEO.

(c) The general reporting and recordkeeping requirements contained in § 211.222 shall apply to non-utility customers of residual fuel oil.

(d) Suppliers of residual fuel oil to utilities shall comply with the reporting requirements of § 211.222. Utilities using residual fuel oil shall comply with reporting requirements of the Federal Power Commission.

(e) If undue hardship results from the provisions of this subpart, hardship applications may be submitted to the appropriate State Office.

(f) Requests by wholesaler purchasers, suppliers, new users and others for adjusted base period volumes shall be submitted to their suppliers or to the appropriate regional FEO as specified in § 211.13.

Subpart J—Petrochemical Feedstocks

§ 211.181 Purpose.

The purpose of this subpart is to encourage petrochemical producers to locate and acquire sufficient petrochemical feedstock to meet their current requirements. If, after maximum effort, the petrochemical producer is unable to acquire sufficient supply, the FEO may assign a supplier and quantity of product to be allocated, if such exists.

§ 211.182 Scope.

(a) This subpart applies to the mandatory allocation of petrochemical feedstocks produced in or imported into the United States except propane and butane.

(b) This subpart does not provide for a State set-aside.

§ 211.183 Definitions.

For purposes of this subpart—

"Petrochemical feedstocks" means crude oil, residual fuel oil, and refined petroleum products which can be processed in a petrochemical plant, including naphtha, gas oil, kerosene, and heavy aromatic gas oil used for production of carbon black. Petrochemical feedstocks do not include ethylene, propylene, butylene, or any item otherwise defined as a petrochemical or natural gas.

"Petrochemical producers" means those persons who manufacture petrochemicals in a petrochemical plant by processing petrochemical feedstock.

"Petrochemical plants" means those industrial plants, regardless of capacity, that process petrochemical feedstocks and obtain at least (30) percent conversion, by weight, to petrochemicals or other products that are converted to petrochemicals, so long as the weight of hydrocarbon contained in the final petrochemical is equal to at least thirty (30) percent of the initial petrochemical feedstock fed to the plant under consideration. For the purpose of this subpart, plants converting crude oil, refined petroleum products or residual fuel oil to a synthetic natural gas are not considered to be petrochemical plants.

"Petrochemicals" means the items defined as such in section 25A of Oil Import Regulation 1 (Revision 5), (32A CFR OI Reg. 1. 25A). For the purpose of this subpart, synthetic natural gas is not considered to be a petrochemical.

§ 211.184 Allocation Levels.

(a) The allocation of petrochemical feedstocks to a petrochemical producer shall be, to the maximum extent practicable, that quantity which when added to the non-allocated supplies of the petrochemical producer results in a quantity equal to one hundred (100) percent of the petrochemical producer's current requirements.

§ 211.185 Supplier/Purchaser Relationships.

(a) Contracts currently in force between suppliers and petrochemical producers for petrochemical feedstocks shall take precedence over other contracts covered under this part except those covered in subpart C.

(b) Any petrochemical producer whose supplier cannot fulfill his maximum contractual supply obligation with the petrochemical producer for petrochemical feedstock to be processed in the petrochemical producer's petrochemical plant may apply to the FEO and may receive permission to purchase from any supplier a quantity of petrochemical feedstock that is equal to the difference between the petrochemical supplier's maximum contract obligation and his actual supply for that producer.

(c) Any petrochemical producer that has a total petrochemical feedstock supply commitment, whether by contract or otherwise, that is less than the actual supply of petrochemical feedstock that the petrochemical producer processed in a petrochemical plant in 1972 may apply to the FEO, and may receive permission to purchase from any supplier a quantity of petrochemical feedstock that is equal to the difference between the petrochemical producer's supply in 1972 and the total petrochemical feedstock that the petrochemical producer has under commitment, if this quantity exceeds the quantity calculated under paragraph (b) of this section.

(d) A petrochemical producer who wishes to purchase quantities of petrochemical feedstocks to be processed in a petrochemical plant in excess of the quantity calculated pursuant to paragraph (b) or (c) of this section may apply to the FEO and may receive permission to purchase the quantity of petrochemical feedstock that is required to meet current needs.

(e) Any petrochemical producer unable to obtain a quantity of petrochemical feedstock for which he has received permission from the FEO to purchase may request that he be assigned a supplier by the FEO.

§ 211.186 Method of allocation.

(a) Each petrochemical producer with less petrochemical feedstocks for a particular plant than the amount calculated pursuant to § 211.185 (b), (c) or (d) may submit a written request for permission to purchase that amount, or for the assignment of a supplier. The request must be made in the manner prescribed in § 211.187(d).

(b) The FEO will issue an order in writing either granting, in whole or in part, or denying the request.

(c) Any purchase of petrochemical feedstock made pursuant to an order in paragraph (b) of this section may be made at the price specified in § 212.81, or § 212.93.

(d) The following guidelines shall be used by the FEO in assigning a supplier to a petrochemical producer:

(i) Previous suppliers of a petrochemical producer that has petitioned the FEO shall first be considered as his source of supplies.

(ii) Petitioners seeking the quantity of petrochemical feedstock calculated pursuant to § 211.185 (b) or (c) of this section shall be given preference over petitioners seeking a quantity calculated pursuant to § 211.185(d).

(iii) Suppliers of crude oil, refined petroleum products, or residual fuel oils that sell the smallest proportion of their production into the petrochemical sector, but are within a logical distribution system to a petitioning petrochemical producer, shall be considered for supplying petrochemical feedstocks before a supplier selling a higher proportion of his production in the petrochemical sector.

(iv) No petrochemical feedstocks shall be assigned to a petrochemical producer if doing so would cause the supplier to be substantially disrupted such as by causing other product streams not to meet specifications or by reducing or limiting the throughput of the supplier's plant.

(v) Petrochemical feedstocks that are being processed in petrochemical plants are not subject to allocation pursuant to this subpart.

(vi) In attempting to locate supplies of petrochemical feedstocks, the FEO shall only solicit information from, and assign quantities to be allocated by, suppliers to whom the applicant has made a written offer for the petrochemical feedstock in question.

§ 211.187 Procedures and Reporting Requirements.

(a) All matters pertaining to the allocation of petrochemical feedstocks shall be addressed to the Administrator, FEO, Washington, D.C.

(b) The general record keeping requirements contained in Subpart L of this part shall only apply to this subpart for those petrochemical feedstocks that are allocated to a petrochemical producer by the FEO pursuant to § 211.186.

(c) Administrative matters associated with the allocation of petrochemical feedstocks shall be considered on a case-by-case basis.

(d) *Petrochemical producer purchase request.* Petrochemical producers applying for permission to purchase petrochemical feedstocks or for allocation of petrochemical feedstocks shall apply to the FEO using the appropriate FEO form or by letter.

(1) The request shall contain the following information for each plant:

(i) The type (e.g., pyrolysis furnace, reformer, etc.) and location of the petrochemical plant.

(ii) The capacity of the plant with:

(a) Typical petrochemical feedstocks, and with

(b) Alternative petrochemical feedstocks.

(iii) The quantity of petrochemical feedstock committed by suppliers for the petrochemical plants.

(iv) The maximum quantity of petrochemical feedstock under contract, whether or not the supplier can meet his commitment.

(v) The total quantity of petrochemical feedstock processed in 1972.

(vi) The quantity of hydrocarbon contained in petrochemicals produced in the plant in 1972 or produced from products made in the plant and processed elsewhere.

(vii) Anticipated conversion to petrochemicals of petrochemical feedstock being sought.

(viii) Certification by the chief executive officer of the company or his delegate that the petrochemical feedstock being sought pursuant to § 211.186 shall be totally processed in the petrochemical plant listed in this paragraph and that a conversion to pretrochemicals of at least thirty (30) percent by weight shall be obtained.

(ix) The names and locations of potential suppliers who were asked to sell supplies of petrochemical feedstocks to be processed in the petrochemical plant and a summary of the suppliers' ability or inability to supply the requested petrochemical feedstocks.

(e) *Refined petroleum product supply report.* Upon request by the FEO, suppliers of petrochemical feedstocks shall submit information pertaining to the availability of such petrochemical re-

fined petroleum products that may be suitable for processing in a petrochemical plant.

Subpart K—Other Products

§ 211.201 Scope.

(a) This subpart applies to the mandatory allocation of refined lubricating oils, naphtha, and any other refined petroleum products not subject to Subparts D–J of this Part produced in or imported into the United States.

(b) This subpart does not provide for a State set-aside.

(c) General allocation procedures, as specified in § 211.11 shall not apply to this subpart.

§ 211.202 Definitions.

For purposes of this subpart—

"Base period" means the calendar quarter of 1972 which corresponds to the current quarter.

"Other products" means refined lubricating oils, naphtha, and any other refined petroleum products not subject to Subparts D–J of this Part.

§ 211.203 Allocation Levels.

The allocation of other products shall provide for one-hundred (100) percent of current requirements except as herein specified.

§ 211.204 Supplier/Purchaser Relationships.

(a) The FEO may order the sale of other products by a supplier to other suppliers or end-users in order to alleviate imbalances or when necessary to meet current requirements of customers.

(b) The FEO may reassign purchasers, require a transfer of some purchasers among suppliers, or make other adjustments as necessary to achieve a more equitable balance of assigned sales among suppliers.

§ 211.205 Method of Allocation.

(a) All suppliers of other products shall meet the current requirements of their current customers or assigned customers under normal business practices.

(b) All suppliers of other products who are unable to meet the requirements of their current customers or assigned customers shall allocate supplies among all their wholesale customers in proportion to each wholesale customer's purchases during the corresponding quarter of 1972.

(c) Any end-user having difficulty securing necessary supplies of other products may petition his appropriate national office for relief.

(d) Any wholesale purchaser of other products who is unable to purchase quantities equal to current requirements may petition to the national FEO in accordance with the provisions of Part 205.

§ 211.206 Procedures and Reporting Requirements.

(a) All matters pertaining to the allocation of other products shall be addressed to the Administrator, FEO, Washington, D.C.

(b) The general record keeping requirements contained in Subpart L of this regulation shall apply to this Subpart. The Initial Report as described in Subpart L of this regulation shall be required. Other reports of Subpart L are not required.

(c) Administrative matters associated with the allocation of other products shall be submitted on a case-by-case basis.

Subpart L—General Reporting and Recordkeeping Requirements

§ 211.221 Scope.

This subpart provides for the general reporting and recordkeeping requirements applicable to this part. Reporting and recordingkeeping requirements that are limited in application to specific products or situations are contained in the other appropriate subparts of this part.

§ 211.222 Monthly reports by Refiners and Importers.

(a) Every refiner for each of his refineries; importer for each importing terminal; and gas processing plant operator for each of his processing plants shall report monthly to the National FEO, the following information for each allocated product. A copy of this report shall be provided to the appropriate regional office and appropriate State office in the month of February 1974, but need not be provided for any month thereafter. State set-aside volumes for the month of February shall be established on the basis of these reports from refiners, importers and gas processing plants.

(1) The inventory at the beginning and end of the preceding month by allocated product.

(2) Deliveries received during the preceding month by allocated products: Deliveries of domestic crude oil should be segmented into new and released domestic crude oil. All allocated products should be listed by source and by country of origin for imports.

(3) Inventory fluctuation which occurred during the preceding month and were caused by other than deliveries, receipts, and transfers.

(4) Total deliveries and supply redistribution in each State during the preceding month by allocated product.

(5) The estimated total available supply for distribution in each State during the following month by product.

(6) The estimated State set-aside volume for distribution in each State during the following month by product.

(7) The total allocable supply (i.e., item (5) minus item (6) for distribution in each State during the following month, by product.

(8) The estimated total allocation requirements for the following month for purchasers to be supplied within each State, by product.

(9) The estimated average or shortfall, i.e., item (5) minus (8).

(10) The estimated allocation fraction, i.e., item (7) divided by (8).

(b) Beginning with the month of March 1974, and thereafter, prime suppliers shall report monthly to the FEO headquarters, appropriate regional offices and appropriate State offices items (4) through (10) of § 211.222(a). This report will be the basis of the State set-aside program.

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

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Subpart J—Accounting and Financial Reporting Requirements

212.151 Comparability of financial data.

AUTHORITY: Emergency Petroleum Allocation Act of 1973, P.L. 93–159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 38 FR 24.

Subpart A—General

§ 212.1 Scope.

(a) This part sets forth the price rules for firms engaged in the production and sale of covered products including crude petroleum, certain refined petroleum products, liquid petroleum gas, and other

natural gas liquids, and the leasing of real property used in the retailing of gasoline, effective 11:59 p.m., e.s.t. January 14, 1974.

(b) The price rules of the Economic Stabilization Program, Title 6 of the Code of Federal Regulations remain effective until 11:59 p.m., e.s.t. January 14, 1973 with respect to sales of covered products and the leasing of real property used in the retailing of gasoline.

(c) Price renegotiation provisions in price or rent contracts which depend for their operation upon the modification or termination of the Economic Stabilization Program, were previously declared to be inoperative as unreasonably inconsistent with the goals of the Economic Stabilization Program. Such renegotiation provisions continue to be inoperative as unreasonably inconsistent with the goals of both the Economic Stabilization Program and the Federal Energy Office. This part shall not operate to permit:

(1) A retroactive increase in prices or rents for goods or services sold or leased while those prices or rents were subject to past or present provisions of 6 CFR, or

(2) A prospective increase in prices or rents under the terms of a contract subject to a decision and order issued at any time pursuant to Title 6, except to the extent consistent with such decision and order.

(d) Any report required to be filed with the Cost of Living Council under 6 CFR, or any rule, order or regulation of the Council in effect on January 14, 1973 for any reporting period which ended on or before that date and which was not filed by that date, shall be filed with the Cost of Living Council in the form and within the time in which it would have been filed pursuant to Title 6. Forms required to be completed and placed among the records of a firm on a quarterly basis pursuant to Title 6 for any quarter which ended prior to January 14, 1974, shall be completed and filed among the firm's records in the form and within the time in which it would have been required to be so filed pursuant to Title 6.

§ 212.2 Applicability.

This part applies to each sale, lease or purchase of a covered product in the United States, and leases of real property used in the retailing of gasoline.

§ 212.3 Adjusted base period profit margins.

Any firm which has been authorized to adjust its base period profit margin pursuant to an exception granted under the authority of the Economic Stabilization Program prior to January 15, 1974 may continue to calculate its base period profit margin pursuant to that exception notwithstanding any other provision of this part.

§ 212.10 General rules.

(a) No firm (including an individual) may charge a price with respect to any sale or lease of an item after January 15, 1973 which exceeds the price permitted under this part for that item.

(b) No firm (including an individual) may knowingly pay a price with respect to any sale or lease of an item which exceeds the price permitted under this part, for that item. However this paragraph does not apply to the sale or lease of an item to any firm (including any individual) under circumstances of economic or other coercion in which the buyer or lessee, because of his need for that property or service, had no reasonable alternative but to pay the illegal price, and he reports the sale or lease to the Federal Energy Office for investigation promptly.

§ 212.11 Profit margin limitation.

(a) *Scope.* A firm shall compute a single profit margin for all of its manufacturing, service, retailing and wholesaling activities except where particular regulations under Title 6 of the Code of Federal Regulations require separate computation of a profit margin. For the purposes of this section, a firm is either (1) a parent and its consolidated entities or (2) an unconsolidated entity.

(b) *Applicability.* This section applies to all activities of a firm, including manufacturing, service, retailing and wholesaling, except those activities subject to particular regulations under Title 6 which require computation of a separate profit margin.

(c) *General rule.* Except as otherwise provided by this part, a firm which charges a price for any item in excess of the base price for that item may not, for the fiscal year in which the price increase is charged, exceed its base period profit margin.

Subpart B—Definitions

§ 212.31 Definitions.

For purposes of this part—

"Aviation turbine fuels" means aviation fuels, Jet A, Jet A–1 and Jet B as defined in American Society for Testing and Materials (ASTM) D1655–71.

"Base period" means any two, at the option of the firm concerned, of the firm's fiscal years ending after August 15, 1968 except a fiscal year for which compliance is being measured. However, a firm which was authorized under the provisions of 6 CFR 130.110 in effect on August 12, 1973, to include in its base period a fiscal year which ended before August 15, 1968, may continue to include that fiscal year in its base period.

"Base period profit margin" means the ratio that the base period operating income (net sales less cost of goods sold and less normal and generally recurring costs of business operations including interest expense on long and short term debt determined before nonoperating items, extraordinary items, and income taxes) bears to the base period net sales as those net sales were reported on the firm's financial statement, or its financial statement as restated pursuant to Subpart J prepared in accordance with generally accepted accounting principles consistently applied. For purposes of computing a base period profit margin, revenues and costs of items and sales exempt pursuant to 6 CFR 150.52, 150.53 (b), 150.54(d) (3) and (4), 150.56, revenues and costs attributable to insurance transactions subject to Subpart M of Part 150 of Title 6 of the Code of Federal Regulations and revenues not included in annual sales or revenues as defined in this section shall be excluded. If a firm uses for its base period, a fiscal year ending after August 15, 1971 and prior to January 11, 1973, for which the firm exceeded a profit margin limitation imposed pursuant to the provisions of Part 300 of Title 6, in effect on January 10, 1973, it shall reduce its operating income for that fiscal year to the level of operating income it would have obtained for that fiscal year had it been in compliance with that Part 300 profit margin restraints.

"Base price" means the base price determined pursuant to § 212.82 or in the case of a new product § 212.111.

"Ceiling price" means the ceiling price determined pursuant to § 212.73 with respect to domestic crude petroleum.

"Class of purchaser" means purchasers or lessees to whom a person has charged a comparable price for comparable property or service pursuant to customary price differentials between those purchasers or lessees and other purchasers or lessees.

"Covered product" means a product described in the 1972 edition, Standard Industrial Classification Manual, Industry Code 1311 (except natural gas), 1321, or 2911.

"Domestic crude petroleum" means a crude petroleum produced in the United States or from the "outer continental shelf" as defined in 43 U.S.C. 1331.

"Customary price differential" includes a price distinction based on a discount, allowance, add-on, premium, and an extra based on a difference in volume, grade, quality, or location or type of purchaser, or a term or condition of sale or delivery.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The FEO may, in regulations and forms issued in this part, treat as a firm: (1) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (2) a parent and its consolidated entities, (3) an unconsolidated entity, or (4) any part of a firm.

"Fiscal quarter" means the fiscal quarter of the firm to which a regulation containing the term applies.

"Fiscal year" means the fiscal year of the firm to which a regulation containing the term applies. It is a consecutive 12-month period constituting an accounting year.

"Gasoline" means any of the various grades of retail gasoline other than aviation gasoline.

"Item" means a product or service unit sold, leased or offered for sale or lease to a class of purchaser.

"Kerosene" means the lighting or burning grade of kerosene.

"Manufacturing" means the trade or business of making, fabricating, or assembling a product or commodity by manual labor or machinery for sale and also includes the mining of natural deposits, the production or refining of oil from wells, and the refining of ores.

"Nonprofit organization" or one which is "not operated for profit" is a firm which is defined as a nonprofit organization in section 501(c) and is exempt under section 501(a) of the Internal Revenue Code of 1954, as amended.

"No. 1 heating oil" means heating oil grade No. 1 as defined in American Society for Testing and Materials (ASTM) D396–71.

"No. 1–D diesel fuel" means diesel fuel grade No. 1 as defined in American Society for Testing and Materials (ASTM) D975–71.

"No. 2 heating oil" means heating oil grade No. 2 as defined in American Society for Testing and Materials (ASTM) D396–71.

"No. 2–D diesel fuel" means diesel fuel grade No. 2 defined in American Society for Testing and Materials (ASTM) D975–71.

"No. 4 fuel oil" means fuel oil grade No. 4 as defined in American Society for Testing and Materials (ASTM) D396–71.

"No. 4–D diesel fuel" means diesel fuel grade No. 4 as defined in American Society for Testing and Materials (ASTM) D975–71.

"Parent" means a firm which is not directly or indirectly controlled by another firm.

"Parent and its consolidated entities," means a parent and those firms, if any, directly or indirectly controlled by the parent which are consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An individual shall be deemed to control a firm which is directly or indirectly controlled by him or by his father, mother, spouse, children or grandchildren.

"Petrochemical feedstock" means petrochemical feedstock as defined in § 211.183 of this chapter.

"Posted price" means a written statement of crude petroleum prices circulated publicly among sellers and buyers of crude petroleum in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field.

"Prenotification" means notice submitted to the Federal Energy Office pursuant to the provisions of Subpart I of this part.

"Price" means any consideration for the sale or lease of any property or services and includes rent, commissions, dues, fees, margins, rates, charges, tariffs, fares, or premiums, regardless of form.

"Price adjustment" means the weighted average of all price increases and price decreases within a product line or service line.

"Price increase" means an increase in the unit price of an item or a decrease in the quality or quantity of substantially the same item.

"Producer" means a firm or that part of a firm which produces crude petroleum or any firm which owns crude petroleum when it is produced.

"Product" means a unit of personal property offered for sale to another person.

"Product line" means (a) a product or (b) an aggregation of products categorized by a four-digit Standard Industrial Classification (SIC) code if that is the customary pricing unit (e.g., cost or profit center) with respect to that aggregation of products. An aggregation of products which includes more than one four-digit SIC code or an aggregation of products of less than one four-digit SIC code may be used provided the level of aggregation reflects the entity's customary pricing unit (e.g., cost or profit center) with respect to that level of aggregation chosen.

"Profit margin" means the ratio that operating income (net sales less cost of goods sold and less normal and generally recurring costs of business operations, interest expense on long and short term debt determined before non-operating items, extraordinary items, and income taxes) bears to net sales as reported on the firm's financial statement or its financial statement as restated pursuant to Subpart J prepared in accordance with generally accepted accounting principles consistently applied. For purposes of computing a profit margin revenues and costs of items and sales exempt pursuant to 6 CFR 150.52, 150.53(b), 150.-54(d)(3) and (4) and 150.56 and revenues and costs attributable to insurance transactions subject to the provisions of Subpart M of 6 CFR Part 150 shall be excluded.

"Refiner" means a firm (other than a reseller or retailer) or that part of such a firm which refines covered products or blends and substantially changes covered products, or refines liquid hydrocarbons from oil and gas field gases, or recovers liquefied petroleum gases incident to petroleum refining and sells those products to resellers, retailers, reseller-retailers or ultimate consumers. "Refiner" includes any owner of covered products which contracts to have those covered products refined and then sells the refined covered products to resellers, retailers, reseller-retailers or ultimate consumers.

"Rent" means any price for the use of personal property of any description, including any charge no matter how identified in a lease or other agreement, for the use of any property or for any service in connection with the use of leased property.

"Reseller" means a firm (other than a refiner or retailer) or that part of such a firm which carries on the trade or business of purchasing covered products, and reselling them without substantially changing their form to purchasers other than ultimate consumers.

"Reseller-retailer" means a firm (other than a refiner) or that part of such a firm which carries on the functions of both a reseller and retailer.

"Retail sales" means sales of covered products to ultimate consumers.

"Retailer" means a firm (other than a refiner or reseller) or that part of such a firm which carries on the trade or business of purchasing covered products and reselling them to ultimate consumers without substantially changing their form.

"Service" includes any work or activities performed by a firm for a person, other than in an employment relationship, and also includes professional work or activities of any kind and work or activities performed by membership organizations for which dues are charged, and the leasing or licensing of property to another person.

"Service activities" means the trade or business of selling or making available services, including professional service organizations, non-profit organizations, governments, and government agencies or instrumentalities which carry on those activities.

"Service line" means (a) a service, or (b) an aggregation of services categorized by a four-digit Standard Industrial Classification (SIC) code if that is the customary pricing unit (e.g., cost or profit center) with respect to that aggregation of services. An aggregation of services which includes more than one four-digit SIC code or an aggregation of services less than one four-digit SIC code may be used provided the level of aggregation reflects the entity's customary pricing unit (e.g., cost or profit center) with respect to that level of aggregation chosen.

"Special products" means gasoline, No. 2 heating oil and No. 2–D diesel fuel.

"State and local governments" means the several States, the District of Columbia, and the territories and possessions of the United States other than the Panama Canal Zone, a municipality or other political subdivision, authority, commission, board, district, public corporation or other agency or instrumentality of the several States, the District of Columbia, and the territories and possessions of the United States other than the Panama Canal Zone and any board, commission, agency or other instrumentality of a local government.

"Transaction" means an arms-length sale or lease between unrelated persons which are not members of a controlled group (as defined in 26 U.S.C. 1563(a)) and is considered to occur at the time and place when a binding contract is entered into between the parties.

"Unconsolidated entity" means a firm directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An unconsolidated entity includes any firm consolidated with the unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles. An

individual shall be deemed to control a firm which is directly or indirectly controlled by him or by his father, mother, spouse, children or grandchildren.

"Unrelated person" means a person other than a person described in section 267(b) of the Internal Revenue Code of 1954, as amended.

Subpart C—Exemptions

§ 212.51 General.

Price adjustments with regard to the items and sales described in this subpart are exempt from the price rules prescribed in this part. However, revenues received from the sale of exempt items or from exempt sales are included in a firm's annual sales or revenues, as defined in § 212.31 for all purposes including determinations of price category classification and except as provided in Subpart B for purpose of computing profit margin.

§ 212.52 Federal and State and local governments.

(a) *Federal.* Prices charged for any sale, lease or lease-sale of a covered product by any Federal department, agency or other instrumentality including any wholly owned Government corporations as defined in the Government Corporation Control Act of 1945, as amended are exempt.

(b) *State and local governments.* Prices charged for any sale, lease or lease-sale of a covered product by State and local governments are exempt.

§ 212.53 Exports and Imports.

(a) The prices charged for export sales of covered products including sales to a domestic purchaser which certifies the product is for export are exempt.

(b) The prices charged for imports, but only the first sale into U.S. Commerce are exempt.

§ 212.54 Crude Petroleum.

The price charged for the first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from any stripper well lease as defined in Part 210 of this chapter is exempt.

Subpart D—Producers of Crude Petroleum

§ 212.71 Applicability.

This subpart applies to the first sale of domestic crude petroleum.

§ 212.72 Definitions.

"Base production control level" for a particular month for a particular property means:

(1) if crude petroleum was produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in the same month of 1972;

(2) if domestic crude petroleum was not produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in 1972 divided by 12.

"Property" is the right which arises from a lease or from a fee interest to produce domestic crude petroleum.

"New crude petroleum" means the total number of barrels of domestic crude petroleum produced and sold from a property in a specific month less the base production control level for that property.

§ 212.73 Ceiling price rule.

(a) *Rule.* Except as provided in section 212.74, no producer may charge a price higher than the ceiling price for the first sale of domestic crude petroleum.

(b) *Ceiling price determination.* The ceiling price for a particular grade of domestic crude petroleum in a particular field is the sum of (1) the highest posted price at 6 a.m., local time, May 15, 1973, for that grade of crude petroleum at that field, or if there are no posted prices in that field, the related price for that grade of domestic crude petroleum which is most similar in kind and quality at the nearest field for which prices are posted; and (2) a maximum of $1.35 per barrel.

§ 212.74 Special release rule.

(a) Notwithstanding the provisions of § 212.73(a), a producer of new crude petroleum produced and sold from a property may in the month produced, beginning with the month of September 1973, or in any subsequent month, sell that new crude petroleum without respect to the ceiling price. However, if the amount of crude petroleum produced and sold in any month subsequent to the first month in which new crude petroleum was produced and sold, is less than the base production control level for that property for that month, any new crude petroleum produced from that property during any subsequent month may not be sold pursuant to this paragraph until an amount of the new crude petroleum equal to the difference between the amount of crude petroleum actually produced from that property during the earlier month and the base production control level for that property for the earlier month has been sold at or below its ceiling price.

(b) Released crude. Notwithstanding paragraph (a) of this section, if during a particular month new crude petroleum which could be sold at other than the ceiling price pursuant to paragraph (a) of this section is produced from a property, the entire base production control level crude petroleum for that month may be sold at a price which exceeds the ceiling price: *Provided,* That the maximum price charged per barrel of that base production control level crude petroleum does not exceed the lesser of (1) the current free market price for the particular quality or grade of crude petroleum or (2) the price derived pursuant to the following:

$$P_{max}=P_c+\left\{\frac{C_{pr}}{C_{bpcl}}-1\right\}\{P_m-P_c\}$$

Where:

P_{max} = Maximum price that may be charged for the crude petroleum (other than new crude) purchased from the property (dollars per barrel);

P_c = Ceiling price of the crude petroleum (dollars per barrel);

C_{bpcl} = Base production control level for property (barrels);

C_{pr} = Total amount of crude petroleum produced from the property during the month (barrels); and

P_m = Current free market price of the particular quality and grade of crude petroleum (dollars per barrel).

Application of this formula may be illustrated by the following example:

Example. During September 1973, Firm X produces 8,170 barrels of a single grade of crude petroleum from a particular property. During September 1972, 6,420 barrels of crude petroleum were produced from the same property. The ceiling price for the September 1973 crude petroleum is $4.10 per barrel, and its free market price (i.e., the price X can get on the market for the 1,750 barrels of new crude) is $4.95 per barrel. The maximum price that X may charge for the 6,420 barrels of other than new crude petroleum (i.e., old plus released crude) produced in September 1973 is:

P max=$4.10+(8,170/6,420−1) ($4.95−$4.10)
P max=$4.10+(.27) ($0.85)
P max=$4.10+$0.23
P max=$4.33/barrel.

(c) Certification. Each producer of domestic crude petroleum which charges a price above the ceiling price pursuant to the provisions of this section must, with respect to each sale of domestic crude petroleum, certify in writing to the purchaser: (1) the ceiling price of domestic crude petroleum, (2) the amount of the new crude petroleum and (3) the amount of the base production control level crude petroleum. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than permitted pursuant to this subpart.

Subpart E—Refiners

§ 212.81 Applicability.

Except as provided in Subpart F, this subpart applies to each sale of a covered product which is purchased or refined by a refiner.

§ 212.82 Price rule.

(a) *Rule.* A refiner may not charge to any class of purchaser a price in excess of the base price of that covered product except to the extent permitted pursuant to the provisions of paragraphs (c) through (k) of this section.

(b) *Price increases.* (1) A price in excess of the base price of an item in a product line may be charged only to recover on a dollar-for-dollar basis those net increases in allowable costs that have been incurred with respect to the prod-

uct line since the period for determining base cost and which the refiner continues to incur.

(2) For the purpose of determining whether net allowable costs have been incurred which permit the charging of a price in excess of the base price, base costs shall be compared with current costs. Current costs which exceed base costs may be used to justify a price in excess of the base price. "Allowable costs" under this section mean non-product costs attributable to refining operations under the customary accounting procedures generally accepted and historically and consistently applied by the firm concerned and exclude any costs attributable to marketing operations other than non-product costs attributable to the marketing of special products which may be included as allowable costs under this section to the extent that these costs allow an increase in the prices of special products above base prices by an amount not in excess of one cent per gallon with respect to retail sales and one half cent per gallon with respect to all other sales.

(c) *Application of price increases.* (1) A firm may not increase prices above base prices pursuant to this section until it complies with the prenotification requirements of Subpart I of this part.

(2) A firm which is authorized to charge a prenotified percentage price increase pursuant to Subpart of this part with respect to a product line by virtue of cost justification determined in accordance with this section, shall apply that percentage price increase in the following manner: (i) A refiner may charge a price in excess of the base price of a special product which reflects that part of the total allowable percentage price increase with respect to the product line allocable to sales of that special product provided that (*a*) the amount of the increase above the base price is calculated by use of the formula in paragraph (c) (3) (i) of this section; (*b*) the amount of increased costs allocable to that special product is equally applied to each class of purchasers; and (*c*) the increase above the base prices may not be implemented more than once in any calendar month and must be implemented on the same date that increased product costs are added to May 15, 1973 selling prices to compute base prices pursuant to paragraph (f) of this section.

(ii) A refiner may charge a price in excess of the base price of its covered products other than special products which reflects that part of the total allowable percentage price increase with respect to the product line allocable to sales of those products or sales of special products not otherwise allocated pursuant to paragraph (c) (2) (i) of this section provided that (a) the amount of increase above the base price is calculated by use of the formula in paragraph (c) (3) (ii) of this section and (b) the amount of increased costs allocated to a covered product other than a special product is equally applied to each class of purchaser.

(3) *General formulae.* (i) For special products (i—1 and i—2):

$$d_i^e = \frac{S_i^e F}{V_i^e}$$

(ii) For covered products other than special products (i=3);

$$D_i^e = S_i^e F$$

Where; for (i) and (ii):

d_i^e = The dollar amount that may be added to each base price of the special product or products of the type "*i*" in the period "*e*" (the consecutive twelve-month period). The formula for special products must be computed separately for $i=1$ (No. 2 heating oil and No. 2–D diesel fuel) and $i=2$ (gasoline).

D_i^e = The total dollar amount a refiner may add in the period "*e*" (the consecutive twelve month period) to base prices of covered products of the type "*i*" in whatever amount it deems appropriate to each particular covered product other than a special product. The formula for covered products other than special products will only be computed for $i=3$ (all covered products other than special products and crude petroleum).

V_i^e = Estimated volume or quantity of sales of a specific covered product of the type "*i*" in the period "*e*" (the consecutive twelve-month period).

S_i^e = Estimated total revenues from sales for the period "*e*" (the consecutive twelve-month period), of a specific covered product or products of the type "*i*" at May 15, 1973 price levels.

F = The percentage of cost-justification entered for all covered products under column (f), item 24, Part VI of CLC Form 22.

The time period for measurement is referenced by the superscript e:

e = The consecutive twelve-month period for which the cost-justification is proposed, commencing the first day following the accounting month most recently ended prior to the date of signing the prenotification CLC Form 22.

The type of covered product is referenced by the subscript i:

$i=1$ represents No. 2 heating oil and No. 2–D diesel fuel.

$i=2$ represents gasoline.

$i=3$ represents all covered products other than special products and crude petroleum.

(d) *Price reductions.* A price charged in excess of the base price may continue to be charged only as long as the net increases in allowable costs which support that price in excess of the base price continue to be incurred. Price reductions shall be made whenever and to the extent necessary to assure that, for any fiscal quarter, the weighted average of all price increases and price decreases in a product line does not exceed the percentage of cost justification for that line.

(e) *Productivity gains.* (1) Increases in allowable costs shall be reduced to reflect productivity gains. For the purpose of determining whether a price may be charged above a base price pursuant to this section, productivity gains shall be calculated on the basis of the average percentage gain in the applicable industrial category, as set forth in the table in § 212.85. To the extent provided in the table in § 212.85 productivity gains shall be taken into account in the calculation of all price increases during any fiscal year but only until the full productivity offset, derived from the table and calculated under paragraph (e) (2) of this section, has been used within that fiscal year.

(2) For the purpose of determining the extent to which a price increase is justified, each refiner shall calculate the sum of all of its labor costs (of the type required to be included as costs in reporting and prenotification forms issued pursuant to Subpart I of this part) as a percentage of sales for the product line concerned, and shall multiply that percentage by the average annual rate of productivity gain for the applicable industrial category, as set forth in the table in § 212.85. The result is the productivity gain, stated as a percentage, by which the total cost increase must be reduced in order to be an allowable cost for the purposes of a price increase under this section.

(3) If the product line concerned extends to more than one industrial category, the average percentage gain in productivity in each category must be weighted in proportion to the ratio which its estimated sales in each industrial category for the most recently completed fiscal quarter bears to the total sales of that product line for that quarter.

(f) *Base price*—(1) *General rule.* (i) The base price for sales of an item by a refiner is the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, plus (*a*) increased product costs incurred between the month of measurement and the month of May 1973 and measured pursuant to the provisions of § 212.83 and (*b*) the refiner incentive factor calculated and permitted pursuant to the provisions of § 212.84. In computing the base price, a firm may not exclude any temporary special sale, deal or allowance in effect on May 15, 1973.

(ii) Notwithstanding the general rule in paragraph (f) (1) (i) of this section, in computing the base price for No. 1 heating oil, No. 4 fuel oil, Nos. 1–D and 4–D diesel fuel, kerosene and aviation turbine fuels, a refiner may, beginning with the month of January 1974, use adjusted May 15, 1973 selling prices. The adjusted May 15, 1973 price for No. 1 heating oil, No. 4 fuel oil, Nos. 1–D and 4–D diesel fuel, kerosene, and aviation turbine fuels, to each class of purchaser, is 2 cents plus the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973.

(iii) Notwithstanding the general rule in paragraph (f) (1) (i) of this section, with respect to an allocation sale made pursuant to § 211.186 of this chapter, the base price of petrochemical feedstock is 115 percent of the price calculated pursuant to paragraph (f) (1) (i) provided that in calculation, of the increased

product costs for petrochemicals in § 212.83, the refiner uses the formula for special products, § 212.83(c)(2)(i).

(2) *Special products.* (i) Notwithstanding the general rule in paragraph (f)(1) of this section, in computing the base price for special products for each month beginning with January 1974, a refiner may use adjusted May 15, 1973 selling prices for No. 2 heating oil and No. 2–D diesel fuel, and must use adjusted May 15, 1973 selling prices for gasoline. In computing base prices for special products, a refiner may not increase its May 15, 1973 selling price to each class of purchaser more than once in any calendar month to reflect the increased product costs allowable pursuant to the provisions of § 212.83 the adjustment specified in paragraph (f)(2)(ii) of this section, or the incentive factor permitted pursuant to § 212.84 but may implement the increase on any day during that month.

(ii) The adjusted May 15, 1973 selling price for No. 2–D diesel fuel and No. 2 heating oil to each class of purchaser is 2 cents plus the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973. The adjusted May 15, 1973 selling price for gasoline to each class of purchaser is the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973 less the adjustment differential. The adjustment differential is computed by use of the following formula:

$$x = \frac{\$.02y}{z}$$

Where

x = The adjustment differential; that amount which must be deducted from the weighted average unit price at which each item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973.

y = The total number of units of Nos. 1 and 2 heating oil, No. 4 fuel oil, Nos. 1–D, 2–D and 4–D diesel fuel, kerosene and aviation turbine fuel domestically produced by the refiner in May 1973.

z = The total number of units of gasoline domestically produced by the refiner in May 1973.

(3) *Imputed prices.* If no transaction occurred with respect to a particular product on May 15, 1973, the most recent day preceding May 15, 1973 when a transaction occurred shall be used for purposes of computing the base price. If a refiner first offered an item for sale after May 15, 1973 and prior to the effective date of this paragraph, the first day when the item was offered for sale shall be used for purposes of computing the base price.

(g) *Base cost*—(1) *Base costs.* Base costs are the net allowable costs incurred with respect to the product line concerned and are calculated as follows:

(i) *Input costs.* The base cost with respect to costs of labor, crude petroleum and other input costs is the rate at which those costs were being incurred on May 15, 1973. If no input costs were incurred on that day, the base cost is the rate at which those costs were being incurred on the next day preceding May 15, 1973 on which input costs were incurred.

(ii) *All other costs.* The base cost with respect to all costs other than input costs is the rate at which those costs were being incurred on May 15, 1973. However, if the base cost with respect to any costs other than an input cost cannot reasonably be determined by the method prescribed in the preceding sentence, that base cost is the average cost incurred throughout the last fiscal quarter which ended before May 15, 1973, in which costs were incurred with respect to the product line concerned as calculated in accordance with forms and instructions issued by the Federal Energy Office.

(2) *New items.* The base cost with respect to input costs for each new item, as defined in accordance with Subpart H, is calculated as of the date on which the new item concerned was first sold or leased in arms-length trading between unrelated persons. The base cost with respect to all other costs which cannot be calculated on the first day of sale is the average cost incurred throughout the fiscal quarter in which the new item concerned was first sold or leased in arms-length trading between unrelated persons.

(h) *Current cost*—(1) *Current costs.* Current costs are the net allowable costs incurred during the current cost period with respect to the item concerned excluding increased product costs incurred after May 15, 1973 and measured pursuant to § 212.83.

(2) *Input costs.* The current cost with respect to costs of labor, crude petroleum and other input costs is the rate at which those costs were being incurred on the last full day of business in the current cost period.

(3) *All other costs.* The current cost with respect to all costs other than input costs is the rate at which those costs were being incurred on the last full day of business in the current cost period. However, if the current cost with respect to all costs other than input costs cannot reasonably be determined by the method prescribed in the preceding sentence, that current cost is the average cost incurred throughout the current cost period with respect to those costs as calculated in accordance with forms and instructions issued by the Federal Energy Office.

(4) *Current cost period.* The current cost period is the last accounting month preceding the date of signature of the prenotification document submitted in accordance with Subpart I of this part except that with respect to input and other costs which may be calculated as of a date certain, the rate at which these costs are incurred on the day which is the date of signature of the prenotification document may be considered the rate on the last full day of the current cost period.

(i) *Profit margin limitation.* A refiner which charges a price for any item in excess of the base price for that item in any fiscal year may not for the fiscal year in which the price increase is charged, exceed its base period profit margin as defined in § 212.31.

(j) *Certification.* Each refiner of gasoline must, with respect to each sale of gasoline other than a retail sale, certify in writing to the purchaser the octane number of the gasoline sold.

§ 212.83 Allocation of refiner's increased product costs.

(a) *Scope.* Except as provided in Subpart F this section prescribes the requirements governing the inclusion of a refiner's increased product costs in the computation of its base price pursuant to § 212.82(f) for covered products.

(b) *Definitions.* For purposes of this section—

"Cost of crude petroleum" means (1) For purposes of domestic crude petroleum, (a) in arms-length transactions, the purchase price provided that with respect to sales of crude petroleum subject to subpart L, it conforms with the requirements of that subpart; (b) in a transaction between affiliated entities, the posted price for the new crude petroleum and petroleum produce from stripper wells the first sale of which is exempt pursuant to § 212.54 and the posted price or price determined pursuant to § 212.74(b) for base production control level crude petroleum. If there is no posted price in a particular field, the related price for that grade of new domestic crude petroleum and petroleum produced from stripper wells which is most similar in kind and quality at the nearest field for which the price is posted and the price determined pursuant to § 212.74(b) for base production control level crude petroleum. Cost of crude petroleum also includes the cost of unfinished oils and natural gas liquids which are used in refining and are further refined, and which are covered products. The cost of domestic crude petroleum, unfinished oils and natural gas liquids includes transportation costs. (2) For purposes of imported crude petroleum, the lended cost.

"Cost of petroleum product" means (1) For purposes of domestic petroleum products other than crude petroleum, the purchase price including transportation costs. (2) For purposes of imported petroleum products other than crude petroleum, the landed cost.

"Firm" means a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

"Increased product costs" means the sum of (1) the difference between the total cost of crude petroleum during the month of measurement and the total cost of crude petroleum during the month of May, 1973 plus (2) the difference between the total cost of petroleum product during the month of measurement and the total cost of petroleum product during the month of May, 1973. If a particular petroleum product was neither purchased nor landed during the month of May 1973, the cost of that petroleum product in May 1973 shall be

imputed to be the lowest price at or above which at least 10% of that product was priced by the refiner in transactions during the month of May 1973.

"Landed cost" means: (1) For purposes of complete arms-length transactions, the purchase price at the point of origin plus the actual transportation cost. (2) For purposes of products purchased in arms-length transactions and shipped pursuant to a transaction between affiliated entities, the purchase price at the point of origin plus the transportation cost computed by use of the accounting procedures generally accepted and consistently and historically applied by the firm concerned. (3) For purposes of products purchased in a transaction between affiliated entities and shipped pursuant to an arms-length transaction, the cost of the product computed by use of the customary accounting procedures generally accepted and consistency and historically applied by the firm concerned plus the actual transportation cost. (4) For purposes of products purchased and shipped pursuant to a transaction between affiliated entities, the costs of the product and the transportation both computed by use of the customary accounting procedures generally accepted and consistently and historically applied by the firm concerned.

"Transactions between affiliated entities" means all transactions between entities which are part of the same firm and transactions with entities in which the firm has a beneficial interest to the extent of entitlement of covered product by reason of the beneficial interest.

(c) *Allocation of increased-costs*—(1) *General rule*—(i) *Special products.* In computing base prices for sales of a special product, a refiner may increase its May 15, 1973 selling prices to each class of purchaser once each calendar month beginning with November 1973 by an amount to reflect the increased product costs attributable to sales of that special product using the differential between the month of measurement and the month of May, 1973 provided that the amount of increased costs used in computing a base price is calculated by use of the general formula set forth in paragraph (c)(2)(i) of this section. To the extent that a refiner does not allocate its increased product cost for a special product pursuant to this provision, it may include that part of its increased product costs attributable to sales of that special product in computing its base prices for covered products other than special products pursuant to paragraph (c)(1)(ii) of this section.

(ii) *Other than special products.* In computing base prices for a covered product other than a special product, a refiner may increase its May 15, 1973 selling price to each class of purchaser each month beginning with November 1973 by an amount to reflect the increased product costs attributable to sales of covered products other than special products or sales of special products not otherwise allocated pursuant to paragraph (c)(1)(i) of this section using the differential between the month of measurement and the month of May, 1973, provided that the amount of increased costs used in computing a base price is calculated by use of the general formula set forth in paragraph (c)(2)(ii) of this section and provide that the amount of increased product costs included in computing base prices of a particular covered product other than a special product must be equally applied to each class of purchaser. In apportioning any amount of increased product costs to covered products other than special products, a refiner may apportion the total amount of increased product costs to a particular covered product other than a special product in whatever amount he deems appropriate.

(2) *General formulae.* (i) For special products ($i=1$ and $i=2$):

$$d_i{}^u = \frac{A^t\left(\frac{V_i{}^n}{V^n}\right) + B_i{}^t + G_i{}^t - H_i{}^u}{V_i{}^u}$$

(ii) For covered products other than special products (i=3):

$$D_i{}^u = A^t\left(\frac{V_i{}^n}{V^n}\right) + B_i{}^t + G_i{}^t + H^u$$

Where; for (i) and (ii):

$d_i{}^u$ = The dollar increase that may be applied in the period "u" (the current month) to the May 15, 1973 selling price of the special product or products of the type "i" to each class of purchaser to compute the base price to each class of purchaser. The formula for special products must be computed separately for $i=1$ (No. 2 heating oil and No. 2-D diesel fuel) and for $i=2$ (gasoline).

$D_i{}^u$ = The total dollar amount a refiner may apportion in the period "u" (the current month) to covered products of the type "i" in whatever amounts it deems appropriate to each particular covered product other than a special product. The formula for covered products other than special products will only be computed for $i=3$ (all covered products other than a special product and crude petroleum).

V^n = The total volume of all covered products sold in the period "n" (the consecutive three-month period of the preceding year such that the middle month of the period corresponds to the current month "u").

$V_i{}^n$ = The total volume of a specific covered product or products of the type "i" sold in the period "n" (the consecutive three-month period of the preceding year such that the middle month of the period corresponds to the current month "u").

$V_i{}^u$ = The volume or quantity of a product or products of the type "i" estimated to be sold in the period "u" (the current month).

$$A^t = Q^t\left(\frac{C^t}{Q^t} - \frac{C^o}{Q^o}\right)$$

Which is the total increased cost of crude petroleum purchased or landed in the period "t" (the month of measurement).

Where:

Q^t = The total quantity or volume of crude petroleum purchased in the period "t" (the month of measurement). For imported crude petroleum, the quantity or volume landed in the period "t" (the month of measurement).

Q^o = The total quantity or volume of crude petroleum purchased in the period "o" (the month of May 1973). For imported crude petroleum, the quantity or volume landed in

C^o = The total cost of crude petroleum purchased or landed in the period "o" (the month of May 1973).

C^t = The total cost of crude petroleum purchased or landed in the period "t" (the month of measurement).

$$B_i{}^t = c_i{}^t - c_i{}^o - Y_i(q_i{}^t - q_i{}^o)$$

Which is the total increased cost of a specific covered product or products of the type "i" purchased or landed in the period "t" (the month of measurement).

Where:

$c_i{}^o$ = The total cost of a covered product or products of the type "i" purchased in the period "o" (the month of May 1973). For imported products, the cost of products of the type "i" landed in the period "o" (the month of May 1973).

$c_i{}^t$ = The total cost of a covered product or products of the type "i" purchased in the period "t" (the month of measurement). For imported products, the cost of products of the type "i" landed in the period "t" (the month of measurement).

$q_i{}^o$ = The total quantity or volume of a covered product or products of the type "i" purchased in the period "o" (the month of May 1973). For imported products of the type "i", the total quantity or volume landed in the period "o" (the month of May 1973).

$q_i{}^t$ = The total quantity or volume of a covered product or products of the type "i" purchased in the period "t" (the month of measurement). For imported products of the type "i", the total quantity or volume landed in the period "t" (the month of measurement).

Y_i = The lowest price at or above which at least 10% of the product or products of type "i" were priced in transactions during the month of May 1973 or, if none occurred in that month, in the month next preceding May 1973 in which such transactions occurred.

Alternatively, the cost of the product or products concerned during the month of May 1973 may be used if computed by use of accounting procedures generally accepted and consistently and historically applied by the firm concerned and provided that the FEO has approved in writing of the cost figures used.

$$G_i{}^t = J_i{}^t - K_i{}^t$$

Which is the total dollar amount of increased costs of the product or products of the type "i" not recovered in sales of that product through the period "t" (the month of measurement) that have been carried forward pursuant to paragraph

(d) of this section or the total excess revenues derived from sales of the product or products of the type "i" which must be subtracted pursuant to paragraph (d) of this section.

Where:

J_i^t = The total dollar amount of increased product costs attributable to the product type "i" from August 1, 1973 through the period "t" (the month of measurement).

K_i^t = The total dollar amount of increased product costs attributable to the product type "i" and recovered by sales through the period "t" (the month of measurement) by adjusting the May 15, 1973 selling prices pursuant to the provisions of this subpart.

H_i^u = The portion of the total dollar amount available in the period "u" (the current month) for inclusion in price adjustments to special products of the type "i" which pursuant to paragraph (c)(1)(ii) of this section the refiner elects to include in prices of covered products other than special products for the period "u" (the current month).

H^u = The sum of the dollar amounts available in the period "u" (the current month) for inclusion in price adjustments to specific products which pursuant to paragraph (c)(1)(ii) of this section the refiner elects to include in calculating the base prices of covered products other than special products for the period "u" (the current month).

The type of covered product is referenced by the subscript i:

i = 1 represents No. 2 heating oil and No. 2–D diesel fuel.

i = 2 represents gasoline.

i = 3 represents all covered products other than special products and crude petroleum.

The time period for measurement is referenced in the superscript; where:

n = The consecutive three-month period of the preceding year such that the middle month of the period corresponds to the current month.

o = The month of May 1973.

t = The month of measurement. (The month of measurement is the month preceding the current month.)

u = The current month. Quantities calculated for the current month will be estimates which should be based on the best available data.

(d) *Carryover of costs.* (1) If in any month beginning with October 1973, a firm charges prices for a special product which result in the recoupment of less total revenues than the entire amount of increased product costs calculated for that product pursuant to the general formula and allowable under paragraph (c)(1)(i) of this section and that unused amount of increased costs is not used to increase May 15, 1973 selling prices pursuant to paragraph (c)(1)(ii) of this section, the amount of increased product cost not recouped may be added to the May 15, 1973 selling prices to compute the base prices for that special product for a subsequent month. The total amount allowable under paragraph (c)(1)(i) of this section may not include any amount represented by the symbol "H" in the formula in paragraph (c)(2)(i) of this section which pursuant to paragraph (c)(1)(ii) of this section the refiner has elected to include in a prior month in the calculation of the maximum permissible amount which may be used to adjust base prices of covered products other than special products. If in any month beginning with October 1973, a firm charges prices for a special product which result in the recoupment of more total revenues than the entire amount of increased product costs calculated for that product pursuant to the general formula and allowable under paragraph (c)(1)(i) of this section, the amount of excess product costs recouped must be subtracted from the May 15, 1973 selling prices to compute the base prices for that special product for the subsequent month.

(2) If, in any month beginning with October 1973, a firm charges prices for covered products other than special products which result in the recoupment of more or less total revenues than the entire amount of increased product costs calculated pursuant to the general formula and allowable under paragraph (c)(1)(ii) of this section, the excess revenues recouped must be subtracted from the May 15, 1973 selling prices and the amount of increased product costs not recouped may be added to May 15, 1973 selling prices to compute base prices for covered products other than special products in the subsequent month provided that the amount of the increased product cost not recouped and included in computing the base prices of a particular covered product other than a special product is equally applied to each class of purchaser. The total amount of increased product costs not recouped includes any amount represented by the symbol "H" in the formula in paragraph (c)(2)(ii) of this section which was available for inclusion in price adjustments to special products in a previous month and which the refiner elected pursuant to paragraph (c)(1)(ii) of this section to include in the calculation of the maximum permissible amount which may be used to calculate base prices for covered products other than special products.

(e) *Affiliated entities.* For purposes of this section, transactions between affiliated entities may be used to calculate increased product costs. Whenever a firm uses a landed cost which is computed by use of its customary accounting procedures, the FEO may allocate such costs between the affiliated entities if it determines that such allocation is necessary to reflect the actual costs of these entities or the FEO may disallow any costs which it determines to be in excess of the proper measurement of costs.

§ 212.84 Refiner's incentive factor.

(a) *Scope.* This section sets forth an incentive plan designed to increase the yield of middle distillates by allowing an increase in May 15, 1973 selling prices for middle distillates in proportion to the increase in yield of middle distillate products.

(b) *Applicability.* This section prescribes the requirements governing the inclusion of the incentive factor in a refiner's adjusted May 15, 1973 selling prices used to compute its base prices of middle distillates pursuant to § 212.82(f).

(c) *Definition.* For purposes of this section—

"Adjusted base percentage distillate yield" means the higher of either (i) the base percentage distillate yield or (ii) the ratio which the maximum economic distillate production bears to estimated crude runs to stills in the current month.

"Base percentage distillate yield" means the ratio which the total number of barrels of middle distillates produced by the refiner in December 1973, bears to the refiner's total crude runs to stills in that month and expressed as a percentage.

"Base percentage yield" means the ratio which the total number of barrels of middle distillates plus gasoline produced by the refiner in December 1973 bears to the refiner's total crude runs to stills in that month and expressed as a percentage.

"Crude runs to stills" means the total barrels of refinery input to crude oil distillation units processed by the refiner and measured in accordance with Bureau of Mines form 6–1300–M.

"Crude capacity" means the operable refinery capacity of all of the refiner's refineries for the current month, expressed in terms of the maximum number of barrels of input to crude oil distillation units than can be processed during the current month, calculated and measured in accordance with the conditions and stipulations described in Bureau of Mines form 6–1300–M.

"Current month" means the calendar month in which the adjustment to May 15, 1973 selling prices are to be applied.

"Current percentage distillate yield" means the ratio which the estimated total number of barrels of middle distillates to be produced by the refiner in the current month bears to the refiner's total estimated crude runs to stills in the current month and expressed as a percentage.

"Current percentage yield" means the ratio which the estimated total number of barrels of middle distillate plus gasoline to be produced by the refiner in the current month bears to the refiner's total estimated crude runs to stills in the current month and expressed as a percentage.

"Maximum economic distillate production" means the total number of barrels of middle distillates that would have to be produced by the refiner in the current month (without any change in the base percentage yield) in order to maximize profits using May 15, 1973 selling prices plus the increased cost allowable in the period of measurement pursuant to § 212.83, and the adjustment to May 15, 1973 selling prices pursuant to § 212.82(f).

"Middle distillates" means Nos. 1 and 2 heating oils, Nos. 1–D, 2–D and 4–D diesel fuels, No. 4 fuel oil, kerosene and aviation turbine fuel.

"Percentage of refinery capacity operated" means the ratio which estimated crude runs to stills bears to crude capacity in the current month.

"Residual fuel oil" means those fuel oils commonly known as Nos. 5 and 6 fuel oils, Bunker C and all other fuel oils which have a fifty percent boiling point over 700°F. in the ASTM D 86 standard distillation test.

(d) *Rule*—(1) *Middle distillates.* In computing base prices under § 212.82(f) for middle distillates for a particular month beginning with January, 1974, a refiner whose current percentage distillate yield exceeds the adjusted base percentage distillate yield may add to the adjusted May 15, 1973 selling prices for each middle distillate a maximum amount determined according to the matrix in paragraph (d)(2) of this section; *Provided,* That (i) the refiner's current percentage yield is not greater than its base percentage yield and that (ii) if the application of the matrix in the current month would result in an increase in total revenues, the refiner must either (*a*) implement in the current month only that part of the amount shown on the matrix which does not result in an increase in the refiner's total revenues because of the application of the matrix, or (*b*) reduce the selling price of gasoline in the current month equally to each class of purchaser to the extent necessary to assure that there is no increase in the refiner's total revenues because of the application of the matrix.

(2) *Matrix.* The matrix shown below is the table to be used in applying the price rule of paragraph (d)(1) of this section. Application of the matrix may be illustrated as follows:

Refiner R, operating at 73% of refinery capacity, produced a middle distillate yield during December 1973 of 24% of the total crude runs to stills. R's adjusted base percentage distillate yield is 27%. By January 1, 1974, R estimates an increase in production of middle distillate so that its "current percentage distillate yield" is 30%.

To determine the maximum allowable increase from the matrix which R may use in computing its base prices for January 1974, R first locates the entry corresponding to the percent of refinery capacity operated and moves across that row to the appropriate "cell" for its adjusted base percentage distillate yield. R then continues along that row horizontally, accumulating the value in each new "cell" entered until reaching the "cell" located in the column corresponding to R's current percentage distillate yield. (R does not include the value shown in the starting "cell", but does include the value shown in the ending "cell".) Using this method, R's computations are as follows:

(1) Starting at row "less than 80" under the caption "percentage of refinery capacity operated", move to "cell" at column "27" under the caption "Percentage of distillate yield on crude runs to stills;

(2) Move along that same row horizontally, accumulating the values shown:

.52¢ (or $.0052) (under column "28")
+.50¢ (or $.0050) (under column "29")
+.50¢ (or $.0050) (under column "30")

1.52¢ (or $.0152) per gallon=The maximum allowable incentive amount which R may use to compute January 1974 base prices for middle distillates.

INCENTIVE MATRIX—DISTILLATE PRODUCTION, ALLOWABLE INCREASES IN MAY 15 SELLING PRICES FOR REFINER'S DISTILLATE YIELDS

[Fraction of a cent per gallon]

Percentage of refinery capacity operated	Percentage distillate yield on crude runs to stills															
	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
0 to 80	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.52	0.52	0.52	0.52	0.52	0.52	0.52	
80 to 90	.52	.51	.51	.51	.51	.51	.50	.50	.50	.50	.50	.50	.50	.50	.50	
90 to 95	.46	.46	.46	.46	.46	.46	.46	.46	.45	.45	.45	.45	.45	.45	.45	
More than 95	.18	.21	.23	.25	.27	.28	.29	.30	.30	.31	.31	.33	.36	.36	.38	

Percentage of refinery capacity operated	Percentage distillate yield on crude runs to stills														
	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
0 to 80	0.52	0.52	0.52	0.50	0.50	0.50	0.50	0.50	0.48	0.48	0.45	0.45	0.45	0.45	0.45
80 to 90	.48	.48	.48	.48	.48	.48	.48	.45	.45	.45	.45	.45	.45	.45	.45
90 to 95	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45
More than 95	.40	.40	.40	.43	.43	.43	.43	.43	.45	.45	.45	.45	.45	.45	.45

§ 212.85 Productivity table.

AVERAGE ANNUAL RATE OF PRODUCTIVITY GAIN BY STANDARD INDUSTRIAL CLASSIFICIATION (SIC)

	SIC (1967*)	Rate (%)**
Iron ores	101	3.9
Copper ores	102	2.4
Lead and zinc ores	103	2.4
Gold and silver ores	104	2.4
Bauxite and other aluminum ores	105	2.4
Ferroalloy ores, except vanadium	106	2.4
Metal mining services	108	2.4
Miscellaneous metal ores	109	2.4
Anthracite mining	11	3.2
Bituminous coal and lignite mining	12	4.9
Oil and gas extraction	13	3.8
Nonmetallic minerals, except fuels	14	3.9
Contract construction	15, 16, 17	
Residential structures (public and private)		2.0
Nonresidential (except highways and sewers)		1.5
Highways		1.0
Sewers		1.5
Ordnance and accessories (except 1925, 1931, 1941)	19	2.4
Complete guided missiles	1925	2.9
Tank and tank components	1931	4.2
Sighting and fire control equipment	1941	4.4
Meat packing plants	2011	4.7
Sausages and other prepared meats	2013	2.1
Poultry dressing plants	2015	2.1
Creamery butter	2021	5.6
Cheese, natural and processed	2022	2.4
Condensed and evaporated milk	2023	2.5
Ice cream and frozen desserts	2024	4.2
Fluid milk	2026	3.2
Canned and cured sea foods	2031	2.8
Canned specialties	2032	3.5
Canned fruits and vegetables	2033	3.6
Dehydrated food products	2034	1.8
Pickles, sauces, salad dressings	2035	3.0
Fresh or frozen packaged fish	2036	2.9
Frozen fruits and vegetables	2037	2.6
Flour and other grain mill products	2041	4.7
Prepared feeds for animals and fowls	2042	4.6
Cereal preparations	2043	2.8
Rice milling	2044	5.9
Blended and prepared flour	2045	1.1
Wet corn milling	2046	4.6
Bread, cake and related products	2051	3.2
Cookies and crackers	2052	3.2
Raw cane sugar	2061	4.4
Cane sugar refining	2062	5.2
Beet sugar	2063	2.9
Confectionery products	2071	3.4
Chocolate and cocoa products	2072	2.5
Chewing gum	2073	3.8
Malt liquors	2082	6.2
Malt	2083	2.0
Wines, brandy, and brandy spirits	2084	2.2
Distilled liquor, except brandy	2085	6.2
Bottled and canned soft drinks	2086	4.2
Flavoring extracts and syrups, nec	2087	4.4
Cottonseed oil mills	2091	4.3
Soybean oil mills	2092	5.9
Vegetable oil mills, nec	2093	0.0
Animal and marine fats and oils	2094	6.7
Roasted coffee	2095	1.6
Shortening and cooking oils	2096	1.5
Manufactured ice	2097	1.6
Macaroni and spaghetti	2098	0.7
Food preparations, nec	2099	1.6
Cigarettes	2111	1.9
Cigars	2121	5.0
Chewing and smoking tobacco	2131	0.0
Tobacco stemming and redrying	2141	0.0
Weaving mills, cotton	2211	3.0
Weaving mills, synthetics	2221	3.5
Weaving and finishing mills, wool	2231	2.9
Narrow fabric mills	2241	2.6
Women's hosiery, except socks	2251	6.0
Hosiery, nec	2252	6.0
Knit outerwear mills	2253	2.0
Knit underwear mills	2254	2.7
Knit fabric mills	2256	6.2
Knitting mills, nec	2259	3.3
Finishing plants, cotton	2261	3.8
Finishing plants, synthetic	2262	2.6
Finishing plants, nec	2269	2.9
Woven carpets and rugs	2271	4.1
Tufted carpets and rugs	2272	6.7
Carpets and rugs, nec	2279	8.8
Yarn mills, except wool	2281	4.2
Throwing and winding mills	2282	8.6
Wool yarn mills	2283	3.5
Thread mills	2284	2.6
Felt goods, nec	2291	2.5
Lace goods	2292	3.4
Padding and upholstery filling	2293	2.6
Processed textile waste	2294	1.1
Coated fabrics, not rubberized	2295	3.6
Tire cord and fabric	2296	5.0
Scouring and combing plants	2297	2.2
Cordage and twine	2298	1.9
Textile goods, nec	2299	3.6
Men's and boys' suits and coats	2311	0.4
Men's and boys' shirts and nightwear	2321	1.8
Men's and boys' underwear	2322	3.4
Men's and boys' neckwear	2323	3.2
Men's and boys' separate trousers	2327	3.3
Men's and boys' work clothing	2328	2.1
Men's and boys' clothing, nec	2329	2.5
Women's and misses' blouses and waists	2331	2.2
Women's and misses' dresses	2335	2.9
Women's and misses' suits and coats	2337	2.1
Women's and misses' outerwear, nec	2339	2.6
Women's and children's underwear	2341	2.0
Corsets and allied garments	2342	3.5
Millinery	2351	3.1
Hats and caps, except millinery	2352	2.3
Children's dresses and blouses	2361	1.6
Children's coats and suits	2363	2.2
Children's outerwear, nec	2369	2.1
Fur goods	2371	3.3
Fabric dress and work gloves	2381	2.2
Robes and dressing gowns	2384	4.5
Waterproof outer garments	2385	4.1
Leather and sheep lined clothing	2386	1.9
Apparel belts	2387	4.8
Apparel and cacessories, nec	2389	3.7
Curtains and draperies	2391	3.2
Housefurnishings, nec	2392	1.0
Textile bags	2393	1.8
Canvas products	2394	2.0
Pleating and stitching	2395	4.4
Automotive and apparel trimmings	2396	4.4
Schiffli machine embroideries	2397	4.0
Fabricated textile products, nec	2399	3.0
Logging camps, and logging contractors	2411	3.5
Sawmills and planing mills, general	2421	3.7
Hardwood dimension and flooring	2426	0.5
Special products sawmills, nec	2429	3.2
Millwork	2431	1.6
Veneer and plywood	2432	5.2
Prefabricated wood structures	2433	1.5
Nailed wooden boxes and shook	2441	3.9

	SIC (1967*)	Rate (%)**
Wirebound boxes and crates	2442	6.9
Veneer and plywood containers	2443	5.3
Cooperage	2445	2.7
Wood preserving	2491	3.0
Wood products, nec	2499	3.2
Wood household furniture	2511	2.0
Upholstered household furniture	2512	1.5
Metal household furniture	2514	2.5
Mattresses and bedsprings	2515	2.6
Household furniture, nec	2519	1.9
Wood office furniture	2521	3.2
Metal office furniture	2522	2.5
Public building furniture	2531	2.7
Wood partitions and fixtures	2541	2.9
Metal partitions and fixtures	2542	2.9
Venetian blinds and shades	2591	2.7
Furniture and fixtures, nec	2599	2.2
Pulp mills	2611	4.5
Papermills, except building paper	2021	4.5
Paperboard mills	2631	4.5
Paper coating and glazing	2641	2.7
Envelopes	2642	3.1
Bags, except textile bags	2643	2.2
Wallpaper	2644	3.1
Die cut paper and board	2645	4.0
Pressed and molded pulp goods	2646	1.9
Sanitary paper products	2647	2.5
Converted paper products, nec	2649	2.5
Folding paper boxes	2651	3.4
Set-up paperboard boxes	2652	1.5
Corrugated and solid fiber boxes	2653	3.2
Sanitary food containers	2654	3.3
Fiber cans, drums, and related material	2655	5.3
Building paper and board mills	2661	4.5
Newspapers	2711	2.0
Periodicals	2721	3.1
Book publishing	2731	2.9
Book printing	2732	1.8
Miscellaneous publishing	2741	0.0
Commercial printing, excluding lithographic	2751	2.6
Commercial printing, lithographic	2752	2.6
Engraving and plate printing	2753	4.4
Manifold business forms	2761	4.1
Greeting card publishing	2771	2.9
Blankbooks and looseleaf binders	2782	1.4
Bookbinding and related work	2789	1.7
Typesetting	2791	1.7
Photoengraving	2793	2.3
Electrotyping and sterotyping	2794	2.2
Alkalies and chlorine	2812	4.2
Industrial gases	2813	6.4
Cyclic intermediates and crudes	2815	6.9
Inorganic pigments	2816	1.9
Industrial organic chemicals, nec	2818	6.9
Industrial inorganic chemicals, nec	2819	4.5
Plastic materials and resins	2821	6.6
Synthetic rubber	2822	2.7
Cellulosic man-made fibers	2823	5.7
Organic fibers, noncellulosic	2824	2.9
Biological products	2831	4.5
Medicinals and botanicals	2833	10.0
Pharmaceutical preparations	2834	5.8
Soap and other detergents	2841	4.8
Polishes and sanitation goods	2842	4.4
Surface active agents	2843	4.4
Toilet preparations	2844	4.9
Paints and allied products	2851	2.6
Gum and wood chemicals	2861	3.4
Fertilizers	2871	5.3
Fertilizers, mixing only	2872	5.3
Agricultural chemicals, nec	2879	6.4
Adhesives and gelatin	2891	5.8
Explosives	2892	0.3
Printing ink	2893	3.5
Carbon black	2895	6.6
Chemical preparations, nec	2899	0.9
Petroleum refining	2911	6.6
Paving mixtures and blocks	2951	4.4
Asphalt felts and coatings	2952	3.4
Lubricating oils and greases	2992	5.1
Petroleum and coal products, nec	2999	5.8
Tires and inner tubes	3011	4.8
Rubber footwear	3021	2.1
Reclaimed rubber	3031	3.9
Fabricated rubber products, nec	3069	3.2
Miscellaneous plastics products	3079	5.6
Leather tanning and finishing	3111	1.5
Industrial leather belting	3121	1.1
Footwear cut stock	3131	1.4
Shoes, except rubber	3141	0.5
House slippers	3142	0.5
Leather gloves and mittens	3151	2.3
Luggage	3161	3.0
Women's handbags and purses	3171	1.7
Personal leather goods	3172	4.2
Leather goods, nec	3199	2.7
Flat glass	3211	3.9
Glass containers	3221	2.9
Pressed and blown glass, nec	3229	2.9
Products of purchased glass	3231	2.6
Cement, hydraulic	3241	4.8
Brick and structural clay tile	3251	2.3
Ceramic wall and floor tile	3253	3.6
Clay refractories	3255	3.2
Structural clay products, nec	3259	3.7
Vitreous plumbing fixtures	3261	4.2
Vitreous china food utensils	3262	1.5
Fine earthenware food utensils	3263	0.2
Porcelain electrical supplies	3264	3.8
Pottery products, nec	3269	3.3
Concrete block and brick	3271	4.1
Concrete products, nec	3272	4.1
Ready-mixed concrete	3273	2.5
Lime	3274	2.7
Gypsum products	3275	1.9
Cut stone and stone products	3281	2.6
Abrasive products	3291	2.8
Asbestos products	3292	1.3
Gaskets and insulations	3293	3.0
Minerals, ground or treated	3295	1.4
Mineral wool	3296	4.4
Nonclay refractories	3297	4.0
Nonmetallic mineral products, nec	3299	2.5
Blast furnaces and steel mills	3312	2.7
Electrometallurgical products	3313	2.7
Steel wire and related products	3315	2.7
Cold finishing of steel shapes	3316	2.7
Steel pipe and tubes	3317	2.7
Gray iron foundries	3321	2.6
Malleable iron foundries	3322	3.3
Steel foundries	3323	2.3
Primary copper	3331	2.3
Primary lead	3332	2.3
Primary zinc	3333	2.3
Primary aluminum	3334	3.3
Primary nonferrous metals, nec	3339	0.0
Secondary nonferrous metals	3341	3.9
Copper rolling and drawing	3351	3.6
Aluminum rolling and drawing	3352	5.4
Nonferrous rolling and drawing, nec	3356	4.0
Nonferrous wire drawing and insulating	3357	3.2
Aluminum castings	3361	2.1
Brass, bronze, and copper castings	3362	2.1
Nonferrous castings, nec	3369	2.1
Iron and steel forgings	3391	4.0
Nonferrous forgings	3392	2.6
Primary metal products, nec	3399	2.9
Metal cans	3411	2.0
Cutlery	3421	4.5
Hand and edge tools, nec	3423	3.0
Hand saws and saw blades	3425	3.3
Hardware, nec	3429	3.5
Metal sanitary ware	3431	4.5
Plumbing fittings, brass goods	3432	1.3
Heating equipment except electric	3433	3.5
Fabricated structural steel	3441	2.2
Metal doors, sash and trim	3442	2.8
Fabricated plate work (boiler shops)	3443	3.3
Sheet metal work	3444	4.1
Architectural metal work	3446	4.5
Miscellaneous metal work	3449	4.5
Screw machine products	3451	0.3
Bolts, nuts, rivets and washers	3452	0.3
Metal stampings	3461	1.6
Plating and polishing	3471	1.0
Metal coating and allied services	3479	1.0
Misc. fabricated wire products	3481	2.7
Metal barrels, drums and pails	3491	0.8
Safes and vaults	3492	2.6
Steel springs	3493	2.7
Valves and pipe fittings	3494	2.1
Collapsible tubes	3496	3.8
Metal foil and leaf	3497	3.2
Fabricated pipe and fittings	3498	1.4
Fabricated metal products, nec	3499	2.4
Steam engines and turbines	3511	4.5
Internal combustion engines, nec	3519	3.1
Farm machinery	3522	2.4
Construction machinery	3531	2.4
Mining machinery	3532	2.0
Oil field machinery	3533	1.7
Elevators and moving stairways	3534	0.0
Conveyors and conveying equipment	3535	2.4
Hoists, cranes and monorails	3536	2.8
Industrial trucks and tractors	3537	3.6
Metal-cutting machine tools	3541	3.0
Metal-forming machine tools	3542	2.0
Special dies, tools, jigs, and fixtures	3544	2.3
Machine tool accessories	3545	2.6
Metal working machinery, nec	3548	1.4
Food products machinery	3551	2.3
Textile machinery	3552	3.6
Woodworking machinery	3553	2.7
Paper industries machinery	3554	2.7
Printing trades machinery	3555	2.8
Special industry machinery, nec	3559	2.7
Pumps and compressors	3561	2.6
Ball and roller bearings	3562	5.7
Blowers and fans	3564	3.6
Industrial patterns	3565	4.2
Power transmission equipment	3566	1.8
Industrial furnaces and ovens	3567	1.6
General industrial machinery, nec	3569	1.7
Typewriters	3572	7.5
Electronic computing equipment	3573	5.7
Calculating and accounting machines	3574	5.7
Scales and balances	3576	3.7
Office machines, nec	3579	2.2
Automatic merchandising machines	3581	2.2
Commercial laundry equipment	3582	3.7
Refrigeration machinery	3585	6.3
Measuring and dispensing pumps	3586	0.4
Service industry machines, nec	3589	4.8
Misc. machinery, except electrical	3599	1.5
Electric measuring instruments	3611	2.0
Transformers	3612	5.4
Switchgear and switchboard apparatus	3613	2.7
Motors and generators	3621	4.4
Industrial controls	3622	2.3
Welding apparatus	3623	3.4
Carbon and graphite products	3624	3.5
Electrical industrial apparatus, nec	3629	3.9
Household cooking equipment	3631	5.9
Household refrigerators and freezers	3632	5.9
Household laundry equipment	3633	5.9
Electric housewares and fans	3634	4.4
Household vacuum cleaners	3635	5.9
Sewing machines	3636	6.3
Household appliances, nec	3639	5.2
Electric lamps	3641	2.8
Lighting fixtures	3642	3.5
Current-carrying wiring devices	3643	3.0
Noncurrent-carrying wiring devices	3644	2.6
Radio and TV receiving sets	3651	6.2
Phonograph records	3652	0.1
Telephone and telegraph apparatus	3661	3.7
Radio and TV communication equipment	3662	3.7
Electron tubes, receiving type	3671	2.7
Cathode ray picture tubes	3672	11.7
Electron tubes, transmitting	3673	7.3
Semiconductors	3674	7.5
Electronic components, nec	3679	7.5
Storage batteries	3691	2.7
Primary batteries, dry and wet	3692	4.6
X-ray apparatus and tubes	3693	3.8
Engine electrical equipment	3694	2.9
Electrical equipment, nec	3699	2.9
Motor vehicles	3711	4.2
Passenger car bodies	3712	4.2
Truck and bus bodies	3713	4.2
Motor vehicle parts and accessories	3714	4.2
Truck trailers	3715	4.2
Aircraft	3721	4.5
Aircraft engines and engine parts	3722	2.3
Aircraft propellers and parts	3723	2.8
Aircraft equipment, nec	3729	2.8
Ship building and repairing	3731	1.3
Boat building and repairing	3732	3.0
Locomotives and parts	3741	4.3
Railroad and street cars	3742	4.3
Motorcycles, bicycles, and parts	3751	5.1
Trailer coaches	3791	2.6
Transportation equipment, nec	3799	2.4
Engineering and scientific instruments	3811	2.8
Mechanical measuring devices	3821	2.2
Automatic temperature controls	3822	1.9
Optical instruments and lenses	3831	3.8
Surgical and medical instruments	3841	3.7
Surgical appliances and supplies	3842	1.9
Dental equipment and supplies	3843	3.7
Ophthalmic goods	3851	4.9
Photographic equipment and supplies	3861	6.4
Watches and clocks	3871	4.9
Watchcases	3872	3.8
Jewelry, precious metal	3911	4.5
Jewelers' findings and materials	3912	3.9
Lapidary work	3913	3.9
Silverware and plated ware	3914	0.7
Musical instruments and parts	3931	1.5
Games and toys	3941	4.7
Dolls	3942	2.3
Children's vehicles, exc. bicycles	3943	3.7
Sporting and athletic goods, nec	3949	0.3
Pens and mechanical pencils	3951	2.9
Lead pencils and art goods	3952	2.9
Marking devices	3953	4.5
Carbon paper and inked ribbons	3955	4.3
Costume jewelry	3961	4.6
Artificial flowers	3962	5.0
Buttons	3963	3.9
Needles, pins, and fasteners	3964	4.5
Brooms and brushes	3991	2.1
Signs and advertising displays	3993	3.4
Morticians' goods	3994	3.4
Hard surface floor coverings	3996	6.2
Manufactures, nec	3999	2.8

§ 212.88 Allocated crude pricing.

(a) *Scope.* This section applies to each sale of crude oil made pursuant to the provisions of the mandatory crude allocation program described in Subpart C of Part 211 of this Chapter.

(b) *Rule.* Notwithstanding the general rules described in this subpart, the price at which crude oil shall be sold when required in Subpart C of Part 211 of this Chapter, in Districts I–IV during each

month shall be the weighted average price of such crude oil delivered to a seller for Districts I–IV, and in District V the weighted average price of such crude oil delivered to a seller for that District, plus a handling fee, equal to 6 percent of such weighted average price, plus any transportation adjustment specified in paragraph (b)(1) of this section, plus a gravity adjustment as specified in paragraph (b)(2) of this section. Each refiner making such a sale, shall calculate its price under paragraph (c) of this section, and shall maintain records, which shall be made available to the FEO upon request, listing the volumes and delivered prices of all crude oil delivered to its refineries during each month.

(1) Actual additional transportation expenses incurred to move the crude oil to the purchaser's refinery shall be paid by the purchaser. Actual transportation expenses saved as a result of moving the offered crude oil directly to the purchaser's refinery shall be deducted from the selling price, if customarily included in such price.

(2) Each refiner seller shall calculate a weighted average gravity (°API) for all crude oil estimated to be delivered to its refineries in Districts I–IV and District V. The gravity differential of crude oil offered for sale used in calculations under paragraph (a) of this section, shall be the weighted average price plus or minus $0.02 per barrel per °API in Districts I–IV and $0.05 per barrel per °API in District V that the crude oil being offered for sale is above or below the weighted average °API of estimated runs of all crude oil for the forthcoming calendar quarter for the refiner-seller in Districts I–IV and V.

(c) *Calculations.* For the purpose of calculating the weighted average delivered price, the delivered cost of such domestic crude oil, at the point of purchase, plus any gathering or trucking allowance, pipeline tariffs, water transportation costs, terminalling costs and exchange differentials paid to deliver the crude oil to the seller's refineries. For imported crude oil, the delivered price shall be the landed cost plus any pipeline tariffs, water transportation costs, terminalling costs, exchange differentials, and including import fees, insurance, duty, and taxes paid to deliver such crude oil to the seller's refineries.

(d) *Allocation of costs.* Each seller which makes a sale of crude oil under the provisions of Subpart C, Part 211 of this chapter, may, notwithstanding the provisions of § 212.83(c)(2) of this subpart, increase the measurement of its total cost of crude oil calculated in § 212.83(c)(2) and represented by the symbol "C^V", by an amount equal to 84 cents per barrel of crude oil sold to comply with the mandatory crude oil allocation program of subpart C of Part 211 of this Chapter.

(e) *Reflection of costs.* Refiners required to sell crude oil under this program shall be allowed to increase their product prices to reflect increased crude oil costs of all available crude oil prior to making crude oil sales to comply with this program.

Subpart F—Resellers and Retailers

§ 212.91 Applicability.

This subpart applies to each sale of a covered product (other than the first sale of crude petroleum) by resellers, reseller-retailers, and retailers, and to each sale of crude petroleum (other than the first sale) by a refiner. For purposes of this subpart, "reseller" includes any entity of a refiner which is engaged in the business of purchasing and reselling covered products, provided that the entity does not purchase more than 5 percent of such covered products from the refiner including any entities which it directly or indirectly controls and provided further that the entity has historically and consistently exercised the exclusive price authority with respect to sales by the entity.

§ 212.92 Definitions.

"Increased costs" means the difference between the weighted average unit cost of a product in inventory and the weighted average unit cost of that product in inventory on May 15, 1973. If a particular product was not in inventory on May 15, 1973, the date for computing the cost is the most recent day preceding May 15, 1973, when the seller had the product in inventory.

§ 212.93 Price rule.

(a) A seller may not charge a price for any item subject to this subpart which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects on a dollar-for-dollar basis, increased costs of the item.

(b) Notwithstanding the provisions of paragraph (a) of this section:

(1) with respect to special products:

(i) Beginning with January, 1974, with respect to retail sales, a seller may charge one cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section, and, with respect to all other sales a seller may charge one-half cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section to reflect nonproduct cost increases which the seller incurred after May 15, 1973.

(ii) A seller may not increase its May 15, 1973 selling prices to each class of purchaser more than once in any calendar month to reflect increased costs or the amount permitted pursuant to paragraph (b)(1)(i) of this section, but may implement the increase on any day during that month.

(2) With respect to an allocation sale of petrochemical feedstocks made pursuant to § 211.186, the maximum price that may be charged is 115 percent of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section.

(c)(1) A seller which charges a price for a covered product other than a special product which exceeds the weighted average price at which the product was lawfully priced by the seller in transaction on May 15, 1973 must decrease the price of that product whenever the costs of that product decrease.

(2) A seller which in any calendar month charges a price for a special product which exceeds the weighted average price at which the product was lawfully priced by the seller in transactions on May 15, 1973 must decrease the price of that product in the next calendar month to the extent necessary to reflect any decrease in the weighted average unit cost from the weighted average unit cost which was used to calculate the price increase in the preceding month. However, such a decrease may be used to offset unrecovered cost increases pursuant to paragraph (e) of this section.

(d) In computing the May 15, 1973 selling price, a firm may not exclude any temporary special sale, deal or allowance in effect on May 15, 1973. If no transaction occurred on May 15, 1973, the most recent day preceding May 15, 1973, when a transaction occurred shall be used for purposes of applying the price rule. If the seller first offered an item for sale after May 15, 1973, and prior to the effective date of this paragraph, the first day when the item was offered for sale shall be used for purposes of applying the price rule.

(e) Notwithstanding paragraph (a) of this section if a seller charges prices for a particular product which result in the recoupment of less total revenues than the total amount of increased costs of that product incurred during that month, the amount of increased cost not recouped by a price adjustment in the subsequent month pursuant to paragraph (a) of this section may also be added to the May 15, 1973, selling prices of that product in a subsequent month at the time the selling prices are computed pursuant to paragraph (a) provided that, with respect to special products, a seller complies with the provisions of paragraph (b) of this section and does not increase prices more than once in any calendar month. A seller shall calculate its amount of increased cost of a particular product not recouped since the most recent price increase after November 1, 1973 to include the following: (1) any "increased costs" not added to the May 15, 1973 selling price at the time of the most recent price increase implemented after November 1, 1973 multiplied by the volume sold since that price increase, plus (2) increases in the weighted average unit cost above the weighted average unit cost which was used to calculate the most recent price increase implemented after November 1, 1973 multiplied by the volume of product purchased at each such increased cost, less (3) any decrease in the weighted average unit cost from the weighted average unit cost which was used to calculate the most recent price increase implemented after November 1, 1973 multiplied by the volume of product purchased at each such lesser cost.

(f) *Certification.* Each seller with respect to each sale of gasoline other than a retail sale must certify in writing to the purchaser the octane number of the gasoline sold.

Subpart G—Lessors

§ 212.101 Applicability.

This subpart applies to each leased real property used in the retailing of gasoline.

§ 212.102 Definitions.

"Base rent" with respect to a lease of real property used in the retailing of gasoline means the rent charged for that station pursuant to the contractual terms prevailing on May 15, 1973.

§ 212.103 Price rule.

A lessor or lessee of real property used in retailing gasoline may not—

(a) increase, offer to increase, or give notice of intent to increase the rent for that real property to an amount in excess of the base rent as defined in § 212.102;

(b) increase the retailer's obligation to sell covered products to a level above that which prevailed for that retailer pursuant to the lease provisions which prevailed on May 15, 1973; or

(c) impose any operating requirements on the retailer which would be unreasonably inconsistent with the standards or goals of the Economic Stabilization Program or the Federal Energy Office including but not limited to a requirement that the retailer extend his hours of operation beyond his customary hours of operation.

Subpart H—New Items

§ 212.111 New item and lease rule.

a) *General New item.* (1) An item is a new item if—

(i) The firm concerned did not produce, sell or lease it in the same or substantially similar form at any time during the 1 year period immediately preceding the day on which the firm offers it for sale or lease. (A change in appearance, arrangement, or combination including a change in octane number does not create a new item. Ordinarily a change in fashion, style, form or packaging does not create a new item;) and

(ii) it is substantially different in purpose, function, quality, or technology, or its use or service effects a substantially different result from any other item which the firm concerned currently sells or leases or sold or leased at any time during the 1-year period immediately preceding the first date on which the firm offers it for sale or lease.

(2) *New market.* An item which the firm concerned has previously sold is a new item with respect to its offer for sale or lease to any market to which it did not sell or lease it at any time during the 1-year pediod immediately preceding the first date on which the firm offers it for sale or lease. For the purposes of this section, a "market" is one or more members of any one of the following groups: retailers; consumers; manufacturers; or service organizations.

(b) *Base price determination*—(1) *Refiners.* (i) A refiner in existence on May 15, 1973 which offers a new item shall determine the base price for that item pursuant to the base price provisions of § 212.82(f). However, for purposes of determining the price at which the item was lawfuly priced in transactions on May 15, 1973, the refiner shall use the average price received on May 15, 1973 for the same or most nearly similar item sold to the same market by other refiners selling the same or most nearly comparable item in the same marketing area. (ii) A refiner coming into existence after May 15, 1973 which offers a new item shall determine the base price for that item pursuant to the base price provisions of § 212.82(f). However, for purposes of computing the base price, the increased product costs shall be calculated using the cost of the item first offered for sale rather than the May 1973 cost for the item, and the price at which that item is priced in transactions by other refiners selling the same or most nearly comparable item in the same marketing area on the day when the item is first offered for sale shall be used rather than the May 15, 1973 selling price.

(2) *Lessors.* A firm offering a lease in a new real property used in the retailing of gasoline shall determine the base rent for that real property as the average rent charged on May 15, 1973, for the most nearly similar real property used in the retailing of gasoline leased to the same market by other firms leasing real property used in the retailing of gasoline in the same geographic area.

(3) *Resellers.* A reseller, reseller-retailer or retailer, offering a new item, shall for purposes of applying the price rule of § 212.93 determine the May 15, 1973 selling price for that item as the price at which that item is priced in transactions at the nearest comparable outlet on the day when the item is first offered for sale. For purposes of computing the "increased costs," the cost of the item first offered for sale shall be used rather than the May 15, 1973 cost.

(c) *Base prices and base production control levels upon acquisition.* (1) If a legal entity or a component of a legal entity determines a base price or maximum selling price, or ceiling price pursuant to this part for a covered product which it sells to a particular market and the entity, or component is subsequently acquired by another firm, that covered product does not become a new item with respect to the same market. The base price or ceiling price of the covered product with respect to that market remains the base price or ceiling price determined for it by the acquired entity or component.

(2) If a legal entity or component of a legal entity determines pursuant to this part a base production control level for a property which produces domestic crude petroleum and the entity or component is subsequently acquired by another firm the domestic crude petroleum produced from that property does not become new crude petroleum. The base production control level for that property remains the base production control level determined for it be the acquired entity or component.

(d) *Quarterly reporting of new items.* A firm subject to the quarterly reporting requirements of Subpart I of this part and which has projected sales and revenues for its current fiscal year of $10 million or more derived from the sale or lease of new items shall, in accordance with instructions which accompany forms issued pursuant to Subpart I of this part, provide information which demonstrates that, with respect to each new item with projected annual sales of $1 million or more which is offered for sale or lease for the first time during the quarter concerned, the item qualifies as a new item as defined in this section and the base price of that item has been determined in accordance with this section.

Subpart I—Prenotification and Reporting

§ 212.121 Rule.

Pursuant to the provisions of Subpart E, a refiner may not charge a price for any covered product above the base price until the firm has filed, pursuant to this subpart, a notice of proposed price increase with respect to that item or a product line which includes that item with the FEO and 30 days have elapsed since the filing. The proposed increase may be charged only for items shipped or services performed after the 30 day period has elapsed.

§ 212.122 Manner of prenotification.

(a) The notice of the proposed price increase must be filed by the parent in the form and manner prescribed by the FEO, and will be considered to be filed on the date when it is stamped and dated by the FEO. The FEO will notify the firm, in writing, of the date of filing. If the information submitted is incomplete or inadequate, the FEO will not accept the filing, and will so notify the firm.

(b) In filing a notice of proposed price increase pursuant to § 212.121 a refiner shall submit data jointly for itself and its consolidated entities and separately for each unconsolidated entity having $10 million or more in annual sales revenues.

§ 212.123 Measure of the prenotification period.

The 30-day prenotification period will begin on the first day which follows the date of filing of the notice of the proposed price increase and which is not a Saturday, Sunday or Federal legal holiday. In any case in which the 30-day period would otherwise end on a Saturday, Sunday or Federal legal holiday, it will end at the close of the next succeeding workday.

§ 212.124 FEO action.

During the 30-day prenotification period, the FEO may issue an order disapproving, modifying, suspending or de-

ferring a proposed price increase in whole or in part.

(a) The FEO may issue an order disapproving or modifying a proposed price increase in whole or in part, if it finds that the proposed price increase does not conform to the rules of this part.

(b) The FEO may issue an order temporarily suspending the running of the 30-day prenotification period of a proposed price increase if it finds additional information is necessary or that the form was improperly filed. The order will remain in effect until the FEO notifies the firm in writing that the additional information has been received and accepted. Unless otherwise provided in writing by the FEO, the prenotification period will resume running on the first day which is not a Saturday, Sunday, or Federal legal holiday and which follows the day on which the FEO notifies the firm in writing that the additional information has been received and accepted.

(c) The FEO may issue an order deferring a price increase, in whole or in part, if it finds that the proposed price increase is of such magnitude and would have such an impact upon the economy as to be unreasonably inconsistent with the goals of the Economic Stabilization Program and the Federal Energy Office.

§ 212.125 Implementation of price increases.

If the FEO does not act upon the proposed price increase within the 30-day prenotification period, pursuant to § 212.124, the proposed price increase may be charged immediately upon expiration of the 30-day prenotification period. Failure of the FEO to act upon the proposed price increase within the 30-day period does not constitute approval of the price increased and nothing in this part shall be construed to limit the authority of the FEO to modify, suspend, disapprove, or defer any such price increase in whole or in part placed into effect after the expiration of the 30-day period if the FEO finds that:

(a) The price increase does not conform to the rules of this part; or

(b) The price increase is of such magnitude and would have such an impact upon the economy as to be unreasonably inconsistent with the goals of the Economic Stabilization Program or the Federal Energy Office.

§ 212.126 Reports.

(a) *Producers.* (1) Each firm which produces as an operator domestic crude petroleum and which derives $50 million or more in annual sales or revenues from sales of covered products shall prepare and file with FEO periodic reports in accordance with forms and instructions issued by FEO.

(2) Each firm which produces as an operator domestic crude petroleum from a property and which sells the domestic crude petroleum above the ceiling price calculated pursuant to § 212.73 shall prepare and file with the FEO periodic reports in accordance with the forms and instructions issued by the FEO.

(b) *Refiners, retailers, and resellers.* Each firm which refines covered products and each firm which derives $50 million or more in annual sales or revenues from the retailing or reselling of covered products shall prepare and file with the FEO periodic reports in accordance with forms and instructions issued by FEO. Each refiner shall submit its calculations under the formulas of § 212.83 in accordance with forms and instructions issued by FEO. Each refiner shall submit monthly reports concerning increased percentage production yields and prices of middle distillates and production levels of residual fuel oils under § 212.84 in accordance with forms and instructions issued by the FEO.

(c) *No. 2 heating oil sellers.* Any seller of No. 2 heating oil which increases the price of No. 2 heating oil pursuant to Subpart E or F must submit a report in accordance with the forms and instructions issued by the FEO by the fifth day following the date on which the price is increased.

§ 212.127 Manner of reporting.

(a) Each report required under § 212.126 of this section shall be made by the parent in accordance with forms and instructions issued by the FEO.

(b) In filing reports pursuant to § 212.126, a parent shall submit data jointly for itself and its consolidated entities and separately for each unconsolidated entity having $10 million or more in annual sales or revenues.

§ 212.128 Recordkeeping.

Each firm which derives less than $50 million but more than $1 million in annual sales or revenues from the retailing or reselling of covered products shall prepare and maintain at its principal place of business, periodic reports in accordance with forms and instructions issued by the FEO.

§ 212.129 Price information and posting.

(a) Each seller of covered products shall maintain records of its base production control levels and selling prices authorized pursuant to this part and shall make such information available upon request by a customer.

(b) No later than 11:59 p.m., local time, November 21, 1973 each retail seller of gasoline and No. 2–D diesel fuel shall post the maximum permissible price allowed to be charged pursuant to amended Subpart E or F in a prominent place on each pump used to dispense gasoline or No. 2–D diesel fuel in retail sales and the octane number or numbers of the gasoline dispensed from that pump. Whenever a monthly adjustment is made to the maximum permissible price, each retail seller must adjust his posted price. Posting must be in the form and manner prescribed by the Federal Energy Office. Prior to November 21, 1973, each retail seller must continue to comply with the posting requirements in effect on October 31, 1973.

§ 212.130 Effect of failure to file or maintain reports or other documents required by or under certain sections of this part.

(a) If a firm which is required to file a report or other document with the Federal Energy Office pursuant to the provisions of this part or an order issued by the Federal Energy Office does not, within the time limits prescribed, file the report or other document—

(1) The firm may not implement any further price increases including price increases which could otherwise be implemented pursuant to § 212.125 until it has complied with that reporting requirement and has obtained the special approval of the Federal Energy Office.

(2) Except to the extent specifically authorized otherwise by the FEO in any case, based upon a written request of the firm concerned citing hardship or inequity, action is suspended on all requests for exception filed by that firm until it has complied with the reporting requirement; and

(3) The FEO may, whenever it considers it appropriate under the circumstances, order the firm to reduce any of its prices.

(b) Each day that a firm fails to comply with a reporting requirement pursuant to this part pertaining to reports, or with an order under this part, is considered to constitute a separate violation of this part or that order.

Subpart J—Accounting and Financial Reporting Requirements

§ 212.151 Comparability of financial data.

(a) *General.* When filing a report or other document under this part, financial data shall be restated in accordance with the provisions of this section in order that profit margins reflect comparable units.

(b) *Acquisitions.* An acquisition including the purchase of a separate accounting entity, such as a company or division, requires adjustments to financial data for purposes of this part if such an acquisition would require restatement or disclosure in a filing with the SEC, or if the acquisition is of a similar type but such restatement or disclosure is not required because the firm does not file reports with the SEC.

(c) *Divestments and discontinuations.* A divestment of a separate accounting entity such as a company or division or a discontinued operation requires adjustment to financial data for purposes of this part if such a divestment would require restatement or disclosure in a filing with the SEC, or if the divestment or discontinued operation is of a similar type but such restatement or disclosure is not required because the firm does not file reports with the SEC.

(d) *Other changes.* If the nature of operations of a firm has changed so that the business being conducted currently is of a significantly different nature than the business previously conducted for a reason other than those discussed above, the firm may request an exception to adjust profit margins appropriately for all pertinent periods.

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