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federal register

TUESDAY, MAY 10, 1977

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NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY

PART 1—ADMINISTRATIVE REGULATIONS FEE SCHEDULE

Subpart A—Official Records

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The amended U.S. Department of Agriculture fee schedule is published in its entirety. The amended fee schedule increases the fees USDA agencies may charge for responding to Freedom of Information Act requests. The increased fees are necessary to offset increased costs.

EFFECTIVE DATE: May 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Anthony E. Cooch, Procurement, Grants and Agreements Management Staff, Office of Operations, U.S. Department of Agriculture, Washington, D.C. 20250. (202-447-7527).

SUPPLEMENTARY INFORMATION: On Wednesday, March 23, 1977, the Department of Agriculture published a notice of proposed rulemaking in the FEDERAL REGISTER (42 FR 15708) setting forth a proposed amendment of the Department of Agriculture fee schedule. Interested persons were given thirty (30) days to submit comments concerning the proposed amendment; no comments were received. The amended fee schedule contains an additional revision not shown in the March 23, 1977, FEDERAL REGISTER. This revision involves a change of address for the Agricultural Stabilization and Conservation Service as shown in Sections 10a and 16c9. As this revision involves a matter of agency management it is not subject by law to the notice and public procedure requirements for rulemaking under 5 USC 553. Therefore, public participation is not being sought in regards to this address change. In accordance with the above Appendix A to 7 CFR, Subtitle A, Part 1, Subpart A is revised to read as follows:

FEE SCHEDULE

SEC. 1. *General.* This schedule sets forth fees to be charged for providing copies of records, including photographic reproductions, microfilm, maps and mosaics, and related services. The fees set forth in this schedule are applicable to all agencies and constituent units of the Department of Agriculture.

SEC. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements of organization and services. Each agency is responsible for promulgating procedures to facilitate public inspection and copying of its records. Any material offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such material for public sale.

Agencies do not stock copies of forms and publications or maintain records at any facility which does not require these materials in its operations.

SEC. 3. *Fees for materials and services.* All agencies of the Department shall be guided by the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule.

SEC. 4. *Circumstances governing exceptions to the charging of fees for records and related services.* (For photographic reproductions, see SEC. 12.)

a. *Waiver of fees for records and related services.* Fees may be waived in whole or in part under the following conditions:

(1) Where individual collections are $3 or less.

(2) Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country or an international organization.

(3) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Where the agency determines that payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved.

b. *Fees not to be charged for records and related services.* Fees shall not be charged under the following conditions:

(1) When the furnishing of records and related services is determined by the agency to be in the public interest as primarily benefiting the general public.

(2) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number.

(3) When members of the public provide their own copying equipment, in which case no copying fee will be charged.

(4) When any notices, decisions, orders, or other material are required by law to be served on a party in any proceedings or matter before any Department agency.

(c) Where both a. and b. above apply to a matter, b. shall be controlling.

SEC. 5. *Limitations of copies.* a. Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

b. Single or multiple copies of transcripts, provided the Department under a reporting service contract, may be obtained from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public but no other charge may be added.

SEC. 6. *Search services.* a. Search services are services of agency personnel—clerical, supervisory or professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

b. Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonably specific description of the record.

SEC. 7. *Payments of fees and charges.* a. Payments will be collected to the fullest extent possible in advance or at the time the requested materials are furnished.

b. Except as otherwise stipulated by agency procedures, payment shall be made by check, draft, or money order made payable to the Treasurer of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

c. Where the estimated fees to be charged exceed $50, a deposit of 50 percent of the estimated amount shall be collected from the requester before any of the requested materials are reproduced.

d. Where a request for records indicates the necessity of an extensive search, the requester should be notified of that fact and of the possibility of an unproductive search. The notification should offer the requester the opportunity to confer with agency personnel to reform his request to meet his needs at a lower fee. When an extensive search still appears necessary, unless the agency determines that the request is in the public interest in accordance with Section 4b(1), it shall inform the requester that no search will be undertaken until an agreement to pay applicable fees is received, including a deposit of 50% of the estimated fee where appropriate.

SEC. 8. *Fees for records and related services.* a. Photocopies 8½" x 14" or smaller; $0.10 for the first copy and $0.05 for each additional copy of the same page.

b. Photocopies in excess of 8½" x 14"; $0.25 per linear foot of the longest side of the copy.

c. Manual searches will be charged for at the rate of $4 per hour for clerical time and $9 per hour for supervisory or professional time. Charges will be computed to the nearest quarter hour required for the search. A search may involve both clerical and supervisory or professional time.

d. Other direct costs incurred will be assessed the requester at the actual cost to the Government, e.g., where records are required to be shipped from one office to another by commercial carrier in order to timely answer the request, the actual freight charges will be assessed the requester.

e. Computer services will be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed, except

that where commercial time-sharing computer sources are the required search media, the contract rate charged by the commercial source to the Government will be charged. A listing follows showing where those rates are published and the office from which copies may be obtained or at which the rates may be examined.

Fort Collins Computer Center Users Manual: Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colorado 80521.

New Orleans Computer Center Users Manual: New Orleans Computer Center, U.S. Department of Agriculture, 13800 Old Gentilly Road, Building 350, New Orleans, Louisiana 70129.

Kansas City Computer Center Users Manual: Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, Missouri 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Ave., S.W., Washington, D.C. 20250.

St. Louis Computer Center. Charges for the St. Louis Computer Center will be based on actual expenses incurred in performing the search.

St. Louis Computer Center, U.S. Department of Agriculture, Farmers Home Administration, Business Services Branch, 1520 Market Street, St. Louis, Missouri 63103.

f. The fees do not include and no charge shall be made for (a) time spent examining records to determine whether an exemption can and should be asserted, (b) time spent deleting exempt matter being withheld from records to be furnished, or (c) time spent in monitoring a requester's inspection of agency records.

g. Certifications, $1 each; Authentications under Department Seal (including aerial photographs), $2 each.

h. Except as provided in section 9, for services not subject to the Freedom of Information Act and not covered by (g) above, agencies may set their own fees in accordance with applicable law.

i. The fees specified in a through f of this Section apply to all requests for services under the Freedom of Information Act, as amended (5 USC 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to Section 4. No higher fees nor charges in addition to those provided for in this schedule may be charged a party requesting search or duplication services under the Freedom of Information Act.

j. The fees specified in g and h of this Section and in Sections 9 through 16 of this schedule apply to requests for services other than those subject to the Freedom of Information Act. The authority for establishment of these fees at 31 USC 483a and other applicable law.

SEC. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

SEC. 10. *Agencies which furnish photographic reproductions.*—a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), APFO, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Forest Service (FS), 24 LOB RP-E, Arlington, Virginia 22209, or nearest Forest Service Regional Office.

Soil Conservation Service (SCS), Cartographic Division, SCS, Washington, D.C. 20250, or Cartographic Unit in nearest SCS Technical Service Center.

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (Address above).

Office of Communication, Photographic Division, Room 536A, Washington, D.C. 20250.

Soil Conservation Service, Information Division, Audio Visual Branch, Washington, D.C. 20250.

National Agricultural Library, Information Officer, Room 204, Beltsville, Maryland 20705.

SEC. 11. *Photographic Sales Committee.* The Photographic Sales Committee consists of representatives designated by Department agencies principally concerned with the sale of photographic reproductions. The Committee recommends prices at which photographic and mosaic reproductions, except library material, shall be sold, and other matters related to photographic reproductions.

SEC. 12. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

c. Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

SEC. 13. *Loans.* Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

SEC. 14. *Sales of positive prints under Government contracts.* The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

SEC. 15. *Procedure for handling orders.* In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

SEC. 16. *Photographic reproduction prices.* The prices for photographic reproductions listed here are the most generally requested items.

a. *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only: Microfilm—$1.00 for each 30 pages or fraction thereof. Photoreproduction—$1 for each 10 pages.

b. *General photographic reproductions.* Minimum charge $1 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work	Unit	Price
1. Black and white copy negatives and film positives:		
4 in x 5 in	Each	$4.20
5 in x 7 in	do	4.60
8 in x 10 in	do	5.40
11 in x 14 in	do	8.40
2. Black and white enlargements:		
Up to 8 in x 10 in	do	3.30
11 in x 14 in	do	4.80
Over 11 in x 14 in	Per square foot	4.20
3. Reductions (from any size negative)		4.20
4. Slides—black and white (from copy negative):		
2 in x 2 in cardboard mounted	Each	3.00
3¼ in x 3¼ in	do	4.20
Original color (from flat copy)	do	2.25
Duplicate color (2 in x 2 in cardboard mounted)	do	.35
(Duplicate color slides are slides copied from 35 mm color slides only. Slides made from black and white material, or from transparencies larger or smaller than 35 mm, will be charged at the same rates shown for black and white and original color slides.)		
5. Color transparencies (4 in x 5 in)	do	9.00
6. Color prints		(1)
7. Current USDA slide sets in stock:		
1 to 50 frames		14.50
51 to 60 frames		16.50
61 to 75 frames		18.50
76 to 95 frames		21.50
96 to 105 frames		23.00
106 to 130 frames		20.50
(Prices include printed narrative guide.)		
The following can be purchased for the corresponding slide sets above:		
Cassettes		3.00
8. Milk sedimentation standards (5 in x 7 in black and white photograph)	Each	1.25
9. Seeds and seedlings (any size)	do	2.40

[1] By quotation.

c. *Aerial photographic reproductions.* No minimum charge on aerial photographic reproductions. All prints are furnished unmounted and untrimmed.

1. *Contact prints.* The prices for contact prints are set forth below. The size refers to the approximate size of the contact print.

	Each
Size 9 x 9 in on commercial grade paper	$2.00

2. *Enlargements* (projection prints). The prices for enlargements of various sizes are set forth below. The size in each case refers to the approximate size of paper required to produce the enlargement ordered.

Size:	Price each
9 x 9 in (from 70 mm)	$3.00
12 x 12 in	4.00
17 x 17 in	5.00
24 x 24 in	6.50
38 x 38 in	15.00

For larger size reproductions, add $2.00 for each additional 12 inches or fraction thereof, linear measurement.

3. *Aerial photo-index sheets,* size 20 x 24 inches.

Quantity:	Price each
Any quantity	$5.00

4. *Film positives.* Contact printed from aerial negatives, size 9 x 9 inches.

Quantity:	Price each
Any quantity	$3.00

5. *Copy negatives.* On film, aerial exposures, size 9 x 9 inches.

Quantity:	Price each
Any quantity	$3.00

6. *Aperture cards and printouts.*

	1st unit	Each additional unit
Duplicate of an aperture card	$1.00	$0.10
Aperture card from photoindex sheet	1.00	.25
Printout from aperture card	1.00	.50

7. *Color photography.* Furnished only by the Regional Forest Service Aerial Photography Laboratories at Ogden, Utah and San Francisco, California, and the Agricultural Stabilization and Conservation Service Aerial Photography Field Office in Salt Lake City, Utah.

Positive contact print made from negative	$7.00
Transparency 9 x 9 inches	12.00
Enlargements 12 x 12 inches	15.00
Enlargements 17 x 17 inches	20.00
Enlargements 24 x 24 inches	25.00
Enlargements 38 x 38 inches	40.00

8. *Landsat/skylab imagery.* Furnished only by the Agricultural Stabilization and Conservation Service Aerial Photography Field Office in Salt Lake City, Utah.

	Black and white	Color
Contact print (70 mm)	$1.50	------
Transparencies (70 mm)	3.00	$5.00
Contact print 9 in x 9 in	3.00	7.00
Transparencies 9 in x 9 in	5.00	12.00
Enlargements 12 in x 12 in	6.00	15.00
Enlargements 17 in x 17 in	8.00	20.00
Enlargements 24 in x 24 in	15.00	25.00
Enlargements 38 in x 38 in	25.00	40.00
Composite negative 9 in x 9 in	------	16.00

9. *Special need.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in Section 10a or the Department Aerial Photography Coordinator, Aerial Photography Field Office, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

SEC. 17. *Sound recordings.*

Reel to reel or cassette:	
7½ min	$6.20
15 min	7.25
22½ min	8.30
30 min	9.20
37½ min	10.50
45 min	11.30
52½ min	12.50
60 min	13.20

(5 U.S.C. 301; 5 U.S.C. 522; 31 U.S.C. 483a; and 7 CFR 2.79(a) (3) (iii).)

Done at Washington, D.C., this 3rd day of May 1977.

E. ALVAREZ,
Director.

[FR Doc.77-13136 Filed 5-9-77;8:45 am]

CHAPTER II—FOOD AND NUTRITION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—FOOD STAMP PROGRAM

[Amdt. No. 102]

PART 272—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS, MEAL SERVICES, AND BANKS

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule deals with the process the Food and Nutrition Service (FNS) follows in reviewing the authorization of a participating firm which no longer appears to meet the criteria for authorization. The present regulation requires FNS to request a new application for authorization from the firm. In practice, the new application usually contains information already available to FNS. Consequently, the new application is not needed, and this rule does away with the requirement that it be submitted. Therefore, in situations in which the nature of a firm's business has changed and the firm no longer appears to meet the criteria for authorization, FNS will proceed directly to issue a notice to the firm that its authorization is being withdrawn. Any firm whose authorization is withdrawn under this rule will have the right to request administrative and judicial review of the determination.

EFFECTIVE DATE: May 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Director, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202-447-8982).

SUPPLEMENTARY INFORMATION: On January 4, 1977, the Food and Nutrition Service published a proposed rule (42 FR 780) to amend Part 272 of the Food Stamp Program Regulations. Most of the comments received were favorable.

DISCUSSION OF MAJOR COMMENTS

Only four letters were received during the comment period, which expired February 3, 1977, on the proposed amendment to § 272.1(h). Three of the letters were from State agencies—Nebraska, Montana, and Ohio. They supported the proposal. The remaining letters, from a retail grocers' association, expressed opposition to the proposal because the procedure imposes "severe hardship on local retail grocers," since it makes them "responsible for initiating administrative procedures to preserve a participatory right in a government program." The grocer association contended that the procedure for requesting administrative review is complicated and that the FEDERAL REGISTER and Code of Federal Regulations, which would explain the procedure, are generally inaccessible to grocers. The association supported the present requirement that FNS request a new application any time it receives new or additional information.

FNS has decided to publish the rule as it appeared in the notice of proposed rulemaking. In situations in which FNS withdraws authorizations of participating firms, the new applications submitted by the firms have seldom contained information which FNS did not already have, and FNS normally acted immediately to withdraw their authorizations. As a result, the firms have to submit unneeded applications, and were still immediately faced with the problem of how to request review. The notice of withdrawal which FNS sends to such firms explains the procedure for requesting review. A copy of the applicable regulations is always enclosed.

Accordingly, Part 272 is amended as follows:

Section 272.1 is amended by deleting paragraph (g), relettering paragraph (h) as paragraph (g), and adding a new paragraph (h). The new paragraph (h) reads as follows:

§ 272.1 Approval of retail food stores, wholesale food concerns, and meal services.

* * * * *

(h) FNS will periodically review the nature and scope of participating firms' business. If FNS receives new or additional information about a firm involving any of the criteria set forth in paragraph (b), (c), and (d) of this section, FNS shall make a determination as to whether the firm's continued participation serves to further the purposes of the program. FNS shall withdraw approval to participate if a determination is made that the firm does not qualify for continued participation. Any withdrawal of authorization shall be subject to administrative review under the provisions of § 272.8.

* * * * *

(78 Stat. 703, as amended, 7 U.S.C. 2011-2026.)

NOTE.—The Food and Nutrition Service has determined that this document does not con-

tain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps.)

Dated: April 30, 1977.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc.77-13179 Filed 5-9-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-116, Amdt. 61]

PART 385—DELEGATION AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTER

Delegation of Authority to the Chief, Government Rates Division, Bureau of Economics, to Issue Final Orders For Administering the Local Service Class Subsidy Rate

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule expands the delegated authority to the Chief, Government Rates Division, Bureau of Economics, concerning outine procedures for administering the local service class subsidy rate, in order to improve administrative efficiency.

DATES:

Effective: May 4, 1977.

Adopted: May 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. (202-673-5442).

SUPPLEMENTARY INFORMATION: The procedures for administering the local service class subsidy require Board approval for the issuance of two types of final orders in addition to show-cause orders. These orders are of a routine nature and are required to update the local service class subsidy rate on a recurrent basis.

One type of such order outlines information and updates reporting requirements concerning the distribution of reported services and financial data to selected categories of services for the semiannual review of subsidy-eligible and subsidy-ineligible operations. Direct air carriers are required to submit this information to the Board so that we can prepare the semiannual amendments to the current Class Rate VIII.

The second type of order issues ad hoc adjustments to each carrier's individual subsidy ceiling under the class rate. The cumulative daily ceilings are raised or lowered to reflect cost increases or savings which have resulted from the addition, reinstatement, suspension, or deletion of subsidy-free eligible communities from the carrier's route schedule. Adjustments of the subsidy ceilings are based on a standard procedure using the net change between a carrier's cost in providing service under a prevailing flight pattern prior to the addition, deletion, or reinstatement of a community, and that of the revised flight pattern.

No substantive policy decisions are involved in the issuance of either of these orders. We believe that the delegation of authority to issue final orders concerning these routine matters would expedite the administration of the local service class subsidy note by removing such nonpolicy matters from the Board's direct consideration.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedures are unnecessary, and that the rule may become effective immediately.

Accordingly, the Board hereby amends Part 385 of its Organization Regulations (14 CFR Part 385), effective May 4, 1977, as follows:

Amend § 385.16 by adding new paragraphs (i) and (j) to read as follows:

§ 385.16 Delegation to the Chief, Government Rates Division, Bureau of Economics.

* * * * *

(i) Issue final orders amending the reporting requirement for distribution of reported services and financial data to selected categories for the semiannual review of subsidy-eligible and subsidy-ineligible operations under the local service class subsidy rate.

(j) Issue final orders making ad hoc adjustments to individual carrier subsidy ceilings under the local service class subsidy rate for the addition, reinstatement, suspension or deletion of subsidy-eligible communities to the carrier's route system.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; (49 U.S.C. 1324 (note)).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-13263 Filed 5-9-77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Diethylcarbamazine Citrate Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency approves a new animal drug application (104-493V) filed by Norden Laboratories, Inc., providing for the safe and effective use of diethylcarbamazine citrate chewable tablet for use in the prevention of heartworm infection and as an aid in the treatment of ascarid infections in dogs. The Commissioner of Food and Drugs is amending Part 520 (21 CFR Part 520) to reflect this approval.

EFFECTIVE DATE: May 10, 1977.

ADDRESS: Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Henry Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857. (301-443-3430).

SUPPLEMENTARY INFORMATION: The application was filed by Norden Laboratories, Inc., Lincoln, NE 68501. It proposes the safe and effective use of diethylcarbamazine citrate chewable tablets for the prevention of infection with *Dirofilaria immitis* (heartworm disease) and as an aid in the treatment of ascarid infections in dogs. In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Food and Drug Administration, during regular working hours.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1).

Part 520 is amended by adding new § 520.622c to read as follows:

§ 520.622c Diethylcarbamazine citrate chewable tablets.

(a) *Specifications.* Each tablet contains 60 to 180 milligrams of diethylcarbamazine citrate.

(b) *Sponsor.* See No. 011519 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 3 milligrams per pound of body weight per day for the prevention of heartworm disease; 25 to 50 milligrams per pound of body weight for the treatment of ascarid infections.

(2) *Indications for use.* For the prevention of infection with *Dirofilaria immitis* (heartworm disease), and as an aid in the treatment of ascarid (*Toxocara canis*) and (*Toxascaris leonina*) infections in dogs.

(3) *Limitations.* Administer by free-choice feeding or crumble and place on food. Dogs with established adult heartworm infections should not be treated until converted to a negative status. For treatment of ascarid infections, repeat the dose 10 to 20 days after the first treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: This regulation becomes effective on May 10, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: May 3, 1977.

PHILIP D. CAZIER,
Acting Director,
Bureau of Veterinary Medicine.

[FR Doc.77-13198 Filed 5-9-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

[Docket No. R-77-431]

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Eligibility of Hospitals for Supplemental Loans; Correction

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared at page 3162 in the FEDERAL REGISTER of January 17, 1977.

EFFECTIVE DATE: January 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Lillian Erickson, Rules Docket Clerk, 451 Seventh Street, SW., Washington, D.C. 20410. Phone number (202) 755-7603.

SUPPLEMENTARY INFORMATION: The second sentence in § 241.125 is corrected by adding the words "to purchase equipment to be used in" immediately following the word "used" and immediately before the words "the operation".

(Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).)

LAWRENCE B. SIMONS,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc.77-13284 Filed 5-9-77;8:45 am]

Title 29—Labor

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

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Emergency Temporary Standard for Occupational Exposure to Benzene; Correction

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Correction to Emergency Temporary Standard.

SUMMARY: This notice announces a correction to the emergency temporary standard for occupational exposure to benzene.

EFFECTIVE DATE: May 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. James Foster, Office of Public Affairs, OSHA, Third Street and Constitution Avenue, NW., Room N-3641, Washington, D.C. 20210, 202-523-8151.

SUPPLEMENTARY INFORMATION: On May 3, 1977, an emergency temporary standard for occupational exposure to benzene was published in the FEDERAL REGISTER (42 FR 22516). The preamble explains that the employer is to provide a copy of the physician's written opinion to the employee. That provision was inadvertently omitted from the standard, however. Accordingly, FR Doc. 77-12726 (42 FR 22516, May 3, 1977) is corrected by adding, on page 22527, 2nd column, a new paragraph (iii) at the end of § 1910.1028(i)(5), as follows:

"(iii) The employer shall provide a copy of the written opinion to the affected employee."

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059).)

Signed at Washington, D.C., this 6th day of May 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-13423 Filed 5-9-77;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL

PART 865—PERSONNEL REVIEW BOARDS

Subpart B—Air Force Discharge Review Board

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: This rule explains the jurisdiction, authority and actions of the Air Force Discharge Review Board. Review by the Board of its procedures revealed a need for further amplification and clarification. These revised procedures are intended to result in clearer understanding by former Air Force members desiring amendment to their military records.

EFFECTIVE DATE: April 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Colonel Lee, Principal Assistant for Discharge Review Matters, Office of the Secretary of the Air Force (Personnel Council), Commonwealth Building, 1300 Wilson Boulevard, Room 920, Arlington, Virginia 22209. (202-694-5418).

SUPPLEMENTARY INFORMATION: On March 9, 1977, the Department of the Air Force, DOD, published a proposed rule (42 FR 13124) to revise 32 CFR 865, Subpart B, Air Force Discharge Review Board. As stated at that time, the revision explains the use of case summaries and investigative reports; requires applicants to submit contentions and/or issues of fact, law, or discretion via DD Form 293 prior to Board consideration; amplifies review process used by the Board; changes Board decision announcements to include names and votes of Board members, statements of findings and conclusions on all issues relevant to the appeal, and statement of the reasons for the findings and conclusions; establishes a public reading room containing Board decisional announcements indexed by contentions raised during the review process.

No public comments were received in response to the proposed changes. However, the Board has determined that a more in-depth definition of clemency should be included. That definition has been added at § 865.106(e)(3).

(The legal authority for this part is sec. 8012, 70A, Stat. 488, sec. 1553, 72 Stat. 1267, 10 U.S.C. 8012, 1553.)

Accordingly, 32 CFR 865 is amended as follows:

Subpart B—Air Force Discharge Review Board

Sec.
865.100 Purpose.
865.101 Statutory authority.
865.102 Organization and purpose of the board.
865.103 Jurisdiction and authority.
865.104 Application for review.
865.105 Board meetings and locations.
865.106 Procedures for hearings.
865.107 Findings, conclusions, and reasons.
865.108 Disposition of proceedings.
865.109 Public disclosures.
865.110 Approval of exceptions to directive.
865.111 Procedures for regional boards.
865.112 Guidance sheet.

Subpart B—Air Force Discharge Review Board

§ 865.100 Purpose.

This Subpart explains the jurisdiction, authority, and actions of the Air Force Discharge Review Board. It applies to all Air Force activities. This Subpart is affected by the Privacy Act of 1974. The system of records cited in this Subpart is authorized by 10 U.S.C. 1553 and 8012. Each data gathering form or format which is required by this Subpart contains a Privacy Act Statement, either incorporated in the body of the document or in a separate statement accompanying each such document.

§ 865.101 Statutory authority.

The Air Force Discharge Review Board (hereafter called the "Board") was established within the Department of the Air Force under section 301 of the Serviceman's Readjustment Act of 1944, as amended (now 10 U.S.C. 1553). The authority for actions set out in § 865.103 (b)(1) is derived from discretionary authority conferred upon the Secretary of the Air Force under 10 U.S.C. 508(a).

§ 865.102 Organization and purpose of the board.

The Board, a part of the Secretary of the Air Force Personnel Council, is administered and supervised by the Council's Director. An administrative agency, it reviews the discharge (other

than a discharge by sentence of a general courtmartial) of former military personnel, on its own motion or at the request of a former military member or his or her appropriate representative.

§ 865.103 Jurisdiction and authority.

The Board has jurisdiction and authority in cases of former military personnel who, at the time of their separation from the Service, were members of the U.S. Army aviation components (Aviation Section, Signal Corps; Air Service; Air Corps; or Air Forces) or the U.S. Air Force. The Board does not have jurisdiction and authority concerning personnel of other arms and services who, at the time of their separation, were assigned to duty with the Army Air Forces or the U.S. Air Force.

(a) The Board's review is based on the former member's available military records, contentions submitted by the applicant, and on any other evidence that is presented to the Board. The review, as accorded the applicant by law, is not an adversary proceeding to relitigate the reasons for the applicant's separation. The Board determines whether the type of discharge the former serviceman or woman received is equitable and proper; if not, the Board instructs the U.S.A.F. Military Personnel Center to change the discharge or to issue a new discharge according to the Board's findings. The Board's determination is subject to review by the Secretary of the Air Force.

(b) The Board is not authorized to revoke any discharge, to reinstate any person who has been separated from the military service, or to recall any person to active duty. However, if an applicant was discharged from his or her last period of Air Force service under conditions which would bar his re-entry, the Board may restore the applicant's eligibility to enlist (actual enlistment would be subject to the needs of the service).

(c) The Board, on its own motion, may review a case that appears likely to result in a decision favorable to the former military member, without the member's knowledge of presence. In this case, if the decision is: (1) Favorable, the Board directs AFMPC/DPM to notify the former member accordingly at the member's last known address. (2) Unfavorable, the Board returns the case to the files without any record of formal action. If the former member later files an application for review, the Board then reconsiders the case without prejudice.

§ 865.104 Application for review.

An application for review must be submitted within 15 years after the effective date of the former member's discharge, subject to exceptions in § 865.106(h).

(a) The applicant submits a single copy of DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, with supporting affidavits and other evidence.

(b) The spouse, next-of-kin, or legal representative of a former member may submit the application for the review as agent for the member, but proof of the member's death or mental incompetency must accompany the request.

(c) Applicants forward their requests for review to the National Personnel Records Center (NPRC/MPR-AF), 9700 Page Boulevard, St. Louis, MO 63132. The National Personnel Records Center forwards all available military records of the former members to the Military Personnel Center for further processing to the Board.

(d) Applicants who express a desire to make a personal appearance before the Board have the option of requesting that one Board member be of enlisted status. The Board corresponds with the applicant before the hearing date to determine his or her preference. If requested, one senior noncommissioned officer is appointed as a voting member to the Board which considers the case.

§ 865.105 Board meetings and locations.

(a) The Board consists of five members and assembles to hear all cases. The president convenes, recesses and adjourns the Board. If the president is absent, the next senior member acts as president.

(b) In addition to holding hearings in Washington, D.C., the Board periodically conducts regional hearings at selected locations throughout the Continental United States. Boards are conducted at centralized locations in those areas with the greatest number of applicants. The selected locations enable applicants to have a personal appearance closer to their home. A continuing review and appraisal is conducted to ensure convenience of hearing locations within the Board's budgetary and manpower capability. Administrative details and responsibilities for traveling boards are outlined in § 865.111.

§ 865.106 Procedures for hearings.

(a) The applicant is entitled, by law, to appear in person at his or her request before the Board in open session and to be represented by counsel of his or her own selection. (In this subpart, "counsel" includes members in good standing of the Federal or a State bar, accredited representatives of veterans organizations recognized by the Veterans Administration under 38 U.S.C. chapter 59, and any other person the Board considers to be competent to present the applicant's claim equitably and comprehensively.) The applicant also may present such witnesses as he or she may desire.

(1) There are three methods of presenting a case before the Discharge Review Board. These are:

(i) Nonpersonal appearance cases—when an applicant indicates that he or she does not desire to appear at the Board, and does not desire to be represented by counsel.

(ii) Personal appearance cases—when an applicant desires to appear in person with or without counsel.

(iii) Nonpersonal appearance with counsel—when an applicant does not desire to appear in person but does want to be represented by counsel.

(2) The Government does not compensate or pay the expenses of the applicant, applicant's witnesses, or counsel.

(3) The applicant may submit any documents he or she wishes as evidence for the Board's consideration. All applicants are provided a guidance sheet (§ 865.112) which suggests various types of information which would be beneficial in the Board's review.

(4) Based upon the available military personnel records of the applicant, a summary of the case is prepared for use by the Board in the review process. A copy of this summary is available to the applicant or his/her counsel upon request.

(5) A designated member of each Air Force Discharge Review Board case insures the accuracy and completeness of the file.

(6) When an applicant has requested a personal appearance, the Board sends the applicant (and designated counsel, if any) written notice of the hearing time and place. The notice will normally be mailed at least 30 calendar days before the hearing date. If the applicant wishes, the time limit may be waived, and in such case the Board may set an earlier hearing date. Evidence must be placed in the record to show how and when the notice was given.

(7) If an applicant has requested a personal appearance and, after being notified of the hearing time and place, fails to appear at the appointed time, either in person or by counsel, the right to be present is waived.

(b) The Director, Secretary of the Air Force Personnel Council, ensures that hearings are conducted to afford full and fair inquiries by the Board.

(1) The Board members and recorder are sworn as are the applicant and witnesses if they decide to testify under oath.

(2) All parts of an applicant's military record that may be viewed by the Board members are made available to the applicant and his/her counsel.

(i) Only investigative reports having a direct bearing on member's discharge may be considered by the Board.

(ii) In cases where applicable investigative reports are in the record, neither Board members nor applicants and their counsel are permitted access to the complete report. An appropriate official prepares an extract of salient information which is included in the summary of the case (without including references to sources of information and other matters that would be detrimental to public interest, if disclosed).

(iii) This unclassified summary may be made available to the applicant and counsel.

(c) The Board, in conducting its inquiries, is not limited by the rules of evidence applicable in judicial proceedings.

(1) Witnesses may present evidence to the Board either in person or by affidavit. If a witness testifies under oath or affirmation, he or she is subject to examination by Board members.

(2) At the request of applicant or his or her counsel, and at the discretion of the Board, witnesses may be allowed to make unsworn statements in respondent's behalf, in which case they will not be examined by Board members.

(d) Applicants must state clearly and specifically any contention(s) and/or issue(s) of fact, law or discretion having a bearing on their case in order for a written determination to be made in accordance with § 865.107. A DD Form 293 provided for this purpose must be completed or amended prior to the Board's decision.

(e) The Air Force Discharge Review Board employs a three-step process in the review of each case:

(1) Preiudicial error in the administrative discharge process. The Board looks for technical errors made bv the Air Force in discharging the individual.

(2) Changes in discharge policy since the date of the applicant's discharge. When no error exists, the Board considers the performance and conduct of the individual during period of military service. In its evaluation of the applicant's performance, the Board applies current policies, attitudes and views.

(3) Clemency. The clemency review involves the individual's development before joining the Air Force, the totality of the individual's military service, and post-service adjustment. In some cases, a post-service period of good citizenship of only one or two years may be sufficient to justify upgrading, depending on other factors such as the conduct that led to discharge and the age of the member at the time of discharge. In others, a longer period may be necessary to warrant such action. In this regard, five or more years of post-service good citizenship will be considered strong evidence in favor of upgrading.

(f) The Board may continue an inquiry on its motion or, at its discretion, grant an applicant's (or his or her counsel's) request for continuance if this appears necessary to ensure a full and fair hearing.

(g) The Board, at its discretion and for good cause, may permit an applicant to withdraw his or her request without prejudice at any time before the Board begins its deliberations.

(h) Once the Board has heard and rendered a decision on a case, an application for rehearing is entertained only on the basis of the following:

(1) If the original review did not involve a personal appearance by the applicant and a personal appearance is now desired, a rehearing is granted on application.

(2) If the applicant submits new substantial and reliable information which might reasonably be expected to change the original findings and decision, a rehearing is granted. The granting of a rehearing under this basis is discretionary, predicated on the Board's consideration of the new material submitted.

(3) Where, after the original decision, there have been relevant changes in law either in statute or through court decisions, or changes in Department of Defense and Air Force policies, the board will consider, on application, whether in light of these changes it should rehear the case.

§ 865.107 Findings, conclusions, and reasons.

(a) The Board, in executive closed session, determines the findings, conclusions and reasons in each case. The findings, conclusions, and reasons of a majority of the Board members constitute the Board's decision. A dissenting Board member may file a minority report.

(b) The decision of the Board in each case shall be made in writing. Any review of the Board's decision shall be made in writing.

(c) The decision of the Board and the reviewing authority, if any, shall include a statement of findings, conclusions, and reasons, except where the reviewing authority expressly adopts in whole or in part the statement of findings, conclusions, and reasons of the Board. In those cases where the reviewing authority adopts the Board's statement of findings, conclusions, and reasons, there is no requirement for duplicative publication.

(d) The decision of the Board shall include:

(1) The date, character of and reason for the discharge certificate at issue, including the specific regulatory authority under which the discharge was issued.

(2) Findings on all issues of fact, law or discretion upon which the decision on the application is based.

(3) Findings and conclusions on all other issues of fact, law or discretion raised by the applicant, including claims by applicant that statutory, regulatory and/or constitutional provisions were violated and such other claims made by applicant, which in the opinion of the Board would warrant greater relief than that afforded applicant by the Board's decision if resolved in the applicant's favor.

(4) Conclusion(s) as to whether or not any change, correction, or modification should be made in the type of character of the discharge certificate and/or the reasons and authority for the discharge and, if so, the particular changes, corrections, or modifications that should be made.

(5) A statement of the reasons for the findings and conclusions made in each case.

(e) Advisory opinions or portions thereof containing factual information relied upon for final decision not fully set forth in the statement of findings, conclusions and reasons; or containing advice, recommendation(s) or opinion(s) accepted as a basis for rejecting any of applicant's claims that are not fully set forth in the statement of findings, conclusions, and reasons shall be incorporated by reference in the statement of findings, conclusions and reasons, and appended to the decision.

(f) Statements of findings, conclusions, and reasons are not required in any determination as to whether a rehearing may be authorized, but apply to a final determination of the Board and/or reviewing authority after a rehearing except to the extent findings, conclusions, and reasons exist from any previous hearings and remain unchanged.

§ 865.108 Disposition of proceedings.

(a) When the Board has concluded its proceedings in any case, the recorder prepares a complete record.

(1) The record includes: (i) The application for review. (ii) An electromagnetic recording of the hearing, if any. (iii) Documentary evidence considered including, by reference only, the applicant's Master Personnel Record. (iv) The findings, conclusions, reasons, and instructions (see § 865.103(a)). (v) Minority reports of dissenting Board members, if rendered; and (vi) All other documents necessary to a true and complete history of the proceedings.

(2) The Board president signs the record and the recorder authenticates it as true and complete. (If the recorder is absent or incapacitated, a voting member of the board may authenticate the record.)

(b) For each case, the Board transmits the record of its proceedings and directions to AFMPC/DPMDR, Randolph AFB, TX 78148. That office administratively carries out the Board's directions and reports the results to the applicant and his or her counsel if any.

(c) The final determination, votes of Board members, and the statement of findings, conclusions, and reasons together with any required appendices thereto and minority opinions, if any, shall be sent promptly to the applicant and counsel with the notice of decision in accordance with § 865.108(b). Information that appears to be potentially injurious to the applicant's physical or mental health is furnished only to the guardian or other authorized representative.

(d) Unclassified records of Board proceedings are open to perusal by the Administrator of Veterans Affairs or his or her authorized representative.

§ 865.109 Public disclosures.

(a) Statements of findings, conclusions, reasons, and the record of the votes of Board members will be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant. If not otherwise listed in the statement of findings, conclusions, and reasons, a list of contentions and/or the issues of fact, law or discretion presented by the applicant will be made public with the decision.

(b) Written minority opinions or reports of a Board panel member on the decision of the Board will be made available for public inspection and copying.

(c) To the extent required to prevent invasion of personal privacy, identifying details of applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers, and military service numbers will be deleted. Written justifications, available for public inspection shall be made for all other deletions.

(d) Documents and records provided for public inspection and copying shall be made available at a reading room located at the Pentagon, Washington, D.C.

(e) All documents made available for public inspection and copying in accordance with § 865.109 (a) and (b) shall be indexed.

(1) the index will include an identifying characteristic (i.e., case number) for each case; the date, character of, reason for and authority for the discharge challenged therein, the decision of the Board and the reviewing authority, if any; and the issues addressed in the statement of findings, conclusions and reasons.

(2) Each index shall be published quarterly or more frequently and upon request be distributed for sale.

(3) The index will be available for review at all regional locations where the Board meets to hear cases. Notice of hearings to applicants will include information as to where the index may be located for inspection and copying. Index will be permanently maintained only at the permanent Board location.

§ 865.110 Approval of exceptions to directive.

Only the Secretary of the Air Force may authorize or approve a waiver of, or exception to, any part of this Subpart.

§ 865.111 Procedures for regional boards.

(a) The Air Force Discharge Review Board, for the convenience of the applicant, conducts regional board hearings at selected locations throughout the Continental United States. Boards are conducted at centralized locations in those areas with the greatest number of applicants. Selected board locations enable applicants to have a personal appearance closer to their home. As a location is determined, applicants from that area are advised of the date the board will be held. The locations normally are at an Air Force installation for the convenience of using existing facilities and selecting board augmentees.

(b) Composition of the Board for these hearings consists of three members from Washington with augmentation by two members from nearby local Air Force resources. One member may be a senior noncommissioned officer (E-8 or E-9) when an applicant requests such membership.

(c) The major commands of the installation selected are required to task the subordinate units to provide two colonels and a senior enlisted person on an additional duty basis, to serve as members of the Board. Detailed information must be provided to the Chief, Personnel Division, of the installation involved before each hearing date.

(d) The administrative staff in Washington processes all cases for regional hearings, establishes hearing dates, and returns the records to the Military Personnel Center at Randolph AFB, Texas, when the case is finalized. Detailed information for the local Board members is provided to the Directors of Personnel of the bases involved approximately four weeks before each hearing date.

(e) Travel and per diem for all board members are funded by the Secretary of the Air Force Personnel Council (SAF/PC). The funding cite number is included in the information provided to the local Board members before each hearing date.

§ 865.112 Guidance sheet.

(a) Regardless of the reason for your discharge, the suggested evidence listed below under No. 1 would be beneficial to the Board. If you can recall the specific reason for discharge (types are shown in left-hand column), additional suggested evidence is shown by the corresponding number in the right-hand column.

Reason for discharge	*Evidence needed by the Board*
1. Discharge for any reason.	1. Your statement on what happened that caused your discharge, what motivated you. Current police record (statement from local police department). Statement from schools and colleges (if you are attending or have completed any school or college since discharge, provide a copy of your transcript, diploma or letter of accomplishment from the school). Employment record (be specific—list jobs in order held—who supervisor was—reason for leaving job). Participation in civic or community affairs. Character references (frank statements about your character from members of your family, family friends, employer(s), family doctor or pastor, and other responsible people in the community).
2. General ineffectiveness (unsuitability, unfitness, limited potential/minimally productive).	2. Indication that your attitude, ability, bearing and behavior are now improved. Indication that your capacity towards organizational loyalty, willingness to work and dedication are improved.
3. Financial irresponsibility.	3. Verification of good credit (statements from banks, lending institutions, department stores, etc., that would attest to your financial condition). Statement from you on how your previous debts were resolved (paid off, bankruptcy, etc.).
4. Alcoholism	4. Verification of good credit (statement from banks, lending institutions, department stores, etc. that would attest to your financial condition). Membership in Alcoholics Anonymous—how long. Medical statement (statement by competent authority on your physical condition).
5. Character and behavior disorder.	5. Medical statement (statement by competent authority on your physical and mental condition).
6. Hardship	6. If discharge was for financial reasons: Verification of good credit (statement from banks, lending institutions, department stores, etc., that would attest to your financial condition). If discharge was for medical reasons: A medical statement from competent medical authority disclosing the hardship no longer exists.
7. Civil convictions	7. If applicable: Statement by competent authority that a pardon has been granted.
8. Homosexuality	8. Circumstances surrounding act or acts for which discharged: Was the applicant seduced or coerced by someone in authority? Was alcohol a factor? Were there any familial or pre-service factors? Present status: Married with a family? Are you dating? Medical statement: if you have been receiving psychotherapy.
9. Drug abuse	9. Statement concerning the underlying causes of the offense: Was it because of youthful curiosity? Did you have a need to be a member of the gang? Did you have the habit prior to enlistment? Medical statement by competent medical authority if you have been receiving psychiatric treatment. Verification of good credit (statements from banks, lending institutions, department stores, etc., that would attest to your financial condition).
10. Conscientious objector.	10. Statement from applicant concerning past views and what has happened to change them.
11. Enuresis	11. Medical statement by competent medical authority on the applicant's physical condition.
12. Exceeding weight standards.	12. Medical statement by competent medical authority on the applicant's physical condition—specifically, your present weight and height.

(b) Fire-related case: If you are advised that all or part of your records were destroyed by the fire in July 1973 at the National Personnel Records Center, it is doubly important that you provide as much evidence as possible to support your request. In these cases, the Board may have limited or no record evidence available to it and must rely on evidence presented by the applicant.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison, Directorate of Administration.

[FR Doc.77-13178 Filed 5-9-77;8:45 am]

Title 31—Money and Finance: Treasury

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 530—RHODESIAN SANCTIONS REGULATIONS

Authorization for the Importation of Certain Ferrochromium and Steel Mill Products

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Rhodesian Sanctions Regulations are being amended to provide for an interim procedure effective until June 18, 1977, governing imports of ferrochrome and specialty steel products into the United States. This interim procedure will apply uniformly to all shipments of ferrochrome and specialty steel to the United States pending the negotiation of permanent certification procedures for each country exporting ferrochrome or specialty steel to the United States. The interim procedure will enable administrative and legislative procedures necessary for permanent arrangements in exporting countries to go forward and will prevent unnecessary disruption of trade pending conclusion of permanent certification arrangements.

EFFECTIVE DATE: May 6, 1977.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220 (202-376-0428).

SUPPLEMENTARY INFORMATION: An amendment of § 530.520 provides for the case-by-case issuance of licenses when supported by a certificate from the individual producer stating that the materials were in shipment to the United States on March 18, 1977, or were in its inventory for that purpose on that date.

A new § 530.523 is being added effective until June 18, 1977. The section permits the importation of these products when an appropriate government agency in the producing country issues a certificate stating in substance that, pursuant to the country's implementation of the United Nations sanctions, the materials do not contain any chromium of Southern Rhodesian origin.

Persons importing ferrochrome or steel mill products under the interim provisions of § 530.520(b) as amended, or under the provisions of § 530.523, should submit the required certificate to the District Director of Customs at the port of importation. These interim certificates are not required for imports from Canada in view of special certification arrangements which have been worked out with that country.

Since this amendment involves a foreign affairs function, the provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date are inapplicable.

The primary author of this amendment is Stanley L. Sommerfield.

31 CFR Part 530 is amended as follows:

1. Section 530.520 is amended by the deletion of present paragraph (b) and the substitution of a new paragraph (b) as follows:

§ 530.520 In-transit steel mill products.

* * * * *

(b) Such materials may also be licensed to be imported on or before June 18, 1977, if the Office of Foreign Assets Control is satisfied that the materials were in transit to the United States on March 18, 1977. Applications must be supported by a certificate from the producer stating that the materials were in shipment to the United States on March 18, 1977, or were in its inventory for that purpose on that date.

* * * * *

2. Section 530.523 is added to the Regulations as follows:

§ 530.523 Interim certification of chromium materials from third countries.

Importation on or before June 18, 1977, of chromium materials subject to the prohibitions of § 530.202(a) (2) or (3) will be authorized on a case-by-case basis upon presentation to the Office of Foreign Assets Control of a certificate or certificates issued by an appropriate agency of the government of the producing country stating in substance that pursuant to the country's implementation of the United Nations sanctions the material does not contain chromium of Rhodesian origin.

(22 U.S.C. 287(c); Pub. L. 95-12, March 18, 1977, 91 Stat. 22; Executive Order 11322; Executive Order 11419; Executive Order 11978.)

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

ROBERT CARSWELL,
Acting Secretary.

[FR Doc.77-13504 Filed 5-9-77;10:55 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 rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 225]

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Withdrawal of alternate food proposal.

SUMMARY: This notice withdraws a proposal to authorize a class of products referred to as "formulated fortified milk-based products" for use in the Summer Food Service Program for Children. This action results from the many negative comments received and the inconclusive benefits of this type of product to the child nutrition programs.

EFFECTIVE DATE: May 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Grace L. Ostenso, Nutrition and Technical Services Staff, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-9081).

SUPPLEMENTARY INFORMATION: On July 13, 1976, the Food and Nutrition Service published a proposed rule (41 FR 28796) to add to Appendix A of the Summer Food Service Program for Children regulations (7 CFR Part 225) authorization for use of a class of products referred to as "formulated fortified milk-based products" as an alternate food for the two components specified in meal requirements for supplemental food.

It was envisioned that this product would provide service institutions with a convenient (one component), nutritions alternative.

In response to the proposal there were received letters from 138 individuals and organizations. A total of 112 commenters (81 percent) opposed the concept; 24 commenters (17 percent) were in favor of it; and two were neutral. Of those opposing the proposal, 54 were individuals, educators and professional organizations within the field of nutrition and public health; 10 were child nutrition program administrators, potential users of the proposed product. Others opposing the proposal included several members of Congress, consumer and community groups, concerned citizens, industry groups, and the Food and Nutrition Service Regional Offices. Among those in favor of the proposal, nine were individuals and educators within the field of nutrition and public health; and 11 were administrators of child nutrition programs, most of whom had used one such product in the past on a trial basis. Others favoring the proposal included industry firms, and two USDA Regional Offices. The neutral comments were relative to the product specifications, if the proposed class of products were authorized.

DISCUSSION OF MAJOR COMMENTS

The major comments on the proposal may be categorized and summarized, as follows:

1. Convenience. The respondents in opposition to the product questioned the gain in convenience in serving this product over the two components of milk or juice or fruit or vegetable, and a bread-type item. There was also concern that the proposed varied serving sizes for different ages of children would reduce the convenience and in some cases make the use impossible. Respondents favoring the product felt that a one component product replacing the two component supplemental food was of benefit to those summer feeding sites having limited facilities and inadequate sanitary conditions.

2. Nutrition Education. Many respondents in opposition to the proposal affirmed that authorizing the use of a formulated fortified product to replace wholesome, "natural" foods contradicts what nutrition educators are trying to teach and compromises the objectives for this child nutrition program. Those respondents supporting the concept, however, believed that since the product was proposed as a supplemental food item, it could provide an opportunity to educate children on the selection of nutritious snack foods.

3. Nutrition. Those respondents opposing the concept foresaw the ensuing products as likely to be high in sugar and fat, and devoid in fiber and trace nutrients found in "natural" foods. Those in favor of the concept argued that the product, providing children with one-sixth of the Recommended Dietary Allowances, would achieve a major objective in the summer program, which is to provide nutritional help to children.

4. Variety. There was some concern among those in opposition that some program administrators would elect to serve the formulated food every day because it would be the easiest to serve, thereby reducing the opportunity to expand a child's eating experiences. Supporters of the product saw it as offering increased variety to the supplemental food pattern.

5. Acceptability. Those commenters that had used such a product in the past testified the majority of children liked the taste and found it quite filling.

REASONS FOR WITHDRAWAL

In view of the many negative comments received, and the inconclusive benefits of this type of product to the child nutrition programs, the Department hereby withdraws the proposal. It is the belief of the Department that a properly balanced diet of conventional foods is the preferred source of adequate nutrition. Any "alternate food" authorized for use in the child nutrition programs must be advantageous to the programs, meeting one or more of the following criteria: nutritional contribution equal to or greater than that of the food it replaces, acceptability, cost, and convenience.

The Department views the nutrient content of the proposed alternate food as satisfactory. However, using conventional foods within the current regulations, a comparable or higher level of nutrition can be provided with good menu planning. Furthermore, the Department does not deem that the small level of convenience provided is adequate justification to compromise the Department's commitment and responsibility to the development of good food habits and the furtherance of nutrition education.

In view of the foregoing, the Department hereby withdraws the proposal published in the FEDERAL REGISTER (41 FR 28796) on July 13, 1976.

Dated: May 5, 1977.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc.77-13206 Filed 5-9-77;8:45 am]

Agricultural Marketing Service

[7 CFR Part 915]

HANDLING OF AVOCADOS GROWN IN SOUTH FLORIDA

Notice of Proposed Rulemaking

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Consideration is being given to the following proposal, which would regulate the handling of fresh avocados grown in South Florida by establishing minimum quality and maturity requirements for such avocados. The proposal would establish U.S. No. 3 as the minimum grade and would prescribe minimum weights or diameters by specified dates as the maturity requirements. Weights or diameters and picking dates are indices used at harvest to assure that avocados are mature and will ripen satisfactorily after picking.

COMMENT DATE: Comments must be received on or before May 20, 1977.

ADDRESSES: Comments may be addressed to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202-447-3545).

SUPPLEMENTARY INFORMATION: The proposed requirements would be established pursuant to § 915.51 Issuance of regulations and were recommended by the Avocado Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The proposed minimum grade and maturity requirements for handling of designated varieties of avocados would be effective on and after May 30, 1977. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The purpose of the proposed regulation is to assure that the fruit of the various varieties will be of suitable quality and maturity so as to provide consumer satisfaction which is a critical element in disposition of the crop. Immature avocados are unpalatable and, except for a few varieties, external characteristics do not provide an adequate basis on which to distinguish immature avocados from those that will ripen into a platable product. Hence, consumers have no rational basis for selection of satisfactory fruit.

The recommendations of the Avocado Administrative Committee reflect its appraisal of the avocado crop and current and prospective market conditions. Shipments of avocados are expected to begin on or about May 30, 1977. The committee has considered and recommended the quality and maturity requirements, including shipping periods, deemed appropriate to the current season for the designated varieties and types of avocados, to prevent the handling of immature and other undesirable fruit. Such recommendation recognizes the differences in consumer demand within and outside the production area and the proposed regulation would provide the trade and consumers with an adequate supply of mature avocados of a satisfactory quality commensurate with crop conditions in the interest of producers and consumers pursuant to the declared policy of the act.

Such proposal reads as follows:

§ 915.319 Avocado Regulation 19.

(a) *Order.* (1) During the period May 30, 1977, through April 30, 1978, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade: *Provided,* That avocados which fail to meet the requirements of such grade may be handled within the production area, if such avocados meet all other applicable requirements of this section and are handled in containers other than the containers prescribed in § 915.305, as amended (7 CFR Part 915), for the handling of avocados between the production area and any point outside thereof;

(2) On and after the effective date of this regulation, except as otherwise provided in subparagraphs (10) and (11) of this paragraph, no avocados of the varieties listed in Column 1 of the following Table I shall be handled prior to the date listed for the respective variety in Column 2 of such table, and thereafter each such variety shall be handled only in conformance with subparagraph (3), (4), (5), (6), (7), (8), and (9) hereof.

TABLE I

Variety	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Kosel	5-30-77	16 oz.	6-13-77	13 oz.	6-27-77	10 oz.	7-11-77
Arue	5-30-77	16 oz.	6-13-77	14 oz. 3-3/16 in	7-18-77		
Roland 22	6-13-77	22 oz.	6-27-77	20 oz.	7-18-77		
J.M. Poropat	6-20-77	20 oz.	6-27-77	18 oz.	7-18-77	16 oz.	8-1-77
Fuchs	6-20-77	14 oz. 3-3/16 in.	7-4-77	12 oz. 3-0/16 in.	7-18-77	10 oz. 2-14/16 in.	8-8-77
K-5	6-27-77	18 oz. 3-5/16 in.	7-11-77	14 oz. 3-3/16 in.	7-25-77		
Dr. DuPuis #2	6-20-77	16 oz. 3-9/16 in.	7-4-77	14 oz. 3-7/16 in.	7-18-77	12 oz. 3-2/16 in.	8-1-77
Hardee	7-4-77	16 oz. 3-2/16 in.	7-11-77	14 oz. 2-14/16 in.	8-1-77		
Pollock	7-4-77	18 oz. 3-11/16 in.	7-18-77	16 oz. 3-7/16 in.	8-1-77	14 oz. 3-4/16 in.	8-15-77
Simmonds	7-4/77	16 oz. 3-9/16 in.	7-18-77	14 oz. 3-7/16 in.	8-1-77	12 oz. 3-1/16 in.	8-15-77
Nadir	7-4-77	14 oz. 3-3/16 in.	7-11-77	12 oz. 3-1/16 in.	7-18-77	10 oz. 2-14/16 in.	8-1-77
Katherine	7-4-77	16 oz.	7-18-77	14 oz.	8-1-77		
Haile	7-4-77	20 oz.	7-18-77	16 oz.	7-25-77	14 oz.	8-15-77
Ruehle	7-18-77	18 oz. 3-11/16 in.	7-25-77	16 oz. 3-9/16 in.	8-1-77	14 oz. 3-7/16 in.	
Ruehle (Continued)					8-15-77	12 oz. 3-5/16 in.	8-29-77
Alpha	7-25-77	16 oz. 3-9/16 in	8-15-77				
Donnie	7-11-77	16 oz. 3-5/16 in.	7-25-77	14 oz. 3-4/16 in.	8-22-77		

TABLE I (Continued)

Variety	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Dawn	7-18-77	12 oz. 3-4/16 in.	8-1-77	10 oz. 3-0/16 in.	8-15-77		
Webb	7-18-77	18 oz.	8-1-77	16 oz.	8-15-77		
Biondo	8-1-77	15 oz.	8-15-77	12 oz.	10-3-77		
Cash	7-18-77	16 oz.	10-3-77				
Peterson	7-25-77	14 oz. 3-8/16 in.	8-8-77	10 oz. 3-2/16 in.	8-22-77	8 oz. 2-14/16 in.	9-5-77
232	8-1-77	14 oz.	8-15-77	12 oz.	8-29-77		
Gretchen	8-1-77	14 oz.	8-15-77	12 oz.	8-29-77		
Trapp	8-15-77	14 oz. 3-10/16 in.	8-29-77	12 oz. 3-7/16 in.	9-12-77		
B&B	8-1-77	16 oz. 3-8/16 in.	9-5-77				
Waldin	8-15-77	16 oz. 3-9/16 in.	8-29-77	14 oz. 3-7/16 in.	9-12-77	12 oz. 3-4/16 in.	9-26-77
Pinelli	8-1-77	18 oz. 3-12/16 in.	8-15-77	16 oz. 3-10/16 in.	8-29-77		
Miguel	8-1-77	22 oz. 3-13/16 in.	8-15-77	20 oz. 3-12/16 in.	8-29-77	18 oz. 3-10/16 in.	9-12-77
Nesbitt	8-1-77	22 oz. 3-12/16 in.	8-15-77	18 oz. 3-8/16 in.	8-22-77	16 oz. 3-5/16 in.	9-12-77
Beta	8-15-77	18 oz. 3-8/16 in.	8-22-77	16 oz. 3-5/16 in.	9-12-77		
K-9	8-15-77	16 oz.	9-5-77				
Tower 2	8-15-77	14 oz.	8-29-77	12 oz.	9-26-77		
Shula	8-15-77	22 oz.	9-5-77				
Tonnage	8-29-77	14 oz. 3-4/16 in.	9-5-77	12 oz. 3-0/16 in.	9-12-77	10 oz. 2-13/16 in.	9-19-77

TABLE I (Continued)

Variety	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Fairchild	8-29-77	16 oz. 3-10/16 in.	9-12-77	14 oz. 3-7/16 in.	9-26-77	12 oz. 3-4/16 in.	10-3-77
Nirody	8-29-77	18 oz. 3-15/16 in.	9-12-77	16 oz. 3-12/16 in.	9-26-77		
Loretta	8-29-77	28 oz. 4-1/16 in.	12-19-77				
Black Prince	9-12/77	23 oz.	9-26-77	16 oz.	10-17-77		
Catalina	9-12-77	24 oz.	9-19-77	22 oz.	10-3-77		
Csonka	9-19-77	22 oz.	10-17-77				
Blair	9-12-77	16 oz.	9-26-77	14 oz. 3-9/16 in.	10-17-77		
Collinson	9-26-77	16 oz. 3-10/16 in.	10-24-77				
Chica	9-26-77	12 oz. 3-7/16 in.	10-10-77	10 oz. 3-4/16 in.	10-24-77		
Rue	9-26-77	30 oz. 4-3/16	10-3-77	24 oz. 3-15/16 in.	10-17-77	18 oz. 3-9/16 in.	10-31-77
Brooks 1978	10-10-77	10 oz.	10-17-77	8 oz.	11-14-77		
Booth 5	10-3-77	14 oz. 3-9/16 in	10-17-77	12 oz. 3-6/16 in.	10-31-77		
Hickson	10-3-77	15 oz. 3-5/16 in	10-17-77	12 oz. 3-1/16 in.	10-31-77	10 oz. 3-0/16 in.	11-14-77
Simpson	10-3-77	16 oz. 3-9/16 in.	10-24-77				
Vaca	10-3-77	16 oz. 3-9/16 in.	10-24-77				

TABLE I (Continued)

Variety	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sherman	10-3-77	16 oz.	10-17-77	14 oz.	10-31-77	10 oz.	11-21-77
Marcus	10-3-77	32 oz. 4-12/16 in.	11-14-77				
Booth 10	10-10-77	16 oz. 3-10/16 in	11-7-77				
Booth 7	9-26-77	18 oz. 3-13/16 in.	10-10-77	16 oz. 3-10/16 in.	10-24-77	14 oz. 3-8/16 in.	11-7-77
Avon	10-10-77	15 oz. 3-11/16 in.	10-31-77				
Booth 11	10-10-77	16 oz. 3-12/16 in.	10-31-77				
Leona	10-10-77	18 oz. 3-10/16 in.	10-24-77				
Winslowson	10-10-77	18 oz. 3-14/16 in.	10-31-77				
Nelson	10-10-77	14 oz. 3-8/16 in.	10-24-77	12 oz. 3-5/16 in.	11-7-77	10 oz. 3-1/16 in.	11-28-77
Hall	10-10-77	26 oz. 3-14/16 in.	10-24-77	20 oz. 3-9/16 in.	11-7-77	18 oz. 3-8/16 in.	11-21-77
Lula	10-17-77	18 oz. 3-11/16 in.	10-31-77	14 oz. 3-6/16 in.	11-14-77	12 oz. 3-5/16 in.	11-28-77
Choquette	10-17-77	24 oz. 4-1/16 in.	10-31-77	20 oz. 3-14/16 in.	11-14-77	16 oz. 3-9/16 in.	11-21-77
Monroe	11-14-77	24 oz. 4-1/16 in.	11-28-77	20 oz. 3-14/16 in.	12-12-77	16 oz. 3-9/16 in.	12-26-77
Herman	10-17-77	16 oz. 3-9/16 in.	10-31-77	14 oz. 3-6/16 in.	11-14-77		
Murphy	10-17-77	16 oz.	10-31-77	14 oz.	11-14-77	11 oz.	12-5-77

TABLE I (Continued)

Variety	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date	Minimum Weight or Diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Ajax (B-7-B)	10-24-77	18 oz. 3-14/16 in.	11-14-77				
Booth 1	11-21-77	16 oz. 3-12/16 in.	12-5-77	14 oz. 3-10/16 in.	12-19-77	12 oz. 3-6/16 in.	1-2-78
Booth 3	10-24-77	16 oz. 3-10/16 in.	11-14-77				
Taylor	10-24-77	14 oz. 3-5/16 in.	11-7-77	12 oz. 3-2/16 in.	11-21-77		
Dunedin	11-7-77	16 oz. 3-10/16 in.	11-21-77	14 oz. 3-8/16 in.	12-5-77	10 oz. 3-1/16 in.	12-26-77
Byars	11-14-77	16 oz. 3-14/16 in.	12-5-77				
Linda	11-14-77	18 oz. 3-12/16 in.	12-5-77				
Nabal	11-14-77	14 oz. 3-9/16 in.	12-5-77				
Zio	11-28-77	12 oz.	12-12-77	10 oz.	12-26-77		
Wagner	12-5-77	12 oz. 3-5/16 in.	12-19-77	10 oz. 3-2/16 in.	1-2-78		
Maya	12-26-77	13 oz.	1-9-78	11 oz.	1-23-78		
Brookslate	1-9-78	14 oz.	1-23-78	12 oz.	2-6-78	10 oz.	2-20-78
Schmidt	1-16-78						
Itzamna	2-13-78						

(3) From the date listed for the respective variety in Column 2 of Table I to the date listed for the respective variety in Column 4 of such table, no handler shall handle any avocado of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 3 of such table or is of at least the diameter specified for such variety in said Column 3;

(4) From the date listed for the respective variety in Column 4 of Table I to the date listed for the respective variety in Column 6 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 5 of such table or is of at least the diameter specified for such variety in said Column 5;

(5) From the date listed for the respective variety in Column 6 of Table I to the date listed for the respective variety in Column 8 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 7 of such table or is of at least the diameter specified for such variety in said Column 7;

(6) No handler shall handle (i) prior to August 22, 1977, any Lisa variety avocados, (ii) during the period August 22, 1977, through August 28, 1977, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 12 ounces, (iii) during the period August 29, 1977, through September 4, 1977, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 11 ounces, (iv) during the period September 5, 1977, through September 11, 1977, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 10 ounces, (v) during the period September 12, 1977, through September 19, 1977, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 9 ounces;

(7) No handler shall handle (i) prior to September 12, 1977, any Booth 8 variety avocados, (ii) during the period September 12, 1977, through October 2, 1977, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 16 ounces, or is at least 3 9/16 inches in diameter, or (iii) during the period October 3, 1977, through October 16, 1977, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 14 ounces, or is at least 3 9/16 inches in diameter, or (iv) during the period October 17, 1977, through October 30, 1977, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 12 ounces, or is at least 3 3/16 inches in diameter, or (v) during the period October 31, 1977, through November 14, 1977, any Booth 8 variety avacodos unless the individual fruit in each of such avocados weighs at least 10 ounces or is at least 3 1/16 inches in diameter.

(8) Except as otherwise provided in subparagraphs (10) and (11) of this paragraph, varieties of the West Indian type of avocados not listed in Table I shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to July 4, 1977.

(ii) From July 4, 1977, through July 31, 1977, the individual fruit in each lot of such avocados shall weigh at least 18 ounces.

(iii) From August 1, 1977, through September 4, 1977, the individual fruit in each lot of such avocados shall weigh at least 16 ounces.

(iv) From September 5, 1977, through October 3, 1977, the individual fruit in each lot of such avocados shall weigh at least 14 ounces.

(9) Except as otherwise provided in subparagraphs (10) and (11) of this paragraph, varieties of avocados not covered by subparagraphs (2) through (8) hereof shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to September 19, 1977.

(ii) From September 19, 1977, through October 16, 1977, the individual fruit in each lot of such avocados shall weigh at least 15 ounces.

(iii) From October 17, 1977, through December 19, 1977, the individual fruit in each lot of such avocados shall weigh at least 13 ounces.

(10) Notwithstanding the provisions of subparagraphs (2) through (9) hereof regarding the minimum weight or diameter for individual fruit, up to 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified weight and be less than the minimum specified diameter: *Provided*, That such avocados weigh not more than two ounces less than the applicable specified weight for the particular variety as prescribed in Columns 3, 5, or 7 of Table I or in subparagraphs (6), (7), (8), and (9). Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(11) The provisions of subparagraphs (2) through (10) of this paragraph shall not apply to any variety, except the Linda variety, of avocados which, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color for that fruit when mature.

(b) Terms used in the amended marketing agreement and order, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; the term "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit; and the term "U.S. No. 3" shall have the same meaning as set forth in the United States Standards for Florida Avocados (7 CFR 51.3050–51.3069).

(c) The provisions of this regulation shall become effective May 30, 1977.

Dated: May 2, 1977.

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

[FR Doc.77-13088 Filed 5-9-77;8:45 am]

Commodity Credit Corporation

[7 CFR Part 1421]

GRAINS AND SIMILARLY HANDLED COMMODITIES

General Regulations Governing Price Support for 1976 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This notice extends to May 27, 1977, the time period for making comments on the proposed expansion of the list of commodities on which approved cooperative marketing associations may participate in authorized price support programs to include barley, corn, grain sorghum, oats, rye and wheat, as a number of parties have requested additional time for making comments. The additional time for comments is given, as requested, in order that all persons will have sufficient time to respond.

DATE: Comments must be received on or before May 27, 1977.

ADDRESS: Send comments to the Director, Grains, Oilseeds and Cotton Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Charlie B. Robbins (ASCS), 202–447–4634.

SUPPLEMENTARY INFORMATION: On April 12, 1977, a notice was published in the FEDERAL REGISTER, 42 FR 19149, that the Secretary was considering an amendment to the General Regulations Governing Price Support for the 1976 and subsequent crops to expand the list of commodities on which approved cooperative marketing associations may participate in authorized price support programs to include barley, corn, grain sorghum, oats, rye and wheat. Comments were solicited from interested persons. The comment period extended through May 12, 1977.

The Secretary is interested in receiving comments from all individuals, firms and cooperatives who wish to respond. A number of persons have requested, however, that additional time be allowed for submitting comments.

Notice is hereby given that an additional 15 days are being allowed for submission of comments. Comments must be received on or before May 27, 1977, to be sure of consideration. All written comments received during the

original 30 days and the additional 15 days for comments will be available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)).

Signed at Washington, D.C., on May 5, 1977.

VICTOR A. SENECHAL,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.77-13417 Filed 5-9-77;8:45 am]

[7 CFR Part 1425]

COOPERATIVE MARKETING ASSOCIATIONS

Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This notice extends to May 27, 1977, the time period for making comments on the proposed expansion of the list of commodities on which approved cooperative marketing associations may participate in authorized price support programs to include barley, corn, grain sorghum, oats, rye, and wheat, as a number of parties have requested additional time for making comments. The additional time for comments is given, as requested, in order that all persons will have sufficient time to respond.

DATE: Comments must be received on or before May 27, 1977.

ADDRESS: Send comments to the Director, Grains, Oilseeds and Cotton Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Charlie B. Robbins (ASCS). (202-447-4634).

SUPPLEMENTARY INFORMATION: On April 12, 1977, a notice was published in the FEDERAL REGISTER, 42 FR 19149, that the Secretary was considering an amendment to the Cooperative Marketing Associations Eligibility Requirements to expand the list of commodities on which approved cooperative marketing associations may participate in authorized price support programs to include barley, corn, grain sorghum, oats, rye, and wheat. Comments were solicited from interested persons. The comment period extended through May 12, 1977.

The Secretary is interested in receiving comments from all individuals, firms, and cooperatives who wish to respond. A number of persons have requested, however, that additional time be allowed for submitting comments.

Notice is hereby given that an additional 15 days are being allowed for submission of comments. Comments must be received on or before May 27, 1977, to be sure of consideration. All written comments received during the original 30 days and the additional 15 days for comments will be available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)).

Signed at Washington, D.C., on May 5, 1977.

VICTOR A. SENECHAL,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.77-13406 Filed 5-9-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 120]

BUSINESS LOAN POLICY

Notice of Proposed Rulemaking

AGENCY: Small Business Administration.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would clarify that all cooperatives, including farm cooperatives, must meet the qualification of a group corporation (13 CFR 122.9) to be eligible for financial assistance. This question arose when Pub. L. 94-305 made agriculture eligible for SBA assistance. The intent of this rule is to establish the same eligibility rules for farm cooperatives as for other cooperatives. Marketing Cooperatives would thus be equally ineligible as marketing group corporations are now. It will also incorporate SBA's longstanding policy that consumer cooperatives are ineligible. See 13 CFR 119.21(d).

DATES: Comments must be received on or before May 25, 1977.

ADDRESSES: Comments, submitted in duplicate, are to be addressed to Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Richard L. Wray, Financial Analyst, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416. (202-653-6470).

(Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. § 634.)

It is proposed to amend, as set forth below, § 120.2(d)(3) of Part 120, Chapter 1, Title 13 of the Code of Federal Regulations.

Section 120.2(d)(3) would be amended to read as follows:

§ 120.2 Business loans and guarantees.

* * * * *

(d) Financial assistance will not be granted by SBA:

(1) * * *

(2) * * *

(3) If the applicant is an eleemosynary institution or other nonprofit enterprise: *Provided, however,* That this provision shall not be construed to bar financial assistance to a cooperative, including a farm cooperative, which meets the qualifications and requirements under § 122.9, of this Chapter. Consumer cooperatives are not eligible. An otherwise eligible small business concern will not become ineligible because it is owned in whole or in part by a nonprofit organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.012 Small Business Loans.)

Dated: May 3, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-13196 Filed 5-9-77;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Parts 1 and 32]

REGULATION OF COMMODITY OPTION TRANSACTIONS

Public Hearing

AGENCY: Commodity Futures Trading Commission.

ACTION: Public hearing.

SUMMARY: The Commodity Futures Trading Commission will hold public hearings on Wednesday, May 25, 1977, to receive oral statements on its proposed pilot program for the regulation of commodity option transactions in the United States.

DATES: Hearing: 10 a.m., May 25 and May 26 (if necessary), 1977.

ADDRESS: 5th Floor Hearing Room, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mrs. Jane Stuckey, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. (202-254-6126).

SUPPLEMENTARY INFORMATION: The Commission's proposed pilot program was publicly announced in the FEDERAL REGISTER on April 5, 1977, (42 FR 18246).

Persons who wish to appear at the hearings should forward an outline of their proposed statement to Mrs. Stuckey at the above address in time for it to be received by May 20, 1977.

Persons making statements before the Commission may be accompanied by persons of their own choosing, who may advise or assist the speaker in responding to questions or otherwise assure that full information is developed for the use of the Commission. Oral presentations will be limited to 15 minutes. During and subsequent to any person's oral presentation, questions may be asked either by members of the Commission or the Commission staff.

The Commission recognizes that members of the public may have questions. Therefore, provision will be made for persons having questions to submit those questions in informal written form to a member of the Commission staff who will have discretion whether or not to pose

those questions to the persons making the presentation.

Issued in Washington, D.C., on May 4, 1977, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.77-13236 Filed 5-9-77;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Part 154]

NATURAL GAS PIPELINE COMPANIES' FPC GAS TARIFFS

Purchased Gas Cost Adjustment Provision

AGENCY: Federal Power Commission.

ACTION: Notice requesting further comments.

SUMMARY: The Commission on April 26, 1977, granted a motion by the Staff for further comments in the rulemaking proceeding in Docket No. R-406, Purchased Gas Adjustment Provisions in Natural Gas Pipeline Companies' FPC Gas Tariffs. Comments were previously requested in this proceeding by notice published on May 17, 1976 (41 FR 20177). The additional comments are requested on the issue of whether a natural gas company should be allowed to file additional purchased gas adjustments, in addition to the proposed semi-annual adjustments, to track costs resulting from rate filings under Section 4(e) of the Natural Gas Act by pipeline suppliers.

DATES: Comments must be received on or before May 11, 1977.

ADDRESS: Send comments to Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, 275-4166

Issued: April 26, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-12766 Filed 5-9-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 61]

[Docket No. 21005]

TARIFFS

International Telex Service With the Domestic Telex and TWX Services; Order Extending Time for Filing Comments, Responses and Replies

AGENCY: Federal Communications Commission.

ACTION: Extension of time.

SUMMARY: Upon request of RCA Global Communications, Inc. the Commission is extending the filing deadlines in Docket 21005 for a period of one week to allow for additional time to respond.

DATES: Comments must be received on or before May 16, 1977; Responses must be received on or before June 16, 1977; and Replies must be received on or before June 27, 1977.

ADDRESSES: Send comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Francis L. Young, Tariff Division, Common Carrier Bureau (202-632-5550).

SUPPLEMENTARY INFORMATION:

Adopted: April 28, 1977.

Released: May 2, 1977.

ORDER

1. Before the Commission for consideration is the motion for extension of time, filed April 27, 1977, by RCA Global Communications, Inc. (RCA Globcom) seeking a one week extension of the filing deadlines in this Docket. In support of its request, RCA Globcom avers that key personnel, including the officer assigned management responsibility for coordinating its response, were required to respond to the action of governmental authorities on Saipan who terminated, on April 23, 1977, RCA Globcom's access to the sole commercial communications facilities link between Guam and Saipan.

2. In light of the extenuating circumstances on Saipan and RCA Globcom's assertion of the assignment of key personnel to address an interim resolution of the problems resulting from the action on Saipan, good cause appears to exist for grant of an extension of time. The one week period requested appears reasonable and not detrimental to the public interest.

3. *Accordingly, it is ordered,* Pursuant to delegated authority, 47 CFR 0.303(c), That the motion for extension of time, filed April 27, 1977, by RCA Global Communications is granted, and that the times for filing comments and responsive pleadings are extended to the following dates: Comments, May 16, 1977; Responses, June 16, 1977; Replies, June 27, 1977.

DANIEL OHLBAUM,
Acting Deputy Chief, Common Carrier Bureau.

[FR Doc.77-13227 Filed 5-9-77;8:45 am]

[47 CFR Part 64]

COMPUTER INQUIRY

Notice Listing Parties in Proceeding

AGENCY: Federal Communications Commission.

ACTION: Notice with service list.

SUMMARY: The Commission is publishing a revised list of those parties who will be participating in the new computer inquiry rulemaking proceeding. The purpose of the list is to enable parties to the proceeding to serve the parties listed with a copy of their comments and reply comments. This list is being prepared to reflect corrections made to the previous service list.

DATES: Comments must be received on or before May 16, 1977, and Reply Comments must be received on or before June 30, 1977.

ADDRESSES: Send comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

James K. Smith, Common Carrier Bureau, 632-9342.

SUPPLEMENTARY INFORMATION: Released: May 5, 1977.

In the matter of amendment of § 64.702 of the Commission's Rules and Regulations (Computer Inquiry).[1]

1. A Supplemental Notice of Inquiry and Enlargement of Proposed Rulemaking (FCC 77-151) which expanded the scope of Docket No. 20828 was issued on March 8, 1977. Parties not listed in the service list attached to the Supplemental Notice who were interested in participating in this proceeding were requested to file a notice of intent to participate by March 25, 1977. In view of the additional responses, a revised service list, released April 21, 1977, was prepared to reflect any additions or corrections to the initial sevice list. Several corrections were not made to the April 21, 1977 service list which should have been made. A new service list (Attachment A) has been prepared which reflects these corrections. Those changes to the April 21, 1977 service list which are being made in Attachment A are denoted by an asterisk (*).

2. Parties to this proceeding should serve a copy of all pleadings in this proceeding on those parties listed in Attachment A. At least one copy per party should be served on those firms representing more than one party. To the extent that other documents may be entered into the record which are not served on the parties listed in Attachment A, reference should be made to the Commission's public file in Docket No. 20828 for the complete record. Comments and other documents filed in this proceeding will be available for public inspection in the Docket Reference Room in the Commission's offices at 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION,
DANIEL R. OHLBAUM,
Acting Deputy Chief, Common Carrier Bureau.

ATTACHMENT A

James G. Buckley, Jim Buckley and Associates, 1319 F Street, N.W., Room 711, Washington, D.C. 20004.

Jeremiah Courtney, Esq., Ad Hoc Telecommunications Committee, 2120 L Street, N.W., Washington, D.C. 20037.

Charles R. Cutler, Esq., Kirkland, Ellis & Rowe, 1776 K Street, N.W., Washington, D.C. 20006. Counsel for Aeronautical Radio, Inc.

[1] See 42 FR 21626, April 28, 1977.

Gerald M. Lowrie, American Bankers Association, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036.

Aloysuis B. McCabe, Esq., Michael Yourshaw, Esq., Kirkland, Ellis & Rowe, 1776 K Street, N.W., Washington, D.C. 20006. Counsel for American Newspaper Publishers Association; Associated Press; Commodity News Services, Inc.

Michael D. Campbell, Esq., Stuart G. Meister, Esq., American Satellite Corporation, 20301 Century Blvd., Germantown, Maryland 20767.

*Alfred A. Green, Esq., American Telephone & Telegraph Company, 195 Broadway, New York, New York 10007.

Carol A. Cohen, Esq., Applied Data Research, Inc., Route 206 Center, Princeton, New Jersey 08540.

Herbert E. Marks, Esq., Stephen R. Bell, Esq., Richard P. Carr, Esq., Wilkinson, Cragun & Barker, 1735 New York Avenue, N.W., Washington, D.C. 20006. Counsel for Remote Processing Services Section (RPSS) of the Association of Data Processing Service Organizations; Independent Data Communications Manufacturers Association, Inc.

Ben Harty, Esq., Vice President, Boeing Computer Services, Inc., 177 Madison Avenue, Morristown, New Jersey 07960.

Arthur Scheiner, Esq., Michael H. Rosenbloom, Esq., Wilner & Scheiner, 2021 L Street, N.W., Washington, D.C. 20036. Counsel for Boeing Computer Services, Inc.

Paul S. Hoffman, Vice President, Bowne and Company, Inc., 345 Hudson Street, New York, New York 10014.

Tedson J. Meyers, Esq., Michael W. Faber, Esq., Peabody, Rivlin, Lambert & Meyers, Connecticut Building, 12th floor, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036. Counsel for Citicorp; Bunker Ramo Corporation.

Joseph M. Kittner, Esq., Peter M. Anderson, Esq., McKenna, Wilkinson & Kittner, 1150 17th Street, N.W., Washington, D.C. 20036. Counsel for the Computer and Business Equipment Manufacturers Association; McDonnell Douglas Corporation.

John S. Voorhees, Esq., Howrey & Simon, 1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Counsel for the Computer and Business Equipment Manufacturers Association.

Robert P. Bigelow, Editor, Computer Law and Tax Report, 28 State Street, Suite 2200, Boston, Massachusetts 02109.

William K. Coulter, Esq., Communications Satellite Corporation, 950 L'Enfant Plaza, S.W., Washington, D.C. 20024.

James T. Roche, Esq., COMSAT General Corporation, 950 L'Enfant Plaza, S.W., Washington, D.C. 20024.

Terry G. Mahn, Esq., Computer and Communications Industry Association, 1911 N. Fort Myer Drive, Rosslyn, Virginia 22209.

Thomas L. Jones, Esq., Continental Telephone Corporation, 1800 K Street, N.W., Suite 629, Washington, D.C. 20006.

Philip C. Onstad, Manager, Telecommunications Policies, Control Data Corporation, 500 West Putnam Avenue, Greenwich, Connecticut 06830.

John Sodolski, Staff Vice President, Electronic Industries Association, 2001 Eye Street, N.W., Washington, D.C. 20006.

Henry Goldberg, Esq., Thomas J. Keller, Esq., Verner, Liipfert, Bernhard & McPherson, 1660 L Street, NW., Suite 1000, Washington, D.C. 20036. Counsel for French Telegraph Cable Co.

David Sherman, Esq., General Electric Company, 401 N. Washington Street, Rockville, Maryland 20850.

Richard A. Fazzone, Esq., General Electric Company, 2500 Cambridge Road, Schenectady, New York 12304.

Edward P. Taptich, Esq., McKenna, Wilkinson & Kittner, 1150 17th Street, N.W., Washington, D.C. 20036. Counsel for General Electric Company.

Spence W. Perry, Esq., General Services Administration, 18th and F Streets, N.W., Room 4008, Washington, D.C. 20405.

James M. Baisley, Esq., 400 North Wolf Road, Northlake, Illinois 60614. Counsel for GTE Automatic Electric, Inc.

Allen R. Frischkorn, Jr., Esq., 1120 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036. Counsel for GTE Automatic Electric Inc.; GTE Data Services, Inc.

James V. Carideo, Esq., P.O. Box 1548, Tampa, Florida 33601. Counsel for GTE Data Services, Inc.

Richard Cahill, Esq., Richard McKenna, Esq., One Stamford Forum, Stamford, Connecticut 06904. Counsel for GTE Domestic Telephone Operating Companies.

Ruth L. Prokop, Esq., 1120 Connecticut Avenue, N.W., Washington, D.C. 20036. Counsel for GTE Domestic Telephone Operating Companies.

Andrew M. Wolfe, Esq., Harrick & Smith, 100 Federal Street, Boston, Massachusetts 02110. Counsel for Incoterm Corporation.

David R. Anderson, Esq., Wilmer, Cutler & Pickering, 1666 K Street, N.W., Washington, D.C. 20006. Counsel for International Business Machines Corporation.

J. Gordon Walter, Esq., Senior Attorney, IBM Corporation, Old Orchard Road, Armonk, New York 10504.

Agatha M. Modugno, Esq., Legal Department, ITT Domestic Transmission Systems, Inc., 67 Broad Street, New York, New York 10004.

Gerald A. Poch, ITT—North American Telecommunications Group, 320 Park Avenue, New York, New York.

Joseph J. Jacobs, Esq., Vice President and General Attorney, ITT World Communications, Inc., 67 Broad Street, New York, New York 10004.

David McCabe, 618 A Street, S.E., Apt. 4, Washington, D.C. 20003.

Michael H. Bader, Esq., Kenneth A. Cox, Esq., William J. Byrnes, Esq., 1730 M Street, N.W., Washington, D.C. 20036, Counsel for MCI Telecommunications Corporation; Microwave Communications, Inc. and N-Triple-C, Inc.

National Burglar and Fire Alarm Association, 1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

Eugene Strange, President, National Communications Services, 107 St. Andrews Drive, Vienna, Virginia 22180.

William B. Moriarty, II, National Data Corporation, One National Date Plaza, Atlanta, Georgia 30329.

Ralph W. Christry, Esq., Alston, Miller & Gaines, 1800 M Street, N.W., Suite 1000, Washington, D.C. 20036. Counsel for National Data Corporation.

Thomas W. Kern, Manager, Systems Standards, Industry Standards and Relations, NCR Corporation, Main and "K" Streets, Dayton, Ohio 45479.

General Counsel, Executive Office of the President, Office of Telecommunications Policy, 1800 G Street, N.W., Washington, D.C. 20504.

Raymond Panko, 808 Coleman Avenue, Apt. 12, Menlo Park, California 94025.

David R. Ellis, Esq., RCA American Communications, Inc., 201 Centennial Avenue, Piscataway, New Jersey 08854.

Donald J. Elardo, Esq., RCA Global Communications, Inc., 60 Broad Street, New York, New York 10004.

David J. Cook, Esq., Nixon, Hargrave, Devans and Doyle, Lincoln First Tower, Rochester, New York 14603. Counsel for Rochester Telephone Corporation.

John R. Bonica, Rutgers Journal of Computers and the Law, 180 University Avenue, Newark, New Jersey 07102.

F. Sherwood Lewis, Esq., Assistant Corporate Counsel, Sander Associates, Inc., Daniel Webster Highway South, Nashua, New Hampshire 03061.

* F. Thomas Tuttle, Esq., Counsel, Regulatory Matters, Satellite Business Systems, 8003 Westpark Drive, McLean, Virginia 22101.

Philip S. Abrams, Vice President, Scientific Time Sharing Corporation, 7316 Wisconsin Avenue, Suite 207, Bethesda, Maryland 20014.

David B. Goldstein, Esq., Davis, Wright, Todd, Riese & Jones, 4200 Seattle, First National Bank Building, Seattle, Washington 98154. Counsel for Seattle-First National Bank.

John L. Bartlett, Esq., Kirkland, Ellis & Rowe, 1776 K Street, N.W., Washington, D.C. 20006. Counsel for Securities Industry Automation Corporation.

John V. Kenney, Esq., 1620 Eye Street, N.W., Suite 615, Washington, D.C. 20006. Counsel for Southern Pacific Communications Company.

Frank M. Lesher, Esq., Sperry Univac Division, Sperry Rand Corporation, P.O. Box 500, Blue Bell, Pennsylvania 19422.

Lloyd I. Krause, Stanford Research Institute, Menlo Park, California 94025.

Philip M. Walker, Esq., Telenet Communications Corporation, 1050 17th Street, N.W., Washingotn, D.C. 20036.

Donald E. Ward, Esq., 1050 17th Street, N.W., Suite 840, Washington, D.C. 20036. Counsel for Telenet Communications Corporation.

Fred W. Morris, President, Tele-Sciences Corporation, 9315 Hollyoak Court, Washington, D.C. 20034.

Merrikay S. Hall, Hughes, Hubbard & Reed, One Wall Street, New York, New York 10005. Counsel for Thrift Transfer Services, Inc.

Roderick A. Mette, Esq., 1747 Pennsylvania Avenue, N.W., Washington, D.C., 20006. Counsel for TRT Telecommunications Corporation.

William M. Combs, President, Tymnet, Inc., 10261 Bubb Road, Cupertino, California 95014.

John O. Somers, Esq., P.O. Box 11315, Kansas City, Missouri 64112. Counsel for United Computer Systems, Inc.

Thomas J. O'Reilly, Esq., Chadbourne, Park, Whiteside & Wolff, 1150 17th Street, N.W., Washington, D.C. 20036. Counsel for United States Independent Telephone Association.

John M. Lothschuetz, Esq., Carolyn C. Hill, Esq., 1800 K. Street, N.W., Suite 1102, Washington, D.C. 20006. Counsel for United Systems Service, Inc., on behalf of the member companies of the United Telephone System.

Warren E. Baker, Esq., P.O. Box 11315, Kansas City, Missouri 64112. Counsel for United Systems Service, Inc., on behalf of the member companies of the United Telephone System.

Charles M. Meehan, Esq., Keller & Heckman, 1150 17th Street, N.W., Suite 1000, Washington, D.C. 20036. Counsel for Utilities Telecommunications Council.

Stephen C. Weingarten, Esq., Western Union International, Inc., One WUI Plaza, New York, New York 10004.

Joel Yohalem, Esq., Robert N. Green, Esq., Western Union Telegraph Company, 1828 L Street, N.W., Washington, D.C. 20036.

James H. Carlisle, The Annenberg School of Communications, University of Southern California, University Park, Los Angeles, California 90007.

Kenneth Robinson, Esq., U.S. Department of Justice, Constitution Avenue at 10th Street, N.W., Washington, D.C. 20530.

John L. Wheeler, Xerox Corporation, Xerox Square 114, Rochester, New York 14644.

* Edgar Mayfield, Esq., American Telephone & Telegraph Company, Long Lines Department, P.O. Box 32, Room 4B-112, Bedminster, New Jersey 07921.

* James R. Tuck, Esq., NLT Computer Services Corporation, 3767 New Getwell Road, Memphis, Tennessee 38118.

[FR Doc.77-13334 Filed 5-9-77;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.

ADMINISTRATOR EMERGENCY NATURAL GAS ACT OF 1977

[Docket No. E77-101]

TEXAS GAS TRANSMISSION CORP.

Emergency Order

On May 3, 1977, Texas Gas Transmission Corporation (Texas Gas), as agent for certain of its customers,[1] filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application for authorization to transport natural gas which it is purchasing for certain of its customers.

Texas Gas, as agent, executed a contract on April 12, 1977, with Hunt Oil Company (Hunt) for the purchase of approximately 1,000 Mcfd from the Bayou Middle Fork Field, Claiborne Parish, Louisiana. Texas Gas will receive these volumes at the outlet of the Claiborne Gasoline Plant, Claiborne Parish, Louisiana, and transport these supplies through its existing pipeline facilities to the customers for which it is purchasing the gas.

The total price to be paid by Texas Gas, as agent, is $2.25 per MMBtu. This price is fair and equitable in accordance with Order No. 2.

Texas Gas' proposed transportation rates are based upon the cost data supporting the settlement rates in Texas Gas' most recent Federal Power Commission rate case in Docket No. RP76-17 and the retention of a percent of the transported volumes for compressor fuel and company use and loss. I find no basis for prescribing other charges since the parties have agreed upon the transportation charges.

Based upon the foregoing, Texas Gas is authorized to purchase gas, as agent, from Hunt and to transport such gas for certain of its customers. This authorization is conditioned on (i) Texas Gas' submission of the names of the customers' for which it is acting as agent, and (ii) Texas Gas' agreement to submit the reports required by Order No. 4.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Texas Gas and Hunt. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MAY 5, 1977.

[FR Doc.77-13388 Filed 5-9-77;8:45 am]

[1] These customers are local distribution companies and interstate pipelines as defined in sections 2 (1), (5) of the Act (91 Stat. 4).

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Louisiana Grain Inspection Areas

Statement of considerations. Pursuant to sections 7(e)(1) and 7A(c)(1) of the U.S. Grain Standards Act of 1976 (7 U.S.C. 71 et seq.), hereinafter the "Act," the Federal Grain Inspection Service is required to provide official inspection and weighing services for all grains required or authorized to be inspected and weighed by the Act, at those export port locations where a state is not delegated to perform these official services (7 U.S.C. 79(e)(1) and 7 U.S.C. 79a(c)(1)).

The Federal Grain Inspection Service will assume performance of official inspection and weighing services at such export port locations within 18 months of the November 20, 1976, effective date of the amended Act. Provided that, subject to meeting certain requirements of the Act, existing official agencies may continue to function during such a transition period.

The New Orleans Board of Trade, New Orleans, Louisiana, a designated official agency at the following Louisiana parishes or portions thereof: Orleans, Plaquemines, and Jefferson, will cease providing official inspection services effective midnight, May 7, 1977, in accordance with prior notice to the Federal Grain Inspection Service.

Notice is hereby given that, effective May 8, 1977, the designation of the New Orleans Board of Trade, New Orleans, Louisiana, as an official agency is canceled pursuant to the provisions of section 7(g)(2) of the Act (7 U.S.C. 79(g)(2)).

The Federal Grain Inspection Service, effective May 8, 1977, will commence providing official grain inspection and weighing services at the area previously serviced by the New Orleans Board of Trade including the following Louisiana parishes or portions thereof: Orleans, Plaquemines, and Jefferson, in accordance with sections 7(e)(1) and 7A(c)(1) of the Act (7 U.S.C. 79(e)(1) and 7 U.S.C. 79a(c)(1)). The land-based elevators in this inspection area include the Mississippi River Grain Elevator, Myrtle Grove, Louisiana, the Continental Grain Company, Westwego, Louisiana, and the Bulk Terminal and the Public Grain Elevator, New Orleans, Louisiana.

(Sec. 7 (Pub. L. 94-582) 90 Stat. 2870 (7 U.S.C. 79); sec. 7A (Pub. L. 94-582) 90 Stat. 2875 (7 U.S.C. 79A).)

Effective date: This notice shall become effective May 7, 1977.

Done in Washington, D.C., on May 4, 1977.

D. R. GALLIART,
Interim Administrator.

[FR Doc.77-13205 Filed 5-9-77;8:45 am]

Office of the Secretary

NATIONAL FOREST MANAGEMENT ACT COMMITTEE OF SCIENTISTS

Meeting

The Committee of Scientists will meet at 9 a.m. on May 24, 1977, through afternoon of May 26, 1977, in Room 104-A of the Department of Agriculture Administration Building, 14th and Independence Ave. SW., Washington, D.C. The purpose of this meeting is Organization and defining the role and charter of the Committee of Scientists.

The meeting will be open to the public. Persons who wish to attend should notify Charles R. Hartgraves, Forest Service, AC 202-447-5933. Written statements may be filed with the committee before or after the meeting.

M. RUPERT CUTLER,
Assistant Secretary.

MAY 6, 1977.

[FR Doc.77-13459 Filed 5-6-77;3:43 pm]

Rural Electrification Administration

COPPER VALLEY ELECTRIC ASSOCIATION, INC., GLENNALLEN, ALASKA

Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider: (a) providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $16,000,000 to Copper Valley Electric Association, Inc., of Glennallen, Alaska, and (b) supplementing such a loan with an insured REA loan at 5 percent interest in the approximate amount of $14,326,000 to this cooperative. These loan funds will be used to finance a project consisting of a

12,000 kW hydro generating unit, substation, and 104 miles of 138 kV and 4 miles of 25 kV transmission line.

Legally organized lending agencies capable of making, holding, and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. James F. Palin, Manager, Copper Valley Electric Association, Inc., Box 45, Glennallen, Alaska 99588.

In order to be considered, proposals must be submitted on or before June 9, 1977, to Mr. Palin. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Copper Valley Electric Association, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washinton, D.C., this 2d day of May 1977.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc.77-13137 Filed 5-9-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 27557]

CARGO CHARTER TRANSFER RATE INVESTIGATION

Reconvening Prehearing Conference; (former title—Transatlantic FAK Container and Charter Freight Rates Investigation)

Notice is hereby given that the prehearing conference in the above-entitled matter will be reconvened on June 14, 1977, at 10 a.m. (local time), in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned Administrative Law Judge.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statements of positions of parties; and (5) proposed procedural dates. The Bureau of Economics will circulate its material on or before May 31, 1977, and the other parties on or before June 7, 1977. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Economics, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing. All submittal dates established herein are to be regarded as dates for receipt and not as mailing dates.

Dated at Washington, D.C., May 4, 1977.

THOMAS P. SHEEHAN,
Administrative Law Judge.

[FR Doc.77-13262 Filed 5-9-77;8:45 am]

[Order 77-5-13, Docket 29123 Agreement C.A.B. 26319 R-1 through R-23, etc.]

IATA

Passenger Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of May 1977.

Agreements adopted by Traffic Conference 3 of the International Air Transport Association relating to passenger fares.

In Order 77-3-163, March 29, 1977, the Board deferred action upon Agreement C.A.B. 26319, adopted by the member carriers of the International Air Transport Association (IATA), which proposes a new intra-Pacific fare package, in view of information that the carriers had adopted an agreement at a special meeting in Manila modifying their original proposal. The Board noted at that time that the new agreement should be filed shortly and stated its intention to consider both agreements as one package. That agreement has now been filed and has been designated Agreement C.A.B. 26542.[1]

Together, the two agreements comprise the intra-Pacific fare structure to be effective through March 1978 and has direct application in air transportation, as defined by the Act, only insofar as fares to/from Guam and American Samoa are concerned. The earlier agreement proposes a five-percent increase in normal first-class and promotional fares and a three-percent increase in normal economy fares. Agreement C.A.B. 26542, however, modifies that earlier proposal in that normal first-class, economy-class, and excursion fares to/from Guam and American Samoa, and certain other destinations in the Pacific Basin, would remain at levels approved by the Board in Order 76-5-95, May 21, 1976. The agreement would add normal first-class, economy-class, and excursion fares for travel between Guam and Jakarta, at levels higher than those contained in presently effective tariffs, and would make certain other technical adjustments in various fare resolutions primarily to correct anomalies in the construction and combination of fares in the Pacific area.

The Board will dispose of the agreements here before it in a manner consistent with its recent disposition of recent agreements relating to the North/Central and South Pacific fare structures. With regard to the North/Central Pacific agreement, the Board found the proposed increases in most fares to be warranted. However, the proposed North/Central normal economy and 21-day excursion fares were found to be in excess of costs.[2] Insofar as data affecting Guam are typicaly included in carrier justification for North/Central Pacific fare increases, we are unable to conclude that normal economy fares to/from Guam are not also in excess of costs. In view of these circumstances, we will approve the increased fares proposed to/from Guam with the exception of the normal economy-fare increase. Contrary to our action with respect to the proposed increase in the North/Central Pacific excursion fare, however, we will approve the increase in this fare proposed to/from Guam since it presently reflects a much greater discount from the normal economy fare than does the corresponding fare to other North/Central Pacific destinations. Since the Board disapproved all increases proposed in fares applicable on the South Pacific route due to the excess earnings forecast by the principal U.S. carrier in that area, we will similarly disapprove all increases proposed in fares to/from American Samoa, inasmuch as data affecting American Samoa are typically included in justification for South Pacific fare increases.[3]

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is not found that the following resolutions, incorporated in the agreements as indicated, are adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously imposed by the Board:

[1] We will also herein dispose of a mail-vote agreement amending an intra-Pacific group inclusive-tour fare, the application of which does not involve U.S. points.

[2] See Order 77-3-163, Mar. 29, 1977.

[3] See Order 77-2-32, Feb. 4, 1977.

Agreement CAB	IATA No.	Title	Application
26319:			
R-1	001b	TC3-Special Effectiveness Resolution (Tie-in)	3
R-2	001bb	Special Escape for TC3 Supersonic Fares (New)	3
R-3	002	Standard Revalidation Resolution	3
R-4	014a	Construction Rules for Passenger Fares (Revalidating and Amending)	3
R-5	014oo	Construction Rule for TC3 (Revalidating and Amending)	3
R-6	022e	TC3 Adjustment Factors for Sales of Passenger Air Transportation (New)	3
26542:			
R-1	022e	TC3 Adjustment Factors for Sales of Passenger Air Transportation (Amending).	3
R-2	033	TC3 First Class Fares (Amending)	3
R-4	070a	TC3 Excursion Fares (Amending)	3
R-7	080e	TC3 Individual Inclusive Tour Fares (Amending)	3

2. It is not found that the following resolutions, incorporated in Agreement C.A.B. 26319 as indicated, are adverse to the public interest or in violation of the Act insofar as they would apply in air transportation to/from Guam provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
26319:			
R-7	053	TC3 First Class Fares	3
R-9	070a	TC3 Excursion Fares (Revalidating and Amending)	3
R-17	080e	TC3 Individual Inclusive Tour Fares (Revalidating and Amending)	
R-20	084k	TC3 Group Inclusive Tour Fares (Revalidating and Amending)	3

3. It is not found that the following resolutions, incorporated into the agreements as indicated and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26319:			
R-13	075a	Common Interest Group Fares (Revalidating and Amending)	3
26542:			
R-5	076c	TC3 Affinity Own Use and/or Incentive Group Travel (Amending.)	3
R-10	084z	TC3 Group Inclusive Tour Fares South West Pacific (Amending)	3

4. It is found that the following resolutions, incorporated in the agreements as indicated, are adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26319:			
R-8	063	TC3 Economy Class Fares	3
26542:			
R-3	063	TC3 Economy Class Fares (Amending)	3

5. It is found that the following resolutions, incorporated in the agreements as indicated, are adverse to the public interest and in violation of the Act insofar as they would apply in air transportation to/from American Samoa:

Agreement CAB	IATA No.	Title	Application
26319:			
R-7	053	TC3 First Class Fares	3
R-9	070a	TC3 Excursion Fares (Revalidating and Amending)	3
R-14	076c	TC3 Affinity Own Use and/or Incentive Group Travel (Revalidating and Amending.)	3
R-17	080e	TC3 Individual Inclusive Tour Fares (Revalidating and Amending)	3
R-21	084kk	TC3 Group Inclusive Tour Fares—Asia/South West Pacific (Revalidating and Amending).	3
R-22	084L	TC3 28 and 35 Day Group Inclusive Tour Fares (Revalidating and Amending).	3
R-23	084z	TC3 Group Inclusive Tour Fares South West Pacific (Revalidating and Amending).	3
R-9	084kk	TC3 Group Inclusive Tour Fares—Asia/South West Pacific (Amending)	3

6. It is not found that the following resolutions, incorporated in the agreements as indicated, affect air transportation within the meaning of the Act:

Agreement C.A.B.	IATA No.	Title	Application
26319:			
R-10	070h	TC3 Execursion Fares—Fiji to India (Revalidating and Amending)	3
R-11	070n	TC3 45 Day Excursion Fares—Australia, New Zealand and New Caledonia to Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka (Revalidating and Amending).	3
R-12	070c	TC3 New Zealand/Fiji Early Purchase Individual Contract Revalidating and Amending).	3
R-15	076v	TC3 Incentive Group Fares (Revalidating and Amending)	3
R-16	079f	TC3 Contract Bulk Inclusive Tour Rules (Revalidating and Amending).	3
R-18	080f	TC3 35 Day Individual and Group Inclusive Tour Fares, Australia/New Zealand to Bangladesh/Burma/India/Nepal/Pakistan/Sri Lanka.	3
R-19	081j	TC3 17 Day Group Inclusive Tour Fares Bangkok to Calcutta (Revalidating and Amending).	
26542:			
R-6	079f	TC3 Contract Bulk Inclusive Tour Rules (Amending)	3
R-8	084kk	TC3 Group Inclusive Tour Fares (Amending)	3
	IATA Resolution		
26552	300(Mail 122)084k		

Accordingly, *It is ordered*, That:

1. Those portions of Agreements C.A.B. 26319 and C.A.B. 26542, set forth in finding paragraphs one and three above, be and hereby are approved, subject where applicable, to conditions previously imposed by the Board;

2. Those portions of Agreement C.A.B. 26319, set forth in finding paragraphs two above, be and hereby are approved insofar as they would apply in air transportation to/from Guam, provided that approval is subject, where applicable, to conditions previously imposed by the Board;

3. Those portions of Agreements C.A.B. 26319 and C.A.B. 26542, set forth in finding paragraph four above be and hereby are disapproved;

4. Those portions of Agreements C.A.B. 26319 and C.A.B. 26542, set forth in finding paragraph five above, be and hereby are disapproved insofar as they would apply in air transportation to/from American Samoa.

5. Jurisdiction be and hereby is disclaimed with respect to those portions of Agreements C.A.B. 26319, C.A.B. 26542, and C.A.B. 26552 set forth in finding paragraph six above;

6. The carriers are hereby authorized to file tariffs implementing the approved portions of the agreements on not less than one day's notice for effectiveness not earlier than May 9, 1977. The authority granted in this paragraph expires June 9, 1977; and

7. Tariffs implementing the approved portions of the Agreements shall be marked to expire March 31, 1978.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-13264 Filed 5-10-77;8:45 am]

[Docket No. 29323]

INTERNATIONAL AIR SERVICE CO.

Hearing Regarding Acquisition of Control of Aloha Airlines, Inc.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on May 16, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, Universal North Building, 1075 Connecticut Avenue, NW., Washington, D.C.

For details of the issues involved in this proceeding, interested persons are referred to the Prehearing Conference Report, served March 9, 1977, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., May 4, 1977.

STEPHEN J. GROSS,
Administrative Law Judge.

[FR Doc.77-13261 Filed 5-9-77;8:45 am]

LEE R. WEST

Designation To Serve as Acting Chairman of the Board

MAY 4, 1977.

The Civil Aeronautics Board today has been advised that President Carter has designated Member Lee R. West to serve as Acting Chairman of the Board. Member Richard J. O'Melia had earlier submitted his resignation as Vice Chairman of the Board, effective at the pleasure of the President.

The Board by unanimous vote designated Member West Acting Chairman.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-13258 Filed 5-9-77;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Grant of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Food and Consumer Services, Immediate Office, Office of the Secretary.

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

[FR Doc.77-13183 Filed 5-9-77;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. AC-35]

TRI-COUNTY SAVINGS AND LOAN ASSOCIATION

Approval of Conversion (Notice of Final Action)

MAY 5, 1977.

Notice is hereby given that on May 4, 1977, the Federal Home Loan Bank Board, and the operating head of the Federal Savings and Loan Insurance Corporation by Resolution No. 77-279 approved the application of Tri-County Savings and Loan Association, Camden, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 320 First Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc.77-13340 Filed 5-9-77;8:45 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	*Owner/Operator and Vessels*
01067	Klosters Rederi A/S: *Sunward II.*
01185	Aksjeselskapet Kosmos: *Jacara.*
01750	Chotin Transporation Inc.: *ETT 108, ETT 112, ETT 117, EBL 62.*
01905	The Ben Line Steamers Ltd.: *Benhiant.*
01910	Deutsche Dampfschiffahrts Gesellschaft "Hansa": *Braunfels.*
02021	Atlantska Plovidba: *Hercegovina.*
02040	"ODRA" Swinoujscie: *Mustel.*
02242	Dal Deutsche Afrika-Linien G.m.b.H and Co.: *Gulf Ranger.*
02367	Canadian Pacific (Bermuda) Ltd.: *Fort St. John.*
02876	Kabushiki Kaisha Hokkaido Gyogyo Kosha: *Kohoku Maru No. 16; Kohoku Maru No. 17.*
02958	Kawasaki Kisen K.K.: *Iberia Maru.*
02975	Venture Shipping (Managers) Ltd: *Radiant Venture; Venus Venture; Sovereign Venture.*
03008	Rederi AB Wallitank: *Falstaff.*
03289	Det Forenede Dampskib-Selskab A/S: *Drosselfels.*
03436	Iino Kaiun K.K.: *Toyosu.*
03614	A/S Kristian Jebsens Rederi: *Ronnes; Brunes.*
03690	The Harbor Tug and Barge Co.: *Santo Domingo.*
03708	Puget Sound Tug and Barge Co.: *Oahu.*
03735	Penrod Drilling Co.: *Penrod 75.*
03819	Algoma Central Railway: *Algolake.*
03863	Migrant Shipping Co. Ltd.: *Maya.*
03920	Nocos Tankers Inc.: *Mobil Aladdin.*
14128	Skips A/S Westray: *Brunto.*
04226	National Marine Service Inc.: *NMS No. 1465; NMS No. 1466; NMS No. 1467.*
04228	Compagnie Maritime Belge (Lloyd Royal) S.A.: *Mineral Luxembourg.*
14413	Leif-Hoegh and Co. A/S: *Hoegh Merchant.*
05003	Wisconsin Barge Line Inc.: *Wisconsin; Joseph Henderick.*
05445	Eastern Seaboard Petroleum Co. Inc.: *Eastpet No. 6.*
05549	Polska Zegluga Morska: *General Pradzynski.*
05770	C.A. Venezolana De Navegacion: *Tachira.*
07627	Kochi Prefectural Government: *Tosakaien Maru.*
07772	Great Eastern Maritime Co. Ltd.: *Penn Hills; Bloomfield.*
08131	Empresa Navegacion Caribe: *Playa Duaba.*
08229	Salvesen Offshore Drilling Ltd.: *Wingate.*
09162	Birdsall Shipping S.A.: *Tropic Isle.*
09226	Manhattan Oil Transportation of New York Inc.: *Joan K; Betty K; Mantank; Manoleine; Ivor; Manhunt; Starcraft; Supercraft.*
09785	San Diego Transportation Co.: *Ponce.*
09872	Jourdain Navigation Ltd.: *Edgar Jourdain.*
09901	Tacarigua Marine C.A.: *Tacamar IV.*
10591	Transpac Marine S.A.: *Atlas III; TM-622; TM-633.*
10718	Smit Lloyd B.V.: *Smit Lloyd 14.*
10963	Kusuzi Katoh: *Seiyu Maru No. 2.*
11083	Sagami Marine Industries Co. Ltd: *Leonila.*
11587	Rowandrill Inc.: *Rowan-Texas.*
11824	Gavaly Ultramar S.A.: *Jadi.*
11982	Aquila Shipping Co. Inc.: *Aquila.*
12088	Lerwick Marine Panama S.A.: *Alexander S. Onassis.*
12115	Nippon Kyoko Hogei K.K.: *Konan Maru No. 25.*
12217	Canadian National Railway Co.: *Marine Cruiser. Bluenose.*
12305	Transocean Transport Corp. & Botelho Shipping Corp.: *Transocean Transport II.*
12314	Panama Plywood Corp.: *El Ganso de Oro.*
12342	Natupan Compania Naviera S.A.: *Maracana I.*
12345	Drake Towing Co., Inc.: *SFI-73, SFI-71, SFI-72, SFI-74, Warren.*
12370	Alp Shipping Enterprises Corp.: *Mariprima.*
12377	Chieftain Shipping Inc.: *Al Redha.*
12379	Greekhymn Shipping Co. S.A.: *Stenies.*
12419	Capgreg Compania Maritima S.A.: *John Gregos.*
12430	Golden Dragon Co. Ltd. S.A.: *Golden Dragon.*
12435	Pesquero San Martin S.A. de C.V.: *San Martin II.*
12450	Silver Bulk Carriers Ltd.: *Seto Bridge.*
12466	Vroon B.V. Breskens Handel-En Scheepvaartonderneming: *Brazilian Express.*
12477	Garden Rouge S.A.: *Despina H.*
12448	Samelet Vesteroilsupply: *Sea Scout.*
12449	Meteor Maritime Inc.: *Nahost Jumbo.*
12451	Alice Suzanne International Inc.: *Alice Ace.*
12452	Aeolian Maritime Inc.: *Emil.*
12453	Diades Navigation Inc. of Panama: *Kodiak, Kristel.*
12454	Partenreederei M.S. Nautic: *Nautic.*
12455	Ionian Endurance Marine, Inc.: *Samos Progress.*
12456	K/S Merc Scandia XX: *Mercandian Pacific.*
12458	K/S Merc Scandia XII: *Mercandian Queen.*
12462	Cia Vasco Cantabrica de Navegacion S.A.: *Elvira C.*
12463	Oyang Fisheries Co. Ltd.: *No. 37 Oyang.*
12464	Matsubun Gyogyo Kabushiki Kaisha: *Ryuho Maru No. 15, Ryuho Maru No. 17, Ryuho Maru No. 31.*
12465	Kashima Gyogyo Kabushiki Kaisha: *Kashima Maru No. 23, No. 15 Kashima Maru.*
12467	Jadecorn Shipping Corp.: *Jadecorn.*
12468	Minos Shipping Co. Ltd.: *Eurco Strength.*
12469	Express Line S.A.: *Western Highway.*
12470	Gallant Transport S.A.: *Gallant Pioneer.*
12471	Brave Transport S.A.: *Brave Pioneer.*

Certificate No.	Owner/Operator and Vessels
12472	Solar Transport S.A.: *Solar Peak.*
12473	Yamakawa Gyogyo Seisan Kumiai: *Waka Maru No. 25.*
12474	Asahi Gyogo Kabushiki Kaisha: *Asahi Maru No. 8.*
12475	Shoichi Gyogyo Kabushiki Kaisha: *Shoichi Maru No. 52.*
12476	Kabushiki Kaisha Kotobukimaru Tsuda Gyogyobu: *Kotobukimaru No. 25, Kotobukimaru No. 31.*
12477	Kabushiki Kaisha Suzuki Gyogyobu: *Ryujin Maru No. 11.*
12478	Kabushiki Kaisha Maruyo Gyogyobu: *Daikichi Maru No. 31, Daikichi Maru No. 32, Daikichi Maru No. 35, Daikichi Maru No. 37, Daikichi Maru No. 38, Daikichi Maru No. 51, Daikichi Maru No. 53.*
12479	Kabushiki Kaisha Inai Sanji Shoten: *No. 51 Hakuryu Maru.*
12480	Yugen Kaisha Endo Gyogyobu: *Choun Maru No. 21.*
12481	Konno Suisan Kabushiki Kaisha: *Eikyumaru No. 35.*
12482	Yokichi Akama: *Meisho Maru No. 15.*
12483	Yamasan Endo Kabushiki Kaisha: *Sachi Maru No. 23, Sachi Maru No. 22.*
12484	Aomori Ken Enyo Gyogyo Kabushiki Kaisah: *No. 11 Yashio Maru.*
12485	Tharros Navigation Ltd.: *Tharros.*
12490	Ionian Glow Marine Inc.: *Star Light.*
12491	Ionian Spirit Marine Inc.: *Star Pride.*
12492	Marfiel Armadora S.A.: *Juvena.*
12493	Lucero Armadora S.A.: *Adamantios.*
12494	Transworld Tanker Transport Inc.: *Energy Growth.*
12489	Comet Maritime Inc.: *Radiant Star.*
12498	RSHV Maasrix B.V.: *Maasrix.*
12495	Albafrigo Navigation Co. S.A.: *Albafrigo.*
12500	Albacore Navigation S.A.: *Albacore.*
12501	Starling Marine Corp.: *Hazel Prosperity.*
12502	Aspera Compania Naviera S.A.: *Fay C.*
12503	Rederiet Helleskov: *Winni Helleskov, Jeanette Helleskov, Henriette Helleskov.*
12505	Ionian Beach Marine Inc.: *Samos Sea.*
12508	Hawk Navigation Inc.: *Stolt Boel.*
12509	Eddie Navigation Corp. S.A.: *Don Eduardo.*
12510	Delta Shipping Ltd.: *Mediterranean Carrier.*
12516	Marathon Compania Naviera S.A.: *Zephyros.*
12518	Ionian Chance Marine Inc.: *Samos Storm.*
12519	Nea Proodos Shipping Co. S.A.: *Helena C.*
12520	Nea Elpis Shipping Co. S.A.: *Antonios C.*
12527	Kelvin Shipping Inc.: *Ioannis Martinos.*
12530	Bright Star Maritime Co. S.A.: *Arcadian Star.*
12533	Drake Marine Corp.: *Sanko Trust.*
12535	Statex Petroleum Inc.: *Z-62.*
12536	Gebr. Broere B.V.: *Broere Emerald.*
12537	Stour Shipping Inc.: *Sun Antares.*
12538	Polaris Marine Kabushiki Kaisha: *Blue Polaris.*
12539	Kabushiki Kaisha Asako Shoten: *Kintoku Maru No. 11.*
12540	White Rose Shipping Ltd.: *White Rose.*
12541	Utopia Naviera Compania S.A.: *Southern Highway.*
12542	Legion Maritime S.A.: *Hakone.*
12544	Cossira Compagna di Navigazione S.P.A.: *Capo Ovest.*
12545	Kaplana Shipping Ltd.: *Salinas.*
12550	Cotsakis Shipping S.A.: *Antonia.*
12551	Laird Shipping Inc.: *Gemini.*
12553	Kirkconnell Shipping Co. Inc.: *Island Supplier, Linera.*
12555	Komanditselskapet Sand Shipping A/S: *Nopal Sea.*
12556	Universal Seaways Corp. of Liberia: *Aristodikos.*
12557	Transatlantic Oceanways Corp. of Liberia: *Aristonidas.*
12558	Transocean Bulk Transports Corp. of Liberia: *Messiniaki Akti.*
12562	Nissin Gyogyo K.K.: *Chuyo Maru No. 18, Chuyo Maru No. 21, Chuyo Maru No. 22.*
12561	Kyuei Gyogyo Kabushiki Kaisha: *Kyuei Maru No. 1.*
12563	Sato Gyogyo Kabushiki Kaisha: *Ryoan Maru No. 21, Ryoan Maru No. 23, Ryoan Maru No. 25, Ryoan Maru No. 28.*
12564	Tms Acquisition Corp.: *Moon Tide, Sun Tide.*
12567	Ionian Azur Marine Inc.: *Afroditi P.*
12569	Northatlantic Oil Carriers Ltd.: *Evanthia.*
12572	Biscay Maritime Ltd.: *Vronti.*
12573	Rederi-Interessentskabet Sif 22: *Erik Sif.*
12574	Ippo Shipping Co. Ltd.: *Shinko Maru.*
12575	Ro Ro Charterers Corp.: *Seaspeed Arabia.*
12576	Ambassador Maritime Inc.: *Hilary B.*
12577	Kumagai Gyogyo Kabushiki Kaisha: *Hamazen Maru No. 35.*
12578	Eucharis Shipping Corp.: *Arc.*
12579	Taisei Gyogyo K.K.: *Taisei Maru No. 1, Taisei Maru No. 3, Taisei Maru No. 11, Taisei Maru No. 16.*
12580	Tricorn Shipping Corp.: *Tricorn.*
12581	Western Marine Transport Ltd.: *Nata.*

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-13339 Filed 5-9-77;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to Part 542 of Title 46 CFR and section 311 (p) (1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/Operator and Vessels
01150	Chevron Transport Corp.: *Paul Pigott.*
01185	Aksjeselskapet Kosmos: *Nopal Japana.*
01330	Shell tankers (U.K.) Ltd.: *Hemimactra.*
01428	Ocean Transport & Trading Ltd.: *Elpenor, Phrontis.*
01430	Tankers Ltd.: *Athelbrae.*
01439	Cory Maritime Ltd.: *Monkdgarth.*
01461	Home Line Ltd.: *Nimos.*
01588	Equity Compania Naviera S.A.: *Equity.*
01637	Sidarma Societa Italiana di Armamento S.P.A.: *Piero Foscari.*
01743	Polestar Compania Naviera S.A. Panama: *Maritsa.*
01842	Christensen Canadian Enterprises: *Theta.*
01982	Ab Svenska Ostasiatiska Kompaniet: *Tokyo.*
02242	Dal Deutsche Afrika-Linien G.M.B.H. & Co.: *Pangini.*
02279	Armenistis Shipping Co. Ltd. of Liberia: *Alikrator.*
02282	Park Steamships, Ltd.: *Green Park.*
02367	Canadian Pacific (Bermuda) Ltd.: *Pacific Logger.* Chevron Oil Co.: *Chevron-31, S-54, Chevron-33, S-94, S-55, S-93, No. 28, No. 17, Chevron-32, S-53, BGG-100, S-87, S-92, MCN No. 3.*
02580	Apple River Chemical Co. Division of St. Paul Ammonia Products, Inc.: *GWG-No. 103.*
02715	Allied Towing Corp.: *Hot Oil 17.*
02858	Intermarine, Inc.: *Gilia.*
02763	Ensenada Maritima Panama S.A.: *Olympic Snow.*
02889	Showa Kaiun K.K.: *Shobu Maru.*
02976	Arthur-Smith Corp.: *Star Diamond.*
02980	Rederi A/S Mimer and A/S Norfart: *Anina.*
03004	Rederi A Soya: *Faust.*
03012	Aliki Liberian Maritime Co.: *Tarpon Swift.*
03013	Tarstar Shipping Co.: *Aliki I.P.*
03014	Tarwave Shipping Co.: *Tarpon Silver.*
03016	Tarsea Shipping Co.: *Tarpon River.*
03054	H. Schuldt: *Mexican Trader.*
03137	Cunard Steamship Co. Ltd.: *Luminous.*
03214	Saleninvest AB: *Sea Sovereign.*
03358	St. Thomas Shipping Co., Inc.: *Fidelity.*
03389	Shell Tankers, B.V.: *Marisa, Philippia.*
03438	Inui Kisen Kabushiki Kaisha: *Evergreen.*
03441	Japan Line K.K.: *Japan Lilac.*
03479	Okada Shosen Kabushiki Kaisha: *Fugaku Maru.*
03484	Sanko Kisen K.K.: *Juko Maru.*
03501	Osaka Shosen Mitsui Senpaku K.K.: *Shinosaka Maru.*
03508	Taiyo Gyogyo K.K.: *Azuma Maru No. 33.*
03627	Igert (a corporation): *MBL-601.*
03708	Puget Sound Tug and Barge Co.: *PAC 336-2.*
03733	Great Lakes Dredge & Dock Co.: *No. 58.*
03837	N.M Paterson Sons Ltd.: *Hamildoc.*
03913	Iberian Tankers Co.: *Wapello.*
03973	Leaseback Projects Ltd.: *Chesley A. Crosbie.*
03974	Crosbie Services Ltd.: *Sir John Crosbie.*
04125	Atlantic Towing Ltd.: *Irving Shark, Irving Dolphin, Scotia Trader, Irving Scallop, Irving Marigold.*

Certificate No.	Owner/Operator and Vessels
04126	Jugoslavenska Linijska Plovidba, Rijeka: *Senj, Volosko, Opatija, Dunav, Losinj, Nikola Tesla, Kastav, Zvir, Visevica, Klek, Bakar, Kraljevica, Dreznica, Lovcen, Drava, Tuhobic, Treci Maj, Susak, Sava, Pionir, Pula, Goran Kovacic, Zadar, Kranjcevic.*
04136	Thomas Marine Co.: *GW-100, Sarah E. Thomas.*
04263	Waywiser Navigation Corp., Ltd.: *Florence, Minlly.*
04394	Philippine President Lines, Inc.: *Asia Seagull.*
04423	Marcona Carriers Ltd.: *Marcona Prospector.*
04437	Lebeouf Bros. Towing Co., Inc.: *LBTCO No. 4, LBTCO No. 5, LBTCO No. 6, LBTCO No. 7, LBTCO No. 8, LBTCO No. 10, LBTCO No. 18, LBTCO No. 17, LBTCO No. 16, LBTCO No. 15, LBTCO No. 14, LBTCO No. 13, LBTCO No. 12, LBTCO No. 11.*
04480	Omaezaki Enyo Gyogyo Kyodo Kumiai: *Kaihou Maru No. 17.*
04491	Fukumaru Gyogyo Kabushiki Kaisha: *Fuku Maru No. 18.*
04564	Yamashita-Shinnihon Kisen Kaisha: *Yamatoshi Maru, Shinnichi Maru.*
04882	Compania Naviera Para Viajes Sud America S.A.: *Pantelis.*
05090	ESSO Petroleum Co. Ltd.: *ESSO Newcastle.*
05520	Union Carbide Corp.: *NSBTS-2, CC-103.*
05718	Prosperity Steamship Co. Ltd.: *Lucky Three, Lucky Two.*
06026	Tarsands Shipping Co.: *Tarpon Sands.*
06064	Trailer Marine Transport Corp.: *Biscayne, Florida.*
06336	Mr. Sadao Ogino: *Koryo Maru No. 31.*
06359	Malaysian International Shipping Corp., Berhad: *Bunga Dahlia.*
06364	Panvia Compania Naviera S.A.: *Marco Botzaris.*
06387	Grand Betelgeuse Inc.: *Grand Betelgeuse.*
06435	Dampskibsaktieselskabet Den Norske Afrika-OG Australielinie, Wilhelmsens Dampskibsaktieselskabet A/S Tonsberg, A/S Tankfart I, A/S Tankfart IV, A/S Tankfart V, A/S Tankfart VI: *Tijuca.*
06472	Taiheiyo Kisen Kaisha, Ltd.: *Horyu Maru.*
06546	Kimberly Navigation Co. Ltd.: *Sankaty.*
06877	Societe Francaise De Transports Maritimes Paris: *Ville Du Havre.*
07176	Great Fortune Navigation Co. S.A., Hong Kong: *Great Victory, Great Glory, Great Success, Great Welfare, Great Fort.*
07247	Luzon Shipping S.A.: *Manila Bay.*
07260	Apollonian Spirit Co. S.A.: *Apollonian Spirit.*
07291	Butler Marine Equipment Co.: *BU 45.*
07322	Apollonian Light Co. S.A.: *Apollonian Light.*
07708	Remolino Naviera S.A.: *Eastern Joy.*
08167	Apollonian Victory Co., S.A.: *Apollonian Victory.*
08295	Franicons Compania Maritima Naviera S.A.: *Good Luck.*
08310	Universal Seaways Private Ltd.: *Universal King, Universal Queen.*
08304	Botany Bay Shipping Co., Inc.: *Chios Island.*
08488	Multinational Gas and Petrochemical Co., Monrovia, Liberia: *Amy Multina.*
08562	Apollonian Champion Co. S.A.: *Apollonian Champion.*
08661	Apollonian Grace Co. S.A.: *Apollonian Grace.*
08961	Incan Ships Ltd.: *Incan St. Laurent.*
09068	Asian Shipping Corp.: *Astyanax.*
09069	Navifrut S.A.N.C.I.I.A.Y.P.: *Cipolletti.*
09097	Nagos Navigation Co. Ltd. Cyprus: *Triada.*
09295	Bentsen Line A/S: *Susann Bentsen.*
09619	Sea Commerce Corp.: *Mediterranean Sprinter; Ocean Sprinter.*
09624	Luna Navigation Co., Ltd.: *Bona Friendship.*
09785	San Diego Transportation Co.: *418.*
09786	Rederij H. and P. Holwerda: *Roelof Holwerda.*
09861	K/S Bewa XVI: *Conny Bewa.*
09872	Jourdain Navigation Ltd.: *George Crosbie.*
09908	Freight Chartering Co., Ltd.: *Carmela I.*
09966	Tara Corp. Ltd.: *Transcarib.*
09993	Rederij Jodine: *Jodine.*
10059	Petter K. Saevik & Sonner A/S & Co.: *Kings Star.*
10073	Inversiones Calmer, S.A.: *Ukola.*
10087	Knight Towing Ltd.: *Chester.*
10159	Chios Castle Shipping Co. Ltd.: *Castle Glory.*
10255	Golden Sun Shipping Co., S.A.: *Kow On.*
10260	Hollywood Marine Inc.: *Star J.D. II, B-428.*
10322	Duk Soo Moolsan Co., Ltd.: *Sunny No. 17, Sunny No. 35.*
10588	Shrine Navigation Co. Ltd.: *Kamo.*
10617	Valmar Navigation Co. Ltd.: *Gisella.*
10748	Seapath Navigation Co. Ltd.: *Elbella.*
10836	Hasting Corp.: *Hastings.*
10922	Leda Shipping Co.: *Leda.*
10931	Hansung Shipping Co., Ltd.: *Dona Placida.*
10962	K. K. Matsueisuisan: *Matsuei Maru II.*
10963	Kusuji Kato: *Seiyu Maru No. 2.*
10970	Symphonic Navigation Co. S.A.: *Loversun.*
11043	N. V. Bevoorrading Op Zee: *FSB-01.*
11056	Ronnes Shipping Corp.: *Ronnes.*
11065	C & M Shipping Co., S.A.: *Glory Pioneer.*
11075	Big Valley Towing, Inc.: *MM-101, MM-102.*
11076	Puddister Trading Co. Ltd.: *Marine Voyager.*
11115	Andromeda Bulkshipping S.A.: *Andromed.*
11228	Trianagia S.A.: *Anna C.*
11286	Binion Marine Service, Inc.: *Eit 121.*
11401	Iligan Bay Express Corp.: *Iligan Merchant.*
11631	Koch Shipping Inc.: *Kristel.*
11663	United Transporter, Inc.: *Eagle Transporter.*
11676	Longan Shipping Pte. Ltd.: *Arenticum.*
11771	Iphigenia Marine Ltd.: *Helena 1.*
11982	Aquila Shipping Co., Inc.: *Notre Dame Victory.*
12025	SPS Management A/S: *Frendo Partnership.*
12207	Tidewater Marine Service, Inc. (U.K.) Ltd.: *Spartan Tide.*
12142	Sidney Torres Marine Transports, Inc.: *SJT 4.*
12145	Chevron U.S.A. Inc.: *Idaho Standard.*
12150	Juniper Tankers, Inc.: *Gaines Mill.*
12176	Miramar Transport Co. Ltd.: *United Spirit.*
12220	Varna Shipping S.A. Panama: *Antonis Gianis.*
12474	Asahi Gyogyo Kabushiki Kaisha: *Asahi Maru No. 8.*

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-13338 Filed 5-9-77;8:45 am]

PACIFIC COAST-AUSTRALASIAN TARIFF BUREAU

Petition Filed

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. 813a).

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, 1100 L Street NW., Room 10126 or at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan; Puerto Rico. 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, 1100 L Street NW., Washington, D.C. 20573, by May 20, 1977. 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.

Notice of Agreement Filed by:

A. H. Eber, Secretary, Pacific Coast-Australasian Tariff Bureau, 635 Sacramento Street, San Francisco, California 94111.

Agreement No. 50 DR-3 has been filed with the Commission for approval under Section 14b of the Shipping Act, 1916, by the member lines of the Pacific Coast-Australasian Tariff Bureau (PCATB). The purpose of the amendment is to change the application of PCATB's Tariff FMC 9, Item 875, Electrical Supplies & Equipment, from a tariff rate to a contract/non-contract rate and thereby in-

clude Item 875 within the scope of the conference's dual rate contract system.

By Order of the Federal Maritime Commission.

Date: May 4, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-13337 Filed 5-10-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. 5. CI77-278, CI77-311]

COASTAL STATES GAS PRODUCING CO.

Extension of Time

MAY 2, 1977.

On April 25, 1977, Coastal States Gas Producing Company filed a motion for an extension of time to answer Trunkline Gas Company's petition for leave to intervene filed April 15, 1977, in the above-designated proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including May 31, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13277 Filed 5-9-77;8:45 am]

[Docket No. ER77-321]

CONNECTICUT LIGHT & POWER CO.

Transmission Agreement

MAY 5, 1977.

Take notice that on April 25, 1977, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated November 1, 1976 between (1) CL&P, The Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO) and (2) Braintree Electric Light Department (BELD).

CL&P states that the Transmission Agreement provides for a transmission service to BELD during the period from November 1, 1976 to October 31, 1977.

CL&P indicates that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities (NU) system determined in accordance with § 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts which BELD is entitled to receive.

CL&P states that BELD did not notify CL&P of its need for transmission service over the NU system until a date which prevented the filing of such rate schedule more than thirty days prior to the proposed effective date.

CL&P therefore requests that in order to permit BELD to receive its Vermont Yankee purchase over the NU system and to allow CL&P, HELCO and WMECO to receive payment for such transmission service, the Commission, pursuant to § 35.11 of its regulations, waive the thirty-day notice period and permit the rate schedule filed to become effective on November 1, 1976.

HELCO and WMECO have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut, WMECO, West Springfield, Massachusetts and BELD, Braintree, Massachusetts.

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 procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 13, 1977. 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 proceedings. 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.77-13266 Filed 5-9-77;8:45 am]

[Docket No. CP77-355]

CONSOLIDATED GAS SUPPLY CORP.

Application

MAY 4, 1977.

Take notice that on April 22, 1977, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP77-355 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing May 6, 1977, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers and other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $4,100,000, with no single onshore project to exceed a cost of $1,025,000 and no single offshore project to exceed a cost of $2,500,000. These costs would be financed with funds on hand and funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1977, 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.77-13269 Filed 5-9-77;8:45 am]

[Docket No. ER77-264]

DETROIT EDISON CO.

Order Accepting for Filing in Part, Rejecting for Filing in Part, Suspending Proposed Rate Schedules in Part, Granting Intervention and Establishing Procedures

APRIL 29, 1977.

On March 28, 1977, the Detroit Edison Company (DEC) submitted for filing a proposed rate increase for electric service for three municipalities, three cooperatives and one privately owned utility.[1] DEC requested that the proposed tariff and rates be made effective May 1, 1977.

The proposed rate changes would increase revenues from jurisdictional sales and service by $7,632,000 based on the

[1] City of Crosswell (Rate Schedule No. 2); Thumb Electric Cooperative (No. 4); Consumers Power Co. (No. 5); Village of Clinton (No. 6); Southeastern Michigan Rural Electric Cooperative (No. 14); Village of Sebewaing (No. 18); and Michigan Municipal Cooperative Pool (No. 20). These rate schedule filings have been designated as indicated in Attachment 1 to this order.

twelve month period ending December 31, 1977. In support of its proposed increase, DEC states that it has not filed for any increase in its jurisdictional sales since February 28, 1975. DEC states that, since that time, all of its costs including capital costs have been subjected to the continuous impact of inflation. Additionally, DEC avers that it is in the process of resuming construction programs, which had been deferred because of financial problems. DEC states that any procedures adopted with respect to this filing give due consideration to its need for prompt collection of the increased revenues requested herein.

DEC's filing was noticed on April 5, 1977 with protests and petitions to intervene due on or before April 20, 1977.

On April 19, 1977, a Petition to Intervene was filed by Consumers Power Company (Consumers), DEC's largest wholesale for resale customer. Consumers asserts that it purchases energy from DEC, that it may be bound by Commission action in this proceeding and that its participation will be in the public interest.

On April 20, the City of Croswell, and the Villages of Clinton and Sebewaing (Cities) filed a Protest, Petition to Intervene Request for Hearing and Five Months Suspension, and Motion to Reject Filing. In support of their intervention request, Cities allege that DEC's proposed changes will result in an average increased bill to them of 26.09 percent and that the increase will directly affect petitioners' rates to their retail customers because they each purchase most of their requirements from DEC. Further, Cities assert that they will be directly affected by DEC's proposal, they may be bound by Commission action, and that their interests cannot be adequately represented by any other party.

In support of their motion to reject and their request for a five-month suspension period, Cities allege that the filing violates certain contractual commitments to Sebewaing, contains "price squeeze" discrimination, and contains numerous errors which undermine its reliability for ratemaking purposes. Specifically, Cities aver that Sebewaing is served under a 1973 agreement that precludes any unilateral change in its rates. Cities state that the Commission in Docket No. E-9294 interpreted that agreement to preclude any Section 205 rate increase to be made effective prior to a Commission determination under Section 206. Cities request that the proposed increase rate not be permitted to become effective as to Sebewaing until after Commission hearing and determination under Section 206. A review of Docket No. E-9294 reveals that Sebewaing's point is well taken. An order in that case issued July 2, 1975 states in relevant part:

> Since the parties provided for changes in rates only by order issued by the Commission, it is clear they did not contemplate the unilateral filings permitted by section 205. The only changes in rates which occur by order of the Commission occur pursuant to an order issued pursuant to section 206. Thus, the parties have provided that changes in rates will only occur pursuant to section 206. Accordingly, we shall investigate Detroit's current rates and set just and reasonable rates pursuant to section 206, all changes to be prospective in application.

Accordingly, the request of Cities to reject the filing under section 205 as applied to Sebewaing only will be granted. An investigation will be ordered under Section 206, and any rate increase which the Commission may finally approve shall become effective for Sebewaing prospectively only.

In support of their request for a five-month suspension period, Cities assert that the increased filing presents them with a "price squeeze" where, so they allege, DEC's wholesale rates to them are higher than its comparable retail rate schedules. Further, Cities allege that the increased rates are predicated on, inter alia, a request for an excessive return, improper working capital allowance, improper allocation of general plant and related depreciation expense, and improper inclusion of certain rate base items. Cities also object to the five-year contract provision and other contract provisions.

Also, on April 20, 1977, a protest and petition to intervene was filed by Southeastern Michigan Rural Electric Cooperative, Inc., Thumb Rural Electric Cooperative, Inc., and Michigan Municipal Cooperative Power Pool (Coops.). In support of their petition to intervene, Coops state that they purchase energy from DEC and that they will be affected by any decision rendered herein. Additionally, Coops allege that their position cannot be adequately protected by any other party in this proceeding. Coops object to a "price squeeze" and to several aspects of DEC's cost of service, including those raised in the petition of Cities.

A review of DEC's filing and the various pleadings indicates that the proposed increased rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. We will therefore set the question of their lawfulness for hearing and will establish procedures for that hearing. Additionally, a review of all of the pleadings indicate that a suspension of the effectiveness of DEC's proposed increased rates for two months will best serve the public interest.

The Commission finds: (1) Good cause exists to accept for filing DEC's proposed rates tendered for filing on March 28, 1977, as to all named customers except the Village of Sebewaing, and suspend those rates for two months to become effective on July 1, 1977 subject to refund, pending the outcome of a hearing and decision thereon.

(2) Good cause exists to reject the filing of a proposed rate increase as to the Village of Sebewaing under Section 205, and to instead institute an investigation under Section 206 to determine whether the rate is so low as to adversely affect the public interest as where it might impair the financial ability of the public utility to continue its service, cast upon other customers an excessive burden, or be unduly discriminatory. *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348.

(3) The participation in the proceeding of City of Croswell (Rate Schedule No. 2; Thumb Electric Cooperative No. 4); Consumers Power Co. (No. 5); Village of Clinton (No. 6); Southeastern Michigan Rural Electric Cooperative (No. 14); Village of Sebewaing (No. 18); and Michigan Municipal Cooperative Pool (No. 20) may be in the public interest.

(4) Good cause exists to establish additional procedures to effectuate the Commission's policy relating to "price squeeze" announced in Order No. 563.

The Commission orders: (A) Pending a hearing and decision thereon, DEC's proposed tariff changes and rate changes as to all customers except the Village of Sebewaing are hereby accepted for filing and suspended for two months, to become effective on Juy 1, 1977 subject to refund.

(B) Pursuant to the Federal Power Act especially Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Commission's Regulations, a hearing shall be held concerning the justness and reasonableness of DG&E's proposed rates.

(C) The motion to reject the filing of a rate increase as to the Village of Sebewaing is granted. Pursuant to Section 206 of the Federal Power Act and the Commission's Rules of Practice and Procedure, an investigation is ordered to determine whether the current rate paid by Sebewaing under its contract of November, 1973 is so low as to adversely affect the public interest.

(D) The Intervenors are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights to intervene and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order issued by the Commission in this proceeding.

(E) The Administrative Law Judge shall convene a prehearing conference within 15 days from the date of this order for the purpose of hearing the Customers request for data required to present their case, including a prima facie showing, on the price squeeze issue. Also, the Company shall be required to respond to the discovery requests authorized by the Administrative Law Judge within 30 days, and the Customers shall file their case-in-chief on the price squeeze issue within 30 days after the Company's response.

(F) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before August 1, 1977. (See Administrative Order No. 157).

(G) 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 an initial con-

ference in this proceeding to be held on _____ at 10 a.m., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Law Judge is authorized to establish all procedural dates and to rule upon all motions, (except petitions to intervene, motions to consolidate and sever and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(H) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

(I) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT 1.—*Detroit Edison Co., docket No. ER77-626, filed Mar. 28, 1977*

Designation	Other Party	FPC Rate Schedules
(1) FPC electric tariff, original volume No. 1, (sheet Nos. 1-23).		
(2) Service agreements under FPC electric tariff, original volume No. 1.	City of Croswell	Supersedes rate schedule FPC No. 2, as supplemented.
(3)	Thumb Electric Cooperative	Supersedes rate schedule FPC No. 4, as supplemented.
(4)	Consumers Power Co	Supersedes rate schedule FPC No. 5, as supplemented.
(5)	Village of Clinton	Supersedes rate schedule FPC No. 6, as supplemented.
(6)	Southeastern Michigan Rural Electric Cooperatives.	Supersedes rate schedule FPC No. 14, 12 supplemented.
(7)	Michigan Municipal Cooperative Power Pool.	Supersedes rate schedule FPC No. 20, as supplemented.

[FR Doc.77-13324 Filed 5-9-77;8:45 am]

[Docket No. CS72-880]

DEVON CORP. (SUCCESSOR TO KIRBY PETROLEUM CO.)

Redesignation

MAY 3, 1977.

On April 18, 1977, Devon Corporation (Devon) filed in Docket No. CS72-880 a Motion for Order Redesignating Party in which it requested that the Commission issue an order redesignating the captioned proceeding in the name of Devon, insofar as it covers jurisdictional sales made from properties acquired from Kirby Petroleum Co. (Kirby).

By Order dated June 14, 1972, the Commission issued to Kirby Petroleum Co., a Nevada corporation, a small producer certificate in Docket No. CS72-880. On December 2, 1975, Devon acquired all of the outstanding stock of Kirby through a wholly owned first-tier subsidiary of Devon, created for that purpose. Kirby and the first-tier subsidiary were then immediately liquidated. By virtue of such liquidation, Devon succeeded to all of the assets of Kirby. The business formerly conducted by Kirby has continued to be conducted by Devon. Devon states that at no time, either before or after the foregoing acquisition, have the jurisdiction sales of Devon or Kirby and their affiliates exceeded ten billion cubic feet in any one calendar year.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1977, 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.

Take further notice that, pursuant to the authority contained in the 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, and if the Commission on its own review of the matter believes that the authorization to reflect a corporate name change is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Devon Corporation to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13281 Filed 5-9-77;8:45 am]

[Docket No. RP72-134, (PGA 77-4a), (PGA 77-5a)]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

MAY 4, 1977.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on April 18, 1977,[1] tendered for filing the following revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1:

Substitute Fortieth Revised Sheet No. 3A Superseding Fortieth Revised Sheet No. 3A and
Substtiute Fortieth Revised PGA-1 Superseding Fortieth Revised PGA-1, to be effective March 1, 1977
Forty-First Revised Sheet No. 3A Superseding Revised Fortieth Revised Sheet No. 3A and
Forty-First Revised PGA-1 Superseding Revised Fortieth Revised PGA-1, to be effective March 3, 1977.

These revised tariff sheets reflect corresponding increases by Transcontinental Gas Pipe Line Corporation (Transco), Eastern Shore's sole supplier, effective March 1 and February 1, 1977, respectively. Prior revised tariff sheets made by Eastern Shore to reflect those increases—the Thirty-Ninth Revised Sheet No. 3A and PGA-1 and the Fortieth Revised Sheet No. 3A and PGA-1—are hereby withdrawn.

Eastern Shore submits the above revised tariff sheets in response to the Commission's order transmitted by letter of March 30, 1977. Because Eastern Shore's Fortieth Revised Sheet No. 3A and PGA-1 assumed that the increases requested in the Thirty-Ninth Revised Sheet No. 3A and PGA-1 would already be in effect, it is necessary to file a Substitute Fortieth Revised Sheet No. 3A and PGA-1 reflecting only the Transco increases effective March 1, 1977. The Forty-First Revised Sheet No. 3A and PGA-1, effective March 3, 1977, add Transco's February 1, 1977, increases. With the filing of the Forty-First Revised Sheet No. 3A and PGA-1, Eastern Shore's tariff will accurately reflect all increases made by Transco as of March 3, 1977. Because the revised tariff sheets submitted herein are substitute sheets intended to implement the Commission's Order of March 3, 1977, the question of notice has already been considered, and waived, by the Commission.

Copies of the filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any persons 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 (10 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1977. 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 available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13274 Filed 5-9-77;8:45 am]

[1] As amended on April 19, 1977.

[Docket No. RP72-134, (PGA 77-6)]

EASTERN SHORE NATURAL GAS CO.

Tracking Rate Decrease to Schedule GSS-1

MAY 4, 1977.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on April 15, 1977, tendered for filing Forty-Second Revised Sheet No. 3A Superseding Forty-First Revised Sheet No. 3A and Forty-Second Revised PGA-1 to its FPC Gas Tariff, Original Volume No. 1. These revised tarff sheets, to be effective May 1, 1977, will decrease the demand and excess charges and will increase the capacity charge of Eastern Shore's General Storage Service Rate Schedule GSS-1. These changes reflect the increase in rates for the General Storage Service (GSS) Rate Schedule of Transcontinental Gas Pipe Line Corporation (Transco), Eastern Shore's sole supplier, requested in Transco's filing of March 30 1977. Transco's proposed decrease, in turn, is intended to reflect a net decrease in the Rate Schedule GSS charges by Consolidated Gas Supply Corporation (Consolidated) to Transco, requested in Consolidated's general rate filing of October 29, 1976, in Docket No. RP77-7. Consolidated's filing was suspended until May 1, 1977, by a November 24, 1976, order of the Federal Power Commission (Commission). Eastern Shore is filing the above revised tariff sheets in order to reflect Transco's filing to track Consolidated's rate decrease as of May 1, 1977.

Because Transco's proposed GSS rates will reduce the rates made effective subject to refund on February 1, 1977, in Transco's Docket No. RP76-136, Transco's proposed rates to be effective May 1, 1977, will also be subject to refund in that Docket. The rates Eastern Shore proposes herein, therefore, will be subject to refund contingent upon any refund obligations of Transco in Docket No. RP76-136.

Pursuant to § 154.51 of the regulations under the Natural Gas Act, Eastern Shore respectfully requests waiver of the notice requirements of § 154.22 of those regulations and of § 20.2 of the General Terms and Conditions of its Tariff, to the extent necessary to permit the tariff sheets submitted to become effective as of May 1, 1977, to coincide with the effective date of Transco's rate changes. In support thereof, Eastern Shore states that Transco's March 30, 1977, filing of revised tariff sheets prohibited it from preparing its computations and revised tariff sheets in time to comply with the applicable notice requirements.

Copies of the filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any persons 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 (10 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 15, 1977. 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 available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13268 Filed 5-9-77;8:45 am]

[Docket Nos. RP72-155 and RP76-59 (PGA77-2a)]

EL PASO NATURAL GAS CO.

Tariff Sheets Tender

MAY 4, 1977.

Take notice that on April 15, 1977, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, the following revised tariff sheets, to become effective April 1, 1977.

ORIGINAL VOLUME NO. 1

First Substitute Nineteenth Revised Sheet No. 3-B.

THIRD REVISED VOLUME NO. 2

First Substitute Ninth Revised Sheet No. 1-D.

ORIGINAL VOLUME NO. 2A

First Substitute Eleventh Revised Sheet No. 1-C.

Seventh Revised Sheet No. 1-D.

El Paso states that by order issued March 31, 1977, the Commission, inter alia, accepted for filing and suspended for one (1) day the PGAC tariff sheets filed by El Paso February 25, 1977,[1] and permitted such sheets to become effective April 2, 1977, subject to refund. El Paso states that ordering paragraph (B) of the Commission's said order of March 31, 1977, permitted El Paso to file a revised PGAC increase to be effective April 1, 1977, which excludes the amounts for gas purchases paid to reversionary interest holders[2] in excess of similar amounts paid to prior owners for gas purchases. El Paso states that the instant tender is designed to implement its PGAC increase on April 1, 1977, as permitted by said order of March 31, 1977.

El Paso states that the above described PGAC tariff sheets provide for a total PGAC current adjustment of 10.70¢ per Mcf, effective as of April 1, 1977, and is comprised of adjusted annualized purchased gas cost increases equating to 5.10¢ per Mcf, plus 5.60¢ per Mcf representing the adjusted unrecovered purchased gas cost balance in Account 191 as of December 31, 1976. El Paso further states that the adjustment proposed by the tendered substitute tariff sheets is an increase of 6.70¢ per Mcf in El Paso's currently effective rates and is 1.12¢ per Mcf below the PGAC net adjustment in rates of 7.82¢ per Mcf, filed by El Paso on February 25, 1977, and suspended for one (1) day until April 2, 1977, by the Commission order of March 31, 1977.

El Paso further states that the tendered Seventh Revised Sheet No. 1-D provides for a current adjustment of 8.0036¢ per Mcf effective as of April 1, 1977, applicable to sales subject to the PGAC—Clean High Pressure Gas ("PGAC-CHPG") provision contained in El Paso's FPC Gas Tariff, Original Volume No. 2A. Such current adjustment is comprised of an increase in the weighted average purchased cost of clean, high-pressure gas equating to 4.2165¢ plus 3.7871¢ per Mcf representing the unrecovered purchased gas balance in Account 191 as of December 31, 1976. El Paso further states that the net PGAC-CHPG adjustment proposed by the tendered Seventh Revised Sheet No. 1-D is an increase of 3.5123¢ per Mcf in the currently effective rates of the affected special rate schedules and is 13.1696¢ per Mcf below the PGAC-CHPG net adjustment in rates of 16.6819¢ per Mcf filed on February 25, 1977, and suspended for one (1) day until April 2, 1977, by the Commission's March 31, 1977, order.

In addition, El Paso furnished copies of the suspended tariff sheets[3] which reflect the superseding pagination reference required as a result of the submittal of the tendered tariff sheets to be effective on April 1, 1977, and which reflect the effective date of April 2, 1977, as prescribed by the Commission in its March 31, 1977, order. Other than these marginal changes, said tariff sheets are identical to the counterpart tariff sheets placed into effect on April 2, 1977, by the Commission's March 31, 1977, order.

El Paso states that copies of the instant tender have been served upon all parties of record in Docket Nos. RP72-155 and RP76-59 and, otherwise, upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before May 19, 1977, 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. Copies of this filing are

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[1] First Substitute Nineteenth Revised Sheet No. 3-B to Original Volume No. 1; First Substitute Ninth Revised Sheet No. 1-D to Third Revised Volume No. 2; First Substitute Eleventh Revised Sheet No. 1-C and Seventh Revised Sheet No. 1-D to Original Volume No. 2A.

[2] Such reversionary interest holders are the subject of the Commission's Opinion No. 737, as amended, issued July 11, 1975, at Docket Nos. CP75-209 and CP75-594.

[3] See footnote 1, supra.

on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13326 Filed 5-9-77;8:45 am]

[Docket No. E-8121]

GULF STATES UTILITIES CO.

Joint Motion To Approve Settlement Agreement

MAY 4, 1977.

Take notice that Gulf States Utilities Company (Gulf States) on April 22, 1977 joined with Intervenor Sam Rayburn Dam Electric Cooperative, Inc. (Sam Rayburn) and tendered a Joint Motion to Approve Settlement Agreement between Gulf States and Sam Rayburn dated December 30, 1976.

Gulf States indicates that the settlement agreement provides for an extension of the existing contract, which had been terminated by Gulf States, effective November 1, 1978 for an additional two years until October 31, 1980. Gulf States further indicates that the settlement agreement establishes rates for base usage, which is the level of service rendered for each billing month from July, 1975 through June, 1976, and establishes rates for growth usage, which is usage in excess of base usage beginning with the billing month of July, 1976.

Gulf States failed to submit an escrow agreement denoted Exhibit A which Gulf States stated was attached to the Motion.

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, N.E., 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 May 16, 1977. 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.77-13332 Filed 5-9-77;8:45 am]

[Docket No. ER77-322]

ILLINOIS POWER CO.

Filing Amendment No. 9 to Interconnection Agreement

MAY 4, 1977.

Take notice that Illinois Power Company ("Illinois Power") on April 27, 1977, tendered for filing proposed Amendment No. 9 to the Interconnection Agreement (Agreement) dated March 1, 1964 between Commonwealth Edison Company and Illinois Power. The Commission has previously designated the March 1, 1964 Agreement as Illinois Power Rate Schedule FPC No. 11 and Commonwealth Edison Company Rate Schedule FPC No. 5.

The parties state that Amendment No. 9 provides for a proposed increase in the charges effective June 1, 1977 for Short-Term Power transactions between Illinois Power and Commonwealth Edison.

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 or § 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 May 18, 1977. 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.77-13272 Filed 5-9-77;8:45 am]

[Docket No. ES77-34]

IOWA POWER AND LIGHT CO.

Application

MAY 4, 1977.

Take notice that on April 25, 1977, Iowa Power and Light Company (Applicant), filed an Application with the Commission pursuant to Section 204 of the Federal Power Act and Part 34 of the Commission's regulations thereunder, seeking authority to engage in direct negotiations with underwriters with respect to the proposed issuance and sale of up to 1,000,000 shares of its authorized but unissued Common Stock, par value $10 per share. Applicant states that it is of the beliew that the best interests of its customers and stockholders may be served if the Commission were to authorize direct negotiations with underwriters.

Applicant is incorporated under the laws of the State of Iowa, with its principal business office at Des Moines, Iowa, and is engaged primarily in the generation, purchase, transmission, distribution and sale at retail of electric energy and in the purchase, distribution and sale at retail of natural gas in central and southwestern Iowa.

Any person desiring to be heard or make any protest with reference to said application should on or before May 20, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions 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 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 and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13270 Filed 5-9-77;8:45 am]

[Docket No. CS76-419, et al.]

LEE PEARSON, ET AL.

Applications For "Small Producer" Certificates[1]

MAY 4, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations there under for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 31, 1977, 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.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket	Date filed	Applicant
CS77-491	Apr. 22, 1977	A. T. Smith, 1776 Lincoln St., Denver, Colo. 80203.
CS77-492	do	Bill J. Maddox, 412 Lincoln Tower Bldg., Denver, Colo. 80295.
CS77-493	do	Marjorie S. Roosevelt, 39 Sunset Dr., Englewood, Colo. 80110.
CS77-494	do	Peter K. Roosevelt, 1330 Metroband Bldg., Denver, Colo.
CS77-495	do	Val Lodholm, 4799 Dahlia, Denver, Colo. 80206.
CS77-496	do	Howard W. Dennis, 808 Lincoln Tower, Denver, Colo. 80295.
CS77-497	do	Randall M. Case, 1776 Lincoln St., suite 1000, Denver, Colo. 80203.
CS77-498	do	Dorothy A. Dubitzky, 6810 J. Elizabeth Circle, Littleton, Colo. 80122.
CS77-499	do	Roy H. Dubitzky.
CS77-500	do	W. H. Arrington, Jr., 1860 Lincoln St., No. 808, Denver, Colo. 80295.
CS76-419	Apr. 25, 1977	Lee Pearson, 2401 Western Ave., Farmington, N. Mex. 87401.
CS77-475	Apr. 21, 1977	Barber Oil, Inc., P.O. Box 1658, Carlsbad, N. Mex. 88220.
CS77-476	do	Liberty Oil & Gas Corp., P.O. Box 297, Olney, Ill. 62450.
CS77-477	Apr. 22, 1977	Joseph W. Geary, 2800 One Main Place, Dallas, Tex. 75250.
CS77-478	do	Robert D. Fraizer, P.O. Box 31445, Aurora, Colo. 80010.
CS77-479	Apr. 25, 1977	Jean G. Swihart, 108 Northwest 29th St., Oklahoma City, Okla. 73118.
CS77-480	do	McKay Investments, Inc., P.O. Box 49, El Dorado, Kans. 67042.
CS77-481	do	Garco, Inc., P.O. Box 2952, Grand Junction, Colo. 81501.
CS77-482	do	Wilma Bacon, 408 Lilac Lane, Grand Junction, Colo. 81501.
CS77-483	do	Robert O. Wilkin, 3508 Sacramento St., San Francisco, Calif. 94118.
CS77-484	do	George W. Brewer, Jr., 3041 Quail Creek Rd., Oklahoma City, Okla. 73120.
CS77-485	Apr. 26, 1977	Sam Jack Partnership No. 6, P.O. Box No. 754, Indiana, Pa. 15701.
CS77-486	do	J.I.C. Drilling Co. No. 4, P.O. Box No. 754, Indiana, Pa. 15701.
CS77-487	Apr. 22, 1977	Robert D. Paulson, 1776 Lincoln St., Denver, Colo. 80203.
CS77-488	do	William G. Odell, 1776 Lincoln St., Denver, Colo. 80203.
CS77-489	do	Will P. Pirkey, M.D., 3191 South Broadway, Englewood, Colo. 80110.
CS77-490	do	Walter W. Doeringsfeld, Jr., 666 Niver Ave., Denver, Colo. 80221.

[FR Doc.77-13283 Filed 5-9-77;8:45 am]

[Docket No. CP77-350]

MISSISSIPPI RIVER TRANSMISSION CORP.

Application

MAY 4, 1977.

Take notice that on April 20, 1977, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP77-350 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation, construction and operation of an additional 1,000 horsepower compressor unit and certain appurtenant facilities, at its existing Twelve Mile No. 2 Compressor Station located on Applicant's Main Line in Madison County, Missouri, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that its Main Line System includes both its Twelve Mile No. 2 Compressor Station in Madison County, Missouri, and its Ste. Genevieve Compressor Station located north of Twelve Mile No. 2 in adjacent Ste. Genevieve County, Missouri. Applicant further states that the Twelve Mile No. 2 Station consists of 5 compressor units, each of 1,100 horsepower, all of which must be continually operating to provide the necessary system throughput. Should one of these units fail the entire Twelve Mile No. 2 Compressor Station ordinarily has to be shut down while the unit is being repaired since the remaining four units do not have the capacity to handle the flow of gas through the station and, as a result, the gas flow on Applicant's main line system, which would then bypass the Twelve Mile No. 2 Station, declines by approximately 60 million Mcf per day, it is said.

Applicant states that the installation of an additional 1,000 horsepower compressor unit at the Twelve Mile No. 2 Station would cause reliability on its main line system to be significantly increased due to the fact that if one of the six individual compressor units goes out of service for a given period of time the compressor station could continue operating by using the five remaining compressor units, and the flow of gas through the station could continue virtually unaffected while repairs are being effected. It is stated that in addition to improving the operating dependability and efficiency of Applicant's system, installation of this additional unit would result in a reduction in system fuel gas requirements, and the operation of the additional compressor unit at Twelve Mile No. 2 would substantially reduce Applicant's usage of its Ste. Genevieve Compressor Station, requiring Applicant to operate the Ste. Genevieve Station primarily for system peaking purposes on an average of eight hours per day during approximately four months of the winter heating season. The reduction in usage of the Ste. Genevieve Station, when netted against the operation of the additional compressor unit at the Twelve Mile No. 2 Station, results in a reduction in Applicant's total fuel usage of approximately 80,000 Mcf of natural gas per year, it is said.

Applicant states that the additional unit proposed to be installed is one which Applicant used at its Twelve Mile No. 1 Station until 1976. The total estimated cost of this proposed project is estimated to be $340,000 excluding the present net book value of the compressor unit itself (approximately $2,000) and of three compressor cylinders (approximately $36,000), all of which Applicant states it presently has in stock.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1977, 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 section 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.77-13271 Filed 5-9-77;8:45 am]

[Docket No. RP74-100 (PGA 77-5a)]

NATIONAL FUEL GAS SUPPLY CORP.

Proposed PGA Rate Adjustment

MAY 4, 1977.

Take notice that on April 19, 1977, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 4, proposed to be effective May 1, 1977.

National states that the purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provisions in Section 17 of the General Terms and Conditions and to recover the cost of emergency purchases for February and March of 1977 over the remaining five months of its currently effective surcharge. National further states that such tariff sheet reflects an adjustment in National's rates of 2.86¢ per Mcf on Twelfth Revised Sheet No. 4.

National proposes, in the event that Twelfth Revised Sheet No. 4 is not approved effective May 1, 1977, that Alternate Twelfth Revised Sheet No. 4 filed herewith be made effective May 1, 1977. Alternate Twelfth Revised Sheet No. 4 reflects only the current PGA adjustment.

It is stated 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 §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 19, 1977. Protests will be considered by the Commission in determining the appropriate 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.77-13275 Filed 5-9-77;8:45 am]

[Docket No. ER77-312]

NORTHEAST UTILITIES SERVICE CO.

Termination of Exchange Agreement

MAY 4, 1977.

Take notice that Northeast Utilities Service Company (NU) on April 19, 1977 tendered for filing a Termination of the Exchange Agreement between NU and Boston Edison Company with respect to Northfield Mountain Project and Mystic Unit No. 5 (the Agreement).

NU indicates that the Agreement terminated on May 3, 1976 and that under the Agreement neither party paid the other a capacity or a transmission charge and that the Agreement provided each party with an improved generation mix and therefore reduced production costs.

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, N.E., 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 May 13, 1977. 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 available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13331 Filed 5-9-77;8:45 am]

[Docket No. RP73-8, (PGA77-9)]

NORTH PENN GAS CO.

Proposed Changes in FPC Gas Tariff

MAY 4, 1977.

Take notice that North Penn Gas Company (North Penn) on April 15, 1977, tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective June 1, 1977. North Penn has included in its filing a decrease under:

Sections 14.3 and 14.5 Unrecovered Purchased Gas Cost Account and Flow-through of Refunds.

The rate change under Sections 14.3 and 14.5 reflects a surcharge credit of 2.107¢ per Mcf which results from amounts accumulated in the Unrecovered Purchased Gas Account for the period September, 1976 through February, 1977, the jurisdictional portion of refunds received by North Penn from its suppliers for the same six-month period and a carryover balance from the surcharge credit filed May 7, 1976, effective June, 1976 through November, 1976. The 2.107¢ surcharge credit will decrease North Penn's jurisdictional revenues by approximately $111.7 thousand over the period June 1, 1977 through November 30, 1977.

North Penn is requesting a waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates to go into effect on June 1, 1977.

Copies of this filing were served upon North Penn's jurisdictional customers, as well as interested state commissions.

Any persons 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 May 24, 1977. 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 interven. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13267 Filed 5-9-77;8:45 am]

[Docket No. ER77-266]

OTTER TAIL POWER CO.

Rate Filing

MAY 3, 1977.

Take notice that on April 22, 1977, Otter Tail Power Company (Otter Tail) tendered for filing rate schedules covering scheduling and dispatching service provided to Cooperative Power Association (Association) and Central Power Electric Cooperative (Central). An effective date of April 1, 1977, is requested for the increase, estimated at approximately $7,343 per year, in rates to be charged the Association per Supplement No. 3 to Otter Tail's Rate Schedule FPC No. 154. An effective date of March 20, 1977, is requested for the increase estimated at approximately $1,842, in rates to be charged Central per supplement No. 3 to Otter Tail's Rate Schedule FPC No. 121.

Otter Tail requests waiver of the Commission's notice requirements to allow these two Schedules to become effective on April 1, 1977 and March 20, 1977 respectively.

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 May 11, 1977. 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.77-13280 Filed 5-9-77;8:45 am]

[Docket Nos. RP73-8 and RP76-158, (PGA 77-5a), (PGA 77-6a), (PGA 77-7a)]

NORTH PENN GAS CO.

Proposed Changes in FPC Gas Tariff

MAY 4, 1977.

Take notice that North Penn Gas Company (North Penn) on April 22, 1977, tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, to comply with Federal Power Commission (Commission) letters dated April 8, 1977 (PGA 77-7) and April 14, 1977 (RP76-158).

North Penn states that it will make refunds to its FPC jurisdictional customers for February and March, 1977 upon acceptance of this filing to reflect the lower rates contained in Substitute Fortieth and Substitute Forty-First Revised Sheets No. PGA-1.

North Penn is requesting a waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates shown on Substitute Fortieth, Substitute Forty-First and Substitute Forty-Third Revised Sheets No. PGA-1 to become effective as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers, as well as interested state commissions.

Any persons 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 May 19, 1977. 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.77-13333 Filed 5-9-77;8:45 am]

[Docket No. ER77-323]

OHIO POWER CO.

Changes in Rates and Charges

MAY 4, 1977.

Take notice that American Electric Power Service Corporation (AEP) on April 27, 1977, tendered for filing on behalf of its affiliates Indiana & Michigan Electric Company (Indiana) and Ohio Power Company (Ohio), Modification No. 4 dated January 31, 1977, to the Interconnection Agreement dated December 12, 1949 among Indiana & Michigan Electric Company, Ohio Power Company and Cincinnati Gas & Electric Company (Cincinnati), designated Indiana Rate Schedule FPC No. 16 and Ohio Rate Schedule FPC No. 21.

AEP indicates that Section 1 of Modification No. 4 provides for an increase in the demand charge for Short Term Power from $0.50 to $0.60/kW-week and Section 3 provides for an increase in the demand charge for Limited Term Power from $2.75 to $3.25/kW-month. Moreover, Section 2 of Modification No. 4 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.125 to $0.15/kW-week and Section 4 provides for an increase in the transmission charge for third party Limited Term Power transactions from $0.55 to $0.65/kW-month, both schedules proposed to become effective June 1, 1977.

AEP states that since the use of Short Term and Limited Term Power cannot be accurately estimated for the twelve month period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from this modification for such period.

AEP also states that copies of the filing were served upon Cincinnati Gas & Electric Company, the Public Service Commission of Indiana, the Michigan Public Service Commission and the Public Utilities Commission of Ohio.

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, 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 May 18, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken. 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.77-13330 Filed 5-9-77;8:45 am]

[Project No. 637]

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

Corrected Notice of Issuance of Annual License(s)

MAY 4, 1977.

This notice corrects and supersedes the Notice of Issuance of Annual License(s) for Project No. 637, issued April 1, 1977.

On October 30, 1975, Public Utility District No. 1 of Chelan County, Licensee for Lake Chelan Project No. 637, located on the Chelan River and Chelan Lake, Chelan County, Washington, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 637 was issued effective May 8, 1926, for a period ending May 7, 1976. Since expiration of the original license, the project has been maintained and operated under an annual license which will expire on May 7, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to the Public Utility District No. 1 of Chelan County.

Take notice that an annual license is issued to the Public Utility Districts No. 1 of Chelan County for the period May 8, 1977, to May 7, 1978, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Lake Chelan Project No. 637 subject to the terms and conditions of the original lincense. Take further notice that if issuance of a new license does not take place on or before May 7, 1978, a new annual license will be issued each year thereafter, effective May 8 of each year, until such time as a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13309 Filed 5-9-77;8:45 am]

[Docket No. CP77-361]

SEA ROBIN PIPELINE CO.

Application

MAY 4, 1977.

Take notice that on April 27, 1977, Sea Robin Pipeline Company (Sea Robin) filed an abbreviated application for a budget-type certificate of public convenience and necessity authorizing the construction and operation of gas purchase, and other facilities necessary to connect new supplies and to implement the exchange and transportation of natural gas. Applicant requests a total authorization of $4,287,095 with single projects limited to $2,500,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 27, 1977, should 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.

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.77-13327 Filed 5-9-77;8:45 am]

[Docket No. CP77-360]

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC. AND NATURAL GAS PIPELINE COMPANY OF AMERICA

Application

MAY 4, 1977.

Take notice than on April 27, 1977, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas, 77001, and Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois, 60603 (Applicants), filed a joint abbreviated application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of pub-

lic convenience and necessity authorizing the investment by Applicants in compression and related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicants request authorization (a) to install, or cause to be installed, a 2,700 horsepower compressor unit and related facilities on the existing producer "A" platform in Eugene Island Block 367, offshore Louisiana, which platform is jointly owned by Texaco Inc. (Texaco) and Tenneco Oil Company (Tenneco Oil) and operated by Texaco; and (b) to operate and maintain said facilities in accordance with the gas purchase contracts between Tennessee and Tenneco Oil and between Natural and Texaco which were filed as exhibits to the joint application of Tennessee and Natural at Docket No. CP76-370.

Applicants state that Texaco and Tenneco Oil each own a 50 per cent leasehold interest in the gas reserves underlying Eugene Island Block 367 and Ship Shoal Blocks 343 and 344 (Block 343 Field) and that Texaco's 50 per cent interest is committed to Natural and 75 per cent of Tenneco Oil's 50 per cent interest is committed to Tennessee, both under Gas Purchase and Sales Agreements. Applicants further state that under their aforementioned respective Gas Purchase and Sales Agreements with their respective producers, they are required to furnish any compression facilities deemed necessary by the operator, and that Texaco, as operator of the Block 343 Field, has determined that compression on the Eugene Island Block 367 "A" platform is required to produce certain reservoirs against the line pressure required for the gas to enter Applicants' pipeline systems and that Texaco therefore proposes to install and operate a 2,700 horsepower compressor unit on the "A" platform.

Applicants estimate the cost of the 2,700 horsepower compressor unit to be $2,670.000 to be borne 50 per cent each by Tennessee and Natural.

Applicants estimate that over the life of the Block 343 Field reserves, an additional 98.040 MMcf of reserves will be recovered as a result of such compression, which would not otherwise be recovered.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 27, 1977, should 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.

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.77-13325 Filed 5-9-77;8:45 am]

[Docket No. CP77-358]

TEXAS GAS TRANSMISSION CORP.

Application

MAY 4, 1977.

Take notice that on April 25, 1977, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP77-358 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of up to 250 Mcf of natural gas per day at 14.73 psia, on an interruptible basis, for Allied Products Corporation-Kerr Finishing Division (Kerr), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 250 Mcf of natural gas per day on an interruptible basis for Kerr pursuant to a transportation service agreement dated April 8, 1977, between Applicant and Kerr.

Applicant states that Kerr has entered into a gas purchase option agreement with Trinidad Petroleum Corporation (Trinidad) for 24-months, giving Kerr the option to purchase volumes of natural gas to be produced from certain leasehold interests presently owned by Trinidad in Standard Field, LaSalle Parish, Louisiana. It is stated that Trinidad would charge Kerr $2.00/Mcf for gas purchased during the first 12 months of the agreement and $2.35/Mcf for the remainder 12-months. It is further stated that the subject gas would be delivered to Applicant at a meter station to be constructed and installed at or near Mile Post 78+0523 on Applicant's Bastrop-Eunice 26-inch pipeline, located near Olla in LaSalle Parish, Louisiana, and Applicant would simultaneously redeliver the gas to Transcontinental Gas Pipe Line Corporation (Transco), at an existing exchange point between Applicant and Transco near Mamou, Evangeline Parish, Louisiana, for ultimate delivery to Kerr for high priority process in Kerr's Concord, North Carolina, plant. It is stated that the gas purchased from Trinidad would be consumed during each month of the transportation period in plant processes for which there are no technically feasible alternative fuels. It is further stated that the total end-use requirements for natural gas at Kerr facility in Concord, N.C. during the transportation period is 180,000 Mcf.

Applicant states that a 2-inch run meter station and related equipment would be constructed and installed on its Bastrop-Eunice 26-inch pipeline in La Salle Parish, Louisiana, in order to effectuate the proposed transportation service. Pursuant to the terms and conditions of the proposed transportation service agreement, Applicant would construct and install the facilities for Kerr, which would own the facilities and Kerr would lease the facilities to Applicant, which as lessee, would operate the facilities for the duration of the transportation service agreement. The estimated cost of the proposed facilities is $11,100, it is said.

Applicant indicates that it would charge 4.67 cents per Mcf (at 14.73 psia) for all quantities of gas transported and delivered to Transco for the account of Kerr.

It is stated that Trinidad elected not to sell its natural gas on the interstate market due to the uncertainty created by the Commission's Opinion No. 770.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1977, 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.77-13265 Filed 5-9-77;8:45 am]

[Opinion No. 796; Docket No. CP74-138, CP74-139, CP74-140]

TRUNKLINE LNG CO. AND TRUNKLINE GAS CO.

Opinion and Order on Proposal to Import Liquefied Natural Gas to the United States from Algeria

APRIL 29, 1977.

OPINION NO. 796

APPEARANCES

Raymond N. Shibley, James J. Flood, Jr., and John D. Townsend for Trunkline LNG Company and Trunkline Gas Company.
George A. Avery, James K. White, James B. Falahee, Toni K. Golden and William W. Ross for Consumers Power Company.
William W. Bedwell, John J. Mullally, and James H. Wuller for Mississippi River Transmission Corporation.
Michael F. Butler, Charles F. Dewey and Robert C. Goodwin for Federal Energy Administration and the Energy Resources Council.
James R. McClarnon for City of Indianapolis, Citizens Gas & Coke Utility.
Richard W. Johnson and Joseph T. Morrow for Northern Indiana Public Service Company.
Richard M. Merriman and Richard T. Witt for Central Illinois Light Company and Michigan Gas Utilities Company.
J. David Mann, Jr. and Stephen J. Small for Laclede Gas Company.
Joseph Certain and George P. Osborn for Indiana Gas Company and Central Indiana Gas Company.
Edward J. Kirby, James R. Lacey, Roger M. Nelson and Harold W. Borden, Jr. for Public Service Electric and Gas Company.
Charles E. McGee, Edward J. Kirby and Phil W. Jordan for Eascogas LNG, Inc.
John T. Ketcham for Consumers Gas Transmission Company and Algonquin LNG, Inc.
G. Scott Cuming, Kenneth G. Johnson, Robert H. Lovell and Donald S. Snow for El Paso Algeria Corporation.
Bradford Ross for Societé Nationale (Sonatrach).
Robert G. Giertz for the Maritime Administration.
Jacobus J. Lankhorst for the United States Coast Guard.
M. Frazier King, Jr., Peter C. Kissel and William R. Koerner, Jr. for the Staff of the Federal Power Commission.

On February 18, 1977, Presiding Judge Samuel Kanell issued an Initial Decision approving, subject to conditions, the applications, as amended, of Trunkline LNG Company (Trunkline LNG or TLC) and Trunkline Gas Company (Trunkline) for: (1) A certificate of public con- CP74-138); (2) an order under section 7(c) of the Natural Gas Act for construction of an LNG marine terminal, LNG plant and associated facilities in Calcasieu Parish, Louisiana (Docket No. CP74-138); (2) an order under Section 3 of the Natural Gas Act authorizing importation into the United States of gas from Algeria over a 20-year period, as outlined herein (Docket No. CP74-139); and (3) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act for construction of a 45.8-mile gas pipeline extension within Louisiana to connect the proposed LNG plant with Trunkline's existing gas pipeline system.

For the reasons set forth in the instant opinion, the Commission shall affirm the Presiding Judge's decision subject to certain modifications of the conditions he attached to his decision; all as provided later in this opinion.

I. INTRODUCTION

The Presiding Judge gave a complete statement of the nature of the proceeding and the proposed project as follows (I.D., pp. 2-5):

Pursuant to sections 3 and 7(c) of the Natural Gas Act, Trunkline LNG Company (TLC) and Trunkline Gas Company (Trunkline) filed three applications with the Commission on November 15, 1973, to request necessary authority to implement a proposal to import about 168.4 million Mcf[1] per year year of liquefied natural gas (LNG) to the United States from Algeria.

On June 23, 1976, amendments were filed to these applications. These amendments reflect both increases in the cost of the purchased LNG and in construction costs. These changes and revised transportation arrangements result in raising the overall estimated initial cost of the regasified LNG delivered to the existing Trunkline transmission system to about $3.37 per Mcf in contrast to the estimated cost of about half of this amount, as set forth in the application as originally filed.

In application filed in Docket No. CP74-138, TLC seeks a certificate of public convenience and necessity from the Commission under section 7(c) of the Natural Gas Act for the proposed construction of a marine terminal, three 600,000 barrel capacity cryogenic storage tanks, seven submerged combustion vaporizers and necessary associated facilities for the receipt, storage, and revaporization of LNG into its natural gaseous state. These facilities would be located about 25 miles north of the Gulf of Mexico at a point 12 miles south of Lake Charles in Calcasieu Parish, Louisiana, along a canal which has access to the Calcasieu ship channel. This latter channel provides for passage of ocean-going vessels to and from the Gulf of Mexico.

The revised cost of the proposed Lake Charles LNG plant is estimated at $164,340,000, exclusive of the cost of extending the canal and providing a necessary turning basis for ocean-going vessels.

By application, as amended, filed under Section 3 of the Natural Gas Act, designed as Docket No. CP74-139, TLC seeks a Commission order authorizing the importation into the United States from Algeria of approximately 168,400,000 Mcf of gas annually for a period of 20 years, beginning 1980.

Under Docket No. CP74-140, Trunkline seeks a certificate of public convenience and necessity from the Commission for the construction and operation of necessary facilities, including a 45.8-mile pipeline extension within the State of Louisiana to receive, transport, and sell in interstate commerce the gas which will be made available by the revaporization of LNG imported from Algeria. The revised cost of the pipeline extension and related facilities is estimated at $28,830,000.

TLC is a wholly owned subsidiary of Trunkline which in turn is wholly owned by Panhandle Eastern Pipeline Company.

[1] Quantity in gasified form.

By order dated January 18, 1974, the Commission consolidated Dockets No. CP74-138, CP74-139, and CP74-140, for purposes of hearing and disposition, and directed that if hearing of all issues other than environmental were completed prior to Staff completion of an environmental impact statement (EIS), pursuant to the provisions of the National Environmental Policy Act, the record would remain open to receive environmental testimony and evidence, and an initial decision would not be issued prior to the completion of the submission of evidence relating to environmental matters.

By order issued June 28, 1974, the Commission denied requests by Trunkline and TLC for a tentative decision pending completion of the EIS.

While awaiting completion of the EIS, no sessions of the hearing were held between May 1974 and September 1976. During this interval, renegotiation of the purchase agreement for Algerian LNG and increased costs of shipping and construction resulted in doubling of the estimated cost of this imported gas.

In assigning this matter for hearing, the Commission enumerated the following issues as relevant for consideration:

1. Reliability of foreign supply of LNG;
2. Dependence on foreign LNG to meet residential and commercial market requirements;
3. Environmental impact considerations;
4. Pricing of LNG supply;
5. Shipping cost;
6. Economic feasibility of the project;
7. End use allocation of the LNG supply;
8. Availability of alternate fuels for the market to be served by the imported LNG;
9. Engineering feasibility;
10. Project safety.

Hearing in this matter was initiated February 26, 1974. The first phase of the hearing continued through nine sessions to May 2, 1974. The hearing was reopened on September 14, 1976, following completion of the EIS and the filing of amendments modifying the initial applications. The hearing was terminated on December 17, 1976, for a total of 22 sessions. All briefs were filed by January 27, 1977.

In light of the provision in the revised contract with the Algerian LNG supplier which provides that this contract can be cancelled by either party if not approved by the Commission by April 1, 1977,[2] the parties agreed to an expedited briefing schedule and also agreed to file exceptions to this Initial Decision within 15 days of its issue and replies to exceptions within 15 days.

* * * * *

As outlined by witnesses for the applicants, this project will be substantially similar to other LNG programs heretofore reviewed by the Commission concerning importation of LNG into the United States.

Under the revised agreement dated September 17, 1975 (Exhibit 69), between Panhandle Eastern Pipeline Company (Panhandle) and Societe' Nationale (Sonatrach),[3] a corporation which is wholly owned by the Government of Algeria, 3.368 trillion cubic feet of natural gas will be made available for use within the United States during a 20-year period beginning in 1980.

By subsequent agreement dated January 2, 1976, Panhandle assigned its interest and obligation under this Sonatrach agreement to its subsidiary, TLC.

[2] Approval date extended to July 1, 1977, per stipulation of counsel for Sonatrach.

[3] This revised contract supersede the August 17, 1973 contract which was abrogated by Sonatrach because of failure of timely approval by the Commission.

Sonatrach will be responsible for producing the gas from its fields in Algeria, transporting the gas to Mediterranean ports, liquefying the gas and delivering the LNG to ocean-going LNG tankers. Further, Sonatrach will arrange to supply three of the five tankers required to transport the LNG to the United States and Trunkline will supply two tankers. Each tanker will have a capacity of 125,000 cubic meters.

These tankers will transport the liquefied gas in cryogenic containers from Algerian ports to the TLC plant to be built in the Lake Charles area of Southern Louisiana. TLC will regasify and deliver the gas to Trunkline, which will transport this gas through its extensive pipeline system and deliver the regasified LNG to its customers.

Trunkline submits that since 1971, it has been compelled to curtail its gas deliveries below its contractual commitments in amounts ranging from 250,000 to 850,000 Mcf per day. Its current level of curtailments is now 650,000 Mcf per day despite all possible efforts to develop new gas resources. The 420,000 Mcf of gas per day that Trunkline expects from this Algerian project will reduce the anticipated 1980 deficiency to about 450,000 Mcf per day. It is expected that even if the imported LNG becomes available in 1980, Trunkline will be unable to serve all Category 1 and 2 customers and that if this LNG were not available, a 1980 deficiency of about 900,000 Mcf per day will be experienced.

By agreement dated January 22, 1976 between Trunkline and TLC (Exhibit No. 66), TLC will sell the regasified LNG to Trunkline under a cost-of-service tariff arrangement which provides that Trunkline will pay all of TLC's cost plus a 15 percent return on equity invested in TLC.

II. Initial Decision

As indicated previously, the Presiding Judge approved applicants' proposals subject to various conditions. With regard to rates, the Presiding Judge prescribed the following conditions (I.D., pp. 55–61):

1. Rates charged Trunkline Gas Company by Trunkline LNG Company for gas obtained from regasified LNG under this project shall not include (a) a return on TLC equity in excess of 14 percent and (b) an overall return for TLC in excess of 9.5 percent.

2. The cost to Trunkline of gas produced from LNG shall not include any cost component related to a rate of return on equity invested in Lachmar[4] in excess of 17.5 percent, measured over any two-year period.

3. Trunkline shall submit to the Commission detailed documentation of any adjustment in LNG freight rates, to insure that only necessary and proper charges are included pursuant to the applicable contractual shipping arrangements, and shall arrange for necessary auditing procedures to insure that no duplication of return on Lachmar's equity is included in any costs charged to Trunkline.

4. Gas derived from this LNG import project will be sold by Trunkline Gas Company to its customers on a rolled-in basis.

5. Trunkline shall submit to the Commission detailed documentation underlying any adjustments in the price paid to Sonatrach for LNG. Such documentation shall clearly delineate the contractual basis for any such price change. Trunkline shall submit this documentation on an annual basis, to be received by the Commission within 45 days after each period ending December 31.

* * * * *

[4] A partnership owned 40 percent by Panhandle, 40 percent by General Dynamics Corporation and 20 percent by Moore McCormack Resources, Inc. (Footnote added.)

10. Prior to the end of the first five-year period of operation of the LNG plant, Trunkline and TLC shall present to the Commission competent documentation based on operational experience of this plant to support continuation of or any proposed change in the depreciation rate, and any change in such rate shall be made only in accord with procedures approved by the Commission.

11. Trunkline and TLC shall not include in gas rates any charges arising from acceleration of any cost without specific Commission approval.

12. Reports on the status of this LNG import program, outlining the progress of construction of the components of this project, the cost of such construction in contrast to projected costs, the effect of any cost changes in the cost of regasified LNG to gas users, the quantity of gas imported, and other substantive information outlining the effectiveness of this program, shall be submitted to the Commission semiannually, 45 days after each period ending June 30, and December 31.

In response to a request by the Energy In response to a request by the Energy Resources Council (ERC)[5] that the Commission adopt a "contingency planning policy" to "assure non-curtailable supply continuity" to high priority users in the event of an LNG import supply cutoff for any reason, the Judge established the following condition:

6. Within six months of the effective date of this Decision, Trunkline will submit a detailed, written compilation and evaluation of its own and its customers' gas reserve capabilities, and a detailed contingency plan to be implemented in the event of disruption of LNG deliveries, including the following:

a. Existing gas reserve capabilities;

b. Gas reserve capabilities which are either presently being constructed or presently being developed, with estimated availability dates;

c. Estimates of the percentage of each customer's needs which will be met by reserve capabilities; and

d. The feasibility of the use of cushion gas reserves to replace gas from LNG.

(I.D., p. 56)

The Judge also established detailed environmental and safety conditions designed to maximize the safety of the project and to minimize the adverse environmental consequences of the project, particularly the required construction in the United States phase of the project. These conditions were based upon his conclusion (I.D., p. 29) that the project, with the conditions urged by Staff and adopted by Trunkline:

* * * will have minimal effect on the environment and does not pose risks in excess of those deemed acceptable for a project of this complexity. Further, Staff and Trunkline have recommended safeguards designed to minimize risks and increase safety, and implementation of these safeguards will be required in the Order below. (I.D., p. 29)[6]

[5] This Council was established by Congress for the purpose of inter alia, coordinating energy policy among Federal agencies. Briefs on behalf of ERC were filed by the Federal Energy Administration (FEA).

[6] His conclusion was based upon the detailed discussion of the environmental and safety aspects of the project on pages 9–16 of the Initial Decision.

The Presiding Judge also found that the record demonstrated that Algeria has ample gas reserves to meet its contractual commitments to Panhandle in the instant case, as well as other commitments for the sale of Algerian gas reserves. (I.D., p.20) Furthermore, the Judge found that the reliability of the LNG gas supply was high and that previous interruptions of LNG supply were due to technical, not political (i.e., OPEC-related) reasons. Furthermore, he found, inter alia, that Algeria has a high "financial stake in the project" which enhanced the reliability. The Presiding Judge also noted that the Department of State concurred in his conclusion (I.D., p.29).

The Presiding Judge also found that the program was feasible from a financial standpoint (with an estimated $3.37 per Mcf initial rate at Trunkline's existing pipeline system) (I.D., pp.31–32) as well as feasible from an engineering standpoint (I.D., pp.33–34). Furthermore, he notes that by 1984, Trunkline will be required to rely on imported LNG for approximately one-half of its total supply[7] and, even then, it will be able to serve only 75 percent of its priority One Customers with no gas available for lower priorities.[8] He also refused to adopt the ERC suggested condition of limiting all LNG imports from one nation to 0.8 to 1.0 Tcf of gas per year. (I.D., p.3)

The Presiding Judge found the estimated delivery cost of $3.37 per Mcf at Trunkline's now existing pipeline system as reasonable compared with alternatives such as coal gas ($5 per Mcf), new domestic gas from post 1–1–76 wells ($1.45 per Mcf per Opinion Nos. 770 and 770–A) and recent sales of emergency gas (as high as $2.34 per Mcf).

As a result of the above, as well as the remaining discussion in his Initial Decision, the Presiding Judge conditionally approved the applications for the project.

III. Positions of the Parties in Briefs on Exceptions and Briefs Opposing Exceptions to the Presiding Judge's Decision

On March 21, 1977, Briefs On Exceptions to the Initial Decision were filed by ERC, Staff and Trunkline and Trunkline LNG, Briefs Opposing Exceptions were filed on March 31, 1977, by El Paso Algeria Corporation, Staff, Trunkline and Trunkline LNG, MRT and on April 1, 1977, by Indiana Gas Company.

Staff, in its Brief On Exceptions, states that it takes no position as to whether or not the project should be certificated, but rather recommends conditions that should be attached in the event the

[7] In 1980, the LNG will constitute approximately 10 percent of Panhandle's supply (Ex. 60), 7 percent of MRT's supply (Tr. 15/1988), and 16 percent of Consumer Gas' supply (Ex. 83).

[8] After 1984, the gas will be used to exclusively supply Panhandle's Priority 1 customers (Ex. 61). In 1980, it will be used on the MRT system to supply "Step 5", resale firm customers with alternate fuel capability and priorities higher than Step 5.

Commission decides to certificate the project. While Staff is satisfied with certain of the conditions imposed by the Presiding Judge, it urges further conditions and modifications as set forth below.

Staff urges the Commission to condition the certification of the project to require elimination of the two provisions of Panhandle-Sonatrach sale and purchase contract (Ex. 69) which permit, respectively, renegotiation (Article XXIV) of the minimum price of $1.30 per MMbtu (subject to changes in currency values) set forth in Article VIII(3) and which permit automatic escalations in the minimum price in direct relation to the escalation of the price of No. 2 and No. 6 fuel oil (Article VIII(2)). Staff argues that these provisions violate the natural Gas Act which requires rate increases to be cost based.[9] Staff argues that to permit such escalation provisions would further enhance the control of the OPEC Nations over the energy supplies of the United States.

Staff urges that the Commission modify the Judge's decision to require the filing within 60 days of the date of the instant order of Sonatrach's final financing arrangements for the Algerian facilities involved in this project.

Staff also argues that the Judge should have required cost substantiation for the currently estimated cost of shipping the LNG by Lachmar and Sonatrach as well as substantiation of any increases in the costs of shipping the LNG. With respect to Lachmar, Staff argues that if the ships cannot be placed into service on time, the costs incurred may be capitalized and passed on to the consumer. Furthermore, Staff argues that all costs incurred during the second year due to nonvessel force majeure may also be capitalized and passed on to Trunkline LNG and eventually to the ultimate consumer. Thus, Staff argues that the Lachmar base rate is excessive because the risks set forth above do not justify a rate which Staff argues is 10 percent above the time charter rate. Staff states that the real risk is that of a late start-up (which is borne by the consumer) which offsets the risk of nonvessel force majeure assumed by Lachmar for years 1, 3 and 4 and does not justify the 10 percent above time charter excess. Staff cites the previous history of LNG start-ups as support for its prediction of a late start-up. Accordingly, Staff recommends that the Commission condition the certificate to require Lachmar or Trunkline after financing to provide the Commission with justification of this allegedly higher rate. Staff also states that the Lachmar base rate costs are out of date and that the 17.5 percent rate of return on equity ceiling imposed by the Presiding Judge on Lachmar is arbitrary, and without record support and that the issue should be decided in a hearing.

With regard to Sonatrach's shipping rates,[10] the Commission is also urged to require cost justification therefor. Furthermore, Staff argues that cost justification should be required for any rate adjustments under the "cost overrun" and "delay in start-up" escalators in the Sonatrach and Lachmar shipping contracts.

With respect to Trunkline LNG's cost-of-service tariff governing sale of the regasified LNG to Trunkline (Ex. 66), Staff argues that the minimum bill provision in Section 12.02D of the tariff be amended to provide that during periods of interruption, Trunkline LNG would recover its embedded debt costs but not any return on equity or the recovery of any equity investment through depreciation.[11] Staff also argues that the minimum bill provision in Section 12.02B of the tariff be amended to provide for loss of equity return in the event of project failure. Staff argues that this particular condition is needed because of the ambiguity of the present language in the proposed tariff.

Staff objects to the language of the Judge's condition number 10 (I.D., p. 60) which, it is argued, allows Trunkline LNG's tariff (Section 12.02B) to provide for a 5 percent depreciation rate subject to yearly redetermination. All the Judge requires is a report in 5 years substantiating any changes in the rate. Staff argues that the "unacceptable" language in the tariff should be eliminated and that Trunkline LNG be required to follow "conventional" procedures in seeking a change in the depreciation rate; a procedure Staff says Trunkline LNG has agreed to in its Reply Brief.

Staff also urges the Commission to reverse the Judge's decision to request (rather than require) Trunkline LNG to submit new accounts for tracking costs associated with its LNG facilities. Staff states that Trunkline LNG has no objection to such a condition. Staff also urges the Commission to adopt a fixed debt to equity capitalization ratio for Trunkline LNG, a proposal it alleges the Presiding Judge ignored in his initial decision.

Furthermore, Staff restates its support for a return on equity ceiling in Trunkline LNG's tariff of 14.50 percent in the event of incremental pricing (or 13.00 percent in the event of rolled-in pricing). Staff opposes the rate of return ceiling of 14 percent on equity and 9.5 percent overall imposed by the Presiding Judge on Trunkline LNG, in conjunction with rolled-in pricing, as being excessive. Staff states that the Judge's reliance on Opinion No. 769[12] was misplaced because the Commission gave Tennessee 13.75 percent return on equity based upon Tennessee's need to explore for and develop new sources of natural gas, a factor not applicable to Trunkline LNG. Furthermore, Staff states that the Judge ignored Staff Witness Adelman's recommendation of 13 percent on equity for rolled-in pricing and 14.5 percent for incremental pricing based upon, inter alia, his testimony to the effect that although Trunkline LNG has a higher risk than a pipeline company such as Tennessee, that risk is more than offset by Trunkline LNG's "all events" cost-of-service tariff.

Staff challenges the Judge's adoption of rolled-in pricing in lieu of Staff's recommended incremental pricing. Staff argues, inter alia, that rolled-in pricing insulates the LNG from the test of the marketplace by averaging its cost in with lower cost domestic gas, that it gives consumers "incorrect" economic signals as to the true cost of LNG, and it precludes state commissions from incrementally pricing LNG if they so choose. Staff states that rolled-in pricing is only proper when the price of the new gas supply does not significantly differ in price from the older flowing gas supply. Staff argues that the fact cited by the Judge that LNG will constitute approximately one-half of Trunkline's gas supply by the mid-1980's is not an argument against incremental pricing. Staff also states that the Judge's statement that incremental pricing may cause purchasers to switch to oil (a larger part of which is supplied by OPEC Nations) is unsupported by the record. Accordingly, Staff urges the Commission to reverse the Judge and adopt incremental pricing for LNG.

Staff sets forth several suggestions as to the contingency plan conditions. Staff also argues that the environmental data conditions (7d through 7g) should be amended to reflect the Staff language in the FEIS recommendations 4 and 7, respectively, and that the work "completion" in condition 7r should be changed to "commencement".

Trunkline LNG states that it will accept the environmental conditions as set forth in the Initial Decision and will accept the Judge's ceiling of 14 percent return on equity for Trunkline LNG if "no new adverse conditions" are added by the Commission. Trunkline LNG states that, in the interests of expediting approval for the project, it is limiting its objections to the Judge's decision to the conditions imposed by the Judge on the Lachmar shipping contract. Specifically, Trunkline LNG objects to the Judge's number 2 condition which specifies that Lachmar's return on equity cannot exceed 17.5 percent for any two-year period. Trunkline LNG argues (1) that the Commission has no jurisdiction over LNG shipping firms[13]: (2) the FPC has no means of adjusting the Lachmar rates; and (3) in any event, Lachmar has sufficient risk to justify the returns

[9] Staff cites, inter alia, Columbia LNG, et al., Opinion No. 622-A, 48 FPC 723, 727 (1972) and Pacific Gas Transmission v. F.P.C., 536 F.2d 393 (D.C. Circ. 1976); cert denied December 6, 1976, 45 U.S.L.W. 3416, as support for its argument.

[10] See Initial Decision, p. 5, 16-19, for a detailed discussion of the financing related to the Lachmar and Sonatrach shipping rates.

[11] Staff again cites Opinion No. 622-A, supra at 730 as well as Transwestern Pipeline Company, et al., Opinion No. 728-A, issued November 21, 1975, in Docket No. CP73-211 at mimeo, p. 4.

[12] Tennessee Gas Pipeline Co., et al., ---- FPC ---- issued July 9, 1976, in Docket No. RP73-113.

[13] Citing Docket No. R-377, 49 FPC 1078 (1973) and Pacific Indonesia LNG Company, et al., ---- FPC ---- issued April 2, 1976, in Docket No. CP74-160, et al.

of from 16.6 percent in the first year to 19.5 percent in the fifth year because it has the risk of failure of its project in the event LNG is not delivered and the nonvessel force majeure risk (including risk due to political force majeure) risk for years 1, 3 and 4.

ERC's Brief on Exceptions states that although the Presiding Judge referred to its proposed limit of 0.8 to 1.0 Tcf of imported LNG per year from any one country, the Judge did not specifically adopt the limit because the instant Trunkline LNG project plus the previously approved projects involving importation of Algerian LNG do not exceed ERC's proposed limit. ERC argues that the Judge should have adopted the ERC proposal as a firm ceiling.

ERC also criticizes the Presiding Judge's Condition #6 dealing with contingency planning because it does not contain the following three elements which ERC considers crucial:

(1) Noncurtailable supply continuity for high priority customers at the burner tip.
(2) for five consecutive months peak use on the system * * *.
(3) in the form of a definite plan prescribing specific actions to be taken.

ERC requests the Commission to require Trunkline LNG to file a plan containing the above three items.

Staff, in its Brief Opposing Exceptions, argues that the 15 percent return on equity proposed by Trunkline LNG for its tariff is excessive and that, if anything, the Judge's 14 percent return on equity ceiling should not be raised but lowered. Furthermore, Staff argues that no party has justified raising the Judge's Lachmar return on equity ceiling of 17.5 percent and Staff repeats its discussion to the effect that the rate might have to be lowered.

Staff opposes the ERC proposal to adopt its 0.8 to 1.0 Tcf LNG ceiling in this case because the issue is not ripe for decision in the instant proceeding. Staff argues, however, that more information may be necessary for formulating the contingency plan.

Trunkline LNG in its Brief Opposing Exceptions supports the Judge's rejection of Staff's 13 percent return on equity ceiling for Trunkline LNG and argues that Opinion No. 769 is applicable because therein the Commission emphasizes the importance of the capital attraction test as well as the comparable earnings test of the "Hope" and "Bluefield" cases. Trunkline LNG also support the Judge's decision to use rolled-in pricing arguing that the Staff's objections thereto are not relevant to the conditions as they exist and will exist on the Trunkline system. Trunkline LNG also argues that Staff's objections to the language of certain of the Judge's cost and rate conditions are without merit and merely exalt from over substance.

Trunkline LNG also argues that the Staff's proposed conditions to Panhandle-Sonatrach gas purchase contract are unjust and would impair the financial viability of the project. It argues that the fuel oil escalator is a reasonable index of costs and further that the price renegotiation clause only operates with the approval of both American and Algerian authorities.

Trunkline LNG also opposes Staff's condition requiring downward adjustment in Trunkline LNG's return on equity in the event its deliveries fall below 420,000 Mcf/day, a figure said to represent 100 percent load factor operations. TLC argues that the condition is arbitrary, unjustified and would adversely affect the financial viability of the project. Also, it argues that the provision would impose a penalty with no rational relationship to the interruption of service which triggers it. Trunkline LNG also argues for rejection of Staff's cost substantiation proposal relating to the Lachmar and Sonatrach shipping rates and for the substitution of the Judge's proposal on this issue.[14]

Trunkline LNG argues that there is no issue as to the contingency plan as alleged by ERC because it will include the three items requested by ERC. However, Trunkline LNG does suggest that the plan would be more efficacious if it were filed 12 months prior to the date of first deliveries of LNG and accompanied by supporting data developed on the plan as submitted. It contends that data requested by Staff and the Judge should await the filing of the contingency plan, which will be under the guidelines outlined by the Presiding Judge and ERC. Finally, with respect to ERC's proposed ceiling, Trunkline LNG concurs with Staff in urging rejection of the ceiling in this proceeding.

Indiana Gas and MRT both support the Judge's adoption of rolled-in pricing and oppose Staff's incremental pricing proposal. MRT also supports the Judge's determination on the proposed ERC import ceiling and on the contingency plan. El Paso Algeria also supports the Judge's decision on the ERC import proposal.

Discussion

Based upon the record in this proceeding, the Commission finds that the project proposed by applicants in this proceeding should be approved subject to the conditions set forth below.

The Commission concurs with and incorporates by reference the Presiding Judge's discussion of the environmental and safety aspects of this project (I.D., pp. 9–16, 34). The Commission concurs with his conclusion that the project will have a minimal effect on the environment and will have minimal safety risks, which are acceptable for a project of this complexity. (I.D., p. 29) Furthermore, the Commission adopts the conditions of the Presiding Judge subject to certain modifications. The Commission shall adopt Staff's suggestion to modify the Judge's Condition Nos. 7d and 7g to reflect the language set forth in Staff's FEIS recommendations 4 and 7 in Exhibit No. 84. Furthermore, the proposed modification of the Judge's Condition No. 7r shall be adopted.[13]

The Commission also adopts and incorporates by reference the findings of the Presiding Judge concerning the engineering feasibility of the project (I.D., pp. 33–34) for the reasons stated therein.

Several issues have been raised by Staff as to the reasonableness of the Panhandle-Sonatrach gas purchase contract, the Sonatrach and Lachmar shipping contractual agreements, and Trunkline LNG's tariff. The Commission has reviewed the evidence of record and the Presiding Judge's decision and has found that the following procedure represents the most appropriate means for assuring that Trunkline LNG's ultimate customers do not suffer from excessive rates and charges. Based upon the discussion in the Presiding Judge's decision, the Commission finds that an initial rate of $3.37 per Mcf [16] (as conditioned below) for gas delivered by Trunkline LNG to Trunkline at Trunkline's now existing pipeline system is in the public convenience and necessity. However, the Commission is aware that an appropriate means must be provided to permit upward and downward adjustments in the rates charged by Trunkline LNG to Trunkline to reflect, inter alia, changes in prudently incurred costs from the operations of Trunkline LNG, Sonatrach and Lachmar shipping, and Sonatrach's operations in Algeria. Accordingly, the Commission shall require Trunkline LNG to file a tariff for the resale of regasified LNG at Trunkline's existing pipeline system reflecting an initial rate of $3.37 subject to an adjustment provision discussed hereafter. Any change in that rate will necessitate Trunkline LNG making a filing under section 4 of the Natural Gas Act and §154.63 of the regulations showing the prudency and reasonableness of any increased cost during any phase of the delivery of the gas from the Algerian wells to Trunkline's existing pipeline system. Our action to the costs of the Algerian phase of the operation is consistent with our decision to eliminate Pacific Gas Transmission (PGT) Company's cost-of-service tariff which permitted automatic rate adjustments to reflect changes in the costs, including the cost of purchased gas mandated by Canadian officials. The Court affirmed the Commission's action stating that to continue to permit PGT to use a cost-of-service tariff:

> * * * would be an abdication of the Commission's statutory duty, making it a rubber stamp for Canadian authority, and inevitably subjecting gas consumers to unjust and unreasonable rates fixed by the Canadian authority, ipse dixit.[17]

[14] Staff urged further proceedings to determine the appropriate cost of the ships. The Presiding Judge required a post hoc report justifying any shipping cost increases.

[13] No parties object to these proposed changes by Staff.

[16] This figure reflects the following cost estimates: Cost at Algerian Ports, $1.47 per Mcf plus Shipping Cost of $1.27 per Mcf plus Trunkline LNG Cost of $.59 per Mcf plus transportation over new Trunkline Gas pipeline of $.04 per Mcf (I.D. pp. 6–8, 37–40).

[17] Pacific Gas Transmission Company v. F.P.C., 536 F. 2d 393 (D.C. Cir 1976); cert. denied, December 6, 1976, 45 U.S.L.W. 3416.

With regard to the review of costs in the shipping phase of a project, the Commission recently stated its policy as follows:

Accordingly, the form of our control over the price charged by the importer was to examine original cost estimates for reasonableness, and then to require that any application for a price increase be substantiated by actual costs incurred. Our intention in examining original cost estimates was to do so in terms of insuring that only those costs which were prudently incurred by the participant companies should be passed on to the consumers of natural gas in interstate commerce. This means that the record should be developed to indicate that the shipping rate involved here is reasonable when considered in the context of the customs and practices of the shipping industry. If the rate paid here is comparable with rates charged for the same or similar services by this or any other shipping company, our investigation as to this item would be at an end. We do not intend to explore the methodology of developing a shipping rate, nor do we intend to require detailed cost and financial evidence relating to the shipping company.[18]

The Commission is aware of the fact that the shipping costs (among others) underlying the $3.37 per Mcf estimate may escalate as ship construction progresses. However, the Commission will have ample opportunity to examine any increased costs for prudency in future filings for rate adjustments to be made by Trunkline LNG.

Consistent with the above, the Commission shall reject Trunkline LNG's proposed cost-of-service tariff.[19] However, the Commission finds that rate adjustments should be permitted without the necessity of a full section 4 rate filing to reflect rate changes triggered by the currency adjustment provision in the Panhandle-Sonatrach gas purchase contract.[20]

With regard to the minimum bill provision relating to service interruptions proposed by Trunkline LNG, as well as the proposal made by Staff limiting Trunkline's proposal, we find that, based upon the record in this proceeding, the Commission should adopt a minimum bill for periods of service interruptions which would permit Trunkline LNG to recover its nonequity related fixed costs.[21] This provision is necessary in order to ensure financeability of the project.

These fixed costs to be recovered under the provision are inter alia those related to debt, taxes, and fixed operating and maintenance expenses. Stockholders of Trunkline LNG, however, would not be permitted during any period of partial or total nondelivery to recover a return on equity or return of equity (through depreciation expense or otherwise) on that portion of contract volumes not delivered.

As the Commission stated in Opinion No. 622-A, 48 FPC 723 at 730:

Such tariff provisions are required by the public conveniences and necessity as an equitable apportionment of the risk between customer and stockholder and in order to assure the financing of the project on reasonable terms to the consumer.

Accordingly, the tariff, rate schedule and service agreements to be filed by Trunkline LNG and Trunkline Gas Company shall include the following minimum bill provision:

In the event that Seller is unable to deliver 100 percent of the gas contracted for by buyer during any period exceeding one day, Buyer shall reimburse Seller not only for volumes delivered, but also for contract volumes not delivered, such that Seller will recover on the nondelivered volumes an apportioned share of Sellers nonequity-related fixed expenses incurred during such period, limited to the following:

(a) Operating and maintenance expenses;
(b) Taxes payable;
(c) Interest expense based on that portion of Seller's then existing debt which was incurred for the construction of the LNG and related facilities;
(d) The requirements for repayment of such debt; and
(e) Amounts, if any, Seller shall be obligated to pay suppliers arising from Buyer's failure to accept deliveries from Seller.

Provided, however, That Buyer's obligation to pay for nondelivered amounts shall not extend beyond the time at which Seller, if it is the party claiming force majeure, could have remedied the cause in an adequate manner with all reasonable dispatch in order to resume deliveries to Buyer.

With respect to the issue of who bears the costs of project failure, the Commission concurs with Staff that Trunkline LNG should be precluded from automatically recovering any costs after the time of project failure absent an appropriate filing by Trunkline LNG with the Commission to amortize the remaining costs of the project to its cost of service over a five-year period, or such other period as the Commission may deem appropriate.

Consistent with the above, Trunkline LNG's revised tariff shall provide for resale of the regasified LNG at Trunkline's now existing pipeline at a volumetric rate not to exceed $3.37 per Mcf, subject to currency adjustments and the minimum bill provision, or such other rate as Trunkline LNG may charge pursuant to appropriate procedures under sections 4 and 5 of the Natural Gas Act, as previously discussed herein.

With regard to the issue of rolled-in versus incremental pricing, the Commission finds, based upon the evidence in this proceeding, that the incremental method is appropriate. As noted in "Columbia LNG Corporation, et al.," Opinion No. 786 ____ FPC ____, issued January 21, 1977, in Docket No. CP71-68, et al., the decision whether or not to incrementally price supplemental sources of gas such as imported LNG must be decided on a case-by-case basis. Based upon the evidence of record in this proceeding, the Commission finds that the incremental method using separate rate schedules is the correct method.

At the outset, we note that the instant case is different from the "Columbia" case where rolled-in pricing was adopted for imported LNG. There, it was found that the initial price of the LNG and other system supply, especially new domestic gas subject to Opinion Nos. 770 and 770-A, were comparable (mimeo p. 15). Rolling the cost of LNG into the rates of the three pipelines systems involved in the "Columbia" case was estimated to cause increases in the unit cost of gas as follows for the first full year of operation: (mimeo, p. 11).

Columbia Gas 9.5¢ per MMbtu
Consolidated Gas 17.55¢ per MMbtu
Southern Natural 13.3¢ per MMbtu

For the Trunkline Gas Company system, the comparable figures for the first 3 years of operation were estimated to be:

Year:	*Dollars*
First	.57
Second	.63
Third	.67

The estimated cost per MMbtu of LNG delivered at Trunkline's now existing system in the first year is $3.37 per MMbtu. By contrast, the comparable prices in the Columbia case were $1.66 per MMbtu for Columbia, $1.81 for Consolidated, and $1.71 for Southern (Columbia, supra p. 11).

The price of new domestic gas under Opinion Nos. 770 and 770-A is now $1.45 per Mcf[22] and at the current rate of adjustment would escalate by the end of 1980 to approximately $1.60 per Mcf. The record also indicates that Trunkline's cost of domestic gas in 1980 will be in the range of $1.75 per Mcf. (I.D. p. 29)

Although the rolled-in method has been generally favored by the Commission,[23] one of the prerequisites for its use in connection with new supplemental supplies is that the price of these supplies must be reasonably comparable to the price of existing supplies of natural gas available to the pipeline. As indicated above, the price comparability test has not been met in this proceeding. References by the Presiding Judge to the price of coal gas (I.D. p. 37) as well as to emergency and peaking service sales (I.D. p. 60) are not persuasive. The Commission has not yet decided the issue of whether to roll-in or incrementally price coal gas.[24] Pricing for peaking service and emergency sales of natural gas is clearly not comparable to pricing of a steady (as opposed to ad hoc) supply of supplemental natural gas for base load.

Given the price differential discussed above, the arguments of the Staff regarding the propriety of incremental

[18] Pacific Indonesia LNG Co., et al., ____ FPC ____, issued April 2, 1976, in Docket No. CP74-160, et al.

[19] Compare: Columbia LNG, Opinion No. 622-A, 48 FPC 723, at 728 (1972).

[20] No parties, including Staff, object to this provision.

[21] See Tr. 17/2210-2211, Testimony of Staff Witness Adelman.

[22] One Mcf of natural gas at that price has a heat value of 1 MMbtu. Thus, the price per Mcf of natural gas is comparable to a price per MMbtu.

[23] Battle Creek Gas Company v. F.P.C., 281 F. 2d 42 (D.C. Cir. 1960): Columbia, supra. (mimeo p. 13, footnote 13).

[24] Transwestern Pipeline Company, Opinion No. 728 ____ FPC ____ issued April 21, 1975, in Docket No. CP73-211 (mimeo pp. 22-23).

pricing become particularly relevant. As Staff Witness Goldstein indicated, if the cost of LNG is rolled-in with cheaper old gas, consumers will be given "incorrect signals" regarding the scarcity and costliness of supplemental gas supplies. "Consumers will be able to purchase these supplies for less than their cost of production and transportation." Use of the incremental method discourages the inefficient use of the gas because the LNG will be subject to the market test of whether its users value the LNG enough to pay the true cost of supplying them with this expensive gas. (Tr. 17/2287–2289) To allow the LNG to be marketed on a rolled-in basis would, in effect, create an artificial market for the imported gas. It would require all of Trunkline's customers to purchase the LNG and absorb its cost, thus denying them the option of choosing a cheaper alternative that may be available. To the extent that the LNG is incrementally priced at each stage of its sale and resale, all customers, including retail customers, are given the appropriate economic incentive to consider its actual cost in relation to the cost of other options, including conservation. Finally, we view an incremental pricing requirement for LNG as exercising a market restraint on future price escalations.

A necessary complement to selling the LNG on an incremental basis under separate rate schedules is requiring the LNG to be excluded from the system supply that is subject to curtailment under Trunkline's curtailment plan. As noted in Opinion No. 786 (mimeo, p. 12), this will encourage the pipelines to invest in supplemental supply projects and will enhance the financeability of the project because it reduces the risk that the new supply may be diverted to others.

Accordingly, we shall require the LNG sold by Trunkline Gas to its customers to be sold on an incremental basis under separate schedules. With respect to MRT and Panhandle, the Commission shall take action at the appropriate time in proceedings under sections 4 and 5 of the Natural Gas Act to require that the supplemental Trunkline LNG gas is sold incrementally to their respective customers. The Commission encourages state commissions to require local distribution companies such as Consumers Power Company to reflect the incremental pricing method, with the noncurtailable provision, for pricing the LNG to the ultimate consumers of natural gas for the reasons set forth in this Opinion. Thus, if this is followed, not only Trunkline's customers, but the ultimate consumers of the LNG will be charged the true cost of the LNG and will therefore be able to make truly rational consumption decisions. The Commission hereby requests that all state commissions in the states where there are consumers who receive gas from Trunkline Gas Company send their comments on this Opinion, if any, to the Commission within 30 days of the date of issuance of this Opinion.

With regard to the depreciation rate issue, the Commission agrees with Staff that conventional procedures under sections 4, 5 and 9 of the Natural Gas Act should be followed in permitting any increase in the proposed 5 percent straight-line rate. Therefore, the Judge's decision shall be modified to provide that Trunkline LNG shall initially use a 5 per cent straight-line depreciation rate and may request a change therein according to the procedures of sections 4, 5 and 9 of the Natural Gas Act.

With regard to the fixed debt-equity ratio proposed by Staff for Trunkline LNG's tariff, the Commission finds that such a condition is not supported by the record herein. Rate of return for Trunkline LNG shall be determined by appropriate proceedings under sections 4 and 5 of the Natural Gas Act according to the evidence presented in each proceeding

The modifications to the contingency plan to be filed by Trunkline proposed by ERC shall be adopted. However, we agree with Trunkline LNG that the plan should not be filed within 60 days of the date of the instant order, but rather one year before the start-up of LNG service. In this way, more current and reliable data will be available to formulate Trunkline's contingency plan. With respect to ERC's country of origin import limitation plan, the ERC filed a letter with the Commission on April 25, 1977, withdrawing the proposal in light of President Carter's April 20, 1977, energy program. Accordingly, the issue is moot and requires no further discussion herein.

With regard to the issue of Trunkline LNG and the development of new accounts, the Commission Staff is currently preparing a proposed notice of rulemaking to govern accounting of specialized LNG facilities. Accordingly, the Commission shall not adopt the Presiding Judge's proposed condition on this issue.

The Commission finds. Good cause exists to grant the application filed in this proceeding as hereinafter ordered and conditioned.

The Commission orders. (A) The applications, as amended, of Trunkline LNG Company and Trunkline Gas Company for: (1) A certificate of public convenience and necessity under section 7(c) of the Natural Gas Act for construction of an LNG marine terminal, LNG plant and associated facilities in Calcasieu Parish, Louisiana (Docket No. CP74–138); (2) an order under section 3 of the Natural Gas Act authorizing importation into the United States of gas from Algeria over a 20-year period, as outlined herein (Docket No. CP74–139); and (3) a certificate of public convenience and necessity under section 7 (c) of the Natural Gas Act for construction of a 45.8-mile gas pipeline extension within Louisiana to connect the proposed LNG plant with the Trunkline's existing gas pipeline system, are hereby approved subject to the following conditions:

(B) Gas derived from this LNG import project shall be sold by Trunkline Gas Company to its customers on an incremental basis pursuant to separate rate schedules or tariffs as set forth more fully in the body of this opinion.

(C) No later than six months prior to initiation of the sales and services authorized herein, Trunkline LNG shall submit for Commission approval a tariff, rate schedule and executed service agreement covering the sales and services certificated by paragraph (A), or resulting from such certification and consistent with the terms and conditions of this opinion and order, pursuant to the applicable provisions of Part 154 of the Commission's Regulations under the Natural Gas Act.

(D) The tariff, rate schedule and service agreements in Ordering Paragraph (C) above shall reflect a flat volumetric rate of $3.37 per Mcf, subject to adjustment to reflect changes in the currency adjustment provision in the Panhandle-Sonatrach contract, and subject to adjustment to reflect the minimum bill provision for service interruption, as set forth in the body of this opinion; which provision shall also be included therein. The tariff, rate schedule and service agreement shall govern sales of LNG by Trunkline LNG to Trunkline Gas Company at Trunkline Gas Company's now existing pipeline system.

(E) No later than 6 months prior to the initiation of service hereunder, Trunkline Gas Company shall file a separate tariff or rate schedule for sale the of LNG gas on an incremental basis pursuant to the principles set forth in this opinion, and copies of all service agreements for sales of the LNG gas to Trunkline Gas' respective customers.

(F) No change in Trunkline LNG's initial rate or the tariff governing sales to Trunkline Gas Company shall be permitted except pursuant to the procedures prescribed in sections 4, 5 and (in the case of depreciation rate of 5 percent) 9 of the Natural Gas Act and § 154.63 of the Commission's regulations under The Natural Gas Act with the exception of the changes in rates caused by the currency adjustment and minimum bill provision discussed in Ordering Paragraph (D) above.

(G) One year prior to the commencement of LNG deliveries Trunkline will submit a proposed contingency plan for use in periods of LNG service interruption which will ensure to the extent possible noncurtailable supply continuity for high priority customers at the burner tip for the five consecutive months of peak use on the system in the form of a specific plan describing specific actions to be taken. The plan shall contain the following information as well as any other information deemed appropriate by Trunkline:

1. A full accounting of the storage capacity of Trunkline, Panhandle Consumers and MRT and all their customers. The current and future utilization of this storage as well as the cost of storage shall be provided.

2. A full accounting of average and peak volumes of LNG in storage at Lake Charles and on board the two Lachmar ships.

3. A study showing the feasibility of using cushion gas and line pack on the systems of Trunkline, Panhandle, MRT and Consumers and all their customers.

4. A full accounting of gas which can be saved on a five-month peak period basis using conservation methods. The study shall cover the systems of Trunkline, Panhandle, Consumers and MRT.

5. A full report of possible exchanges among the customers of Trunkline such that high priority consumers are protected.

6. Such data shall be provided with a view providing full LNG volumes for a five month peak period through other alternatives.

(H) Safeguards recommended by Staff's FEIS, to which Trunkline has agreed, shall be implemented as follows:

1. Trunkline shall increase the proposed deliverability of the fire water pump system in order that both the fire hydrant loop system and the individual tank deluge systems would be able to operate at maximum capacity in the event of an emergency.

2. Trunkline shall provide a means of fire-fighting a potential LNG fire at the storage tank, dikes and sumps.

3. The output of the emergency generator shall be increased so that all electric-powered detector devices, alarms, and firefighting equipment at the terminal shall remain operative in the event of a power failure.

4. The applicant should outline procedures to be utilized in the event that the evacuation of nearby areas and the suspension of local highway and shipping traffic are necessitated by a major accident. Such procedures should contain measures for the immediate notification of nearby inhabitants of any potentially dangerous situation that might arise and notification and mobilization of emergency personnel such as Civil Defense, hospitals, police, and fire departments.

5. An interlocking safety system similar to the one proposed for emergency notification of the Consolidated Aluminum Corporation shall be provided for all other industries which may locate in the vicinity of the LNG plant and marine terminal.

6. Trunkline shall provide a means of containing an LNG spill at the unloading dock due to a rupture of one or more of the unloading arms or of the LNG unloading line to shore to insure that the maximum possible spill from the LNG arm or LNG line will not spill into the water. Detailed drawings of the LNG spill containment system shall be consistent with known technology and shall be provided to the Commission prior to the operation of the proposed terminal.

7. If the terminal is approved for operation, it is recommended that the Commission require operational reports semiannually within 45 days after each period ending December 31 and June 30, describing facility operations for the period covered and particularly noting any abnormal operating experience or behavior. Abnormalities would include, but not limited to, rollover, geysering, cold spots on the tank, fires, significant equipment and piping malfunctions or failures, nonscheduled maintenance or repair (and reasons therefore), rapid vaporizations, vapor or liquid releases, negative pressures (partial vacuum) within the storage tank, and higher than predicted boil-off rates. The technical information supplied by the applicant should be submitted in a form acceptable to the Commission and should provide sufficient detail to allow a complete understanding of such events consistent with the existing state-of-the-art or knowledge. Such information can provide the FPC with useful technical data that may be applied to other LNG facilities. In the event that an abnormality is of sufficient magnitude to endanger the facility, the operating personnel, or nearby residences or industries, the Commission should be notified immediately.

8. Trunkline shall ensure that the capacity of the dike which surrounds the proposed spoil disposal area for the dredging of the proposed berthing area is adequate to contain all the spoils which are deposited. Outflow of water from the disposal area shall be regulated to prevent insufficient settling of waste water and to reduce the level of suspended solids re-entering the canal and turning basin.

9. Trunkline shall take steps to avoid the spilling of fuels, lubricants, pipe-coating agents, and other harmful substances during the construction and operation of the proposed facilities.

10. Trunkline shall request that the Louisiana Wildlife and Fisheries Commission examine the proposed LNG terminal site and pipeline route to determine the presence of wildlife prior to construction. Trunkline shall make every reasonable effort to comply with protective measures recommended by the Louisiana Wildlife and Fisheries Commission.

11. Prior to crossing rice fields which have a clay pan, Trunkline shall consult with landowners and local representatives of the Agricultural Stabilization and Conservation Service and the Soil Conservation Service concerning the advisability of piling the clay plan separate from the underlying soil layers, so that it may be replaced at or near its original position in the soil profile during backfilling in order to minimize the impact of pipeline construction on the ability of rice fields to hold irrigation water.

12. Trunkline shall consult with landowners concerning future plans to alter the drainage of land, and the location and depth of the pipeline shall accommodate to the extent possible future drainage and irrigation projects.

13. Trunkline shall make every effort to minimize the clearing of forest vegetation and to restrict the clearing of hardwoods to the normal right-of-way width at stream crossings. Material excavated from waterways shall be stored within the right-of-way. To the extent possible, spoil shall be transported to land outside of the narrow bands of bottomland hardwood forest which adjoin streams in the project area. Trunkline shall consult with the Louisiana Wildlife and Fisheries Commission concerning the advisability of temporarily storing the excavated material within the watercourse of those streams and investigate the feasibility of utilizing the most effective stream-crossing method which would minimize loss of bottomland forest habitat and avoid in-water construction activities.

14. Erosion-sensitive areas such as sloped streambanks shall be seeded as soon as possible upon completion of construction, and mulched, riprapped, or similarly treated where necessary to minimize soil erosion. The Louisiana Wildlife and Fisheries Commission and the Soil Conservation Service shall be consulted when selecting plant species to be used in reseeding the right-of-way. These plants shall be selected for value in providing food and cover for wildlife as well as for stabilizing soil. Erosion control diversions shall be used where necessary to prevent erosion of topsoil along the right-of-way.

15. To aid in the stabilization of streambanks and to provide a source of stream cover beneficial to stream-associated life forms, Trunkline shall plant indigenous bottomland shrubs and trees along the edges of each waterway crossed by the proposed pipeline.

16. To prevent the possible abandonment or destruction of wild turkey nests, pipeline construction activities shall not take place in the forested area adjoining the Calcasieu River during the period March through June. In addition, Trunkline shall schedule maintenance-mowing of the pipeline right-of-way during the late summer and fall months to minimize adverse impacts on nesting wildlife.

17. Trunkline's water-quality monitoring program shall include analysis of the parameters listed in Table 7 of the FEIS during the dredging activities. Return effluent flow from the onland dredge disposal sites shall be sampled as part of the monitoring program. If pollutant concentrations exceed existing background levels or if dissolved oxygen concentrations fall below levels necessary to support aquatic life as a result of dredging, mitigating measures shall be taken, including temporary suspension, reduction, or other modification of the dredging operation until previous background levels of pollutants or oxygen concentration returns.

18. Any significant changes in facility design, construction, operation, or operating philosophy shall be reported to the FPC on a timely basis. In addition, final design plans for the proposed LNG terminal shall be submitted to the Commission for review prior to commencement of the construction of the terminal.

19. Trunkline shall coordinate with the U.S. Coast Guard prior to operation of the terminal to investigate and establish further vessel traffic safety procedures to be implemented during the LNG tanker transit of the Calcasieu ship channel.

Reports outlining Trunkline's compliance with the foregoing safeguards shall be submitted seminannually to the Commission by Trunkline within 45 days after each period ending June 30 and December 31.

(I) As a minimum, five tankers to be used to deliver the LNG shall be constructed and operated in compliance with the safety and reliability requirements, including any amendments thereto, of the U.S. Coast Guard (Ex. 86), without precluding the use of construction and operation criteria which result in higher degrees of safety.

(J) As a minimum, the LNG storage and regasification facilities shall be constructed and operated in compliance with the National Bureau of Standards' Cryogenic Safety Review (Ex. 85), without precluding the use of construction criteria which result in higher degrees of safety.

(K) Reports on the status of this LNG import program, outlining the progress of construction of the components of this project, the cost of such construction in contrast to projected costs, the effect of any cost changes in the cost of regasified LNG to gas users, the quantity of gas imported, and other substantive information outlining the effectiveness of this program, shall be submitted to the Commission semiannually, 45 days after each period ending June 30 and December 31.

(L) The authorizations granted herein shall not take effect as to any facility, or operation of any part of any facility, until all necessary federal, state and local authorizations as to that part of the facility, or operation thereof, have been secured. A copy of each such authorization for each facility, or part thereof, shall be submitted to the Commission prior to the commencement of service of such facility or part thereof. Such authorizations shall include, but are not limited to, building permits, Coast Guard clearances of vessels and harbor operations, and statements of compliance with applicable industry codes or regulatory codes governing the design, construction and operation of facilities in a safe manner.

(M) The general terms and conditions set forth in the Commission's regulations under the Natural Gas Act and particularly those contained in §§ 154 and 157.20, thereof, shall attach to the certificates issued herein.

(N) The facilities authorized herein shall be constructed and placed in actual operation, and the proposed sale and delivery of natural gas authorized herein shall commence on or before April 1, 1980.

(O) To the extent not granted herein, the exceptions to the Initial Decision are denied.

KENNETH F. PLUMB,[23]
Secretary.

[FR Doc.77-13282 Filed 5-9-77;8:45 am]

[Docket No. ER77-320]

UNION ELECTRIC CO.

Filing

MAY 4, 1977.

Take notice that on April 25, 1977, Union Electric Company (Union) tendered for filing a Letter Agreement revising the reservation charge for Maintenance Energy Transactions under the Interconnection Agreement dated November 1, 1969 between the Tennessee Valley Authority and Central Illinois Public Service Company, (CIPS) Illinois Power Company, (IP) and Union.

Union indicates that the Letter Agreement provides for an increase in the reservation charge for Maintenance Energy Transactions from $.50 per week per kilowatt to $.60 per week per kilowatt and that the reservation charge was arrived at through negotiations and is the same as that included in IP's Rate Schedule FPC No. 9 and in CIP's Rate Schedule FPC No. 62.

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, N.E., 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 should be filed on or before May 18, 1977. 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 available for public inspection at the Federal Power Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13328 Filed 5-9-77;8:45 am]

[Docket No. ER77-313]

UNION LIGHT, HEAT AND POWER CO.

Filing of Tariff

MAY 3, 1977.

Take notice that Union Light, Heat and Power Company (Union) on April 19, 1977 tendered for filing proposed changes in its FPC Electric Tariff for wholesale electric service to the City of Williamstown, Kentucky. Union indicates that the proposed tariff, FPC Electric Tariff Original Volume No. 1, will cancel and supersede Rate Schedule FPC No. 10, which is the present tariff established in the Contract for Electric Service with the City of Williamstown for the period August 1, 1966 to July 31, 1966.

Union proposes to make the changes in rates effective May 19, 1977.

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 May 11, 1977. 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.77-13279 Filed 5-9-77;8:45 am]

[Docket No. ES77-33]

UPPER PENINSULA GENERATING CO.

Application for Authorization To Issue Securities

MAY 4, 1977.

Take notice that on April 29, 1977 Upper Peninsula Generating Company (Applicant) filed an application with the Federal Power Commission seeking authority, pursuant to section 204(a) of the Federal Power Act, to issue short term notes of an aggregate principal amount of up to $40,000,000.

The Applicant is incorporated under the laws of the State of Michigan, with its principal business office at Houghton, Michigan. The Applicant is engaged in generation of electric energy for sale to its owners, Upper Peninsula Power Company and Cliffs Electric Service Company.

The Applicant has proposed to issue unsecured promissory notes of a principal amount of up to $40,000,000 outstanding at any one time, payable to such bank or banks from which the Applicant may borrow, for periods not exceeding twelve months from the date of original issuance, extension or renewal. The notes will be issued on or before July 1, 1978 and will have a final maturity date not later than July 1, 1979. The interest rate on such notes will not exceed 120 percent of the prime rate in effect at the time of issue. The notes will not be subject to resale to the public.

The notes proposed to be issued would be in addition to short term notes of an aggregate principal amount not exceeding $30,000,000 at any one time, which the Applicant may issue under a revolving credit agreement authorized by the Commission in Docket No. E-9461.

The proceeds from the sale of the notes will be used for the purchase of coal supplies through July 1, 1979.

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, N.E., 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 May 20, 1977. 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.77-13273 Filed 5-9-77;8:45 am]

[23] Commissioner Holloman, dissenting, filed a separate statement as part of the original document.

[Docket No. E-9147 (Phase II)]

VIRGINIA ELECTRIC AND POWER CO.

Filing of Settlement Agreement

MAY 3, 1977.

Take notice that on April 12, 1977, Virginia Electric and Power Company ("Vepco") and ElectriCities of North Carolina ("ElectriCities") filed a joint motion that the Commission approve an attached Settlement Agreement entered into by them at a settlement of all issues in this proceeding.

Appended to the Settlement Agreement is a Memorandum of Agreement executed concurrently by Vepco and North Carolina Municipal Power Agency Number 2 ("NCMPA2") pursuant to which Vepco agrees to enter into a Contract for Interchange Service, including certain Schedules and Supplementary Agreement Number One, all attached thereto. NCMPA2 is a body corporate and politic organized under Chapter 159B of the General Statutes of North Carolina for the purpose of developing joint ownership of electric generation and transmission facilities for the benefit of its member municipalities who are all of the municipal systems in North Carolina who presently receive wholesale electric service directly or indirectly from Vepco. The effectiveness of the Settlement Agreement and the Memorandum of Agreement are contingent upon the effective ness of the other.

The Settlement Agreement provides inter alia that Vepco will file in a timely manner the Contract for Interchange Service; that it will, subject to the same limitations as contained in the Memorandum of Agreement with NCMPA2, make available a similar Memorandum of Agreement to municipal wholesale customers now served by Vepco for the purpose of their development of ownership of electric generation and transmission facilities; that Vepco, as part of its next general wholesale rate application, will file a revised full service requirements tariff (included as part of the Settlement Agreement) for its wholesale municipal customers: and that Vepco will develop and file a partial requirements tariff to be applicable by such time as NCMPA2's planned 50,000 kW to 100,000 kW gas turbine generator(s) goes into commercial operation.

The Settlement Agreement further provides that Electri-Cities, on behalf of itself and its Vepco-served members in North Carolina and Virginia (including those served indirectly by Vepco), and Vepco each agree (with certain stated exceptions) not to raise issues or bring actions against the other based in whole or in part on allegations of anticompetitive conduct or acts or practices claimed to violate any state or federal antitrust laws, the Federal Power Act or other related statutes up to and including the date of the Settlement Agreement and that each releases (or covenants not to sue in certain circumstances) the other from claims as to such matters.

Any person desiring to be heard as to said motion should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 16, 1977. Copies of the motion are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13278 Filed 5-9-77;8:45 am]

[Docket No. E-6684]

VIRGINIA ELECTRIC AND POWER CO. AND DAN RIVER, INC.

Proposed Determination of Headwater Benefits Payments in Roanoke River Basin

MAY 4, 1977.

Public notice is hereby given that the Commission Staff proposes a determination pursuant to the provisions of section 10(f) of the Federal Power Act (16 U.S.C. 803), of certain payments for benefits provided by the Federal Philpott and John H. Kerr headwater improvements in the Roanoke River Basin to downstream hydroelectric plants owned by the Virginia Electric and Power Company (VEPCO) and Dan River, Inc. (Dan River) during the period of January 1, 1969, through December 31, 1972. The proposed payments, based on a report by the Commission's Bureau of Power, dated December 1975, amount to $1,352,000 for benefits plus $32,400 for a share of the costs of the investigations, assigned to VEPCO; and $900 for benefits plus $100 for a share of the costs of the investigations, assigned to Dan River.

Copies of the December 1975 Bureau of Power report were sent to all parties to the investigation on December 29, 1975, with requests for comments or suggestions. No objections were received.

Any person desiring to be heard or to make protest with reference to said proposed determination should on or before June 20, 1977 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 available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13276 Filed 5-9-77;8:45 am]

FEDERAL RESERVE SYSTEM

SOUTHERN BANK HOLDING COMPANY

Formation of Bank Holding Company

Southern Bank Holding Company, Savannah, Georgia, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company through acquisition of at least 52 percent of the voting shares of Southern Bank and Trust Company, Savannah, Georgia. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 1, 1977.

Board of Governors of the Federal Reserve System, May 4, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-13202 Filed 5-9-77;8:45 am]

FEDERAL TRADE COMMISSION

[Docket No. 9066]

FRITO-LAY, INC.

Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 77-11249 appearing at page 20346 in the issue for Tuesday, April 19, 1977 on page 20347, middle column, the 12th line of the first full paragraph should should be deleted and in its place inserted "concerned. In addition, the order speci-".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-471; FDAA-532-DR]

ALABAMA

Amendment to Notice of Major Disaster

Notice of Major Disaster for the State of Alabama, dated April 9, 1977, is hereby amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1977:

The counties of:

Blount	Marshall
Clay	Morgan
De Kalb	Talladega

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: April 21, 1977.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-13248 Filed 5-9-77;8:45 am]

ARIZONA

[Docket No. NFD-470; FDAA-3038-EM]

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Arizona, dated April 15, 1977, is hereby

amended to include the following counties among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of April 15, 1977:

The counties of:

Graham Pinal

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice:

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: April 20, 1977.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-13249 Filed 5-9-77;8:45 am]

[Docket No. NFD-474; FDAA-3038-EM]

ARIZONA

An Emergency Declaration and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on April 15, 1977, the President declared an emergency as follows:

I have determined that the impact of a drought on the State of Arizona is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Arizona.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert C. Stevens, FDAA Region IX, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area to have been adversely affected by this declared emergency:

The San Carlos Indian Reservation.

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: April 15, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-13254 Filed 5-9-77;8:45 am]

[Docket No. NFD-469; FDAA-3023-EM]

CALIFORNIA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of California, dated January 20, 1977, and amended on February 2, 1977, February 15, 1977, and March 10, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 20, 1977:

The counties of:

Santa Barbara.
San Luis Obispo.

The purpose of this designation is to provide emergency livestock feed assistance and cattle transportation assistance only in the aforementioned affected areas effective the date of this amended Notice:

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: April 20, 1977.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-13250 Filed 5-9-77;8:45 am]

[Docket No. NFD-473]

FORT BERTHOLD INDIAN RESERVATION

AGENCY: Federal Disaster Assistance Administration, HUD.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of emergency declaration for the State of North Dakota (FDAA-3016-EM) dated July 21, 1976.

DATED: April 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

Notice: The Notice of emergency for the State of North Dakota dated July 21, 1976, and amended on December 30, 1976, and March 1, 1977, is hereby further amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of July 21, 1976:

The Fort Berthold Indian Reservation within the counties of:

Dunn Mercer
McKenzie Mountrail
McLean

The purpose of this designation is to provide emergency livestock feed assistance and cattle transportation assistance only in the aforementioned affected areas effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-13253 Filed 5-9-77;8:45 am]

[Docket No. NFD-472; FDAA-3013-EM]

MINNESOTA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Minnesota, dated June 17, 1976, and amended on June 28, 1976, August 27, 1976, November 9, 1976, December 30, 1976, January 14, 1977, January 19, 1977, February 11, 1977, and April 1, 1977, is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of June 17, 1976:

THE COUNTY OF WINONA

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected area effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: April 22, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-13251 Filed 5-9-77;8:45 am]

[Docket No. NFD-468; FDAA-530-DR]

VIRGINIA

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Virginia dated April 7, 1977, and amended on April 14, 1977, is hereby further amended to include the following area determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 7, 1977:

The Wythe-Bland Water and Sewer Authority in Carroll County.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: April 21, 1977.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administrator.

[FR Doc.77-13252 Filed 5-9-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 25122-A-E and G-J]

NORTHWEST PIPELINE CORP.

Pipeline Applications

APRIL 29, 1977.

Pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt

Lake City, Utah 84110, has applied for rights-of-way for natural gas pipelines for the Foundation Creek Gathering System in Garfield and Rio Blanco Counties, Colorado.

The above-named system is comprised of over 25 miles of natural gas pipelines of various sizes, ranging from 4½" o.d. to 16" o.d., across the following public lands:

RIO BLANCO COUNTY

T. 4 S., R. 102 W., 6th P.M.
Sec. 18, SE¼SW¼;
Sec. 19, SE¼NE¼, W½NE¼, NE¼NW¼, SE¼SW¼, S½SE¼, NE¼SE¼;
Sec. 24, SE¼SW¼;
Sec. 25, W½NE¼, E½NW¼, NW¼NW¼, N½SW¼, SW¼SW¼, NW¼SE¼, SE¼SE¼;
Sec. 27, S½SE¼, SE¼SW¼;
Sec. 33, SE¼NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, W½SE¼, NE¼SE¼;
Sec. 34, E½NE¼, E½W½, SW¼NW¼;
Sec. 35, SW¼NW¼;
Sec. 36, NE¼NE¼, NW¼NW¼.
T. 4 S., R. 103 W., 6th P.M.
Sec. 27, E½E½, SE¼SW¼, W½SE¼;
Sec. 34, W½NE¼, E½NW¼, SE¼SE¼, N½SE¼.

GARFIELD COUNTY

T. 5 S., R. 102 W., 6th P.M.
Sec. 2, Lot 6;
Sec. 4, Lots 7 and 8;
Sec. 6, Lot 9;
Sec. 7, NW¼NE¼;
Sec. 10, S½SE¼;
Sec. 11, S½SW¼, SW¼SE¼;
Sec. 17, SE¼SW¼, S½SE¼;
Sec. 18, SW¼NE¼, N½S½, SE¼SE¼;
Sec. 19, SE¼SE¼;
Sec. 20, NE¼NE¼, N½NW¼, SW¼NW¼, W½SW¼;
Sec. 21, N½NW¼;
Sec. 30, N½NE¼, SW¼NE¼, S½NW¼.
T. 5 S., R. 103 W., 6th P.M.
Sec. 1, SE¼NE¼, W½NE¼, N½NW¼, SW¼NW¼, NE¼SE¼;
Sec. 2, NW¼NW¼, S½N½;
Sec. 3, NE¼NE¼;
Sec. 13, E½SW¼, N½SE¼;
Sec. 23, SE¼NE¼;
Sec. 24, NE¼NW¼, SW¼NW¼.

The above-named system will enable the applicant to expand its natural gas gathering and transportation systems and thereby meet the demands of its customers.

The purposes of this notice are: to inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should or should not be approved and, if so, under what terms and conditions; to allow all parties asserting claims to the lands or having bona fide objections to the proposed natural gas pipeline rights-of-way to file their claims and/or objections in this office. All comments, claims and objections must be identified with the specific lands involved by Township and Range and portions thereof along with name and number of this right-of-way.

Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

RODNEY A. ROBERTS,
Acting Chief,
Branch of Adjudication.

[FR Doc.77-13247 Filed 5-9-77;8:45 am]

National Park Service

APPALACHIAN NATIONAL SCENIC TRAIL ADVISORY COUNCIL

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Appalachian National Scenic Trial Advisory Council will be held at 9 a.m. e.d.t. on May 27, 1977, at the Shepherd's College Student Center, Shepherdstown, West Virginia.

The Council was originally established by P.L. 90-543 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the administration of the Appalachian National Scenic Trial. It was rechartered by the Secretary of the Interior on February 24, 1975, under the authority of P.L. 91-383.

The purpose of the Council is to provide for the free exchange of ideas between the National Park Service and the public, and to encourage suggestions and ideas from members of the public on problems and programs pertinent to the Appalachian National Scenic Trail. The purpose of this meeting is a follows: (1) to discuss the progress of State and Federal programs; (2) to review specific Trail protection priorities and immediate goals; (3) to discuss alternative strategies for protecting the Trail; (4) to review the organization of the Council and its prospects for the future; and (5) to discuss the proposed draft shelter system policy.

The meeting which will be held prior to the Appalachian Trail Conference's biennial meeting, will be open to the public. Any person may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements, may contact David A. Richie, Project Manager, Appalachian Trail Project Office, Charlestown Navy Yard, Boston, Massachusetts 02129, at area code 617-242-1730.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address, and at the Headquarters of the Appalachian Trail Conference, Washington and Jackson Streets, Harpers Ferry, West Virginia 25425. Copies of the minutes may be obtained by writing to the Appalachian Trail Project Office in Boston.

Dated: May 5, 1977.

ROBERT N. LANDAU,
Assistant for Advisory Boards and Commissions, National Park Service.

[FR Doc.77-13238 Filed 5-9-77;8:45 am]

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 29, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by May 20, 1977.

JERRY L. ROGERS,
Chief, Office of Archeology and Historic Preservation.

ALABAMA

Calhoun County

Anniston, *St. Michael and All Angels Episcopal Church*, W. 18th St.

Madison County

Huntsville, *Robinson, John, House (Oaklawn)*, 2709 Meridan St. N.

CALIFORNIA

Alameda County

Berkeley, *Berkeley Women's City Club*, 2315 Durant Ave.

San Luis Obispo County

San Luis Obispo vicinity, *Port San Luis Site*, S of San Luis Obispo.

CONNECTICUT

Fairfield County

Monroe, *Monroe Center Historic District*, CT 110 and CT 111.

Hartford County

Hartford, *Hyde-St. John House*, 25 Charter Oak Ave.

ILLINOIS

Fulton County

Bluff City vicinity, *Crable Site*, N of Bluff City.
Lewistown vicinity, *Larson Site*, S of Lewistown.

Hardin County

Rosiclare vicinity, *Orr-Herl Mound and Village Site*, NE of Rosiclare.

Mason County

Manito vicinity, *Clear Lake Site*, W of Manito (also in Tazewell Co.).

Union County

McClure vicinity, *Linn-Heilig Mounds and Village Site*, NE of McClure.
Ware vicinity, *Ware Mounds and Village, Site*, W of Ware.

MARYLAND

Dorchester County

Cambridge vicinity, *Yarmouth*, SE of Cambridge.
Taylors Island vicinity, *Ridgeton Farm*, 0.5 mi. SW of Taylors Island.

Frederick County

Frederick vicinity, *One-Million-Liter Test Sphere*, N of Frederick on Ft. Detrick.

Washington County

Keedysville vicinity, *Baker Farm*, N of Keedysville off MD 34.
Keedysville vicinity, *Doub Farm*, N of Keedysville off MD 34.

MICHIGAN

Delta County

Escanaba, *Carnegie Public Library*, 201 S. 7th St.

Monroe County

Monroe, *Sawyer House*, 320 E. Front St.

NEW YORK

New York County

New York, *Duke, James B., Mansion*, 1 E. 78th St.

TEXAS

Garza County

Post vicinity, *Cooper's Canyon*, 5 mi. S of Post.
Post vicinity, *O. S. Ranch Petroglyphs*, 12 mi. E of Post.
Post vicinity, *Post-Montgomery Site*, W of Post.
Post vicinity, *Post West Dugout*, 2 mi. W of Post.

Nacogdoches County

Woden vicinity, *Oil Springs Oil Well Discovery Well*, 4 mi. SE of Woden.

VERMONT

Windham County

Brattleboro, *Canal Street Schoolhouse*, Canal St.
Brookline vicinity, *Round Schoolhouse*, S of Brookline on Grassy Brook Rd.

[FR Doc.77-12872 Filed 5-9-77;8:45 am]

DEPARTMENT OF JUSTICE

UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION

Eastern Fifth Circuit Panel

Chairman: DuBose Ausley. The schedule of meetings of the nominating panel for the Eastern Fifth Circuit of the United States Circuit Judge Nominating Commission is as follows:

1. The first meeting will be held on May 24, 1977, at 10 a.m. in the Second Floor Conference Room of Judge James C. Hill, United States Courthouse (Old Post Office Building), Atlanta, Georgia.

The purpose of the first part of this meeting is to formally constitute the Panel and to discuss procedures and this part of the meeting will be open to the public. The remaining portion of the meeting will be devoted to a discussion of potential candidates and will not be open to the public pursuant to Pub. L. 92-463, section 10(D) as amended. (CF 5 U.S.C. 552b(c)(6).)

2. The second meeting will be held on June 14, 1977, at 10 a.m. in the same location as the first meeting. The purpose of this meeting will be to interview candidates and will not be open to the public pursuant to Pub. L. 92-463, section 10(D) as amended. (CF 5 U.S.C. 552b (c)(6).)

3. The third meeting will be held on June 27, 1977, at 10 a.m. in the Montgomery Federal Courthouse, Montgomery, Alabama. The purpose of this meeting will be to interview candidates and will not be open to the public pursuant to Pub. L. 92-463, section 10(D) as amended. (CF 5 U.S.C. 552b(c)(6).)

JOSEPH A. SANCHES,
Advisory Committee, Management Officer.

MAY 4, 1977.

[FR Doc.77-13226 Filed 5-9-77;8:45 am]

UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION

Sixth Circuit Panel

Chairman: Wilson W. Wyatt. The schedule of meetings of the nominating panel for the Sixth Circuit of the United States Circuit Judge Nominating Commission is as follows:

1. The first meeting will be held on May 23, 1977, at 10 a.m. in the Hall of Justice, 600 West Jefferson, Louisville, Kentucky. The morning session will be an orientation session dealing with procedures; it will be open to the public. The afternoon session will be given to a discussion of candidates and will be closed to the public pursuant to Pub. L. 92-463, section 10(D) as amended. (CF 5 U.S.C. 552b(c)(6).)

2. The second meeting will be held on June 6, 1977, at 10 a.m. in the United States Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, Ohio. The purpose of this meeting is to interview candidates and the meeting will be closed to the public pursuant to Pub. L. 92-463, section 10(D) as amended. (CF 5 U.S.C. 552b(c)(6).)

3. The third meeting will be held on June 20, 1977, at 10 a.m. in the United States Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, Ohio. The purpose of this meeting is to interview candidates and the meeting will be closed to the public pursuant to Pub. L. 92-463, section 10(D) as amended. (CF 5 U.S.C. 552b(c)(6).)

JOSEPH A. SANCHES,
Advisory Committee, Management Officer.

MAY 4, 1977.

[FR Doc.77-13225 Filed 5-9-77;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-1531]

AIRCO ALLOYS

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1531: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 30, 1976 in response to a worker petition received on December 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing silico manganese at the Theodore, Alabama plant of Airco Alloys, Division of Airco, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3365). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Theodore plant of Airco Alloys, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

Significant Total or Partial Separations. Average employment of production workers at the Theodore, Alabama plant decreased 10.8 percent in 1975 compared to 1974 and declined 15.2 percent in 1976 compared to 1975. Plant employment declined 37.0 percent in the fourth quarter of 1975 compared to the fourth quarter of 1974. Production workers were out on strike from March 1, 1976 through May 14, 1976.

Sales, Production, or Both, Have Decreased Absolutely. Plant sales, in tons, declined 54.6 percent in 1975 compared to 1974 and decreased 1.4 percent in 1976 compared to 1975.

Plant production, in tons, declined 27.2 percent in 1975 compared to 1974 and decreased 32.4 percent in 1976 compared to 1975.

Increased Imports. Imports of silico manganese increased each year, from 29,928 short tons in 1971, to 67,751 short tons in 1974 and declined to 55,567 short tons in 1975. U.S. imports increased to 80,118 short tons in 1976. The ratio of imported silico manganese to domestic production increased from 15.4 percent in 1971 to 20.6 percent in 1972. The ratio of

imports to domestic production declined to 16.5 percent in 1973 before increasing to 20.5 percent and 24.9 percent, respectively, in 1974 and 1975. The ratio of imports to domestic production increased to 42.5 percent in the first eleven months of 1976.

Contributed Importantly. A survey of customers purchasing silico manganese from Airco Alloys indicated that there has been a switch to imported silico manganese.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increased imports of silico manganese have contributed importantly to the total or partial separation of the workers at the Theodore, Alabama plant of Airco Alloys. In accordance with the provisions of the Act, I make the following certification:

All employees at the Theodore, Alabama plant of Airco Alloys who became totally or partially separated from employment on or after October 10, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.74-13286 Filed 5-9-77;8:45 am]

[TA-W-1406]

ALLAN WOOD STEEL CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1406: Investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 14, 1976 in response to a worker petition received on that date which was filed by the United Steel Workers of America on behalf of workers and former workers producing carbon and alloy steel products at the Alan Wood Steel Company in Conshohocken, Pennsylvania.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 867). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Alan Wood Steel Company, its customers, U.S. International Trade Commission, U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that criterion four has not been met.

Significant Total or Partial Separations. The average number of production workers and maintenance declined 22.1 percent in 1975 compared to 1974 and increased 9.6 percent in 1976 compared to 1975. Employment decreased 32.4 percent in the fourth quarter of 1975 compared to the similar quarter in 1974 and decreased 16.4 percent in the first quarter of 1976 compared to the first quarter of 1975. Employment increased 22.0 percent in the second quarter of 1976, 35.2 percent in the third quarter and 1.8 percent in the fourth quarter compared to the same quarter of 1975.

Sales or Production, or Both, Have Decreased Absolutely. Sales of steel plate products, in terms of tons, decreased 13.0 percent in 1975 compared to 1974 and decreased 3.4 percent in 1976 compared to 1975. Sales of hot rolled sheet and strip products declined 40.4 percent from 1974 to 1975 and then increased 31.6 percent from 1975 to 1976. Sales of cold rolled sheet and strip products declined by 45.1 percent from 1974 to 1975 and increased 74.2 percent from 1975 to 1976.

Increased Imports. Imports of hot rolled carbon sheet steel decreased each year from 1971 through 1975. Imports increased 6.1 percent in the first nine months of 1976 compared to the same period of 1975. The ratio of imports to domestic shipments decreased from 12.3 percent in the first nine months of 1975 to 9.5 percent in the same period of 1976.

Imports of cold rolled carbon steel sheet decreased each year from 1971 through 1975 for a total of 41.7 percent. Imports increased 16.3 percent in terms of tons in the first nine months of 1976 compared to the similar period in 1975. The ratio of imports to domestic shipments decreased from 15.1 percent in the first nine months of 1975 to 11.8 percent in the first nine months of 1976.

Imports of hot rolled carbon steel strip decreased from 1974 to 1975 and then increased in the first nine months 1976 compared to the first nine months of 1975. The ratio of imports to domestic shipments, however declined from 2.7 percent in 1974 to 2.0 percent in 1975 and declined from 2.2 percent in the first nine months of 1975 to 1.9 percent in the first nine months of 1976.

Imports of cold rolled carbon steel strip declined each year from 1973 through 1975. Imports then increased in the first nine months of 1976 compared to the first nine months of 1975. The ratio of imports to domestic shipments increased from 3.7 percent in 1974 to 3.9 percent in 1975 and increased from 4.2 percent in the first nine months of 1975 to 5.1 percent in the first nine months of 1976.

Imports of carbon steel plate increased in 1974 compared to 1973. Imports decreased 20.4 percent in 1975 compared to 1974. In the first nine months of 1976 imports increased 1.7 percent compared to the first nine months of 1975. The ratio of imports to domestic shipments increased from 18.7 percent in the first nine months of 1975 to 24.8 percent in the first nine months of 1976.

Contributed Importantly. The Department's investigation revealed that most customers of Allan Wood that purchase steel plate, cold rolled sheet and strip, or hot rolled sheet and strip either do not purchase any imports of these steel products or have increased purchases from Allan Wood.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with cold rolled sheet and strip and hot rolled sheet and strip, or carbon alloy steel plate, produced at the Alan Wood Steel Company in Conshohocken, Pennsylvania did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C. this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13287 Filed 5-9-77;8:45 am]

[TA-W-1411]

ATLANTIC STEEL CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1411: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1976, in response to a worker petition received on December 14, 1976, which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel at the Atlanta, Georgia, plant of the Atlantic Steel Company.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 869). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Atlantic Steel Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eli-

gibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation has revealed that criteria one (1) and two (2) have not been met.

The Atlantic Steel Company, Atlanta, Georgia, produces hot rolled carbon steel, which includes hot rolled carbon strip, concrete reinforcing bars, carbon steel structural shapes and hot rolled carbon steel bar. The Atlantic Steel Company also produces carbon steel wire.

Significant Total of Partial Separations

Employment increased 5.3 percent in 1976 compared to 1975.

The earliest possible date for coverage under the Trade Act is December 3, 1975, one year prior to the date of the petition, December 3, 1976. Employment at the Atlanta plant increased in December 1975 compared to the preceding month and increased in 1976 compared to 1975.

Sales or Production, or Both, Have Decreased Absolutely

Plant sales of hot rolled carbon steel, which includes hot rolled carbon steel bars, concrete reinforcing bars, carbon steel structural shapes and carbon steel strip declined 29.7 percent and 25.3 percent in quantity and value, respectively, in 1975 compared to 1974. Plant sales of hot rolled carbon steel increased 16.9 percent and 12.1 percent in quantity and value, respectively, in 1976 compared to 1975.

Plant sales of carbon steel wire declined 34.1 percent and 24.6 percent in quantity and value, respectively, in 1975 compared to 1974. Plant sales of carbon steel wire increased 19.5 percent and 19.7 percent in quantity and value, respectively, in 1976 compared to 1975.

Plant production of hot rolled carbon steel declined 28.4 percent and 25.3 percent in quantity and value, respectively, in 1975 compared to 1974. Plant production of hot rolled carbon steel increased 13.3 percent and 9.0 percent in quantity and value, respectively, in the first eleven months of 1976 compared to the same period of 1975.

Plant production of carbon steel wire declined 23.5 percent and 13.7 percent in quantity and value, respectively, in 1975 compared to 1974 and increased 10.6 percent and 9.6 percent, respectively, in the first eleven months of 1976 compared to the same period of 1975.

Increased Imports

U.S. imports of hot rolled carbon steel bars increased from 802.6 thousand short tons in 1971 to 804.1 thousand short tons in 1972. U.S. imports declined to 723.0 thousand short tons in 1973, 691.3 thousand short tons in 1974, and 423.1 thousand short tons in 1975. U.S. imports declined from 378.9 thousand short tons in the first three quarters of 1975 to 233.6 thousand short tons in the same period in 1976.

The ratio of imports of hot rolled carbon steel bars to domestsic shipments declined in each year from 1971, when the ratio was 14.5 percent, through 1975, when the ratio was 8.2 percent. The ratio of imports to domestic shipments declined from 9.1 percent in the first three quarters of 1975 to 5.4 percent in the first three quarters of 1976.

U.S. imports of concrete reinforcing bars were 514.5 thousand short tons in 1971 and declined to 358.2 thousand tons and 286.4 thousand tons, respectively, in 1972 and 1973. U.S. imports increased to 477.5 thousand net tons in 1974 before declining to 141.9 thousand net tons in 1975. U.S. imports increased from 121.3 thousand net tons in the first three quarters of 1975 to 143.4 thousand net tons in the same period in 1976.

The ratio of imports of concrete reinforcing bars to domestic shipments declined from 11.4 percent in 1971 to 8.0 percent and 5.6 percent, respectively, in 1972 and 1973. The ratio of imports to domestic shipments increased to 9.5 percent in 1974 before declining to 3.9 percent in 1975. The ratio of imports to domestic shipments increased from 4.4 percent in the first three quarters of 1975 to 4.8 percent in the first three quarters of 1976.

U.S. imports of carbon steel structural shapes increased from 1,477.5 thousand short tons in 1971 to 1,614.0 thousand short tons in 1972 before declining to 1,250.7 thousand short tons and 1,142.7 thousand short tons, respectively, in 1973 and 1974. U.S. imports declined to 804.9 thousand short tons in 1975. U.S. imports increased from 629.1 thousand short tons in the first three quarters of 1975 to 909.8 thousand short tons in the first three quarters of 1976.

The ratio of imports of carbon steel structural shapes to domestic shipments was 31.3 percent in 1971 and increased to 34.1 percent in 1972. The ratio of imports to domestic shipments declined to 21.3 percent in 1973, 19.7 percent in 1974, and 19.5 percent in 1975. The ratio of imports to domestic shipments increased from 18.7 percent in the first three quarters of 1975 to 34.3 percent in the first three quarters of 1976.

U.S. imports of hot rolled carbon strip increased from 36.8 thousand short tons in 1971 to 43.3 thousand short tons in 1972. U.S. imports declined to 34.2 thousand short tons in 1973 before increasing to 35.0 thousand short tons in 1974. U.S. imports declined to 17.5 thousand short tons in 1975. Imports increased from 14.8 thousand short tons in the first three quarters of 1975 to 16.5 thousand short tons in the first three quarters of 1976.

The ratio of imports of hot rolled carbon steel strip to domestic shipments was 2.7 percent in 1971 and increased to 3.0 percent in 1972. The ratio of imports to domestic shipments declined to 2.0 percent in 1973 and increased to 2.7 percent in 1974 before declining to 2.0 percent in 1975. The ratio of imports to domestic shipments declined from 2.2 percent in the first three quarters of 1975 to 1.9 percent in the first three quarters of 1976.

U.S. imports of carbon steel wire declined from 515.3 thousand short tons in 1972 to 433.2 thousand short tons in 1973. U.S. imports increased to 553.8 thousand short tons in 1974 and decreased to 349.6 thousand short tons in 1975. U.S. imports increased to 371.8 thousand short tons in 1976.

The ratio of imports of carbon steel wire to domestic shipments declined from 23.3 percent in 1972 to 17.5 percent in 1973. The ratio of imports to domestic shipments increased to 22.6 percent in 1974 before declining to 22.0 percent and 19.9 percent, respectively, in 1975 and 1976.

Contributed Importantly

Although in the first three quarters of 1976 there was an increase in U.S. imports of concrete reinforcing bars, carbon steel structural shapes, hot rolled carbon steel strip, and carbon steel wire compared to the same 1975 period, Atlantic's sales and production of hot rolled carbon steel, which includes carbon steel structural shapes, concrete reinforcing bars, hot rolled carbon steel strip and carbon steel bars increased both in quantity and in value in 1976 compared to 1975. Although there was an increase in U.S. imports of carbon steel wire in 1976 compared to 1975, Atlantic's sales and production of carbon steel wire increased in quantity and in value in 1976 compared to 1975.

A survey of customers of Atlantic Steel indicated that these customers have not switched to imported hot rolled carbon steel or carbon steel wire. Customers that decreased purchases from Atlantic Steel cited declines in the construction industry as the major factor for their reduced purchases.

Conclusion

After careful review of the facts obtained during the course of the investigation, I conclude that increases of imports like or directly competitive with hot rolled carbon steel and carbon steel wire did not contribute importantly to the total or partial separations of the workers at the Atlanta, Georgia plant of the Atlanta Steel Company as required under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13288 Filed 5-9-77;8:45 am]

[TA-W-1614]

CONVERSE RUBBER CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1613: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 31, 1977, in response to a worker petition received on January 31, 1977, which was filed by the United Paperworkers International Union on behalf of workers and former workers producing canvas and athletic footwear at the Berlin, New Hampshire, plant of Converse Rubber Company.

The notice of investigation was published in the FEDERAL REGISTER (42 FR 9239) on February 15, 1977. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of Converse Rubber Company, its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at the Berlin plant of Converse Rubber Company decreased 20 percent in 1975 and 8 percent in 1976 compared to 1974.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of canvas and athletic footwear by Converse Rubber Company declined 12 percent in quantity and 8 percent in value in 1975 compared to 1974 and 13 percent in quantity and 7 percent in value in 1976 compared to 1975.

Production of canvas and athletic footwear at the Berlin, New Hampshire plant of Converse Rubber Company declined 4 percent in 1975 compared to 1974, increased 7 percent in 1976 compared to 1975 and declined 17 percent in the fourth quarter of 1976 compared to the fourth quarter of 1975.

INCREASED IMPORTS

Imports of athletic footwear increased in absolute terms and relative to domestic production each year from 1971 through 1975, except for 1973 when imports increased absolutely but decreased relative to domestic production. In 1975 imports increased 102 percent in absolute terms. The ratio of imports to domestic production increased from 84.3 percent in 1974, to 148.0 percent in 1975. In the first 9 months of 1976, imports increased 119 percent in absolute terms. The ratio of imports to domestic production increased from 203.9 percent in the first 9 months of 1975 to 333.3 percent in the first 9 months of 1976.

Imports of rubber/canvas footwear increased in absolute terms and relative to domestic production each year from 1972 through 1974. Imports decreased in absolute terms from 1974 to 1975 and increased 17 percent in the first 9 months of 1976 compared to the first 9 months of 1975. The ratio of imports to domestic production remained stable from 1974 to 1975, then increased from 18.3 percent in the first 9 months of 1975 to 25.4 percent in the first 9 months of 1976.

CONTRIBUTED IMPORTANTLY

Imports of canvas and athletic footwear by Converse Rubber Company increased 1,010 percent in quantity and 1,011 percent in value in 1975 compared to 1974 and declined 10 percent in quantity and 12 percent in quantity in 1976 compared to 1975.

Customers of Converse Rubber Company indicated they have decreased their purchases of canvas and athletic footwear from Converse Rubber Company and have increased their purchases of imported footwear.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with canvas and athletic footwear produced at the Berlin, New Hampshire, plant of Converse Rubber Company, contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Berlin, New Hampshire, plant of Converse Rubber Company who became totally or partially separated from employment on or after May 15, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13291 Filed 5-9-77;8:45 am]

[TA-W-911]

CONVERSE RUBBER CO.

Notice of Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974, and in accordance with section 223(a) of such Act, on September 6, 1976, the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers producing canvas footwear at the Bristol, Rhode Island, plant of Converse Rubber Company.

Subsequent to the publication of the original determination, the Office of Trade Adjustment Assistance received an inquiry on behalf of workers at the Lawrence Distribution Center of Converse Rubber Company, Lawrence, Massachusetts. Further investigation revealed that workers at the Lawrence Distribution Center were engaged in employment related to the production of canvas footwear and should have been included in the original certification as eligible to apply for adjustment assistance.

The subject workers were not identified in the original certification because the company maintained separated records and ledgers for distribution staff in other locations.

CONCLUSION

Based on additional evidence, a review of the entire record and in accordance with the provisions of the Act, I hereby issue the following revised certification as follows:

All workers at the Bristol, Rhode Island, plant of Converse Rubber Company and all employees at the Lawrence Distribution Center, Lawrence, Massachusetts, who became totally or partially separated from employment on or after June 10, 1975, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13285 Filed 5-9-77;8:45 am]

[TA-W-1590]

CONVERSE RUBBER CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of

Labor herein presents the results of TA-W-1590: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 24, 1977, in response to a worker petition received on January 24, 1977, which was filed on behalf of workers and former workers producing canvas and athletic footwear at the Presque Isle, Maine, plant of Converse Rubber Company.

The notice of investigation was published in the FEDERAL REGISTER on February 1, 1977 (42 FR 6023). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of Converse Rubber Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at the Presque Isle plant of Converse Rubber Company decreased 23 percent in 1975 compared to 1974 and 20 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of canvas and athletic footwear by Converse Rubber Company declined 12 percent in quantity and 8 percent in value in 1975 compared to 1974 and 13 percent in quantity and 7 percent in value in 1976 compared to 1975.

Production of canvas and athletic footwear at the Presque Isle, Maine, plant of Converse Rubber Company declined 18 percent in 1975 compared to 1974, and 25 percent in 1976 from 1975.

INCREASED IMPORTS

Imports of athletic footwear increased in absolute terms and relative to domestic production each year from 1971 through 1975, except for 1973 when imports increased absolutely but decreased relative to domestic production. In 1975, imports increased 102 percent in absolute terms. The ratio of imports to domestic production increased from 84.3 percent in 1974, to 212.4 percent in 1975. In the first 9 months of 1976, imports increased 119 percent in absolute terms. The ratio of imports to domestic production increased from 203.9 percent in the first 9 months of 1975 to 333.3 percent in the first 9 months of 1976.

Imports of rubber/canvas footwear increased in absolute terms and relative to domestic production each year from 1972 through 1974. Imports decreased in absolute terms from 1974 to 1975 and increased 17 percent in the first 9 months of 1976 compared to the first 9 months of 1975. The ratio of imports to domestic production remained stable from 1974 to 1975, then increased from 18.3 percent in the first 9 months of 1975 to 25.4 percent in the first 9 months of 1976.

CONTRIBUTED IMPORTANTLY

Imports of canvas and athletic footwear by Converse Rubber Company increased 1,010 percent in quantity and 1,011 percent in value in 1975 compared to 1974 and declined 10 percent in quantity and 12 percent in quantity in 1976 compared to 1975.

Customers of Converse Rubber Company indicated they have decreased their purchases of canvas and athletic footwear from Converse Rubber Company and have increased their purchases of imported footwear.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with canvas and athletic footwear produced at the Presque Isle, Maine, plant of Converse Rubber Company, contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Presque Isle, Maine, plant of Converse Rubber Company who became totally or partially separated from employment on or after October 23, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-13290 Filed 5-9-77;8:45 am]

[TA-W-1516]

COPPERWELD CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-1516: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 15, 1976, in response to a worker petition received on December 15, 1976, which was filed by the United Steelworkers of America in behalf of workers and former workers producing copper-clad and aluminum-clad steel wire products at the Metallic Division of Copperweld Corporation, Glassport, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3370). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the United Steelworkers of America, officials of the Copperweld Corporation, the U.S. Department of Commerce publications, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

Evidence developed in the Department's investigation reveals that there are no known imports of copper-clad or aluminum-clad steel wire products.

After careful review of the facts obtained in the investigation, I conclude that imports of copper-clad and aluminum-clad steel wire products like or directly competitive with products produced at Copperweld Corporation, Metallic Division, Glassport, Pennsylvania, have not increased as required in section 222 of the Trade Act of 1974. The petition is, therefore, denied.

Signed at Washington, D.C., this 29th day of 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13292 Filed 5-9-77;8:45 am]

[TA-W-1212]

DELTON SHIRTMAKERS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1212: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 26, 1976, in response to a worker petition received on that date which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's shirts at the Lowell, Massachusetts plant of Delton Shirtmakers, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on November 19, 1976 (41 FR 51138). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Delton Shirtmakers, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Comimssion, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof, have increased either actual, or relative to domestic production, and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Layoffs began in June 1976 and continued thereafter until the plant closed in September 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales decreased 67.7 percent and 11.0 percent in July and August 1976, respectively compared to the same months in 1975. All sales and production ceased when the plant shut down in September 1976. Sales equalled production.

INCREASED IMPORTS

Imports of men's woven dress shirts increased 86.0 percent in the first nine months of 1976 compared to the like period in 1975. Imports of men's knit shirts increased 13.2 percent in the first nine months of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

The manufacturer for whom the company produced men's shirts also contracts and imports shirts from abroad. Customers of this manufacturer indicated that they increased purchases of imports of men's shirts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of men's shirts have contributed importantly to the total or partial separations of workers at the Lowell, Massachusetts plant of Delton Shirtmakers, Inc. In accordance with the provisions of the Act, I make the following certification:

All workers at the Lowell, Massachusetts plant of Delton Shirtmakers, Inc. who became totally or partially separated from employment on or after May 29, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13294 Filed 5-9-77;8:45 am]

[TA-W-1307]

DELTON SHIRTMAKERS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1307: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 29, 1976, in response to a worker petition received on that date which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's shirts at the New Bedford, Massachusetts plant of Delton Shirtmakers, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Delton Shirtmakers, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof, have increased either actual, or relative to domestic production, and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Layoffs began in January 1976 and all employment ceased when the plant closed in September 1976.

SALES OR PRODUCTION, OR BOTH HAVE DECREASED ABSOLUTELY

Unit sales decreased 67.7 percent and 11.0 percent in July and August 1976 compared to the like periods in 1975. All sales and production ceased when the plant shut down in September 1976. Sales equalled production.

INCREASED IMPORTS

Imports of men's woven dress shirts increased 86.0 percent in the first nine months of 1976 compared to the like period in 1975. Imports of men's knit shirts increased 13.2 percent in the first nine months of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

The manufacturer for whom the company produced men's shirts also contracts and imports shirts from abroad. Customers of this manufacturer indicated that they increased purchases of imports of men's shirts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of men's shirts have contributed importantly to the total or partial separations of workers at the New Bedford, Massachusetts plant of Delton Shirtmakers, Inc. In accordance with the provisions of the Act, I make the following certification:

All workers at the New Bedford, Massachusetts plant of Delton Shirtmakers, Inc. who became totally or partially separated from employment on or after January 2, 1976 are

eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-13293 Filed 5-9-77;8:45 am]

[TA-W-1688]

DENISON COTTON MILL CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1688: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 1, 1977, in response to a worker petition received on that date which was filed on behalf of workers and former workers producing cotton duck at the Denison Cotton Mill Company, Denison, Texas.

The Notice of Investigation was published in the FEDERAL REGISTER March 11, 1977 (42 FR 13628). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Denison Cotton Mill Company, its customers, the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment at the Denison Cotton Mill Company declined 9 percent in 1975 compared to 1974 and declined 33 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at the Denison Cotton Mill Company declined 42 percent in 1975 compared to 1974 and declined 11 percent in 1976 compared to 1975.

INCREASED IMPORTS

Imports of cotton duck have increased from $30.5 million in 1973 to $40.9 million in 1974. Imports declined to $19.8 million in 1975 but increased in 1976 to $38.3 million.

CONTRIBUTED IMPORTANTLY

Customers of the Denison Cotton Mill Company increased purchases of imported cotton duck.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with cotton duck produced at the Denison Cotton Mill Company contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Denison Cotton Mill Company, Denison, Texas who became totally or partially separated from employment on or after February 18, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13294 Filed 5-9-77;8:45 am]

[TA-W-1554]

EMPIRE OLDSMOBILE

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1554: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 5, 1977, in response to a worker petition received on that date which was filed by workers formerly selling Oldsmobile automobiles at Empire Oldsmobile, New York, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on January 28, 1977 (42 FR 5450). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of General Motors Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average hourly employment increased 38.9 percent from model year (MY) 1975 to MY 1976 and declined 17.4 percent in the first seven months of MY 1977 compared to the same period in MY 1976. All hourly workers were permanently separated during March 1977.

Average employment of commission salesmen increased 40.0 percent from MY 1975 to MY 1976 and increased 14.3 percent in the first four months of 1977 compared to the same period in MY 1977. All commission salesmen were separated during December 1976.

Average salaried employment was unchanged from MY 1975 to MY 1976 and declined 35.3 percent in the first seven months of MY 1977 compared to the same period in MY 1976. The company expects all salaried employees to be separated by the end of April 1977.

SALES OR PRODUCTION, OR BOTH, HAVE DECLINED ABSOLUTELY

All new cars sold by Empire Oldsmobile were supplied by the Oldsmobile Division of General Motors. The automobile model year used by General Motors runs from September through the following August.

Shipments of luxury small cars to Empire Oldsmobile declined 29.8 percent from MY 1975 to MY 1976 and were unchanged in the first quarter of MY 1977 compared to the same period in MY 1976. From MY 1975 through the first quarter of MY 1977, luxury small cars represented 3.1 percent of total automobile shipments to Empire Oldsmobile.

Shipments of compact cars to Empire Oldsmobile increased 97.9 percent from MY 1975 to MY 1976 and declined 12.5

percent in the first quarter of MY 1977 compared to the same period in MY 1976. From MY 1975 through the first quarter of MY 1977, compact cars represented 10.2 percent of total automobile shipments to Empire Oldsmobile.

Shipments of intermediate size cars to Empire Oldsmobile increased 71.4 from MY 1975 to MY 1976 and increased 36.3 percent in the first quarter of MY 1977 compared to the same period in MY 1976. From MY 1975 through the first quarter of MY 1977, intermediate size cars represented 56.1 percent of total automobile shipments of Empire Oldsmobile.

Shipments of full size cars to Empire Oldsmobile increased 16.0 percent from MY 1975 to MY 1976 and increased 117.3 percent in the first quarter of MY 1977 compared to the same period in MY 1976. From MY 1975 through the first quarter of MY 1977, full size cars represented 30.6 percent of total automobile shipments to Empire Oldsmobile.

INCREASED IMPORTS

Sales of imported luxury cars decreased from 250.8 thousand units comprising 100.0 percent of the market in MY 1973 to 223.1 thousand units comprising 35.7 percent of the market in MY 1974. In MY 1975, import sales increased to 354.0 thousand units comprising 36.1 percent of the market. In the first three quarters of MY 1976, sales of imports were 198.1 thousand units comprising 17.2 percent of the market compared to 261.3 thousand units comprising 38.0 percent of the market for the same period in MY 1975.

Sales of imported compact cars decreased from 344.4 thousand units comprising 17.4 percent of the market in MY 1973 to 238.3 thousand units comprising 13.2 percent of the market in MY 1974. In MY 1975, import sales declined to 114.1 thousand units comprising 7.8 percent of the market. In the first three quarters of MY 1976, sales of imports were 39.2 thousand units comprising 3.8 percent of the market compared to 93.5 thousand units comprising 8.5 percent of the market for the same period of MY 1975.

Sales of imported intermediate size cars increased from 265.1 thousand units comprising 9.7 percent of the market in MY 1973 to 269.2 thousand units comprising 11.7 percent of the market in MY 1974. In MY 1975, import sales declined to 189.4 thousand units comprising 9.9 percent of the market. In the first three quarters of MY 1976, sales of imports were 212.4 thousand units comprising 10.5 percent of the market compared to 131.0 thousand units comprising 9.4 percent of the market for the same period in MY 1975.

Sales of imported full size cars decreased from 148.6 thousand units comprising 3.9 percent of the market in MY 1973 to 43.5 thousand units comprising 1.9 percent of the market in MY 1974 and then increased to 180.5 thousand units comprising 12.0 percent of the domestic full size car market in MY 1975. In the first three quarters of MY 1976, sales of imports were 159.3 thousand units comprising 10.8 percent of the market compared to 150.8 thousand units comprising 13.1 percent of the market for the same period of MY 1975.

CONTRIBUTED IMPORTANTLY

Empire Oldsmobile was a retail car dealership engaged in the marketing of new Oldsmobile cars in the luxury small, compact, intermediate and full size car classes. The dealership opened in September 1974 and was closed in February 1977.

During the period of its operation, Empire Oldsmobile was under the full operating and financial control of the Oldsmobile Division of General Motors. The opening of Empire Oldsmobile in September 1974 was based upon General Motors' desire to locate an Oldsmobile dealership in mid-town New York City at a time when no independent dealerships were operating in that area. The ownership and operational control of a retail dealership by General Motors is not typical of the relationship that the firm establishes with its retail dealerships. It is General Motors' policy to maintain a system of independent retail dealerships which market the cars General Motors manufactures. Of the approximately 13,700 General Motors dealerships operating in the United States and Canada since 1972, only five (including Empire Oldsmobile) have been owned and operated by General Motors. General Motors is in the process of closing all five of these dealerships. Subsequent to the opening of Empire Oldsmobile by General Motors, several Oldsmobile franchises were granted to independent dealers in mid-town New York City. With its competitive presence in the central city area assured, General Motors decided that continued ownership and operation of Empire Oldsmobile was no longer necessary. The decision to close Empire Oldsmobile was based on General Motors' corporate policy to operate a network of independent retail dealerships with no corporate control by General Motors.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with luxury small, compact, intermediate and full size cars sold by Empire Oldsmobile, New York, New York, did not contribute importantly to the total or partial separation of the workers at that firm.

Signed at Washington, D.C., this 29th Day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13296 Filed 5-9-77;8:45 am]

[TA-W-1304]

ETTELSON OF PHILADELPHIA, INC., PHILADELPHIA, PENNSYLVANIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1304: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 29, 1976 in response to a worker petition received on November 29, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's big and tall size suits, sportscoats and slacks at the Philadelphia, Pennsylvania plant of Ettelson of Philadelphia, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ettelson of Philadelphia, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the above criteria have been met, the Department's investigation indicates that criteria (3) and (4) have not been met.

According to the best estimates available imports of men's big and tall size suits, sportcoats and slacks are negligible.

Customers indicated that they would still be purchasing from the company had it not shut down and further indicated that their purchases of imports of big and tall size men's suits, sportcoats and slacks were negligible.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with men's suits, sportcoats and slacks produced at the Philadelphia, Pennsylvania plant of Ettelson of Philadelphia Inc., have not increased as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13297 Filed 5-9-77;8:45 am]

[TA-W-1679]

GILBERT SHOE CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1679: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1977 in response to a worker petition received on February 15, 1977 which was filed by three workers on behalf of workers and former workers producing children's and babies' shoes at The Gilbert Shoe Company in Thiensville, Wisconsin.

The Notice of Investigation was published in the FEDERAL REGISTER on March 8, 1977 (42 FR 13085). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Department of Commerce, the U.S. International Trade Commission, The Gilbert Shoe Company and its customers, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat, thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average weekly number of employees decreased 2.0 percent in 1975 compared with 1974, decreased 2.0 percent in 1976 compared with 1975 and decreased 27.7 percent in the first quarter of 1977 compared with the first quarter of 1976.

Average weekly hours worked decreased 11.5 percent in 1975 compared with 1974, increased 6.5 percent in 1976 compared with 1975 and decreased 8.8 percent in the first quarter of 1977 compared with the first quarter of 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of children's and babies' shoes in terms of quantity, including women's safety shoes, decreased 15.4 percent in 1975 compared with 1974 and decreased 7.0 percent in 1976 compared with 1975.

Production of children's and babies' shoes in terms of quantity, including women's safety shoes, decreased 12.1 percent in 1975 compared with 1974 and decreased 6.9 percent in 1976 compared with 1975.

INCREASED IMPORTS

Imports of children's nonrubber footwear in terms of quantity decreased 17.7 percent in 1973 compared with 1972, decreased 12.9 percent in 1974 compared with 1973, decreased 9.0 percent in 1975 compared with 1974 and increased 42.3 percent in 1976 compared with 1975. The ratios of imports to domestic production and consumption increased from 60.0 and 37.5 percent, respectively, in 1975 to 72.1 and 41.9 percent, respectively, in 1976.

Imports of infants' and babies' nonrubber footwear in terms of quantity decreased 15.6 percent in 1973 compared with 1972, decreased 10.5 percent in 1974 compared with 1973, increased 1.5 percent in 1975 compared with 1974 and increased 55.1 percent in 1976 compared with 1975. The ratios of imports to domestic production and consumption increased from 28.5 and 22.2 percent, respectively, in 1975 to 41.0 and 29.1 percent, respectively, in 1976.

CONTRIBUTED IMPORTANTLY

Customers indicated that they have increasingly shifted purchases of children's and babies' shoes to foreign sources while reducing domestic purchases. The reason most often cited for these increased purchases of imported footwear is the price differential which exists between imported children's and babies' shoes and that footwear purchased from domestic manufacturers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with children's and babies' shoes produced by The Gilbert Shoe Company in Thiensville, Wisconsin contributed importantly to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of children's and babies' shoes at The Gilbert Shoe Company in Thiensville, Wisconsin who became totally or partially separated from employment on or after April 17, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13298 Filed 5-9-77;8:45 am]

[TA-W-1667]

GOLD SEAL GARTER CORP.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1667: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 17, 1977 in response to a worker petition received on February 2, 1977 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers of the New York, New York plant of Gold Seal Garter Corporation.

The notice of investigation was published in the FEDERAL REGISTER (42 FR 13086) on March 8, 1977. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Gold Seal Garter Corporation, its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated; or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at the plant increased 3.4 percent in 1975 compared to 1974 and decreased 6.7 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of brassiers and girdles by Gold Seal Garter Corporation decreased 6.4 percent in 1975 compared to 1974 and 2.1 percent in 1976 compared to 1975.

INCREASED IMPORTS

Imports of brassieres, bra-lettes and bandeaux increased each year, from 4995 thousand dozen in 1971 to 6921 thousand dozen in 1975. Imports increased 26.4 percent in 1976 compared to 1975, from 6921 thousand dozen to 8751 thousand dozen.

Imports of girdles and corsets increased each year from 66 thousand dozen in 1973 to 137 thousand dozen in 1975. Imports increased 68.6 percent in 1976 compared to 1975, from 137 thousand dozen to 231 thousand dozen.

CONTRIBUTED IMPORTANTLY

A sample of Gold Seal Garter Corporation's customers indicated that several of these customers increased their purchases of imported brassieres and girdles while decreasing their purchases of brassieres and girdles from Gold Seal Garter Corporation.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with brassieres and girdles produced at the New York, New York plant of the Gold Seal Garter Corporation contributed importantly to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the New York, New York plant of the Gold Seal Garter Corporation who became totally or partially separated from employment on or after January 28, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13299 Filed 5-9-77;8:45 am]

[TA-W-1385, 1386, 1387, 1783]

H. W. GOSSARD CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1385; 1386; 1987; and 1783: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 8, 1976 in response to a worker petition received on December 8, 1976 which were filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' slips, and panties at the Arkansas and Missouri plants of H. W. Gossard Company, Chicago, Illinois.

The notices of investigation were published in the FEDERAL REGISTER on January 4, 1977 (42 FR 882 and 883) and on March 25, 1977 (42 FR 16200). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of H. W. Gossard Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974, must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separation, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that criteria one (1) was not met at the Piggott, Arkansas plant (TA-W-1385) and that criteria two (2) and four (4) were not met at the Popular Bluff, Missouri (TA-W-1386); Malden Air Base, Missouri (TA-W-1387); and the Malden, Missouri (TA-W-1783) plants.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at the Popular Bluff, Missouri plant declined 21 percent from 1974 to 1975 and declined 3 percent from 1975 to 1976.

Empolyment of production workers at the Malden, Missouri plant declined 25 percent from 1974 to 1975 and declined 3 percent from 1975 to 1976.

Employment of production workers at the Pigott, Arkansas plant declined 12 percent from 1974 to 1975 and increased 14 percent from 1975 to 1976.

Employment of production workers at the Malden Air Force, Missouri plant remained constant from 1974 to 1975 and increased 1 percent from 1975 to 1976.

SALES, PRODUCTION, OR BOTH DECREASED ABSOLUTELY

Sales of ladies' sleepwear by the Lingerie Division declined 10 percent from 1974 to 1975 and declined 18 percent from 1975 to 1976.

Production of ladies' sleepwear at the Poplar Bluff, Missouri plant declined 24 percent from 1974 to 1975 and increased 16 percent in the first eleven months of 1976 compared to the first eleven months of 1975.

Production of ladies' sleepwear at the Malden, Missouri plant declined 10 percent from 1974 to 1975 and increased 6 percent in the first eleven months of 1976 compared to the first eleven months of 1975.

The Piggott, Arkansas plant contains the cutting operation for the Lingerie Division.

Sales of ladies' slips and panties by the Lingerie Division of Gossard Company increased 29 percent from 1974 to 1975 and increased 8 percent from 1975 to 1976.

Production of ladies' slips and panties at the Malden Air Base, Missouri plant declined 5 percent from 1974 to 1975 and increased 26 percent in the first eleven months of 1976 compared to the first eleven months of 1975.

All production and employees of the Malden Air Base plant were transferred to the Malden, Missouri plant in January 1977.

INCREASED IMPORTS

Imports of women's, misses' and juniors' non-cotton sleepwear declined absolutely from 1971 to 1972 and from 1972 to 1973. Imports increased absolutely from 1973 to 1974 and then declined absolutely and relatively from 1974 to 1975. Imports increased 51 percent from 1975 to 1976. Imports of women's, misses' and juniors' cotton sleepwear increased 43 percent from 1975 to 1976.

CONTRIBUTED IMPORTANTLY

Customers of H.W. Gossard were surveyed regarding their purchases of ladies' slips, panties and sleepwear. Most customers stated they did not shift purchases to imported panties and sleepwear.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' slips, panties and sleepwear produced at the Piggott, Arkansas; Poplar Bluff, Missouri; Malden, Missouri and Malden Air Base, Missouri plants of H. W. Gossard Company, Chicago, Illinois did not contribute importantly to the decline in sales and production or to the total or partial separation of workers of these plants.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13302 Filed 5-9-77;8:45 am]

[TA-W-1541]

HEAVENLY SHOE CO., WILKES-BARRE, PENNSYLVANIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1541: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 4, 1977 in response to a worker petition received on that date which was filed by the Boot and Shoe Worker's Union on behalf of workers and former workers producing women's shoes at the Heavenly Shoe Company, Wilkes-Barre, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3372). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Heavenly Shoe Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales and production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment at the Heavenly Shoe Company declined 31 percent in 1975 compared to 1974 and increased 32 percent in 1976 compared to 1975. Employment declined 15 percent in the fourth quarter of 1976 compared to the previous quarter of 1976 and declined 25 percent compared to the fourth quarter of 1975. All workers were permanently laid off on March 30, 1977.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of the Heavenly Shoe Company declined in quantity and value in 1975 compared to 1974 by 43 percent and 33 percent, respectively. In 1976, sales increased 25 percent in quantity and 38 percent in value compared to 1975. In the fourth quarter of 1976, sales declined 22 percent in quantity and 23 percent in value compared to the third quarter of 1976 and declined 26 percent in quantity and 15 percent in value compared to the fourth quarter of 1975.

All sales and production operations were terminated on March 30, 1977.

INCREASED IMPORTS

Imports of women's nonrubber footwear increased relative to domestic production and consumption from 107.6 percent and 51.8 percent, respectively, in 1974 to 119.1 percent and 54.4 percent, respectively, in 1975. In 1976 imports as a percentage of production and consumption declined to 108.8 percent and 52.1 percent, respectively.

Imports of women's nonrubber footwear increased 192.9 million pairs in 1972 to 206.2 million pairs in 1973. Imports declined to 183.5 million pairs in 1975 but increased to 183.5 million pairs in 1976.

CONTRIBUTED IMPORTANTLY

Customers of Heavenly Shoe Company indicated that they increased purchases of imports and decreased purchases from Heavenly Shoe.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shoes produced by Heavenly Shoe Company, Wilkes-Barre, Pennsylvania contributed importantly to the total or partial separations of the workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of the Heavenly Shoe Company, Wilkes-Barre, Pennsylvania who become totally or partially separated from employment on or after February 28, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-13300 Filed 5-9-77;8:45 am]

[TA-W-1364]

HOMESTEAD INDUSTRIES, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1364: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing valves at Plant No. 1 of Homestead Industries, Corapolis, Pennsylvania.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 883). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from Homestead Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first two criteria have been met, criteria (3) and (4) have not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Plant No. 1 decreased 8 percent in 1975 compared to 1974. Employment declined 14 percent in the first eleven months of 1976 compared to the like period in 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales, in value, of valves at Plant No. 1 declined 36 percent in 1975 compared to 1974. Sales, in value, declined 7 percent in the first eleven months of 1976 compared to the like period in 1975. Sales are deflated using the BLS Wholesale Price Index for industrial valves.

INCREASED IMPORTS

Imports of valves and similar devices increased every year from 1971 to 1976, from 56.5 million dollars in 1971 to 165.1

million dollars in 1976. Imports increased from 127.6 million dollars in the first nine months of 1975 to 134.2 million dollars in the like period of 1976.

The ratio of imports to domestic production of valves and similar devices increased from 2.4 percent in 1971 to 4.7 percent in 1976. This ratio declined from 4.9 percent in the first nine months of 1975 to 4.5 percent in the like period of 1976.

A more specific import category for foreign valves similar to valves produced by Homestead (for which there is no matching available production data) is: Hand-operated and check-iron and steel valves. Imports of this category have increased every year from 1971 to 1975, from 13.3 million dollars to 75.0 million dollars. Imports declined from 59.8 million dollars in the first nine months in 1975 to 49.3 million dollars in in the like period of 1976.

CONTRIBUTED IMPORTANTLY

Customers of Homestead Industries indicate that they do not import any articles competitive with the two types of valves produced at Plant No. 1 of Homestead Industries; lubricated plug valves and nonlubricated ballcentric valves. Customers indicated that they have not been offered any imported valves of the type produced by Homestead because of the unique nature of these valves.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with valves produced at Plant No. 1 of Homestead Industries Incorporated, Coraopolis, Pennsylvania did not contribute importantly to the total or partial separation of workers at that plant.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13301 Filed 5-9-77;8:45 am]

[TA-W-1660]

INTERNATIONAL SHOE CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1660: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 8, 1977 in response to a worker petition received on February 8, 1977 which was filed by three workers on behalf of workers and former workers producing women's and infants' shoes at the El Dorado Springs, Missouri plant of International Shoe Company.

The notice of investigation was published in the FEDERAL REGISTER on March 8, 1977 (42 FR 13086). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the International Shoe Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof and to the decrease in sales and production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers declined 11 percent from 1974 to 1975, and remained at the same annual average in 1976 as in 1975. However, employment declined 16 percent in the last six months of 1976 compared to the same period of 1975. The average number of hours worked declined 10 percent from 1974 to 1975 and declined 9 percent from 1975 to 1976. The average hours worked declined 34 percent in the last six months of 1976 compared to the last six months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales data are not maintained at the El Dorado plant, since all shoes are shipped to a central distribution location and stocked with shoes produced at other International plants.

Production of women's and infants' shoes declined 18 percent in quantity from 1974 to 1975 and declined 4 percent in quantity from 1975 to 1976. Production declined 42 percent in quantity in the last half of 1976 compared to the last six months of 1975.

INCREASED IMPORTS

Imports of women's and misses' nonrubber footwear, except athletic, increased absolutely and relative to domestic production from 1972 to 1973, declined from 1973 to 1974, and then increased absolutely in each year from 1974 to 1976. The ratio of imports to domestic production declined from 114.1 percent in 1975 to 106.3 percent in 1976.

Imports of infants' and babies' nonrubber footwear declined absolutely in each year from 1972 to 1974, and then increased from 1974 to 1975 and from 1975 to 1976. The ratio of imports to domestic production increased from 28.5 percent in 1975 to 41.0 percent in 1976.

CONTRIBUTED IMPORTANTLY

Retail customers switched purchases of women's and infants' shoes from International Shoe to imports from 1975 to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's and infants' shoes produced at the El Dorado Springs, Missouri plant of the International Shoe Company contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of women's and infants' shoes at the El Dorado Springs, Missouri plant of the International Shoe Company who became totally or partially separated from employment on or after July 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-13303 Filed 5-9-77;8:45 am]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened

to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 26th day of April 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aetna Standard Engineering Co. (USWA).	Elwood City, Pa	Apr. 25, 1977	Apr. 1, 1977	TA-W-2,027	Hot and rolling steel mills.
Bradley Scott Clothes, Inc. (workers).	Fall River, Mass	Apr. 26, 1977	Apr. 20, 1977	TA-W-2,028	Men's clothing.
Harwood Manufacturing (ACTWU).	Adamsville, Tenn	Apr. 25, 1977	do	TA-W-2,029	Men's dress shirts.
Quanex Corp. (USWA)	South Lyon, Mich	do	Apr. 1, 1977	TA-W-2,030	Carbon and alloy steel tubes.
Townsend Fastening systems (USWA).	Elwood City, Pa	do	do	TA-W-2,031	Industrial fasteners, rivets, and threaded products.
Do	Fallstown, Pa	do	do	TA-W-2,032	Do.
Walworth/Aloyco (I.U.E.)	Linden, N.J	do	Apr. 18, 1977	TA-W-2,033	Stainless steel valves.
Do	Elizabeth, N.J	do	do	TA-W-2,034	Do.

[FR Doc.77-13155 Filed 5-9-77;8:45 am]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 25th day of April 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Belle-Moc, Inc. (Lewiston Auburn Shoeworkers Protective Association).	Lewiston, Maine	Apr. 25, 1977	Apr. 18, 1977	TA-W-2,023	Men's cement process shoes.
Eltra of Puerto Rico, Inc. (company)	Canovanas, P.R.	do	do	TA-W-2,024	Rubber and canvas footwear and leather athletic footwear.
Hygrade Handbag Corp. (workers)	New Brunswick, N.J.	Apr. 22, 1977	Apr. 20, 1977	TA-W-2,025	Ladies' handbags.
Picato (workers)	Manchester, Conn.	do	Apr. 15, 1977	TA-W-2,026	Women's sportswear.

[FR Doc.77-13064 Filed 5-9-77;8:45 am]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 20th day of April 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
E. W. Ferry Screw Products, Inc. (I.W.A.).	Brook Park, Ohio	Apr. 19, 1977	Apr. 13, 1977	TA-W-1,994	Cold headed industrial fasteners.
Uniroyal, Inc. (Arthur, Dry & Kulish P. C.	Naugatuck, Conn.	do	Apr. 19, 1977	TA-W-1,995	Waterproof and fabric rubber sole footwear.

[FR Doc.77-13154 Filed 5-9-77;8:45 am]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 19th day of April 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

Petitioner: Union/workers or former workers of General Motors Corp.—	Location	Date received	Date of petition	Petition No.	Articles produced
Stamping plant (UAW)	Lordstown, Ohio	Apr. 20, 1977	Mar. 28, 1977	TA-W-2,002	Stamping.
Casting plant (UAW)	Massena, N.Y	do	do	TA-W-2,003	Castings.
Engine plant (UAW)	Tonawanda, N.Y	do	do	TA-W-2,004	Engines.
Axle plant (UAW)	Buffalo, N.Y	do	do	TA-W-2,005	Axles.
Rochester products (UAW)	Rochester, N.Y	do	do	TA-W-2,006	Carburetors, locks, lighters, cannisters.
AC spark plugs (UAW)	Flint, Mich	do	do	TA-W-2,007	Panels, spark plugs, oil filters, air cleaners, fuel pumps, etc.
Diesel equipment division (UAW)	Grand Rapids, Mich	do	do	TA-W-2,008	Valve lifters.
Chevrolet transmission (UAW)	Muncie, Ind	do	do	TA-W-2,009	Standard transmissions, 4-wheel drive conversion units.
Saginaw steering gear, plant No. 7 (UAW)	Saginaw, Mich	do	do	TA-W-2,010	Steering gear.
Guide Lamp (UAW)	Anderson, Ind	do	do	TA-W-2,011	Die castings, metal stampings such as side panels.
Chevrolet metal fabricating (UAW)	Flint, Mich	do	do	TA-W-2,012	Hoods, fenders, front end components.
Fisher fabricating (UAW)	Willow Springs, Ill	do	do	TA-W-2,013	Roof ASM.
Chevrolet Manufacturing (UAW)	Flint, Mich	do	do	TA-W-2,014	Grilles and bumpers.
Chevrolet service parts (UAW)	Saginaw, Mich	do	do	TA-W-2,015	Oil and water pumps.
Fisher cut and sew, plant No. 2 (UAW)	Grand Rapids, Mich	do	do	TA-W-2,016	Interior trim sets.
Delco electronics	Kokomo, Ind	do	do	TA-W-2,017	Radios, electrical parts.
Delco battery (UAW)	Muncie, Ind	do	do	TA-W-2,018	Batteries.
Harrison radiator (UAW)	Buffalo, N.Y	do	do	TA-W-2,019	Air inlets, heater defrosters.
New Departurer-Hyatt (UAW)	Sandusky, Ohio	do	do	TA-W-2,020	Wheel bearings, smog bearings, and bearings for water pump, alternators, and air conditioners.
Chevrolet transmission (UAW)	Parma, Ohio	do	do	TA-W-2,021	Transmissions and parts.
Central foundry (UAW)	Bedford, Ind	do	do	TA-W-2,022	Transmission cases for 4-cylinder engines.

[FR Doc.77-13063 Filed 5-9-77;8:45 am]

[TA-W-1543]

JACK SEBASTIAN SHOE, INC. WILKES-BARRE, PENNSYLVANIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1543: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 4, 1977 in response to a worker petition received on that date which was filed by the Boot and Shoe Worker's Union on behalf of workers and former workers producing women's shoes at Jack Sebastian Shoe, Incorporated, Wilkes-Barre, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3372). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jack Sebastian Shoe, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment at Jack Sebastian Shoe declined 15 percent in 1975 compared to 1974 and declined 3 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales at Jack Sebastian Shoe declined 11 percent in value in 1975 compared to 1974 and declined 7 percent in value in 1976 compared to 1975.

Production at Jack Sebastian Shoe declined 26 percent in quantity in 1975 compared to 1974 and declined 5 percent in quantity in 1976 compared to 1975.

INCREASED IMPORTS

Imports of women's nonrubber footwear increased relative to domestic production and consumption from 107.6 percent and 51.8 percent, respectively, in 1974 to 119.1 percent and 54.4 percent, respectively, in 1975. In 1976 imports as a percentage of production and consumption declined respectively to 108.8 percent and 52.1 percent.

Imports of women's nonrubber footwear increased from 192.9 million pairs in 1972 to 206.2 million pairs in 1973. Imports declined to 183.5 million pairs in 1975 but increased to 183.8 million pairs in 1976.

CONTRIBUTED IMPORTANTLY

Customers of Jack Sebastian Shoe, Incorporated indicated they increased purchases of imported women's footwear relative to purchases from Jack Sebastian in 1976 compared to 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's shoes produced by Jack Sebastian Shoe, Incorporated contributed importantly to the total or partial separation of the workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of Jack Sebastian Shoe, Incorporated who become totally or partially separated from employment on or after February 14, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13304 Filed 5-9-77;8:45 am]

[TA-W-1690]

KENOSHA AUTO TRANSPORT CORP., KENOSHA, WISCONSIN

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1690: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 1, 1977 in response to a worker petition received on February 9, 1977 which was filed on behalf of workers and former workers at the Kenosha, Wisconsin terminal of Kenosha Auto Transport Corporation, a subsidiary of Jupiter Transportation Corporation, Chicago, Illinois, who were engaged in providing the service of delivering automobiles to dealers.

The notice of investigation was published in the FEDERAL REGISTER on March 11, 1977 (42 FR 13628). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Kenosha

Auto Transport Corporation and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

If any of the above criteria is not satisfied, a negative determination must be made.

Kenosha Auto Transport Corporation does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in "Pan American World Airways, Incorporated" (TA-W-153, 40 FR 54639). The only question in this case is whether American Motors Corporation, i.e., a firm which produces an article, namely automobiles, and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in "Nu-Car Driveaway, Incorporated" (TA-W-393, 41 FR 12749).

Kenosha Auto Transport Corporation is a transport business incorporated in the State of Wisconsin and licensed and regulated by the State and the Interstate Commerce Commission. Kenosha Auto Transport competed for available business with other carriers in the Kenosha, Wisconsin area and each was free to haul for any business requesting their services.

Neither American Motors Corporation nor Kenosha Auto Transport, is financially or otherwise involved in the business of the other. Kenosha Auto Transport either owns or leases the facilities necessary to the operation of its business and owns or leases all its trucks and equipment.

The workers upon whose behalf this petition was filed were hired and are paid by Kenosha Auto Transport Corporation. They are supervised by and subject to the control of Kenosha Auto Transport personnel only. All employment benefits which they enjoy are provided and maintained by Kenosha Auto Transport.

Conclusion

After careful review of the issues and facts involved, I have determined that services of the kind provided by Kenosha Auto Transport Corporation, Kenosha, Wisconsin are not "articles" within the meaning of section 222(3) of the Trade Act of 1974, and that American Motors Corporation cannot be considered the "workers firm". The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C., this 29th day of April 1977.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13305 Filed 5-9-77;8:45 am]

[TA-W-1403]

MACSTEEL CO., DIVISION OF MICHIGAN SEAMLESS TUBE CO., JACKSON, MICHIGAN

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents results of TA-W-1403: Investigation regarding certification of eligibility to apply to worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 13, 1976 in response to a worker petition received on December 13, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon and alloy steel bars and billets at the Macsteel Company, Jackson, Michigan, a Division of Michigan Seamless Tube Company.

The notice of investigation was published in the Federal Register on January 4, 1977 (42 FR 889). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Macsteel Company, its customers, the U.S. International Trade Commission, U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criteria (1), (2), and (3) have been met, criterion (4) has not been met.

Significant Total or Partial Separations

The average number of production workers at Macsteel Company, Jackson, Michigan increased 100 percent in May through December 1975 compared to the same period in 1974 and increased 4.7 percent in 1976 compared to 1975. Employment increased 26.7 percent and 4.8 percent, respectively in the first two quarters of 1976 compared to the first two quarters of 1975 and decreased 0.9 percent and 9 percent, respectively in the third and fourth quarters, respectively, in 1976 compared to the third and fourth quarters of 1975.

The average number of salaried workers increased 24.1 percent in 1976 compared to 1975.

Sales or Production, or Both, Have Decreased Absolutely

Macsteel Company produces carbon and alloy hot rolled steel bars and billets primarily for transfer to other plants of Michigan Seamless Tube Company for the production of seamless tubing which is the end product. Production at Macsteel Company started in May 1974.

Production of Macsteel bars and billets increased 377.7 percent in May through December 1975 compared to the same period in 1974 and decreased 16.5 percent in 1976 compared to 1975. Production increased 9.3 percent and 5.9 percent, respectively, in the first two quarters of 1976 compared to the same quarters of 1975 and decreased 32.7 percent and 34 percent, respectively, in the third and fourth quarters of 1976 compared to the same quarters of 1975.

Increased Imports

Imports of carbon steel pipe and tubing decreased 10.9 percent in 1973 compared to 1972, increased 13.1 percent in 1974 compared to 1973, and decreased 13.4 percent in 1975 compared to 1974. Imports increased 11.5 percent in the first nine months of 1976 compared to the first nine months of 1975. The ratios of imports to domestic shipments increased from 20.5 percent in 1975 to 34.0 percent in the first nine months of 1976.

Contributed Importantly

Evidence developed in the investigation revealed that Macsteel Company had attempted to develop a revolutionary system for producing billets and bars for use in the manufacture of seamless tubing. Technological difficulties, quality control problems and start-up problems caused temporary declines in production and employment at Macsteel Company.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with seamless steel tubing, the end product made from steel bars and billets produced at Macsteel Company, did not contribute importantly to

the total or partial separations of the workers at the Macsteel plant.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13306 Filed 5-9-77;8:45 am]

[TA-W-1575]

MARIA GARMENT CO., JERSEY CITY, NEW JERSEY

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1575: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 19, 1977 in response to a worker petition received on January 17, 1977 which was filed on behalf of workers and former workers producing ladies' knit slacks, blouses, dresses, and long formal dresses at Maria Garment Company, Jersey City, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER on January 28, 1977 (42 FR 5453). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Maria Garment Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974, must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers declined 10 percent from 1974 to 1975 and declined 13 percent in the first eleven months of 1976 compared to the like period of 1975.

All employment was terminated in November 1976.

SALES, PRODUCTION, OR BOTH HAVE DECREASED ABSOLUTELY

Sales of all garments from Maria Garment declined 13 percent from 1974 to 1975 and declined 2 percent in the first eleven months of 1976 compared to the like period of 1975.

Production at Maria Garment was equivalent to sales. In 1976, production consisted primarily of ladies' long formal dresses. Production ceased in November 1976.

INCREASED IMPORTS

Imports of women's, misses', and children's blouses and shirts increased absolutely in each year from 1972 through 1976. The ratio of imports to domestic production increased from 56 percent in 1974 to 65 percent in 1975. Imports increased 16 percent from 1975 to 1976.

Imports of women's, misses', and children's slacks and shorts declined absolutely and relative to domestic production in each year from 1972 to 1974. Imports increased absolutely from 1974 to 1975 and from 1975 to 1976. The ratio of imports to domestic production increased from 30.3 percent in 1974 to 32.1 percent in 1975. Imports increased 10 percent from 1975 to 1976.

Imports of women's and misses' dresses (which includes long formal dresses) declined absolutely and relative to domestic production in each year from 1972 through 1973. Imports increased absolutely and relatively from 1973 to 1974 and from 1974 to 1975. The ratio of imports to domestic production increased from 3.6 percent in 1974 to 4.1 percent in 1975. Imports increased 2 percent from 1975 to 1976.

CONTRIBUTED IMPORTANTLY

Prior to 1976, Maria Garment produced ladies' slacks, blouses and dresses in the first three quarters of each year, and ladies' long formal dresses in the fourth quarter of each year. In 1976, long formal dresses were produced throughout the year and represented nearly 100 percent of production.

This change in product mix was the result of Maria Garment's loss of orders from the manufacturer for whom Maria produced ladies' slacks, blouses, and dresses. This manufacturer purchases imports of ladies' slacks, blouses and dresses. Retail customers of the manufacturer who were surveyed by the Office of Trade Adjustment Assistance increased purchases of imported ladies' sportswear from 1975 to 1976. This was the only manufacturer for whom Maria produced sportswear. Maria was unable to secure sportswear orders from other manufacturers.

Maria Garment's sales declined throughout 1976. Manufacturers reduced orders with Maria for long formal dresses because their own sales were declining. Retail customers of these manufacturers were contacted regarding their purchases of long formal dresses. Twenty-five percent of the customers contacted reduced purchases of long formal dresses produced by Maria and increased purchases of imported long formal dresses from 1975 to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' slacks, blouses, dresses and long formal dresses produced at Maria Garment Company, Jersey City, New Jersey contributed importantly to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Maria Garment Company, Jersey City, New Jersey who became totally or partially separated from employment on or after December 20, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13307 Filed 5-9-77;8:45 am]

[TA-W-1316]

MAXI MANUFACTURING CO., CATAWISSA, PENNSYLVANIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1316: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on November 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing forged carbon steel pipe unions at the Catawissa, Pennsylvania, plant of Maxi Manufacturing Company.

The Notice of Investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54561). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Maxi Manufacturing Company, their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first three criteria have been met, the fourth criterion has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers declined 17.4 percent in the first eleven months of 1976 compared to the like period in 1975. Average weekly hours per worker declined 19.5 percent in the first eleven months of 1976 compared to the same period in 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales declined 28.9 percent in the first nine months of 1976 compared to the same period in 1975.

INCREASED IMPORTS

Carbon forged steel threated and socket weld pipe unions are included in the import category "Forged Steel Threaded and Socket Weld Fittings and Unions." U.S. imports of Forged Steel Threaded and Socket Weld Fittings and Unions increased in each year between 1971 and 1975, from 4.9 million pounds in 1971 to 19.3 million pounds in 1975. In the first nine months of 1976 imports declined to 11.0 million pounds compared to 32.3 percent in 1975. In the first nine months of 1975.

The ratio of imports to domestic production increased in each year between 1971 and 1975, from 14.7 percent in 1971 to 32.2 percent in 1975. In the first nine months of 1976, the ratio of imports to domestic production increased to 42.0 percent compared to 28.1 percent in the same period one year earlier.

CONTRIBUTED IMPORTANTLY

Customers of Maxi Manufacturing reported that they do not purchase imported forged steel unions. Some customers who reduced purchases indicated that, in 1976, they had large inventories left over from 1975. As a consequence, they had to reduce purchases from Maxi Manufacturing until inventories were reduced.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with forged carbon steel unions produced at the Catawissa, Pennsylvania, plant of Maxi Manufacturing Company did not contribute importantly to the total or partial separation of workers at the plant.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13308 Filed 5-9-77;8:45 am]

[TA-W-1253]

MISS QUALITY INC., R AND N DIVISION PHILADELPHIA, PENNSYLVANIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1253: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 9, 1976 in response to a worker petition received on November 9, 1976 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing girls' blouses, slacks, coveralls, dresses, and jumpers at the Philadelphia, Pennsylvania plant of the R and N Division of Miss Quality, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53095). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the R and N Division, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Workers are used interchangeably on all products at R and N.

Separations of production workers at the R and N plant in Philadelphia, Pennsylvania began in the fourth quarter of 1975 and employment declined 25.6 percent in the first quarter of 1976 compared to the same period in 1975. In the second, third and fourth quarters of 1976 employment of production workers increased, respectively, 13.3 percent, 2.7 percent and 8.6 percent compared to the same quarters of 1975.

Average hourly employment decreased 1.8 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales decreased 5.7 percent in value in 1976 compared to 1975. Sales equal production.

INCREASED IMPORTS

Imports of women's, misses', and children's blouses and shirts increased in quantity 27.1 percent in 1975 compared to 1974 and increased 24.8 percent in the first nine months of 1976 compared to the like period in 1975.

Imports of children's dresses increased 4.3 percent in 1975 compared to 1974 and declined 4.7 percent in the first nine months of 1976 compared to the like period in 1975.

Imports of women's, misses', and children's slacks and shorts increased 12.8 percent in 1975 compared to 1974 and increased 13.1 percent in the first nine months of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

A sample of the customers of the manufacturers who contract with R and N revealed that several increased their imports of girls' blouses and tops or of girls' slacks while their purchases of the same products from the contractors of R and N declined.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with girls' blouses and slacks produced at the Philadelphia, Pennsylvania, plant of the R and N Division of Miss Quality, Inc., contributed importantly to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Philadelphia, Pennsylvania plant of the R & N Division of Miss Quality, Inc., who became totally or partially separated on or after October 18, 1975 and before April 3, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers who became separated on or after April 3, 1976 are denied adjustment assistance.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13309 Filed 5-9-77;8:45 am]

[TA-W-1608]

NEW HUMOR CO., DALLAS, TEXAS

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1608: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 27, 1977 in response to worker petition received on that date which was filed by workers and former workers producing textile plant hangers at the New Humor Company, Dallas, Texas.

The Notice of Investigation was published in the FEDERAL REGISTER on February 15, 1977 (42 FR 9242). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the New Humor Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that all of the above criteria have been met for plant hangers; however, criterion (1) has not been met for novelties.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers in the Plant Hanger Department of the New Humor Company decreased 55.0 percent in the fourth quarter of 1975 compared to the same quarter of 1974 and further decreased 33.3 percent in the first ten months of 1976 compared to the same period in 1975. The Plant Hanger Department ceased operations on November 1, 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Total sales and production of plant hangers decreased 84.6 and 84.7 percent, respectively in the first ten months of 1976 compared to the same period in 1975. Sales equalled production.

INCREASED IMPORTS

Imports of textile hangers, which includes cotton and jute, increased absolutely in each year from 1972 through 1975. Imports increased from 6.4 million pieces in 1974 to 21.1 million pieces in 1975. Imports increased from 3.4 million pieces in the first six months of 1975 to 7.2 million pieces in the same 1976 period.

Imports of textile hangers increased relative to domestic production and consumption in each year from 1972 through 1975. The ratio of imports to domestic production and consumption increased from 712.4 percent and 87.7 percent, respectively, in 1974 to 917.2 percent and 90.2 percent, respectively, in 1975, and from 436.7 percent and 81.4 percent, respectively, in the first six months of 1975 to 1007.1 percent and 91.0 percent, respectively in the first six months of 1976.

CONTRIBUTED IMPORTANTLY

In 1975 and 1976 the domestic market for plant hangers was faced with an increase in the supply of plant hangers coupled with a decline in demand. The saturation of the market can mainly be attributed to the increased imports of plant hangers.

Customers of the New Humor Company cited the impact of imports on the domestic market as a major reason for reduced purchases from the subject firm. Also, customers stated that the New Humor Company could no longer remain price competitive with the lower priced imported hangers.

There have been no involuntary separations of workers from employment in the Gift and Novelty Department of the New Humor Company, Dallas, Texas since October 1, 1975, more than one year prior to the signature date of the petition.

CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases of imports like or directly competitive with textile plant hangers produced at the New Humor Company, Dallas, Texas contributed importantly to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers in the Plant Hanger Department of the New Humor Company, Dallas, Texas including piece workers who became totally or partially separated from employment on or after November 22, 1975 are certified eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

It is further concluded that separations of workers in the Gift and Novelty Department of the New Humor Company, Dallas, Texas have not occurred as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13310 Filed 5-9-77;8:45 am]

[TA-W-1421]

PHOENIX STEEL CORP., PHOENIXVILLE, PENNSYLVANIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1421: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing tubular and structural steel at the Phoenixville, Pennsylvania plant of the Phoenix Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 893). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Phoenix Steel Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation has revealed that all four of the criteria have

been met by workers in the Tubular Steel Division and the Structural Steel Division.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers decreased 7.3 percent in 1975 compared to 1974 and 3.4 percent in 1976 compared to 1975. Production workers are used interchangeably on all products.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of tubular steel decreased 19.5 percent in quantity and 29.4 percent in valume in 1976 compared to 1975.

Sales of structural steel increased 24.6 percent in quantity and 11.6 percent in value in 1976 compared to 1975.

Production of tubular steel decerased 16.7 percent in 1976 compared to 1975. Tubular steel accounted for 35 percent of total plant production in 1976.

The Structural Steel Division ceased operations in November 1976. Structural steel accounted for 65 percent of total plant production in 1976.

INCREASED IMPORTS

Imports of tubular steel were recorded at 1,774.0 thousand tons in 1971 and declined to 1,542.5 thousand tons in 1975. Imports in the first nine months of 1976 were recorded at 1,348.6 thousand tons compared to 1,209.2 thousand tons in the same period in 1975, a 11.5 percent increase. In the first nine months of 1976, the ratio of imports to domestic shipments was 34.0 percent compared to 20.5 percent in the same period in 1975.

Imports of structural steel shapes declined in each year from 1,614.0 thousand tons in 1972 to 804.9 thousand tons in 1975. The ratio of imports to domestic shipments decreased each year from 34.3 prcent in 1972 to 19.5 percent in 1975. Imports in the first nine months of 1976 were 909.8 thousand tons, an increase of 44.6 percent over the 629.1 thousand tons in the same 1975 period.

CONTRIBUTED IMPORTANTLY

Customers of tubular steel have reduced purchases from the subject plant and indicate that imports of tubular steel are a major concern in the industry. One major customer of tubular steel increased its import purchases of tubular steel 345 percent in 1976 compared to 1975.

Customers of structural steel indicated they have switched to foreign sources of supply.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports like or directly competitive with the tubular steel and structural steel produced at the Phoenixville, Pennsylvania plant of the Phoenix Steel Corporation have contributed importantly to the total or partial separation of workers as required in section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

All workers at the Phoenixville, Pennsylvania plant of the Phoenix Steel Corporation who became totally or partially separated from employment on or after December 3, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13311 Filed 5-9-77;8:45 am]

[TA-W-1422]

PHOENIX STEEL CORP., CLAYMONT, DELAWARE

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1422: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers producing steel plates at the Claymont, Delaware plant of the Phoenix Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 893). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials, of the Phoenix Steel Corporation, its customers, the U.S. International Trade Commission, U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment decreased 20.0 percent in 1975 compared to 1974 and 9.7 percent in 1976 compared to 1975. Employment decreased 45.1 percent in the fourth quarter of 1975 compared to the same quarter in 1974.

SALES OR PRODUCTION, OF BOTH, HAVE DECREASED ABSOLUTELY

Sales decreased in quantity 39.7 percent in 1975 compared to 1974 and 5.3 percent in 1976 compared to 1975. Sales decreased in value 37.6 percent in 1975 compared to 1974 and 23.0 percent in 1976 compared to 1975. Sales decreased 67.1 percent in quantity in the fourth quarter of 1975 compared to the same 1974 quarter.

Production decreased in quantity 42.6 percent in 1975 compared to 1974 and 3.3 percent in 1976 compared to 1975. Production decreased 71.2 percent in the fourth quarter of 1975 compared to the same quarter in 1974.

INCREASED IMPORTS

Imports of carbon steel plate increased 1,552,000 tons in 1971 to 1,651,000 tons in 1972 before declining to 1,322,000 tons in 1973. Imports increased in 1974 to 1,699,000 tons and declined to 1,353,000 tons in 1975. Imports for the first nine months of 1976 were 1,083,200 tons, a 1.7 percent increase from the same period in 1975.

The ratio of imports to domestic shipments increased from 16.4 percent in 1973 to 18.8 percent in 1974 and to 19.4 percent in 1975. The ratio jumped from 18.7 percent in the first nine months of 1975 to 24.8 percent for the same period in 1976.

CONTRIBUTED IMPORTANTLY

A survey of customers revealed that some customers either increased their import purchases of carbon steel plate or maintained their import purchases while reducing their purchases from the subject plant.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with carbon steel plates produced at the Claymont, Delaware plant of the Phoenix Steel Corporation have contributed importantly to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Claymont, Delaware plant of the Phoenix Steel Corporation who became totally or partially separated from employment on or after December 3, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13312 Filed 5-9-77;8:45 am]

[TA-W-1311]

RAYBESTOS MANHATTAN FRICTION MATERIALS CO., MANHEIM, PENNSYLVANIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 and the Department of Labor herein presents the results of TA-W-1311: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on November 30, 1976 which was filed by three workers on behalf of workers and former workers producing friction materials products at the Manheim, Pennsylvania plant of Raybestos Manhattan Friction Materials Company, a division of Raybestos-Manhattan, Inc., Trumbell, Connecticut.

The notice of investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Raybestos Manhattan Friction Materials Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that criterion four has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at Manheim decreased 23.5 percent in 1975 compared with 1974 and decreased 2.6 percent in 1976 compared with 1975. Average weekly hours worked decreased 4.3 percent in 1975 compared with 1974 and increased 2.9 percent in 1976 compared with 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production of clutch facings at the Manheim plant in terms of quantity decreased 18.2 percent in 1975 compared with 1974 and increased 17.5 percent in 1976 compared with 1975. Production of woven lining decreased 41.4 percent in 1975 compared with 1974 and increased 10.8 percent in 1976 compared with 1975. Production of brake lining decreased 3.4 percent in 1975 compared with 1974 and decreased 40.2 percent in 1976 compared with 1975. Production of asbestos yarn decreased by 21.9 percent from 1974 to 1975 and decreased by .3 percent from 1975 to 1976.

INCREASED IMPORTS

Imports of asbestos friction materials products, including clutch facings, brake linings, woven linings and asbestos friction materials in terms of value decreased 14.3 percent in 1972 compared with 1971, increased 48.6 percent in 1973 compared with 1972, increased 36.5 percent in 1974 compared with 1973 and decreased 8.2 percent in 1975 compared with 1974. The ratio of imports to domestic production and consumption decreased from 5.3 percent and 5.3 per cent, respectively, in 1974 to 4.8 percent and 4.7 percent, respectively, in 1975. Imports of asbestos friction materials products increased 26.1 percent in 1976 compared with 1975.

Imports of asbestos yarn are included in TSUSA basket category 518.2100 of which the asbestos yarn is estimated to constitute 80 percent. Imports of this category increased 10.7 percent in 1972 compared with 1971, increased 45.2 percent in 1973 compared with 1972, increased 40.0 percent in 1974 compared with 1973, increased 49.2 percent in 1975 compared with 1974 and decreased 10:6 percent in 1976 compared with 1975.

CONTRIBUTED IMPORTANTLY

Customers surveyed indicated that they purchase no imported friction materials products such as clutch facings and woven and brake linings. Purchases of these products from the Manheim plant have generally remained constant or have increased in 1976 compared with 1975.

In order to comply with government regulations concerning the production of asbestos yarn, Raybestos is phasing out production of asbestos yarn at Manheim. The company will source production at domestic facilities in the Carolinas. The company has always purchased small amounts of heavy duty asbestos yarn from foreign sources. It will continue to do so after the transfer.

CONCLUSION

After careful review of the facts obtained in the investigation, it is concluded that imports of articles like or directly competitive with asbestos friction materials products and asbestos wool yarn produced by the Manheim plant did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C., this 29th Day of April 1977.

JAMES F. TAYLOR,
Director Office of Management, Administration and Planning.

[FR Doc.77-13313 Filed 5-9-77;8:45 am]

[TA-W-1395]

ROBLIN STEEL CO., DUNKIRK, NEW YORK

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1395: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 13, 1976 in response to a worker petition received on December 13, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel, structural shapes, sizes, plates, silicon steel, pipes and tubing, piling, round wire, stainless round wire and welded pipe at the Dunkirk, New York plant of the Roblin Steel Company.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 896). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the United Steelworkers of America and the Roblin Steel Company.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separation, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Dunkirk, New York plant of the Roblin Steel Company produces alloy and carbon steel billets.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

Annual average plant employment of production workers increased 3.4 percent in 1975 compared to 1974 and increased 0.7 percent in 1976 compared to 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Dunkirk, New York plant of the Roblin Steel Company have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13314 Filed 5-9-77;8:45 am]

[TA-W-1545]

SHOE HEELS AND COUNTER DEPARTMENT, FINISHED LEATHER AND VINYL PRODUCTS DEPARTMENT, WESTERN LEATHER PRODUCTS CORP., MILWAUKEE, WISCONSIN

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1545: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 4, 1977 in response to a worker petion received on January 4, 1977 which was filed on behalf of workers and former workers producing shoe counters and heels at the Milwaukee, Wisconsin plant of Western Leather Products Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on January 28, 1977 (42 FR 5446). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Western Leather Products Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard as to whether any of the other criteria have been met, criterion (3) has not been met for shoe counters and heels and criteria (2) and (4) have not been met for finished leather and vinyl products.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The investigation revealed that during the year prior to the signature date of the petition, and up to the present, involuntary separations of production workers took place only in the counters, heels and finished leather and vinyl products departments.

Employment of production workers at the finished leather and vinyl products department declined 10.0 percent in 1975 compared to 1974 and declined 11.1 percent in 1976 compared to 1975. Production workers within the department are used interchangeably among the large variety of products manufactured in this department.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Company sales of finished leather and vinyl products equal company production. Sales by this department increased 43.9 percent in 1975 compared to 1974 and increased 12.0 percent in 1976 compared to 1975, in adjusted 1974 dollars. Travel kits accounted for approximately 80.0 percent of this department's sales.

INCREASED IMPORTS

The evidence developed in the Department's investigation reveals that there are no separately identifiable imports of shoe counters and heels. The products are not listed as a separate item of any U.S. Tariff Schedule grouping. In addition, industry spokesmen indicated that imports of these items are negligible.

Imports of shoes which incorporate counters and heels of the same origin are not like or directly competitive with shoe counters produced by Western Leather Products Corporation.

Imports of luggage increased from $55.781 million in 1972 to $74.108 million in 1973, then declined to $67.070 millions in 1974 and to $59.357 millions in 1975 and increased to $112.527 millions in 1976.

CONTRIBUTED IMPORTANTLY

A representative sample of Western Leather's customers indicated that all but one either increased purchases of travel kits from the subject firm or did not purchase imports. The only customer that decreased purchases from Western Leather while importing travel kits, imported this product in a negligible amount.

CONCLUSION

After careful review of the facts obtained in the investigation, it is concluded that articles like or directly competitive with shoe counters and heels produced at the counter and heels department of Western Leather Products Corporation, Milwaukee, Wisconsin, are not being imported in increasing quantities either actual or relative to domestic production as required in section 222 of the Trade Act of 1974.

It is further concluded that imports of articles like or directly competitive with travel kits produced at the finished leather and vinyl products department of that company have not contributed importantly to worker separations as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13315 Filed 5-9-77;8:45 am]

[TA-W-1177]

SOUTHWEST STEEL ROLLING MILLS, INC., LOS ANGELES, CALIFORNIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1177: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 14, 1976 in response to a worker petition received on October 14, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing fence posts, steel bar products, reinforcing bar and structural steel shapes at the Los Angeles, California plant of the Southwest Steel Rolling Mills, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on November 5, 1976 (41 FR 48817). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Southwest Steel Rolling Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed criteria three (3) and the four (4) have not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of employees at Southwest Steel Rolling Mills declined 38 percent in 1975 compared to 1974 and declined 51 percent in the first three quarters of 1976 compared to the like period of 1975. Since September 1976, only the plant guard force has been employed.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of steel bars, reinforcing bars and fence posts constituted over 95 percent in 1975 and over 93 percent in 1976 of total sales of finished products. Total sales of all products produced at Southwest Steel Rolling Mills, Inc., declined 22 percent in the first seven months of 1975 compared to the same period in 1974. In November 1975 all operations at the plant ceased. In 1976, the plant was reopened. During the first seven months of 1976, sales declined 47 percent compared to the same period in 1975. In September 1976, operations again ceased. The plant has remained idle since that time.

INCREASED IMPORTS

There are no separate import and production categories for fence posts. They are included in the categories, Fence Gates, Posts and Fittings. U.S. imports of fence gates, posts and fittings increased from 5.3 thousand net tons in 1971 to 6.7 thousand net tons in 1972 and declined to 4.6 thousand net tons in 1973. In 1974 imports increased to 4.7 thousand net tons before declining to 0.8 thousand net tons in 1975. In the first nine months of 1976 imports increased to 2.1 thousand net tons compared to 0.6 thousand net tons in the same period in 1975. The ratio of imports to domestic production increased from 2.4 percent in 1971 to 2.8 percent in 1972 and declined to 1.8 percent in 1973 and 1974. In 1975 the ratio of imports to domestic production declined to 0.3 percent. In the first nine months of 1976 the ratio of imports to domestic production increased to 1.1 percent compared to 0.3 percent during the same period in 1975.

Imports of steel bars increased from 876.6 thousand net tons in 1971 to 935.9 thousand net tons in 1972 before declining to 849.4 thousand net tons in 1973, 777.1 thousand net tons in 1974 and 488.7 thousand net tons in 1975. In the first six months of 1976 imports declined to 141.7 thousand net tons compared to 358.6 thousand net tons during the same period in 1975. The ratio of imports to domestic shipments declined in every year from 13.1 percent in 1971 to 7.7 percent in 1975. In the first six months of 1976 the ratio of imports to domestic shipments declined to 4.0 percent compared to 9.8 percent during the first six months of 1975.

U.S. imports of carbon steel structural shapes increased from 1,477.5 thousand short tons in 1971 to 1,614.0 thousand short tons in 1972 before declining to 1,250.7 thousand short tons in 1973, 1,142.7 thousand short tons in 1974 and 804.9 thousand short tons in 1975. In the first nine months of 1976 imports of carbon steel structural shapes were 909.8 thousand short tons compared to 629.1 thousand short tons during the same period of 1975. The ratio of imports to domestic shipments increased from 31.3 percent in 1971 to 34.1 percent in 1972 before declining to 21.3 percent in 1973, 19.7 percent in 1974 and 19.5 percent in 1975. In the first nine months of 1976 the ratio of imports to domestic shipments increased to 34.3 percent compared to 18.7 percent during the same period one year earlier.

CONTRIBUTED IMPORTANTLY

In 1974 Southwest discontinued the fabrication and placement of reinforcing bar, continuing contracts were sub-contracted to other domestic manufacturers and no new contracts were bid.

Customers of the Southwest Steel Rolling Mills, Inc., stated that they did not shift purchases to imported steel products. Those customers who reduced purchases from Southwest stated that reduced construction activity had lowered the demand for the products made by Southwest Steel Rollings Mill, Inc.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of products like or directly competitive with the reinforcing bars, fence posts, steel bar products and structural shapes produced at the Los Angeles, California plant of the Southwest Steel Rolling Mills, Inc., did not contribute importantly to the total or partial separations of the workers at that plant as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13816 Filed 5-9-77;8:45 am]

[TA-W-1523]

STANDEE MANUFACTURING CORP., PERTH AMBOY, NEW JERSEY

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1523: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 27, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers producing girls sportswear at the Perth Amboy, New Jersey plant of Standee Manufacturing Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3380). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Standee Manufacturing Corp., its customers, the U.S. Department of Commerce, the U.S International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof, have increased either actual, or relative to domestic production, and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first three criteria have been met, criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATION

Complete employment data was not available from the company. Employ-

ment was 25 percent higher in the first 6 months of 1976 than the first 6 months of 1975. Third quarter comparisons were not available.

All employees were separated in December 1976 when the plant closed.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Total value of production by Standee decreased 3 percent in value in 1975 from 1974 and 1 percent in 1976 from 1975.

INCREASED IMPORTS

Imports of children's dresses into the U.S. decreased in 1973 from 1972 and in 1974 from 1973, increased in 1975 from 1974 and decreased from 949 thousand dozen in 1975 to 901 thousand dozen in 1976.

Relative to domestic production, imports decreased in 1973 from 1972 and increased in 1974 from 1973. Relatively, imports increased from 12.8 percent of domestic production in 1974 to 14.2 percent in 1975. Relative figures for 1976 are not available.

Imports of women's, misses' and children's blouses and shirts into the U.S. increased absolutely but decreased relative to domestic production in 1973 from 1972, and increased absolutely and relative to domestic production in 1974 from 1973 and in 1975 from 1974. Imports increased from 26,113 thousand dozen in 1975 to 30,273 thousand dozen in 1976.

Imports of women's, misses', and children's slacks and shorts into the U.S., both absolutely and relative to domestic production, decreased in 1973 from 1972 and in 1974 from 1973 and increased in 1975 from 1974. Imports increased from 10,067 thousand dozen in 1975 to 11,040 thousand dozen in 1976.

Imports of women's, misses' and children's skirts into the U.S., both absolutely and relative to domestic production, dcreased in 1973 from 1972 and in 1974 from 1973 and increased in 1975 from 1974. Imports increased from 508 thousand dozen in 1975 to 780 thousand dozen in 1976.

Imports of women's, misses' and children's suits into the U.S. both absolutely and relative to domestic production, increased in 1973, 1974 and 1975 from the previous year. Imports decreased from 412 thousand dozen in 1975 to 408 thousand dozen in 1976.

CONTRIBUTED IMPORTANTLY

Customers of Standee have not shifted purchases from Standee to imported girls sportswear.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with girl's sportswear produced at the Perth Amboy, New Jersey plant of Standee Manufacturing Corp. did not contribute importantly to the total or partial separations of the workers of that plant. Therefore, workers or former workers of that plant are not eligible to apply for Trade Adjustment Assistance.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13317 Filed 5-6-77;8:45 am]

[TA-W-1305]

SUMNEYTOWN PANTS SHOP, ETTELSON OF PHILADELPHIA, INC., SUMNEYTOWN, PENNSYLVANIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1305: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 29, 1976 in response to a worker petition received on November 29, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's big and tall size suit pants and slacks at the Sumneytown, Pennsylvania plant of Ettelson of Philadelphia, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54567). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ettelson of Philadelphia, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the above criteria have been met, the Department's investigation indicates that criteria (3) and (4) have not been met.

According to the best estimates available imports of men's big and tall size suit pants and slacks are negligible.

Customers indicated that they would still be purchasing from Ettelson of Philadelphia, Inc. had it not shut down and further indicated that their purchases of imports of men's big and tall size suit pants and slacks are negligible.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with men's big and tall size suit pants and slacks produced at the Sumneytown Pants Shop, Sumneytown, Pennsylvania plant of Ettelson of Philadelphia, Inc., did not increase as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13318 Filed 5-6-77;8:45 am]

[TA-W-1524]

TENCO DIVISION, COCA COLA CO.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1524: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 27, 1976 in response to a worker petition received on December 27, 1976 which was filed on behalf of workers and former workers producing instant coffee at the Linden, New Jersey plant of Tenco Division of the Coca Cola Company, Atlanta, Georgia.

The notice of investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3369). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the officials of Tenco Division, the U.S. Department of Commerce, the International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed

importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria were met for the Processing Department at the Linden plant and that criterion four was not met for the Packaging Department at the Linden plant.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Total production employment at the Linden plant declined 16 percent from 1974 to 1975 and declined 11 percent from 1975 to 1976.

Workers are directly identifiable between the Processing Department and the Packaging Department. Bumping is permitted between departments.

SALES, PRODUCTION, OR BOTH HAVE DECREASED ABSOLUTELY

Sales of spray dried and freeze dried instant coffee by the Linden plant increased 21 percent in value from 1974 to 1975 and increased 68 percent in value from 1975 to 1976.

Sales value, when adjusted for price changes, increased 12 percent from 1974 to 1975 and increased 32 percent from 1975 to 1976.

Pounds of instant coffee produced in the Processing Department declined 22 percent from 1974 to 1975 and declined 28 percent in the last three quarters of 1976 compared with the same period of 1975.

Pounds of instant coffee packaged in the Packaging Department increased 34 percent from 1974 to 1975 and then declined 7 percent in the last three quarters of 1976 compared with the same period of 1975.

The first quarter was eliminated from 1976 production comparisons because of a strike at the Linden plant during that period.

INCREASED IMPORTS

Imports of soluble roasted coffee (processed instant coffee powder) increased absolutely and relative to domestic production in each year from 1971 through 1974. Imports declined absolutely and relatively from 1974 to 1975. Imports then increased 53 percent in the first nine months of 1976 compared to the first nine months of 1975. The ratio of imports to domestic production increased from 35.0 percent in the first nine months of 1975 to 51.4 percent in the first nine months of 1976.

CONTRIBUTED IMPORTANTLY

Company imports of instant coffee powder increased 32 percent from 1975 to 1976. Importing coffee powder offers cost advantages over processing the coffee domestically. Tenco's imports of coffee powder are sent directly to packaging or bulk shipment at Linden (with the exception of some spray dried coffee which is agglomerated at Linden), thus eliminating all processing at the plant. In March 1975, Tenco ceased the freeze drying operation at the Linden plant and has since imported all freeze dried coffee to meet customers' requirements. Increased company imports resulted in production declines in the Processing Department at Linden.

Increased imports however, have not been detrimental to production in the Packaging Department at Linden. Imported coffee powder must be packaged just as coffee processed at the plant. Consequently, company imports cannot be considered as contributing to declines in employment or production in the Packaging Department.

Declines in production in the Packaging Department from 1975 to 1976 can be attributable to several factors. Increases in bulk shipments and changes in the product mix (from large to smaller containers) and difficulties in obtaining supplies from foreign sources would cause the quantity of pounds packaged to decline.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with instant coffee produced in the Processing Department at the Linden, New Jersey plant of Tenco Division of the Coca-Cola Company contributed importantly to the total or partial separation of the workers of that department. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of instant coffee in the Processing Department at the Linden, New Jersey plant of Tenco Division of the Coca Cola Company who became totally or partially separated from employment on or after December 2, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

It is further concluded that increases of imports like or directly competitive with instant coffee packaged in the Packaging Department at the Linden, New Jersey plant of Tenco Division of the Coca Cola Company did not contribute importantly to the total or partial separations of workers of that department.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13319 Filed 5-9-77;8:45 am]

[TA-W-1473]

UNION ELECTRIC STEEL CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1473: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 20, 1976 in response to a worker petition received on December 20, 1976 which was filed by the United Steelworkers of American on behalf of workers and former workers producing finished forged hardened steel rolls for rolling machines in cold rolling mills at the Carnegie, Pennsylvania plant of the Union Electric Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER on January 7, 1977 (42 FR 1539). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the United Steelworkers of America and Union Electric Steel Corporation.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 22 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred since November 1, 1975 more than one year prior to the date of the petition November 1, 1976, except for a three week period ending February 7, 1977 due to a general energy shortage.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Carnegie, Pennsylvania plant of Union Electric Steel Corporation have not become totally or partially separated as required in Section 222 of the Trade Act of 1974. The petition is, therefore, denied.

Signed at Washington, D.C. this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13320 Filed 5-9-77;8:45 am]

[TA-W-59T]

WESTMINSTER CORP.

Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223(d) of the Trade Act of 1974, the Department

of Labor herein presents the results of TA-W-59T: investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in section 223(d) of the Act.

On August 18, 1975, workers engaged in employment related to the production of infants, babies, children and misses footwear at the Westminster, Maryland plant of the Westminster Corporation were certified as eligible to apply for trade adjustment assistance. The Notice of Determination was published in the FEDERAL REGISTER on August 27, 1975 (40 FR 38200).

The investigation regarding termination of certification was initiated on July 28, 1976 to determine whether the group of workers specified above continue to meet the group eligibility requirements of section 222 of the Act. The Notice of Investigation was published in the FEDERAL REGISTER (41 FR 33599) on August 10, 1976. No public hearing was requested and none was held.

During the course of the investigation, information was obtained from officals of The Westminster Corporation, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Whenever it becomes evident that any of the above criteria are no longer met, the certification as issued must be revised to include a termination date. The termination date would apply only with respect to total or partial separations occurring after this date as specified in the revised certification.

Without regard to whether the other criteria are satisfied, the investigation reveals that the first criterion is no longer met with respect to workers at the Westminster, Maryland plant of the Westminster Corporation.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Subsequent to the August 18, 1975 finding, employment of hourly workers at the Westminster, Maryland plant of the Westminster Corporation decreased 69 percent from 1974 to 1975. All hourly workers were laid off by the end of December 1975, subsequent to the June 1975 closing of the plant.

Employment of salaried workers at the Westminster, Maryland plant of the Westminster Corporation decreased 57 percent from 1974 to 1975, and decreased 33 percent in the first three quarters of 1976 compared to the like period in 1975. All salaried workers were laid off by the end of October 1976, subsequent to the June 1975 closing of the plant.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that total or partial separations of workers engaged in employment related to the production of babies', infants', children's, and misses' footwear at the Westminster, Maryland plant of the Westminster Corporation are no longer attributable to the conditions specified in section 222 of the Trade Act of 1974. In accordance with section 223(d) of the Act, I hereby revise the certification of August 18, 1975 to read as follows:

That all workers of the Westminster, Maryland plant of the Westminster Corporation (TA-W-59) who became or will become totally or partially separated from employment on or after October 3, 1974 and before May 15, 1977 be certified eligible to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers who became totally or partially separated from employment on or after May 15, 1977 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 29th day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13321 Filed 5-9-77;8:45 am]

[TA-W-1347]

WHEELING MACHINE PRODUCTS CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1347; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel pipe couplings at the National Road plant of Wheeling Machine Products Co., Wheeling, West Virginia.

The notice of investigation was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55610). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and the Wheeling Machine Products Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four criteria have been met.

SIGNIFICANT TOTAL OF PARTIAL SEPARATIONS

The average number of production workers at the National Road plant decreased 10 percent in the 4th quarter of 1975 compared to the like period in 1974. Employment declined 26 percent in the first 11 months of 1976 compared to the like period in 1975.

SALES OF PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of pipe couplings at the National Road plant decreased 16 percent in value in the 4th quarter of 1975 compared to the like period in 1974. Sales decreased 35 percent in value in the first 11 months of 1976 compared to the like period in 1975.

INCREASED IMPORTS

Imports of steel couplings increased each year from 1971 to 1975, from 3.2 million pounds in 1971 to 13.2 million pounds in 1975. Imports decreased from 9.9 million pounds in the first 9 months of 1975 to 7.1 million pounds in 1976.

The ratio of imports to domestic production of steel pipe couplings increased from 25.0 percent in 1971 to 39.8 percent in 1972, then decreased to 35.3 percent in 1973. The import to production ratio declined in 1974 to 24.3 percent, then increased to 51.8 percent in 1975. The ratio of imports to domestic production of couplings increased from 45.4 percent in the first 9 months of 1975 to 57.3 percent in the first 9 months of 1976.

CONTRIBUTED IMPORTANTLY

Customers of the National Road plant were surveyed. Many of these customers are distributors that indicated they had purchased less from Wheeling Products in 1976 than in 1975 because imports were coming into the U.S. and being offered to their customers at lower prices than they could offer. The Office of Trade

Adjustment Assistance contacted some of the customers of piping distributors. Most of these customers revealed that they had decreased their purchases of domestically manufactured couplings and increased purchases of imported couplings. The lower price of the imports was given as the cause of the switch.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with steel pipe couplings produced at the National Road plant of Wheeling Machine Products Company, Wheeling, West Virginia, contributed importantly to the total or partial separations of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of steel pipe couplings at the National Road plant of Wheeling Machine Products Company, Wheeling, West Virginia who became totally or partially separated from employment on or after November 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th Day of April 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-13322 Filed 5-9-77;8:45 am]

SUGAR

On March 17, 1977, the International Trade Commission determined that increased imports of sugar are a substantial cause of the threat of serious injury to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (42 FR 15978).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The Department of Labor has concluded its report on sugar. The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the Department of Labor has received 21 petitions for certification of eligibility for adjustment assistance from workers engaged in the growing and processing of beet and cane sugar. Investigations are currently in process. A total of about 1600 workers who were laid off from beet sugar processing plants and sugar cane mills will be affected.

2. There is no evidence of any widespread or significant unemployment among sugar cane farm and mill workers in the mainland United States. There is also no evidence of significant unemployment among sugar beet farm workers or those engaged in the processing and refining of beet and cane sugar, with the exception of those workers covered by the petitions. Since the Hawaiian sugar industry is of a year-round nature, these workers would not be excluded from trade readjustment and relocation allowances by the requirement in the Act that all eligible workers must have been employed at least 26 of the 52 weeks immediately preceding their separations. Similarly, although beet processing tends to be of a seasonal nature, the eligibility of most of the workers who have petitioned for adjustment assistance (mainly maintenance personnel) would not be affected by this legal requirement.

3. Nearly 200 sugar cane mill workers in Hawaii and about 100 in Louisiana are likely to be laid off over the next few months. More workers could be affected if the price of sugar does not recover. A continuation of the western drought will also have an adverse effect on employment in sugar beet growing and processing. Many of these workers can be expected to apply for adjustment assistance. Some of the workers involved in growing and processing beet and cane sugar in the mainland United States would not be eligible for trade readjustment and relocation allowances due to the high degree of seasonality that is characteristic of the industry.

4. The workers that were separated from the industry are located primarily in scattered parts of Colorado and Hawaii. Local unemployment rates were considerably higher in Hawaii (8.5 to 9.6 percent) than in the impacted areas in Colorado (2.4 to 7.0 percent). Some of the displaced Hawaiian sugar cane mill workers can be absorbed into field operations, however. The reemployment prospects of the remainder of these workers, both in Hawaii and the mainland United States, are limited by the lack of other crops or food processing plants in the impacted areas.

5. The Comprehensive Employment and Training Act (CETA) programs appear to be capable of meeting the needs of the displaced workers. Although actual levels of enrollment are in some instances higher than expected levels, funding appears to be adequate to sustain all programs. The Employment and Training Administration through the State Employment Service has the authority to purchase additional training when CETA funds are not available.

Copies of the Department's report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (phone 202-523-7665).

Signed at Washington, D.C. this 2nd day of May 1977.

HOWARD D. SAMUEL,
Deputy Under Secretary, International Affairs.

[FR Doc.77-13157 Filed 5-9-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR NEUROBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Advisory Panel for Neurobiology.

DATE AND TIME: June 1, 2, 3, 1977—8:30 a.m.-17:30 hours.

PLACE: Torrey Pines Inn, LaJolla, California.

TYPE OF MEETING: Part open.

CONTACT PERSON:

Dr. N. Herbert Spector, Program Director of Neurobiology, Room 333, National Science Foundation, Washington, D.C. 20550, 202-634-4106.

SUMMARY MINUTES: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF PANEL: To provide advice and recommendations concerning support for research in Neurobiology.

AGENDA: June 1 and 3; and June 2, 8:30-12 Closed; The panel will be reviewing and evaluating research proposals and projects as part of the selection process for awards. June 2, 13-17:30 hours Open: (1) Discussion of problems and perspectives in basic research in the neurosciences; (2) Methods for improvement of the Neurobiology Program at the National Science Foundation.

REASON FOR CLOSING: The proposal's being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: The determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 5, 1977.

[FR Doc.77-13233 Filed 5-9-77;8:45 am]

ADVISORY PANEL FOR SENSORY PHYSIOLOGY & PERCEPTION

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

NAME: Advisory Panel for Sensory Physiology and Perception.

DATE AND TIME: June 1, 2, and 3, 1977—9 a.m.-5 p.m. each day.

PLACE: National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550, Room 517.

TYPE OF MEETING: Part open.

CONTACT PERSON:

Dr. Terrence R. Dolan, Program Director for Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone 202-634-1624.

SUMMARY MINUTES: (Open portion) May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF PANEL: To provide advise and recommendations concerning support for research in Sensory Physiology and Perception.

AGENDA: *Closed*—June 1, 2 all day; June 3, 1-5 p.m. To review and evaluate research proposals and projects as part of the selection process for awards. *Open:* June 3, 9 a.m.-12 noon—(1) Discussion of problems and perspectives in basic research in the sensory physiology and perception sciences. (2) Methods for improvement of the Sensory Physiology and Perception Program at the National Science Foundation.

REASON FOR CLOSING: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 5, 1977.

[FR Doc.77-13234 Filed 5-9-77;8:45 am]

SCIENCE APPLICATIONS TASK FORCE

Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting.

NAME: Science Applications Task Force.

DATE: 23-24 May 1977.

TIME: 23 May: 9 a.m. to 5 p.m., 24 May: 9 a.m. to 4 p.m. (tentatively).

PLACE: Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

TYPE OF MEETING: Open.

CONTACT PERSONS:

Gilbert B. Devey, Executive Secretary, Science Applications Task Force, National Science Foundation. Telephone: 202-634-6608.
Dale Draper, NSF Secretariat, National Science Foundation. Telephone: 202-632-5876.

Persons interested in attending the meeting should inform the Executive Secretary before 5 p.m. on May 16, 1977.

SUMMARY MINUTES: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF ADVISORY GROUP: The purpose of the NSF Task Force on Science Applications is to provide advice and assessments and make recommendations to the NSF Director on science applications programs and related organization and management issues.

AGENDA

May 23-24, 1977, Room 540, 1800 G Street, NW.

MAY 23, 1977

9 a.m.—Announcements: Dr. John R. Whinnery, Task Force Chairperson.
9:15 a.m.—Remarks About House Science and Technology Committee Study of RANN. R. B. Dillaway.
10:15 to 11:30 a.m.—Individual Reports and Elements of Final Report.
11:30 to 12—Materials Research Laboratories.
Noon to 1:30 p.m.—Lunch (Continuing Task Force Discussion).
1:30 to 3 p.m.—Individual Reports and Elements of Final Report.
3 to 4 p.m.—Discussions with Program Directors/Managers.
4 p.m.—Remarks by Mr. E. Q. Daddario, Director, Office of Technology Assessment.
5 p.m.—Adjourn.

MAY 24, 1977

9 a.m.—General Discussion and Public Participation.
Noon to 1:30 p.m.—Lunch.
1:30 p.m.—General Discussion and Public Participation.
4 p.m.—Tentative Adjournment.

NOTE.—Persons interested in submitting oral or written statements at this meeting should contact Mr. Devey or Mr. Draper before 5 p.m. on May 16, 1977.

REASON FOR LATE NOTICE: The final agenda for this meeting could not be prepared until details had been determined at the meeting of the Task Force held on May 3, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 5, 1977.

[FR Doc.77-13232 Filed 5-9-77;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS

Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (the Act), notice is hereby given that a meeting of the Advisory Committee for Trade Negotiations will be held Wednesday, June 8, 1977, from 1 p.m. to 4:30 p.m. in Room 204-A of the Everett Dirksen Building Chicago, Illinois.

The purpose of this meeting will be to review and discuss the status of, and the United States strategy and objectives for, the multilateral trade negotiations currently underway in Geneva.

In accordance with section 10(d) of the Act, the meeting will not be open to the public because information falling within the purview of 5 U.S.C. 552b(c)(1) (the exception to the Government in the Sunshine Act for matters specifically required by Executive order to be kept secret in the interest of foreign policy) will be reviewed and discussed.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Executive Secretary, Advisory Committee for Trade Negotiations, Office of the Special Representative for Trade Negotiations, 1800 G Street, Room 725, Washington, D.C. 20506.

PHYLLIS O. BONANNO,
Executive Secretary, Advisory Committee for Trade Negotiations.

[FR Doc.77-13363 Filed 5-9-77;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

[Delegation of authority No. 165-18]

DIRECTOR, USAID/HONDURAS

Assistant Administrator for Latin America

Pursuant to the authority vested in me as Assistant Administrator for Latin America, Agency for International Development, by the Foreign Assistance Act of 1961, as amended, and the delegations of authority issued thereunder, I hereby delegate to the Director, USAID/Honduras, authority to negotiate and execute A.I.D. Loan No. 522-T-032 (Small

Farmer Technologies) in accordance with and subject to the terms and conditions set forth in a project authorization dated December 30, 1976, authorizing said Project ("Project Authorization").

This delegation of authority is effective through July 29, 1977.

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Acting Assistant Administrator, Latin America Bureau.

APRIL 27, 1977.

[FR Doc.77-13257 Filed 5-9-77;8:45 am]

[Delegation of Authority No. 121]

PERSONAL FOREIGN EXCESS PROPERTY IN TURKEY

Delegation of Authority

Pursuant to the authority vested in me by Delegation of Authority No. 104 from the Secretary of State, dated November 3, 1961 (26 FR 10608), as amended, I hereby delegate to the United States Ambassador to Turkey the following authority:

a. Upon the determination that it will be consistent with and in furtherance of the purposes of part I and within the limitations of the Foreign Assistance Act of 1961, as amended (the Act), to permit the furnishing of U.S. Government-owned excess property and related services in accordance with section 607(a) of the Act. Such authority shall be exercised only with respect to personal foreign excess property located in Turkey. Any acquisitions of excess property located in Turkey made under section 607(a) of the Act directly from U.S. Government agencies shall be subject to the guidelines set forth in Chapter 7 of A.I.D. Handbook 16.

b. To make the determinations prescribed under section 607(b) of the Act, to wit:

(1) That, with respect to any U.S. Government-owned excess property which is to be made available in accordance with this Delegation of Authority, there is a need for such property in the quantity requested and such property is suitable for the purpose requested;

(2) The status and responsibility of the end-user justifies the requested transfers and the end-user has the ability effectively to recondition when necessary, use, and maintain such property; and

(3) The residual value, serviceability, and appearance of the property to be transferred will not reflect unfavorably on the image of the United States and will justify the accessoroal costs, and the residual value at least equals the total of these costs.

Such determinations shall be made in writing prior to the transfer of such property. The authority delegated under this paragraph b may be redelegated to subordinate officers.

The authority delegated by this Delegation of Authority shall be subject to the terms and provisions of A.I.D. Handbook 16 including, without limitation, those portions of Chapter 5 thereof entitled "Control, Utilization, and Disposition of Excess Property" and "Use of the Official AID Emblem".

This Delegation of Authority revokes Delegation of Authority No. 28, dated May 2, 1963 (28 FR 4726), as amended, only insofar as Delegation of Authority No. 28 concerns Turkey.

This Delegation of Authority shall become effective June 30, 1977.

Dated: April 27, 1977.

JOHN J. GILLIGAN,

[FR Doc.77-13259 Filed 5-9-77;8:45 am]

DEPARTMENT OF THE TREASURY

[Treasury Department Order No. 250]

DISESTABLISHMENT OF THE POSITION AND OFFICE OF ASSISTANT SECRETARY

Enforcement, Operations, and Tariff Affairs

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by Reorganization Plan No. 26 of 1950, the following organizational changes are ordered.

1. The position and the Office of Assistant Secretary (Enforcement, Operations, and Tariff Affairs) are hereby disestablished. The functions, responsibilities, and personnel formerly assigned to the Assistant Secretary (Enforcement, Operations and Tariff Affairs) are hereby temporarily transferred to the Under Secretary, pending review and further disposition of these functions and responsibilities.

2. Additional changes in organization, and reassignments of functions, responsibilities, and personnel necessitated by this order will be finalized as soon as possible.

3. Treasury Department Orders No. 128 (Revision 5), No. 147 (Revision 3), No. 191-3, No. 217 (Revision 1), and No. 220 are hereby amended.

This order is effective immediately.

Dated: May 3, 1977.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc.77-13256 Filed 5-9-77;8:45 am]

[Treasury Department Order No. 251]

ESTABLISHMENT OF THE OFFICE OF THE ASSISTANT SECRETARY

Public Affairs

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by Reorganization Plan No. 26 of 1950, it is ordered that:

1. The position of the Assistant Secretary (Public Affairs) is hereby established. The incumbent will report to the Secretary, and will be responsible for:

a. Establishing general operating policies and guidelines, and providing leadership, direction and management strategy for administering public affairs programs and activities in all Treasury offices and bureaus;

b. Formulating and executing public information policies and programs which will increase the public's knowledge and understanding of Treasury's activities and services;

c. Providing continuing public information support to the Office of the Secretary; and

d. Serving as the principal advisor to the Secretary, the Deputy Secretary, and senior officials throughout the Treasury Department on matters affecting the public's understanding of Treasury policies and programs.

2. The Office of the Assistant Secretary (Public Affairs) is hereby established. Under the supervision of the Assistant Secretary (Public Affairs) this Office performs the following functions:

a. Developing materials to inform the public of the Department's policies, programs, activities, and services;

b. Serving the day-to-day needs of the print and electronic media, including the writers who specialize in economic reporting and analysis, and the media who base their daily operations in the Treasury headquarters;

c. Serving the specialized needs of specific Treasury officials for releasing public information;

d. Providing editorial support services such as preparation of Congressional and public statements, and research, correspondence, clipping service and files;

e. Coordinating public affairs policies throughout the Department.

3. All of the functions, positions, personnel, records and property assigned to the Office of the Special Assistant to the Secretary (Public Affairs) are transferred to the Office of the Assistant Secretary (Public Affairs).

4. Responsibility for maintaining the Secretary's current issues briefing book and for answering correspondence, and the positions, personnel, records, and property associated with these responsibilities are transferred to the Office of the Assistant Secretary (Public Affairs) from the immediate office of the Secretary.

5. The Assistant Secretary (Public Affairs) is authorized to define the organizational structure and the specific responsibilities of the positions and personnel assigned to the Office of the Assistant Secretary (Public Affairs).

This Order is effective immediately.

Treasury Department Order No. 99 is hereby rescinded.

Dated: May 3, 1977.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc.77-13255 Filed 5-9-77;8:45 am]

Office of the Secretary

RAILWAY TRACK MAINTENANCE EQUIPMENT FROM AUSTRIA; ANTIDUMPING

Withholding of Appraisement Notice

AGENCY: United States Treasury Department.

ACTION: Withholding of appraisement.

SUMMARY: This notice is to advise the public that there are reasonable grounds to believe or suspect that there are or are likely to be sales of railway track maintenance equipment from Austria to the United States at less than fair value within the meaning of the Antidumping Act of 1921. Appraisement for the purpose of determining the proper duties applicable to entries of this merchandise will be suspended for 6 months. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Interested persons are invited to comment on this action by June 9, 1977.

EFFECTIVE DATE: May 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Paul R. Nichols, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: Information was received on September 23 and October 1, 1976, from counsels acting on behalf of Kershaw Manufacturing Co., Inc. Montgomery, Alabama, and Tamper, Inc., Columbia, South Carolina, respectively indicating that railway track maintenance equipment from Austria was 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"). On the basis of this information a "Notice of Reopening of Discontinued Investigation" was published in the FEDERAL REGISTER of November 1, 1976 (41 FR 47970-71), and the U.S. Customs Service renewed its inquiry to obtain information necessary to enable the Secretary of the Treasury to determine whether there were reasonable grounds to believe or suspect that there are or are likely to be sales to the United States at less than fair value.

Tentative Determination of sales at less than fair value: On the basis of the information presented and that developed by the United States Customs Service, for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that there are reasonable grounds to believe or suspect that the exporter's sales price of railway track maintenance equipment from Austria is less or likely to be less, than the fair value, and thereby the foreign market value, of such or similar merchandise.

Statement of reasons on which this determination is based: (a) *Scope of the Investigation.* It appears that all imports of the subject merchandise from Austria were manufactured by Plasser and Theuer, Linz, Austria. Therefore, the investigation was limited to this manufacturer.

(b) *Basis of Comparison.* For the purposes of determining whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between exporter's sales price and the third country price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since all export sales appear to be made to a related purchaser in the United States which in turn sells to unrelated purchasers. Third country price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is not sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes. In accordance with section 153.31(b), Customs Regulations (10 CFR 153.31(b), pricing information was obtained concerning sales of railway track maintenance equipment from Austria during the period of March 1 through December 31, 1976.

(c) *Exporter's Sales Price.* For the purposes of this tentative determination of sales at less than fair value, deductions have been made from the U.S. resale price for ocean and inland freight, insurance, brokerage, handling, and United States customs duties.

(d) *Third Country Price.* For the purposes of this tentative determination of sales at less than fair value, the third country price has been calculated on the basis of the C.I.F. delivered price to a customer in Alexandria, Egypt. Deductions have been made for ocean and inland freight, and insurance.

(e) *Result of Fair Value Comparison.* Using the above criteria, preliminary analysis suggests that exporter's sales price probably will be lower than the third country price of such or similar merchandise. Comparisons were made on merchandise which accounts for approximately 63 percent of the merchandise exported to the United States during the investigative period. The best information available indicates that margins exist on 100 percent of the merchandise compared, with the average margin being 62 percent. The manufacturer of the subject merchandise has submitted additional information, but not in sufficient time to allow consideration of it in connection with this determination.

Accordingly, Customs officers are being directed to withhold appraisement of railway track maintenance equipment from Austria, in accordance with § 153.48 Customs Regulations (19 CFR 153.48).

In accordance with section 153.40 Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in time to be received by his office on or before May 20, 1977. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received in his office on or before June 9, 1977.

This notice, which is published pursuant to § 153.35(b) Customs Regulations (19 CFR 153.35(b)), shall become effective May 10, 1977. It shall cease to be effective at the expiration of 6 months from the date of publication unless previously revoked.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

MAY 3, 1977.

[FR Doc.77-13203 Filed 5-9-77;8:45 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

NATIONAL BUREAU OF STANDARDS' VISITING COMMITTEE

Meeting

Pursuant to the Federal Advisory Committee Act 5 U.S.C., App. I (Supp. V, 1975), notice is hereby given that the National Bureau of Standards' Visiting Committee will meet on Monday, June 27, 1977, from 8:30 a.m. to 4:30 p.m. in Lecture Room B, Administration Building, National Bureau of Standards, Gaithersburg, Maryland; and Tuesday, June 28, 1977, from 9 a.m. to 12 noon in Room 3881 and from 2 p.m. to 3:30 p.m. in Room 5851, Department of Commerce, Washington, D.C.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any persons wishing to attend the meeting should inform Ms. Elaine D. Bunten, Office of the Associate Director for Programs, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921-3131.

Dated: May 4, 1977.

ERNEST AMBLER,
Acting Director.

[FR Doc.77-13260 Filed 5-9-77;8:45 am]

National Oceanic and Atmospheric Administration

AQUARIUM OF NIAGARA FALLS, INC.

Issuance of Permit To Take Marine Mammals

On March 4, 1977 notice was published in the FEDERAL REGISTER (42 FR 12453), that an application had been filed with the National Marine Fisheries Service by the Aquarium of Niagara Falls, Inc., 701 Whirlpool Street, Niagara Falls, New York 14301, for a permit to take two (2) California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on May 4, 1977, and as authorized by the provisions

of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a permit for the above taking to Aquarium of Niagara Falls, Inc. subject to certain conditions set forth therein. The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 4, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-13239 Filed 5-9-77;8:45 am]

DR. G. CAUSEY WHITTOW

Issuance of a Permit To Take Endangered Marine Mammals

On February 3, 1977, notice was published in the FEDERAL REGISTER (42 FR 6618), that an application had been filed with the National Marine Fisheries Service by Dr. G. Causey Whittow, Kewala Marine Laboratory, 41 Ahui Street, University of Hawaii, Honolulu, Hawaii 96813, for a Permit to continue the studies on the Hawaiian monk seal (*Monachus schauinslandi*), an endangered species, previously authorized under his Marine Mammal Protection Act Permit, under the provisions of the Endangered Species Act of 1973, for scientific purposes.

Notice is hereby given that on May 4, 1977, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above mentioned taking to Dr. G. Causey Whittow, to take Hawaiian monk seals for two years and to conduct general observational studies subject to certain conditions therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with, and is subject to, Parts 220 and 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 4, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-13246 Filed 5-9-77;8:45 am]

EXHIBITS, INC., DORNEY PARK COASTER CO.

Receipt of Application for Public Display Permit

Notice is hereby given that the following applicant has applied in due form for a Permit to take marine mammals for public display as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407); and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Exhibits, Inc., Dorney Park Coaster Company, Dorney Park Road (Allentown, Pennsylvania 18140, requests to take three (3) California sea lions (*Zalophus californianus*) for public display.

The requested animals will be captured by a professional collector on or near Santa Cruz or San Miguel Islands off Santa Barbara, California, with a hoop net on land or with a modified gill net in the water.

The animals will be acclimated at the collector's facility, and then shipped to the Allentown facility by commercial aircraft and truck.

At the facility the animals will be displayed in a circular pool 120 feet in diameter with a varying depth of 4 to 22 feet. In addition, there is an indoor holding pool and 2 haul-out areas.

The facility is operated for profit with approximately 25,000 weekly visitors. The animals will be on display from April through September at the facility in Allentown. During the off-season the animals will be maintained at the Applicant's facility, a circular pool approximately 30 feet in diameter and 2 to 6 feet deep, with a shaded haul-out area, in Bradenton, Florida.

Dorney Park is owned and operated by the Dorney Park Coaster Company with the Director, Mr. Dietch, having 30 years working experience in the care and maintenance of sea lions.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Documents submitted in connection with the above application are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boue-card, St. Petersburg, Florida 33702;

Regional Director, National Marine Fisheries Service, Southwest Region, 200 South Ferry Street, Terminal Island, California 90731; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 9, 1977. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: May 2, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-13240 Filed 5-9-77;8:45 am]

MYSTIC MARINELIFE AQUARIUM

Issuance of Permit To Take Northern Fur Seals

On January 21, 1977, notice was published in the FEDERAL REGISTER (42 FR 3886), that an application had been filed with the National Marine Fisheries Service by Mystic Marinelife Aquarium, Mystic, Connecticut 06355, for a Permit to take ten (10) Northern fur seals (*Callorhinus ursinus*), for the purpose of public display.

Notice is hereby given that on May 2, 1977, and as authorized by the provisions of the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), The National Marine Fisheries Service issued a Permit for the above taking to Mystic Marinelife Aquarium subject to certain conditions set forth therein. The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930;

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 2, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-13241 Filed 5-9-77;8:45 am]

NORTH CAROLINA DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES

Receipt of Application for Endangered Species Scientific Purposes Permit

Notice is hereby given that the following Applicant has applied in due form for a Permit to take an endangered species of fish for scientific purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

North Carolina Department of Natural and Economic Resources, Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557, requests to take, for research purposes, shortnose sturgeon (*Acipenser brevirostrum*), an endangered species of fish, during the next three years.

The Applicant proposes: (a) To capture, identify, tag, and release sturgeons, including shortnose sturgeon in the Atlantic Ocean off North Carolina and Virginia. (b) To examine the catches of commercial fishermen in the Albemarle Sound area, North Carolina, in order to determine if shortnose sturgeon still exist in the area. (c) To examine, tag and release any living shortnose sturgeon captured incidentally in Division nets set primarily for *Alosa* sp. and *Morone* sp. in the Albemarle Sound area.

The Applicant stated that sturgeon are infrequent inclusions in pound and gill net operations and that research is needed to evaluate aspects of the life history of the shortnose sturgeon in these water.

The data collected from captured specimens will be provided to other researchers who are conducting more extensive work on shortnose sturgeon.

Documents submitted in connection with this application are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester Massachusetts 01930; and

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Written data or views, or requests for a public hearing on this application, should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 9 1977. The holding of such a hearing is at the discretion of the Director. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate.

An statements and opinions that may be contained in this notice in support of this application are summarized from information supplied by the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Date: May 2 1977.

ROBERT J. AYERS,
Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-13242 Filed 5-9-77;8:45 am]

NORTHWEST AND ALASKA FISHERIES CENTER

Marine Mammal and Endangered Species Permit

On December 16, 1976, notice was published in the FEDERAL REGISTER (41 FR 54970) that Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way N.E., Seattle, Washington 98115, had applied for a Permit for Scientific Research under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and for Scientific Purposes under the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), to take by tagging 980 Hawaiian monk seals (*Monachus schauinslandi*).

Notice is hereby given that on April 6, 1977, the National Marine Fisheries Service issued a Permit for Scientific Research as authorized by the Marine Mammal Protection Act of 1972, and for Scientific Purposes as authorized by the Endangered Species Act of 1973, to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, subject to certain conditions set forth therein.

Of the 980 animals authorized to be taken over the next five years, not more than 90 animals may be taken prior to December 31, 1977. Prior to the continuation of this project after December 31, 1977, the Holder shall submit a report to the Director, National Marine Fisheries Service, describing the activities conducted as authorized by the Permit. The Director, may, in consultation with the Marine Mammal Commission, approve continuation of the project or terminate the project.

Issuance of the Permit is based, as required by the Endangered Species Act of 1973, on a finding that such permit (1) was applied for in good faith; (2) if granted and exercised, will not operate to the disadvantage of the endangered species involved; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with, and is subject to, Parts 220 and 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington 98109; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 2, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-13243 Filed 5-9-77;8:45 am]

TULSA ZOOLOGICAL PARK

Issuance of Permit To Take Marine Mammals

On March 4, 1977, notice was published in the FEDERAL REGISTER (42 FR 12455), that an application had been filed with the National Marine Fisheries Service by Tulsa Zoological Park, 5701 E. 36th Street North, Tulsa, Oklahoma 74115, for a permit to take one (1) California sea lion (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on May 4, 1977, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking to Tulsa Zoological Park subject to certain conditions set forth therein. The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 4, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-13244 Filed 5-9-77;8:45 am]

VIRGINIA INSTITUTE OF MARINE SCIENCE

Receipt of Application for Endangered Species Scientific Purposes Permit

Notice is hereby given that the following Applicant has applied in due form for a Permit to take an endangered species of fish for scientific purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

Virginia Institute of Marine Science (VIMS), Gloucester Point, Virginia 23062, requests to take, for research purposes, shortnose sturgeon (*Acipenser brevirostrum*), an endangered species of fish, during the next three years.

The Applicant states that the research is needed to evaluate aspects of the life history of the shortnose sturgeon in the Virginia waters of Chesapeake Bay and its tributaries.

Information on the number of captures, method of capture, weight, and fork and total lengths will be obtained from sturgeons that have been incidentally taken by commercial pound and gill net fishery operations. Live specimens will be released at the site of capture after the desired information is obtained. Dead specimens will be returned to VIMS for further analysis.

The Applicant stated that the data collected could provide valuable information to other researchers who are conducting more extensive work on short-nose sturgeon.

Documents submitted in connection with this application are available for review in the following offices:

Director, National Marine Fisheries Service, Department of Commerce, 3300 Whitehaven Street, NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and
Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Written data or views, or requests for a public hearing on this application, should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 9, 1977. The holding of such a hearing is at the discretion of the Director. These individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate.

Any statements and opinions that may be contained in this notice in support of this application are summarized from information supplied by the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: May 2, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-13245 Filed 5-9-77;8:45 am]

[Department Organization Order 35-1A; Amdt. 2]

DEPARTMENT ORGANIZATION ORDER SERIES

Bureau of Economic Analysis

APRIL 13, 1977.

This order effective April 13, 1977 further amends the material appearing at 40 FR 42766 of September 16, 1975 and 41 FR 8520 of February 27, 1976.

Department Organization Order 35-1A of August 4, 1975 is hereby further amended as shown below. The purpose of this amendment is to redelegate, to the Director, Bureau of Economic Analysis, the Secretary's authority under sections 4(a) (1), (2), (4), and 4(b) of the International Investment Survey Act of 1976.

Section 3. Delegation of authority. a. Paragraph .01 is revised to read as follows:

.01 Pursuant to the authority vested in the Secretary of Commerce by law, including Reorganization Plan No. 5 of 1950 and 15 U.S.C. 1516, and subject to such policies and directives as the Secretary may prescribe, the Director is hereby delegated authority to perform the following functions vested in the Secretary of Commerce under:

b. Delete the word "and" at the end of subparagraph 3.01c.

c. Delete period at end of subparagraph 3.01d. and add semicolon and the word "and".

d. A new subparagraph .01e. is added to read as follows:

e. Section 3 of Executive Order 11961 of January 19, 1977 which delegates to the Secretary of Commerce certain authority of the President under sections 4(a) (1), (2), (4), and 4(b) of the International Investment Survey Act of 1976 (Public Law 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108). The functions thereunder shall be carried out in coordination with the Bureau of International Economic Policy and Research, Assistant Secretary for Policy (Department Organization Order 10-2, Section 6.), including, to the extent feasible, the division or assignment of responsibilities. All regulations established to carry out the functions under the Act, and reports to be submitted to the Congress, shall be issued by the Secretary.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary for Administration.

[FR Doc.77-13237 Filed 5-9-77;8:45 am]

Maritime Administration

[Docket No. S-556]

AMERICAN EXPORT LINES, INC.

Notice of Application

Notice is hereby given that American Export Lines, Inc. has applied for written permission under section 805(a) of the Merchant Marine Act, 1936, as amended (the Act), to operate a vessel on a maximum of two voyages in the intercoastal trade during the course of the vessel's service on Line D on Trade Route No. 12 (U.S. Atlantic/Far East). The vessel would carry outsized reactor components and accessories which are scheduled for shipment from Portsmouth, New Hampshire, to Long Beach, California, in July 1977, and in December 1977 or January 1978.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room No. 3099B, Department of Commerce Building, Fourteenth and E Streets NW., Washington, D.C. 20230.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on May 18, 1977 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Assistant Secretary for Maritime Affairs.

Dated: May 18, 1977.

JAMES S. DAWSON, JR.,
Secretary.

[FR Doc.77-13503 Filed 5-9-77;10:55 am]

GENERAL SERVICES ADMINISTRATION

[Temp. Reg. A-11, Supp. 4]

FEDERAL PROPERTY MANAGEMENT REGULATIONS

Changes to Federal Travel Regulations

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A-11, incorporates all current provisions of the regulation including those in supplements 1 and 3 thereto, and further amends certain provisions of FPMR 101-7, Federal Travel Regulations (FTR).

2. *Effective date.* a. Effective May 1, 1977, the expiration date of FPMR Temporary Regulation A-11 and supplements 1 and 3 thereto is extended.

b. The provisions of attachment A to this supplement are effective for travel performed on or after June 1, 1977; however, for entitlement to the increased relocation allowances prescribed herein, an employee's effective date of transfer; i.e., the date the employee reports for duty at a new official station, must be on or after June 1, 1977.

3. *Expiration date.* This regulation expires April 30, 1978, unless sooner superseded or canceled.

4. *Background.* a. Executive Order 11609 (July 22, 1971) and the Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975) authorize the Administrator of General Services to prescribe regulations necessary to admin-

ister the laws governing travel and relocation allowances and entitlements for Federal employees. Pursuant to this authority, various amendments to the FTR were proposed by GSA in a notice of proposed rulemaking which was published in the FEDRAL REGISTER on May 20, 1976 (41 FR 20708). Federal agencies were invited to comment. This supplement implements certain of those proposed amendments as explained below.

(1) Proposed changes dealing with provisions concerning the use of various modes of transportation, miscellaneous travel expenses, claims for reimbursement, and relocation allowances and entitlements resulted in generally supportive comments from Federal agencies. Hence, those proposed changes, as modified to the extent feasible to accommodate the views of commenting agencies, are implemented herein.

(2) Proposed changes to regulations pertaining to per diem and actual subsistence expense reimbursement (FTR, Chapter 1, Parts 7 and 8) generated substantial agency comment. These proposed changes, therefore, are not implemented in this supplement but will be subject to further evaluation and interagency review.

b. In addition to changes related to the above notice of proposed rulemaking, the FTR are also amended to: (1) implement the provisions of Comptroller General Decision B-178342, dated August 11, 1976, which authorizes reimbursement for the cost of certain insurance purchased in connection with the operation of a vehicle in a foreign country, and (2) revise certain paragraphs for clarity.

c. The FTR consist of: (1) The basic regulations issued by GSA Bulletin FPMR A-40, dated April 30, 1973, and (2) amendments to the basic regulations issued in FPMR Temporary Regulation A-11, dated May 19, 1975, and supplements 1 and 3 thereto, dated June 27, 1975, and September 28, 1976, respectively. To consolidate all current amendments to the basic regulations in a single document for ease of reference, the applicable provisions of FPMR Temporary Regulation A-11 and supplements 1 and 3 thereto are republished without change in attachment A to this supplement.

5. *Explanation of changes.* The provisions of attachment A to this supplement amend the FTR, as revised by FPMR Temporary Regulation A-11, for the reasons given below. It should be noted that all applicable amendments to the FTR published in attachments to FPMR Temporary Regulation A-11 and supplements 1 and 3 thereto are republished in this supplement without change.

a. Paragraph 1-2.2e is added to provide guidance in the use of ocean vessels as a method of transportation for official travel.

b. Paragraph 1-2.6 is revised to reflect the new term "Government-furnished" vehicle and to add paragraph 1-2.6c to provide procedures to be followed if a Government-furnished vehicle is not available as a first resource.

c. Paragraph 1-3.2c is revised to authorize reimbursement for the cost of additional insurance when required for the use of a rented or leased vehicle in a foreign locality.

d. Paragraph 1-3.6 is revised to reflect the new term "U.S. flag carrier" and to incorporate guidelines for the use of U.S. flag air carriers for Government-financed transportation of persons and property which were issued by the Comptroller General of the United States in implementation of the International Air Transportation Fair Competitive Practices Act of 1974 (Pub. L. 93-623; January 3, 1975).

e. Paragraphs 1-4.2a and 1-4.2c(2) are revised to make editorial changes, and paragraph 1-4.2a-1 is added to provide a procedure by which agencies can request GSA to establish higher mileage rates for use of privately owned conveyances in areas outside the conterminous United States. (Under this procedure, any new rate approved by GSA for a particular overseas area will become the uniform rate payable to all Federal employees in that area.)

f. Paragraph 1-8.2c(1) is revised to clarify that the rate and method of reimbursement in instances of mixed travel involving both per diem and actual subsistence expenses, or several high rate geographical areas, is determined by the location of the temporary duty assignment at the end of the day, regardless of where lodgings are obtained, paragraph 1-8.2c(3) is revised to delete the reference to examples showing computation of mixed travel reimbursement, and figure 1-8.2c is deleted.

g. Paragraph 1-9.1b-1 is added to authorize reimbursement for the cost of traveler's checks, money orders, or certified checks purchased in connection with official travel within as well as outside the conterminous United States (as formerly provided in 1-9.1c(3), reimbursement for the cost of these items was permitted only when purchased in connection with travel outside the conterminous United States), and paragraph 1-9.1c(3) by replacing the provisions currently appearing therein, which have been transferred to new paragraph 1-9.1b-1, with new provisions authorizing reimbursement for the cost of trip insurance purchased in connection with the operation of Government-furnished or privately owned vehicles in foreign countries.

h. Paragraph 1-10.2 is revised to update provisions for the use of Standard Form 1169, U.S. Government Transportation Request (GTR), and reflect changes in regulations governing the use of cash in the procurement of Government financed passenger transportation services.

i. Paragraph 1-10.3c(3) is revised to prohibit agencies from requiring travelers to furnish bonds in order to obtain travel advances.

j. Paragraph 1-11.3c is amended for clarity and to add paragraph 1-11.3c(18) to include cash payment for passenger transportation services as a cash expenditure for which receipts are required to support a claim for reimbursement.

k. Paragraph 1-11.5c(3) is revised to require receipts for cash payment for common carrier fares, except local transit fares, to support a claim for reimbursement and to provide that travelers paying cash for transportation must include a statement on the travel voucher assigning to the Government their right to recover excess payments resulting from a carrier's use of improper rates.

l. Paragraph 1-11.6b(11) is revised to reflect the new term "foreign flag air carrier" and to update a reference.

m. Paragraph 2-1.4c is revised to clarify the definition of "agency" and to include therein the judicial branch of the Government, and paragraph 2-1.4d is revised to expand the definition of "immediate family" and to establish general criteria for determining the dependent status of certain members of an employee's household for the purpose of relocation allowances entitlements.

n. Paragraph 2-1.5f(1)(c) is revised to add a public law reference number, and paragraph 2-1.5g(5-a) is added to provide for the return travel of a former spouse and dependents from an overseas post of duty under certain conditions.

o. Paragraph 2-1.6b is revised for clarity.

p. Paragraph 2-2.3d(2) is revised to provide agencies with the authority to approve an exception, under certain circumstances, from the minimum daily driving distance requirement for travel to a new duty station by privately owned automobile.

q. Paragraph 2-4.2 is revised to authorize reimbursement for reasonable local transportation expenses at the location of the new duty station during housekeeping trips.

r. Paragraph 2-6.2g is revised to increase the dollar limitations on expenses which may be reimbursed in connection with the purchase or sale of a residence incident to relocation.

s. Paragraph 2-8.2a is revised to increase the maximum weight allowance for shipment of household goods and personal effects of an employee without immediate family, and paragraph 2-8.2a-1 is added to establish guidelines for shipment of an employee's personally owned professional books, papers, and equipment as an administrative expense of an agency.

6. *Effect on other issuances.* Effective June 1, 1977, attachment A to FPMR Temporary Regulation A-11, dated May 19, 1975, is superseded, and supplements 1 and 3 to that regulation, dated June 27, 1975, and September 28, 1976, respectively, are canceled. The applicable provisions of the above are incorporated herein.

ROBERT T. GRIFFIN,
Acting Administrator of General Services.

APRIL 29, 1977.

CHANGES TO FEDERAL TRAVEL REGULATIONS, FPMR 101-7

1. Paragraphs 1-1.2 a and b and 1-1.3c (3) through (8) are republished without change, as follows:

1-1.2. *Applicability.*

a. The provisions of this chapter apply to official travel of civilian employees of Government agencies, including civilian employees of the Department of Defense, as authorized under 5 U.S.C. 5701-5709, but excluding employees of the judicial branch of the Government.

b. The provisions of this chapter also apply to official travel of individuals employed intermittently in the Government service as consultants or experts and paid on a daily when-actually-employed (WAE) basis and of individuals serving without pay or at $1 a year. These individuals are not considered to have a "permanent duty station" within the general meaning of that term; however, they may be allowed travel or transportation expenses under this chapter while traveling on official business for the Government away from their homes or regular places of business and while at places of Government employment or service. Maximum rates prescribed herein are applicable unless a higher rate is specifically authorized in an appropriation or other statute.

1-1.3. *General rules.*

* * * * *

c. *Definitions.*

* * * * *

(3) *Government-furnished automobile.* The term "Government-furnished automobile" includes an automobile which is: (a) owned by an agency, (b) assigned or dispatched to an agency on a rental basis from a GSA inter-agency motor pool, or (c) leased by the Government for a period of 30 days or longer from a commercial firm.

(4) *Government-contract rental automobile.* A "Government-contract rental automobile" is an automobile obtained from a commercial firm under the provisions of an appropriate General Services Administration (GSA) Federal Supply Schedule contract.

(5) *Special conveyance.* "Special conveyance" is any method of transportation other than common carrier, Government-furnished or privately owned, which requires specific authorization or approval for the use thereof. Such transportation generally includes conveyances obtained through commercial rental means for less than 30 days.

(6) *Employee.* As used in this chapter, "employee" means an individual employed in or under an agency, including an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed (WAE) basis and an individual serving without pay or at $1 a year.

(7) *Government.* "Government" means the Government of the United States and the government of the District of Columbia.

(8) *Agency.* "Agency" means an executive agency; a military department; an office, agency, or other establishment in the legislative branch; and the government of the District of Columbia, but does not include a Government-controlled corporation, a Member of Congress, or an office or committee of either House of Congress or of the two Houses.

2. Paragraph 1-2.2e is added and paragraphs 1-2.2a through d are republished without change, as follows:

1-2.2. *Methods of transportation.*

a. Authorized methods. Methods of transportation authorized for official travel include railroads, airlines, helicopter service, ships, buses, streetcars, subways, and taxicabs; Government-furnished and contract rental automobiles and airplanes; privately owned and rented automobiles and airplanes; and any other necessary means of conveyance.

b. *Selecting method of transportation to be used.* Travel on official business shall be by the method of transportation which will result in the greatest advantage to the Government, cost and other factors considered. In selecting a particular method of transportation to be used, consideration shall be given to energy conservation and to the total cost to the Government, including costs of per diem, overtime, lost work time, and actual transportation costs. Additional factors to be considered are the total distance of travel, the number of points visited, and the number of travelers. 5 U.S.C. 5733 requires that, "The travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel."

c. *Presumptions as to most advantageous method of transportation.*

(1) *Common carrier.* Since travel by common carrier (air, rail, or bus) will generally result in the most efficient use of energy resources and in the least costly and most expeditious performance of travel, this method shall be used whenever it is reasonably available. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would seriously interfere with the performance of official business or impose an undue hardship upon the traveler, or when the total cost by common carrier would exceed the cost by some other method of transportation. The determination that another method of transportation would be more advantageous to the Government than common carrier transportation shall not be made on the basis of personal preference or minor inconvenience to the traveler resulting from common carrier scheduling.

(2) *Government-furnished automobiles.* When it is determined that common carrier transportation is not advantageous to the Government and that an automobile is required for official travel, a Government-furnished automobile shall be used whenever it is reasonably available.

(3) *Privately owned conveyance.* Except as provided in 1-2.2d, the use of a privately owned conveyance shall be authorized only when such use is advantageous to the Government. A determination that the use of a privately owned conveyance would be advantageous to the Government shall be preceded by a determination that common carrier transportation or Government-furnished vehicle transportation is not available or would not be advantageous to the Government. To the maximum extent possible, these determinations and the authorization to use a privately owned conveyance shall be made before the performance of travel.

(4) *Special conveyance.* Commercially rented vehicles and other special conveyances shall be used only when it is determined that use of other methods of transportation discussed in 1-2.2c would not be more advantageous to the Government. In the selection of commercially rented vehicles, first consideration shall be given to Government-contract rental vehicles available under an appropriate GSA Federal Supply Schedule contract.

d. *Permissive use of a privately owned conveyance.* When an employee uses a privately owned conveyance as a matter of personal preference and such use is compatible with the performance of official business, although not determined to be advantageous to the Government under 1-2.2c(3), such use may be authorized or approved provided that reimbursement is limited in accordance with the provisions of 1-4.

e. *Travel by ocean vessel.* Except for travel between points served by ferries, travel by ocean vessel shall not be regarded as advantageous to the Government in the absence of sufficient justification that the advantages accruing from the use of ocean transportation offset the higher costs associated with this method of transportation; i.e., per diem, transportation, and lost worktime. Authority to authorize or approve travel by ocean vessel shall be retained at the highest administrative level consistent with agency travel management policy. The requirements of 1-3.6a for use of United States flag ships shall be observed. (See 1-3.3c for authorized vessel accommodations.)

3. Paragraph 1-2.6 is revised as follows:

1-2.6. *Use of Government-furnished vehicles.*

a. *Use limited to official purposes.* When a Government-furnished vehicle is used by an employee for official travel, its use shall be limited to official purposes (31 U.S.C. 638a) which include transportation between places where the employee's presence is required incident to official business; between such places and places of temporary lodging when public transportation is unavailable or its use is impractical; and between either of the above places and suitable eating places, drug stores, barber shops, places of worship, cleaning establishments, and similar places necessary for the sustenance, comfort, or health of the employee to foster the continued efficient performance of Government business.

b. *Government driver's identification card.* Under instructions prescribed by the U.S. Civil Service Commission, a Federal employee who must occasionally use a Government-furnished vehicle for official business while on temporary duty away from his official station need not possess a Standard Form 46, U.S. Government Motor Vehicle Operator's Identification Card, if he holds a valid State, District of Columbia, or territorial motor vehicle operator's license and presents travel orders specifically authorizing the temporary use of a Government-furnished vehicle.

c. *Vehicle not available.* If a Government-furnished vehicle is not available as a first resource, a commercially rented vehicle may be used provided such use is consistent with the provisions of 1-2.2c and the regulations and authorizations of the employee's agency.

4. Paragraph 1-3.2c is revised as follows:

1-3.2. *Rental automobiles and special conveyances.*

* * * * *

c. *Damage waiver or insurance costs.* Commercial vehicle rental contracts customarily include full insurance coverage for property damage or injury or death to third parties resulting from the rentee's use of the vehicle. Damage to the rented vehicle (collision damage), however, is often covered only above a deductible amount specified in the rental contract, the rentee being responsible for the cost of damage below that amount. In such instances, additional insurance (collision damage waiver or collision damage insurance) to relieve the rentee from liability for damage to the vehicle up to a deductible amount is available in the rental contract for an extra fee.

(1) Agencies may not pay or reimburse the employee for the cost of collision damage waiver or collision damage insurance when official travel in the rental vehicle is performed wholly within the conterminous United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, or the United States territories and possessions. However, agencies are authorized to pay for

damage to the rented vehicle up to the deductible amount contained in the rental contract if the damage occurs while the vehicle is being used for official business.

(2) Agencies may pay or reimburse the employee for the cost of additional insurance (collision damage waiver or collision damage insurance) when the vehicle is rented or leased for official travel in foreign areas (areas other than those listed in (1), above).

(3) The cost of personal accident insurance is a personal expense and is not reimbursable.

* * * * *

5. Paragraph 1-3.6 is revised as follows:

1-3.6 *Use of United States flag carriers.*

a. *Travel by United States flag ships.* Section 901 of the Merchant Marine Act of 1936 (46 U.S.C. 1241(a)) provides: "Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under foreign flag: *Provided,* That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor."

b. *Use of United States flag air carriers.*

(1) *Definition.* The term "U.S. flag air carrier" as used in this regulation means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371), but excludes foreign air carriers operating under permits.

(2) *General requirements.*

(a) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (Pub. L. 93-623, January 3, 1975; 49 U.S.C. 1517) requires any executive department or other agency or instrumentality of the United States which finances transportation of persons (and their personal effects) or property by air between the United States and a place outside thereof, or between two places both of which are outside of the United States, to take such steps as may be necessary (including disallowance of payment) to ensure that only U.S. flag air carriers are used whenever service by these carriers is available.

(b) The act cited in (a), above, also requires the Comptroller General of the United States to disallow any expenditures from appropriated funds for payment of travel on foreign flag air carriers in the absence of satisfactory proof of the necessity therefor.

(c) Employees shall use U.S. flag air carriers when travel is performed by commercial air transportation between the United States and a foreign country or between locations outside the United States to the extent such service is available under the guidelines set forth in 1-3.6b (3) and (4), below. This requirement also applies to other persons such as employee dependents, consultants, contractors, grantees, or other travelers whose travel is paid from funds appropriated, owned, controlled, granted, or otherwise established for the account of the United States. The requirement to use U.S. flag air carriers to the maximum extent possible shall not be influenced by factors of cost, convenience, or personal travel preference of the traveler. Excess and near excess foreign currencies will be used for paying the expenses of such travel as provided in 1-10.4.

(3) *Guidelines for determining "available" service.* The Comptroller General of the United States has issued to heads of departments, agencies, and others concerned, specific guidelines in Decision B-136942, March 12, 1976, for determining "available" U.S. flag air carrier service. Under these guidelines, a U.S. flag air carrier which can provide the commercial air transportation needed to accomplish an agency's mission is considered "available" even though:

(a) Comparable or a different kind of service by a foreign flag air carrier costs less;

(b) Service by a foreign flag air carrier can be paid in excess foreign currency (However, see 1-3.6b(4)(e), below, regarding certain programs and activities funded solely with excess foreign currency.);

(c) Service by a foreign flag air carrier is preferred by the agency or traveler needing air transportation; or

(d) Service by a foreign flag air carrier is more convenient for the agency or traveler needing air transportation.

(4) *Guidelines for determining "unavailable" service.* The decision of the Comptroller General cited in (3), above, and Comptroller General Decision B-184136, August 17, 1976, state that passenger service by a U.S. flag air carrier is considered "unavailable" when:

(a) The traveler, while en route, would have to wait 6 hours or more to transfer to a U.S. flag air carrier to proceed to the intended destination;

(b) Any flight by a U.S. flag air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, or other cause, and no other flight by a U.S. flag air carrier is available during the 6-hour period;

(c) Service by a U.S. flag air carrier, or by a combination of U.S. flag and foreign flag air carriers (if U.S. flag air carriers are "unavailable"), would take 12 or more hours longer, from the origin airport to the destination airport, to accomplish the agency's mission than would service by a foreign flag air carrier or carriers;

(d) The elapsed travel time on a scheduled flight from the origin airport to the destination airport by foreign flag air carrier(s) is 3 hours or less, and service by U.S. flag air carrier(s) would involve twice that scheduled travel time; or

(e) U.S. flag air carriers render themselves "unavailable" by declining to accept payment in foreign currencies for transportation services required by certain programs or activities of the Government which, under legislative authority, are financed solely with excess foreign currencies which may not be converted to U.S. dollars. In these instances, and notwithstanding the provisions of 1-3.6b(3)(b), foreign flag air carriers that will accept the required foreign currency may be used to the extent necessary to accomplish the mission of the particular program or activity. The statement of justification required under 1-3.6c must indicate that the transportation service needed can be paid for only in excess foreign currencies and that otherwise "available" U.S. flag air carriers declined to accept payment in the foreign currencies.

c. *Use of foreign flag air carriers.* The use of foreign flag air carriers may be authorized or approved only when U.S. flag air carrier service is "unavailable" as determined under the guidelines in b, above. Service by a U.S. flag air carrier should be used from the origin airport to the furthest practicable interchange point on a usually traveled route to the extent such service, including appropriate connections, is "available." When the origin airport or an interchange point on a usually traveled route is not serviced by a U.S. flag air carrier, a foreign flag air carrier should be used only to the nearest practicable interchange point to connect with "available" U.S. flag air carrier service. A statement executed by the traveler or agency justifying the use of a foreign flag air carrier for any part of foreign travel must be entered on or attached to the travel voucher, transportation request, or other payment document. Each request for a change in route or schedule which involves the use of a foreign flag air carrier must be accompanied by a statement justifying such use. Expenditures for transportation on a foreign flag air carrier shall be disallowed in the absence of a justification statement. The following is provided as a guide for preparing the required statement:

I certify that it (is (was) necessary for

_____
(Name of traveler or agency)

to use_____
(Name of foreign flag vessel(s) or foreign flag air carrier(s))

_____or to transport
(Flight identification number)

_____
(Personal effects) (Freight)

between _____

and _____

en route from_____

to _____

on_____for the following reasons:
(Date)

_____

_____

_____ _____
(Date) (Signature of traveler or authorizing officer)

_____
(Title or position)

_____
(Organization)

6. Paragraph 1-4.1c is republished without change as follows:

1-4.1. *Basic rules.*

* * * * *

c. *Other allowable costs.* Reimbursement for parking fees; ferry fees; bridge, road, and tunnel fees; and airplane parking, landing, and tiedown fees shall be allowed in addition to the mileage allowance unless the travel orders or other administrative determinations restrict such allowance.

7. Paragraphs 1-4.2a and 1-4.2c(2) are revised, paragraph 1-4.2a-1 is added, and paragraph 1-4.2c(1) is republished without change, as follows:

1-4.2. *When use of a privately owned conveyance is advantageous to the Government.*

a. *Authorized mileage rates.* When the use of a privately owned conveyance is authorized or approved as advantageous to the Government for the performance of official travel as provided in 1-2.2c(3), reimbursement to the traveler shall be at the mileage rates prescribed in (1) through (3), below.

(1) For use of a privately owned motorcycle: 11 cents per mile.

(2) For use of a privately owned automobile: 15½ cents per mile.

(3) For use of a privately owned airplane: 24 cents per mile.

a-1. *Mileage rates outside the conterminous United States.* Generally, the mileage rates prescribed in a, above, are applicable outside as well as within the conterminous United States. However, if an agency determines that any mileage rate which is below the statutory maximum ((1), below) is inadequate compensation for use of a privately

owned conveyance in a particular area outside the conterminous United States, the head of the agency may submit a request to GSA for the establishment of a higher mileage rate for that area. Any new mileage rate approved by GSA for a particular area shall be the uniform rate payable to all Federal employees in that area. The request to establish a higher rate shall be forwarded to the General Services Administration (FZR), Washington, D.C. 20406, and shall include the following information:

(1) A recommended mileage rate not exceeding the following statutory maximums.

(a) For use of a privately owned motorcycle: 11 cents per mile.

(b) For use of a privately owned automobile: 20 cents per mile.

(c) For use of a privately owned airplane: 24 cents per mile.

(2) An analysis of the costs per mile of operating the privately owned conveyance in the particular area involved which shall include the data listed below. Expenses which are reimbursable as separate allowances under 1-4.1c, such as parking or toll fees, shall not be included as cost factors in this analysis.

(a) Size/type of conveyance to which the cost data applies.

(b) Fixed operating costs: vehicle depreciation, insurance, taxes, and registration fees.

(c) Variable operating costs: gasoline, motor oil, maintenance, repairs, and tires.

(d) Other related cost factors affecting vehicle operating costs which are peculiar to the area involved.

* * * * *

c. *To and from common carrier terminals and office.*

(1) *Round trip when in lieu of taxicab to carrier terminals.* In lieu of the use of a taxicab under 1-2.3c, payment on a mileage basis at the rate of 15½ cents per mile and other allowable costs as set forth in 1-4.1c shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either his home or place of business to a terminal or from a terminal to either his home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under 1-2.3c for a one-way trip between the applicable points.

(2) *Round trip when in lieu of taxicab between residence and office on day of travel.* In lieu of the use of a taxicab under 1-2.3d, payment on a mileage basis at the rate of 15½ cents per mile and other allowable costs as set forth in 1-4.1c shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from his residence to his place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under 2-2.3d for a one-way trip between the points involved.

* * * * *

8. Paragraphs 1-4 b through d, 1-7.1a, 1-7.2a, 1-7.3c, and 1-8.1 are republished without change, as follows:

1-4.4.

When use of a privately owned conveyance is in lieu of a Government-furnished automobile.

* * * * *

b. *Reimbursement based on Government costs.* Based upon average rental rates which agencies pay for GSA motor pool automobiles and the administrative cost to the user agency, it has been determined that the average mileage cost for use of a Government-furnished automobile for travel in the conterminous United States is 11 cents. Therefore, the mileage rate for authorized use of a privately owned conveyance when use of a Government-furnished automobile would be most advantageous to the Government shall be 11 cents. Exceptions to the above limitation may be authorized if any agency determines that, because of unusual circumstances, the cost of providing a Government-furnished automobile would be higher than 11 cents. In such instances the agency may allow reimbursement at such higher rate within the statutory maximum that will most nearly equal the cost of providing a Government-furnished automobile in those circumstances. In addition to mileage for the distance allowed under 1-4.1b, the employee may be reimubrsed for expenses authorized under 1-4.1c which would have been incurrend if a Government-furnished vehicle had been used.

c. *Partial reimbursement when Government automobile is available.* When an employee who is committed to using a Government-furnished automobile, or who because of the availability of Government-furnished automobiles, would not ordinarily be authorized to use a privately owned conveyance in lieu of a Government-furnished automobile nevertheless requests use of a privately owned conveyance, reimbursement may be authorized or approved. The rate of reimbursement shall be 6 cents per mile, which is the approximate cost of operating a Government-furnished automobile, fixed costs excluded.

d. *Reimbursement claims.* When claiming mileage at the 11-cent rate, the employee shall state on his voucher that he had not made a commitment to use a Government-furnished automobile and that reimbursement for use of a privately owned automobile was not limited under 1-4.4c.

1-7.1. *Coverage.*

a. *Travel for which per diem shall be paid.* Per diem allowances under 1-7 shall be paid for official travel except when it is determined that reimbursement should be on the basis of actual subsistence expenses as provided in 1-8.

* * * * *

1-7.2. *Maximum locality rates.*

A per diem allowance in lieu of actual subsistence expenses for travel on official business shall be authorized or approved within the following maximum rates:

a. *Conterminous United States.* Reimbursement for official travel within the limits of the conterminous United States shall be a daily rate not in excess of $35 except when actual subsistence expense travel is authorized or approved due to the unusual circumstances of the travel assignment or for travel to a designated high rate geographical area as provided in 1-8.1.

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1-7.3. *Agency responsibility for authorizing individual rates.*

* * * * *

c. *When lodgings are required.*

(1) For travel in the conterminous United States when lodging away from the official duty station is required, the per diem rate shall be established on the basis of the average amount the traveler pays for lodging, plus an allowance of $16 for meals and miscellaneous subsistence expenses. Calculation shall be as follows:

(a) To determine the average cost of lodging, divide the total amount paid for lodgings during the period covered by the voucher by the number of nights for which lodgings were or would have been required while away from the official station. Exclude from this computation the night of the employee's return to his residence or official station.

(b) To the average cost of lodging add the allowance for meals and miscellaneous expenses. The resulting amount rounded to the next whole dollar, subject to the maximum prescribed in 1-7.2a, is the rate to be applied to the traveler's reimbursement voucher.

(2) No minimum allowance is authorized for lodging since those allowances are based on actual lodging costs. Receipts for lodging costs may be required at the discretion of each agency; however, employees are required to certify on their vouchers that per diem claimed is based on the average cost for lodging while on official travel within the conterminous United States during the period covered by the voucher.

(3) An agency may determine that the lodging-plus method as prescribed herein is not appropriate in circumstances such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established and reductions made in accordance with this part, provided the exception from the lodging-plus method is authorized in writing by an appropriate official of the agency involved.

* * * * *

1-8.1. *Authorization or approval.*

a. *General.* Authority for reimbursement of actual and necessary subsistence expenses incurred during official travel is normally contingent upon the entitlement to per diem (see 1-7) and the determination that the authorized maximum per diem allowance would be inadequate to cover the actual and necessary expenses of the traveler. A traveler may be reimbursed for the actual and necessary expenses of the official travel when the maximum per diem allowance otherwise allowable is determined to be inadequate due to the unusual circumstances of the travel assignment, or for travel to high rate geographical areas. Heads of those agencies defined in 5 U.S.C. 5701, or their designees (see 1-8.3), shall authorize or approve reimbursement for the actual and necessary subsistence expenses of a traveler incurred during official travel in accordance with the provisions of this part.

b. *Travel to high rate geographical areas.* Actual subsistence expense reimbursement shall normally be authorized or approved whenever temporary duty travel is performed to or in a location designated as a high rate geographical area (see 1-8.6), except when the high rate geographical area is only an enroute or intermediate stopover point at which no official duty is performed. Agencies may, however, authorize other appropriate and necessary reimbursement as follows:

(1) A per diem allowance under 1-7.3 if the factors cited in 1-7.3a would reduce the travel expenses of an employee provided the agency official designated under 1-8.3a(1) determines the existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate; or

(2) Actual subsistence expense reimbursement under paragraph c, below, and 1-8.2a(2) if the travel to a high rate geographical area also involves unusual circumstances of the travel assignment.

c. *Unusual circumstances of the travel assignment.* Actual subsistence expense reimbursement may be authorized or approved for specific travel assignments within and

outside the conterminous United States when it is determined that maximum per diem allowance (see 1–7.2) would be inadequate due to the unusual circumstances of the travel assignment.

(1) The actual subsistence expense basis of reimbursement shall not be authorized or approved in instances in which the actual and necessary subsistence expenses exceed the maximum per diem allowable only by a small amount. The actual subsistence expense basis may appropriately be authorized or approved for travel assignments which otherwise meet conditions prescribed herein and by the head of the agency if, due to unusual circumstances:

(a) The actual and necessary subsistence expenses exceed the maximum per diem allowance (see 1–7.2) by 10 percent or more; or

(b) The traveler has no alternative but to incur hotel costs which absorb all or nearly all of the maximum per diem allowance (see 1–7.2), since hotel accommodations constitute the major portion of necessary subsistence expenses.

(2) Notwithstanding the criteria outlined above, actual subsistence expense reimbursement shall not be authorized or approved solely on the basis of inflated lodging and/or meal costs since inflated costs are common to all travelers; some unusual circumstances of the travel assignment must be involved to cause the lodging and/or meal costs to be higher than those which normally would be incurred at a particular location (42 Comp. Gen 440).

(3) Travel which involves unusual circumstances may include, but is not limited to, the following situations:

(a) The traveler attends a meeting, conference, or training session away from his official duty station where lodging and/or meals must be procured at a prearranged place (such as the hotel where the meeting, conference, or training session is being held) and the lodging costs incurred because of such prearranged accommodations, absorb all or practically all of the maximum per diem allowance;

(b) The traveler, by reason of the assignment, necessarily incurs unusually high expenses in the conduct of official business such as for superior or extraordinary accommodations including a suite or other quarters for which the charge is well above that which he would normally have to pay for accommodations; or

(c) The traveler necessarily incurs unusually high expenses incident to his assignment to accompany another traveler in a situation as described above.

d. *Maximum to be stated in travel authorization.* The amount per calendar day authorized by the agency or as prescribed herein for high rate geographical areas shall be stated in the travel authorization for a specific travel assignment.

e. *Conditions warranting approval.* If travel is performed without prior authorization or is authorized on a per diem basis and otherwise conforms to the provisions of this part, the actual and necessary subsistence expenses incurred may be approved within the authorized maximum rates as stated herein.

9. Paragraph 1–8.2c (1) and (3) are revised, paragraphs 1–8.2 a and b and the remainder of c are republished without change, and figure 1–8.2c is deleted, as follows:

1–8.2 *Authorized reimbursement.*

a. *Maximum daily reimbursement.* When the actual subsistence expenses incurred during any one day are less than the daily rate authorized, the traveler shall be reimbursed only for the lesser amount. The daily rate shall not be prorated for fractions of a day; however, expenses incurred and claimed for a fraction of a day shall be reviewed and allowed only to the extent determined to be reasonable by the agency concerned. The maximum amount of reimbursement for actual subsistence expense travel which may be authorized or approved for each calendar day or fraction thereof is limited as follows:

(1) For travel within the conterminous United States to designated high rate geographical areas, under the general provisions of 1–8.1b, the maximum authorized rates have been set administratively as provided in 1–8.6. These are uniform maximum actual subsistence expense rates and are not subject to change by the agencies concerned, except as provided in 1–8.1b (1) and (2).

(2) For travel within the conterminous United States involving unusual circumstances, the statutory maximum daily rate is $50. Agencies shall determine appropriate and necessary daily maximum rates not to exceed this amount.

(3) For travel outside the conterminous United States involving unusual circumstances, the statutory maximum daily rate is $21 per day plus the maximum per diem allowance officially established for the overseas locality in which the travel is performed. (See 1–7.2.) Agencies shall determine appropriate and necessary daily maximum rates not to exceed this limitation.

b. *Allowable expenses.* Actual subsistence expense reimbursement shall be allowed for the same type of expenses normally covered by the per diem allowance under the provisions of 1–7.1b.

c. *Special rules for mixed travel (per diem and actual subsistence expense).* Travel may be authorized or approved on both a per diem basis and an actual subsistence expense basis during a single trip when travel is performed in several locations including high rate geographical areas; however, only one method of reimbursement (per diem or actual subsistence expense) shall be authorized within the same day.

(1) *Rate and method of reimbursement determined by location of temporary duty assignment.* In instances of mixed travel involving both per diem and actual subsistence expense, or several high rate geographical areas, the method of reimbursement and authorized maximum rate for a calendar day (beginning at 12:01 a.m.) shall be the method and rate applicable for the temporary duty point where the traveler is located at the end of the day. The location of lodgings does not affect this determination. For example, when a traveler performs travel in a per diem area for part of a day and completes that day's travel in a high rate geographical area where he performs official duty (either that day or the following workday) and obtains lodging, the traveler shall be reimbursed under the actual subsistence expense method for the entire day not to exceed the maximum rate prescribed for the high rate geographical area.

(2) *Reimbursement for day of return.* The method of reimbursement for the day of return to home or official station (where lodgings are not involved) shall be the same method of reimbursement authorized for the first day of travel. For example, if a traveler is authorized actual subsistence expense reimbursement for the first day of travel, reimbursement for the day of return to home or official station shall also be on an actual subsistence expense basis; if per diem is authorized for the first day of travel, per diem shall also be authorized for the day of return to home or official station.

(3) *Reimbursement computation.* A traveler's claim for reimbursement may include several different rates depending upon the location(s) in which travel is performed.

10. Paragraphs 1–8.3 and 1–8.6 are republished without change, as follows:

1–8.3. *Agency responsibilities, review, and administrative controls.*

a. *Delegation of authority.* Heads of agencies may delegate, with provisions for limited redelegation, authority to authorize or approve travel under 1–8.1 as follows:

(1) The delegation or redelegation of authority to authorize or approve travel on an actual subsistence expense basis due to unusual circumstances of the travel assignment or to authorize a per diem allowance under the provisions of 1–8.1b(1) shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances involved in the travel assignment.

(2) Travel to designated high rate geographical areas is normally on an actual subsistence expense basis. Accordingly, the delegation or redelegation of authority to authorize or approve this type of travel should be at a lower administrative level than that stated in (1), above.

b. *Review and administrative controls.* Heads of agencies shall establish necessary administrative arrangements for an appropriate review of the justification for travel on the actual subsistence expense basis and of the expenses claimed by a traveler to determine whether they are allowable subsistence expenses and were necessarily incurred in connection with the specific travel assignment. Agencies shall ensure that travel on an actual subsistence expense basis is properly administered and shall take necessary action to prevent abuses.

1–8.6. *Designated high rate geographical areas.*

Pursuant to the provisions of 1–8.1b and 1–8.2a(1), for temporary duty travel to or within the cities designated as high rate geographical areas below, a traveler automatically shall be placed in an actual subsistence expense status and shall be reimbursed for the actual and necessary subsistence expenses incurred not to exceed the maximum rate prescribed for the particular geographical area involved.

Designated high rate geographical areas:	*Prescribed maximum daily rates*
Boston, Mass. (all locations within the corporate limits of Boston and Cambridge, Mass.	$49
Chicago, Ill. (all locations within the corporate limits thereof)	43
Los Angeles, Calif. (all locations within the outer boundaries of the corporate limits of the city of Los Angeles, including those areas surrounded by the city of Los Angeles and the Pacific coastline)	40
Newark, N.J. (all locations within the corporate limits thereof)	42
New York, N.Y. (all locations within the boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island)	50
Philadelphia, Pa. (all locations within the city of Philadelphia)	46
San Francisco, Calif. (all locations within the corporate limits of San Francisco and Oakland, Calif.	41
Washington, D.C. (all locations within the corporate limits of Washington, D.C.; the cities of Alexandria, Falls Church, and Fairfax and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland)	50

11. Paragraph 1–9.1b–1 is added and paragraph 1–9.1c is amended, as follows:

1–9.1 *Expenses allowable.*

* * * * *

b–1. *Traveler's checks, money orders, or certified checks.* Reimbursement for cost of traveler's checks, money orders, or certified checks purchased in connection with official travel may be allowed. The amount of the checks or money orders may not exceed the amount of funds necessary to cover the estimated reimbursable expenses.

c. *Fees relating to travel outside the conterminous United States.* Reimbursement for the following items of expense may be authorized or approved:

* * * * *

(3) *Trip insurance.* Cost of trip insurance purchased by employees for use of a Government-furnished or privately owned vehicle during official business for specific or individual trips into a foreign country. Trip insurance covers potential liability for property damage or personal injury or death to third parties. Reimbursement is limited to instances in which the purchase of such insurance is required by foreign statute or is a practical necessity due to the legal procedures of a foreign country which, in the event of an accident, could result in detainment of the driver and impoundment of the vehicle. The amount of reimbursement is limited to the cost of the minimum amount of insurance required for the use of a foreign country's roads or the minimum amount required to be purchased by industrial custom.

* * * * *

12. Paragraph 1–10.2 is revised as follows:

1–10.2. *Procurement of common carrier transportation.*

a. *U.S. Government transportation requests.* All passenger transportation services by common carrier must be procured through the use of Standard Form 1169, U.S. Government Transportation Request (GTR), unless otherwise specifically provided herein and in 41 CFR 101–41.203.

(1) *Regulations governing use.* The GTR and procedures for its use are prescribed by the Administrator of General Services in 41 CFR 101–41.

(2) *Use of the GTR.* The GTR shall be issued and used only for officially authorized passenger transportation by common carrier or for authorized passenger transportation services or accommodations furnished by common carrier; i.e., air, bus, rail, or vessel. The GTR shall not be issued and used in the following instances:

(a) For personal transportation services or privileges which increase or exceed the cost of those authorized. When an indirect route or accommodations superior to those authorized are requested or used by the traveler for personal reasons, the additional cost, including the applicable share of the Federal transportation tax, shall be at personal expense and paid to the carrier;

(b) For individually procured taxicab, airport limousine, intracity transit, rental automobiles, or other for-hire automobile services;

(c) For payment of toll road or toll bridge charges; or

(d) For passenger transportation services costing $10 or less, excluding Federal transportation tax, or excess baggage services costing $15 or less for each leg of a trip, unless special circumstances justify use of a GTR.

(3) *Lost or stolen GTR.* When a GTR in the possession of a traveler or other accountable person is lost or stolen, an immediate report shall be made to the administrative office in the manner prescribed by the agency concerned. If the lost or stolen GTR shows the carrier, service desired, and point of origin, the named carrier and other local initial carriers shall be promptly notified. A GTR which is recovered subsequent to having been reported lost shall not be used but shall be sent to the administrative office. A traveler may be held liable for any expenditure by the Government caused through negligence on his part in safeguarding GTR's or tickets received in exchange for a GTR.

b. *Cash payments for transportation.*

(1) Travelers shall use cash to procure all passenger transportation services costing $10 or less, excluding Federal transportation tax, and to pay excess baggage charges costing $15 or less for each leg of a trip, unless special circumstances justify the use of a GTR.

(2) Agencies may, by appropriate regulations, require a traveler to use cash to procure passenger transportation services within the United States (50 States and the District of Columbia) when the cost is over $10 but does not exceed $100, excluding Federal transportation tax, for each trip as authorized on the official travel authorization. Cash payment of official transportation expenses, without regard to the $100 limitation, is authorized when employees secure group or excursion fares available through travel agents (1–3.4b(2)); travel agents may not otherwise be used under these cash payment provisions.

(3) Except as noted in (2), above, a GTR must be used to procure passenger transportation services costing in excess of $100, excluding Federal transportation tax, unless otherwise exempted in writing as provided in 41 CFR 101–41.203–2.

(4) Receipts, passenger coupons, or other appropriate evidence shall be required to support claims for reimbursement of cash payments for passenger transportation services in all cases except for use of local transit systems. (See 1–11.5c(3) for voucher requirements.)

13. Paragraph 1–10.3c(3) is revised as follows:

1–10.3. *Advance of funds.*

* * * * *

c. * * *

(3) *Other means of recovery.* Outstanding advances which have not been recovered by deductions from reimbursement vouchers or voluntary refunds by the traveler shall be recovered promptly by a setoff of salary due or retirement credit or otherwise from the person to whom it was advanced, or his estate, by deduction from any amount due from the United States, or by any other legal method of recovery that may be necessary. Salary or other amounts due shall be considered before the retirement credit. In view of these protections, which are specifically included in the law, travelers shall not be required to furnish bonds in order to obtain travel advances (Pub. L. 92–310, June 6, 1972; 31 U.S.C. 1201(a)).

* * * * *

14. Paragraph 1–11.3c is amended and paragraph 1–11.3c(18) is added, as follows:

1–11.3. *Travel vouchers and attachments.*

* * * * *

c. *Receipts required.* Receipts are required for allowable cash expenditures in amounts in excess of $15, plus any applicable tax. When receipts are not available, the expenditures shall be explained on the voucher. Receipts are required for the following expenditures regardless of amount:

* * * * *

(18) *Cash payments for passenger transportation services.* (See 1–10.2b(4).)

* * * * *

15. Paragraph 1–11.5c(3) is revised as follows:

1–11.5. *Preparation of voucher.*

* * * * *

c. * * *

(3) *Cash payment for common carrier fare.* A traveler using cash to purchase any authorized passenger transportation service for official travel as provided in 1–10.2b shall account for those expenses on an authorized travel voucher form, furnishing pertinent receipts, passenger coupons, or other appropriate evidence to support the claim for reimbursement. Receipts are not required for local transit system fares. A traveler who has procured passenger transportation services with cash (whether using personal funds or a travel advance) shall assign to the Government his right to recover any excess payment involving a carrier's use of improper rates by including the following statement on the travel voucher: "I hereby assign to the United States any rights I may have against other parties in connection with any reimbursable carrier transportation charges described herein."

* * * * *

16. Paragraph 1–11.6b(11) is revised, as follows:

1–11.6. *Administrative approvals.*

* * * * *

b. * * *

(11) *Use of foreign flag air carriers (1–3.6c).*

* * * * *

17. Paragraphs 2–1.4 c and d are revised as follows:

2–1.4. *Definitions.*

* * * * *

c. *Agency.* For purposes of this chapter 2, "agency" means:

(1) An "Executive agency" as defined in 5 U.S.C. 105 (an executive department, an independent establishement, the General Accounting Office, or a wholly owned Government corporation as defined in section 101 of the Government Corporation Control Act, as amended, but excluding a Government controlled corporation);

(2) A military department;

(3) A court of the United States;

(4) The Administrative Office of the United States Courts;

(5) The Federal Judicial Center;

(6) The Library of Congress;

(7) The United States Botanic Garden;

(8) The Government Printing Office; and

(9) The District of Columbia.

d. *Immediate family.*

(1) Any of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel:

(a) Spouse;

(b) Children of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support (The term "children" shall include natural offspring; stepchildren; adopted children; and grandchildren, legal minor wards, or other dependent children who are under legal guardianship of the employee or employee's spouse.);

(c) Dependent parents (including step- and legally adoptive parents) of the employee or employee's spouse (See (2), below, for dependent status criteria.); and

(d) Dependent brothers and sisters (including step- and legally adoptive brothers and sisters) of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (See (2), below, for dependent status criteria.)

(2) Generally, the individuals named in 2-1.4d(1) (c) and (d) shall be considered dependents of the employee if they receive at least 51 percent of their support from the employee or employee's spouse; however, this percentage of support criteria shall not be the decisive factor in all cases: These individuals may also be considered dependents for the purposes of this chapter if they are members of the employee's household and, in addition to their own income, receive support (less than 51 percent) from the employee or employee's spouse without which they would be unable to maintain a reasonable standard of living.

* * * * *

18. Paragraph 2-1.5f(1)(c) is revised and 2-1.5g(5-a) is added, as follows:

2-1.5. *Eligibility and conditions.*

* * * * *

f. * * *

(1) * * *

(c) *Special statutory provisions.* Appointments under any law in effect on August 25, 1960 (effective date of Pub. L. 86-587 pertaining to manpower shortage category appointees), which authorized payment of travel and transportation expenses of appointees by the Government, are not affected by the provisions herein. The limitations of the act involved and the regulations issued thereunder, but not these regulations, are applicable to such cases.

* * * * *

g. * * *

(5-a) *Return of former spouse and dependents.* The provisions of (5), above, are also applicable to the spouse and dependents of an employee who have traveled to the employee's overseas post of duty as dependents (as provided in 2-1.4d) at Government expense, even if, because of divorce or annulment, such individuals will have ceased to be dependents as of the date the employee becomes eligible for return travel. Travel of such former dependents is authorized by the employee's next entitlement to return travel but not beyond the end of the employee's current agreed tour of duty.

* * * * *

19. Paragraph 2-1.6b is revised as follows:

2-1.6. *Use of funds.*

* * * * *

b. *Funding of transfers between agencies.* In the case of transfer from one agency to another, allowable expenses shall be paid from the funds of the agency to which the employee is transferred. However, in transfers between agencies for reasons of reduction-in-force or transfer of functions, expenses allowable under these regulations (excluding nontemporary storage when assigned to an isolated permanent duty station within the conterminous United States and also excluding transfer to, from, or between foreign countries) may be paid in whole or in part by the agency from which the employee is transferred or by the agency to which he is transferred as may be agreed upon by the heads of the agencies concerned.

20. Paragraph 2-2.3d(2) is revised and paragraphs 2-2.3 b and c are republished without change, as follows:

2-2.3. *For use of a privately owned automobile in connection with permanent change of station.*

* * * * *

b. *Mileage rates prescribed.* Payment of mileage allowances when authorized or approved in connection with the transfer shall be allowed as follows:

Occupants of automobile:	*Mileage rate (cents)*
Employee only; or 1 member of immediate family	8
Employee and 1 member; or 2 members of immediate family	10
Employee and 2 members; or 3 members of immediate family	12
Employee and 3 or more members; or 4 or more members of immediate family	15

c. *Mileage rates in special circumstances.* Heads of agencies may prescribe that travel orders or other administrative determinations specify higher mileage rates not in excess of 15 cents for individual transfers of employees or transfers of groups of employees when:

* * * * *

d. * * *

(2) *Maximum allowance based on total distance.* Per diem allowances should be paid on the basis of actual time used to complete the trip, but the allowances may not exceed an amount computed on the basis of a minimum driving distance per day which is prescribed as reasonable by the authorizing official and is not less than an average of 300 miles per calendar day. An exception to the daily minimum driving distance may be made by the agency concerned when travel between the old and new official stations is delayed for reasons clearly beyond the control of the travelers such as acts of God, restrictions by Governmental authorities, or other reasons acceptable to the agency; e.g., a physically handicapped employee. In such cases, per diem may be allowed for the period of the delay or for a shorter period as determined by the agency. The traveler must provide a statement on his reimbursement voucher fully explaining the circumstances which necessitated the en route travel delay. The exception to the daily minimum driving distance requires the approval of the agency's authorizing official.

* * * * *

21. Paragraph 2-4.2 is revised as follows:

2-4.2. *Duration of trip.*

The round trip should be allowed for a reasonable period of time considering distance between the old and new official stations, mode of transportation to be used, and the housing situation at the new official station location. In no instance shall the period of the round trip at Government expense be allowed in excess of 6 calendar days, including travel time. In authorizing or allowing a particular mode of transportation, consideration shall be given to providing minimum time en route and maximum time at the new official station locality. Accordingly, if the use of a privately owned automobile is permitted, such use is deemed to be advantageous to the Government and the mileage allowance shall be as provided in 2-2.3 b and c. Reasonable expenses for local transportation at the location of the new official station shall be allowed. Agencies may authorize local transportation by common carrier, local transit systems, GSA contract rental or other commercially rented automobiles, or privately owned automobiles; however, the mode of local transportation must be consistent with the mode of transportation authorized for travel to and from the new official station. Expenses for the use of taxis shall be limited to transportation between depots, airports, or other carrier terminals, and place of lodging.

22. Paragraph 2-6.2g is revised as follows:

2-6.2. *Reimbursable and nonreimbursable expenses.*

* * * * *

g. *Overall limitations.* The aggregate amount of expenses which may be reimbursed is as follows:

(1) In connection with the sale of the residence at the old official station, reimbursement shall not exceed 10 percent of the actual sale price or $8,000, whichever is the lesser amount.

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price or $4,000, whichever is the lesser amount.

* * * * *

23. Paragraph 2-8.2a is revised and paragraph 2-8.2a-1 is added, as follows:

2-8.2. *General limitations.*

a. *Maximum weight allowance.* The maximum weight of household goods which may be transported or stored in connection therewith is limited to 11,000 pounds net weight for employees with immediate families and 7,500 pounds net weight for employees without immediate families. However, if in an individual case an employee without immediate family possesses household goods exceeding the 7,500 pound limit, the limit may be extended up to 11,000 pounds net weight, provided that: (1) The employee acquired all or a substantial portion of the property because he had been the head of or a member of a larger household (as when the employee's spouse has died), and (2) it is determined under regulations prescribed by the agency head that hardship would result from application of the 7,500 pound limit. The aggregate total of the weight of household goods stored under 2-9.1 and 2-9.2 plus the weight of household goods transported under this Part 8 shall not exceed the above maximum weight allowances.

a-1. *Professional books, papers, and equipment.*

(1) For purposes of this Part 8, the term "professional books, papers, and equipment" includes those professional or specialized items and other materials which are personally owned by the employee for use in the performance of official duties. The term does not include sports equipment or office, household, or shop fixtures and furniture; e.g., bookcases, file cabinets, desks, and racks of any kind even though used in connection with the professional books, papers, and equipment.

(2) There is no statutory authority to transport personally owned professional books, papers, and equipment in addition to the maximum weight allowance (2-8.2a) established by law for transportation of an employee's household goods and personal effects. However, there may be instances in which the weight of the professional books, papers, and equipment would cause an employee's household goods shipment to be in excess of the maximum weight allowance. In such instances, the personally owned professional books, papers, and equipment may be transported to the new permanent duty station as an administrative expense of an agency (not chargeable to travel and transportation appropriations). Shipment of these items as an administrative expense

would be in lieu of shipment as an allowance of the employee. (Comp. Gen. Decision B-171677, May 13, 1971.)

(3) Authority to transport professional books, papers, and equipment as an administrative expense shall be subject to agency policy and discretion within the following guidelines:

(a) The employee shall furnish an itemized inventory of professional books, papers, and equipment for review by an appropriate authorizing official at the new permanent duty station. In addition, the employee shall furnish appropriate evidence (as determined by the agency concerned) that transporting the itemized materials as part of the employee's household goods would result in an excess of the employee's maximum weight allowance.

(b) The authorizing official at the new permanent duty station shall review and certify that the professional books, papers, and equipment as itemized are necessary in the proper performance of the employee's duties at the new duty station and that if these items were not transported to the new duty station, the same or similar items would have to be obtained at Government expense for the employee's use at the new duty station.

(c) When professional books, papers, and equipment are certified as provided in (b), above, and shipped for the employee as an administrative expense of an agency, shipment shall be by the actual expense method; the commuted rate method shall not be used. When shipped in the same lot with the employee's household goods and other personal effects under the actual expense method, the professional books, papers, and equipment shall be packed and weighed separately; the weight thereof and the administrative appropriation chargeable shall be stated as separate items on the Government bill of lading. In unusual instances in which it is impractical or impossible to obtain separate weights, a constructive weight of 7 pounds per cubic foot may be used.

* * * * *

[FR Doc.77-13460 Filed 5-9-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 386]

ASSIGNMENT OF HEARINGS

MAY 5, 1977.

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.

MC 126600 (Sub-14), Ehrsam Transport, Inc., now being assigned July 6, 1977 (1 day) at Kansas City, Missouri, in a hearing room to be later designated.

MC 124796 (Sub-117), Continental Contract Carrier Corp., now being assigned July 7, 1977 (2 days) at Kansas City, Missouri, in a hearing room to be later designated.

MC 133095 (Sub-131), Texas Continental Express, Inc., now being assigned July 11, 1977 (1 day) at Kansas City, Missouri, in a hearing room to be later designated.

MC 95540 (Sub-966), Watkins Motor Lines, Inc., now being assigned July 12, 1977 (2 days) at Kansas City, Missouri, in a hearing room to be later designated.

MC 115793 (Sub-22), Caldwell Freight Lines, Inc., now being assigned July 14, 1977 (2 days) at Kansas City, Missouri, in a hearing room to be later designated.

MC 124796 (Sub-No. 145), Continental Contract Carrier Corp., now being assigned for hearing on June 14, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 141033 (Sub-No. 9), Continental Contract Carrier Corp., now being assigned June 20, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-13342 Filed 5-9-77;8:45 am]

[Notice No. 58]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 5, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1824 (Sub-No. 74TA), filed April 14, 1977. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Boulevard, Preston, Md. 21655. Applicant's representative: T. E. Robertson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the plantsite and storage facilities owned and/or utilized by J. H. Filbert, Inc., located in Baltimore City, Anne Arundel, Baltimore, Howard and Prince Georges Counties, Md. to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Pennsylvania, Vermont, Virginia, West Virginia, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. H. Filbert, Inc., 3701 Southwestern Blvd., Baltimore, Md. 21229. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Bldg., Baltimore, Md. 21201.

No. MC 16903 (Sub-No. 49TA), filed April 15, 1977. Applicant: MOON FREIGHT LINES, INC., 120 West Grimes Lane, P.O. Box 1275, Bloomington, Ind. 47401. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Urethane foam products, component parts and accessories* moving in the same vehicle, from Charleston, Ill., to points in West Virginia, Pennsylvania, North Carolina, Virginia, Maryland, Delaware, New York, Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, Tennessee, Mississippi, Alabama, Georgia, South Carolina, and the District of Columbia, restricted to the transportation originating at the plantsite of The Celotex Corporation, Charleston, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Celotex Corporation, 1500 North Dale Marby, Tampa, Fla. 33607. Send protests to: William S. Ennis, District Supervisor, Interstate Commerce Commission, Federal Bldg. and U.S. Courthouse, 46 East Ohio St., Rm. 469, Indianapolis, Ind. 46204.

No. MC 32779 (Sub-No. 12TA), filed April 19, 1977. Applicant: SILVER EAGLE COMPANY, 2532 S.E. Hawthorne Blvd., Portland, Oreg. 97214. Applicant's representative: Robert R. Hollis, 520 S.W. Yamhill St., Suite 400, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring the use of special equipment), (1) between Spokane, Wash., and Seattle, Wash., and their respective commercial zones, serving all intermediate and off route points in Lincoln, Adams, Grant and Kittitas Counties, Wash.: From Spokane over Interstate Highway 90 to Seattle and return over the same route; (2) Between Spo-

kane, Wash., and Portland, Oreg. and their respective commercial zones, serving all intermediate and off route points in Lincoln, Adams, Franklin, Walla Walla, Benton and Klickitat Counties, Wash.: From Spokane over Interstate Highway 90 to Junction U.S. Highway 395, thence over U.S. Highway 395 to Junction U.S. Highway 730, thence over U.S. Highway 730 to Junction Interstate Highway 80N, thence over Interstate Highway 80N to Portland and return over the same route; and (3) between Pasco, Wash., and Wentachee, Wash., and their respective commercial zones, serving all intermediate and off route points in Benton, Yakima and Kittitas Counties, Wash.: From Pasco over U.S. Highway 12 to Junction U.S. Highway 97, thence over U.S. Highway 97 to Wenatche and return over the same route, for 180 days. Supporting shipper: This application is supported by 68 shippers. Names may be examined at the Interstate Commerce Commission, Washington, D.C., or at Portland field office of the Interstate Commerce Commission. Send protests to: District Supervisor, A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

No. MC 36509 (Sub-No. 26TA), filed April 6, 1977. Applicant: LOOMIS ARMORED CAR SERVICE, INC., 55 Battery Street, Seattle, Wash. 98121. Applicant's representative: George H. Hart, 1100 IBM Bldg., Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin and currency*, between Minneapolis, Minn., on the one hand, and, on the other, Superior, Wis.; and between Minneapolis, Minn. on the one hand, and, on the other, points in Barnes, Burleigh, Cass, Grand Forks, Morton, Ramsey, Richland, Stutsman, and Ward Counties, N. Dak.; and between Minneapolis, Minn., on the one hand, and, on the other, points in South Dakota, under a continuing contract or contracts with Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, Minn. 55480. Supporting shipper: Federal Reserve Bank of Minneapolis, 250 Marquette Ave., Minneapolis, Minn. 55480. Send protests to: District Supervisor Claud W. Reeves, 211 Main, Suite 500, San Francisco, Calif. 94105.

No. MC 40494 (Sub-No. 12TA), filed April 18, 1977. Applicant: HILBURN TRUCKING, INC., 19401 East 39th St., Independence, Mo. 64092. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New and used combines*, knocked down or set up, and *parts thereof*, between Independence, Mo., on the one hand, and, on the other, points in Nebraska, Kansas, Colorado, Illinois, Wisconsin, Indiana, Ohio and Michigan, for 180 days. Supporting shipper: Allis-Chalmers, P.O. Box 1099, Independence, Mo. 64051. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 94201 (Sub-No. 148TA), filed April 20, 1977. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, 1500 Cedar Grove Rd., Atlanta, Ga. 30316. Applicant's representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrapping paper, printing paper and pulpboard*, from the plantsite, warehouse and storage facilities of Union Camp Corporation, located at or near Franklin, Va. to Louisville, Ky. and points within its commercial zone and all points in Illinois, Indiana and Michigan, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Union Camp Corporation, 1600 Valley Road, Wayne, N.J. 07470.

No. MC 95540 (Sub-No. 979TA), filed April 14, 1977. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Fla. 33801. Applicant's representative: Benjy W. Fincher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery and confectionery products*, except in bulk, in vehicles equipped with mechanical refrigeration from the storage facilities utilized by M & M/Mars, located at or near Hampden Township, Cumberland County, Pa., to points in Alabama, Colorado, Florida, Georgia, Iowa, Illinois, Mississippi, Missouri, Nebraska, North Carolina, South Carolina, Tennessee, Texas, Kansas, Minnesota, Oregon, Utah, Washington, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper. M & M/Mars, Division of Mars, Inc., High Street, Hackettstown, N.J. 07840. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 96938 (Sub-No. 5TA), filed April 13, 1977. Applicant: ARKANSAS TRANSIT HOMES, INC., 8400 Mabelvale Pike, Little Rock, Ark. 72209. Applicant's representative: Harold G. Hernly, Jr., 118 N. St. Asaph St., Alexandria, Va. 22314. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, except recreational vehicles, and buildings, in sections, except prefabricated buildings, in initial movements, in truck-away service, from Jackson and Mississippi Counties, Ark. to points in Oklahoma, Texas, Louisiana, Mississippi and Tennessee, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Countryside Homes, Inc., P.O. Box 696, Newport, Ark. 72112. Richland Homes, Inc., Manila, Ark. 72442. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 107496 (Sub-No. 1075TA), filed April 19, 1977. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666 Grand Ave., Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes. transporting: *Liquid fertilizer*, in bulk, from Worthington, Minn. to points in Iowa, Nebraska, South Dakota, and North Dakota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Batcheller's Ag Service's, P.O. Box 472, Worthington, Minn. 56187. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 1076TA), filed April 19, 1977. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666 Grand Ave., Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Applicant sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, in bulk, from Springfield, Mo. to Wickliffe, Ky., for 180 days. Supporting shipper: West Vaco Corporation, 299 Park Avenue, New York, N.Y. 10017. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 1077TA), filed April 19, 1977. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666 Grand Ave., Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solutions*, in bulk, from La-Crosse, Wis. to points in Minnesota and Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hawkeye Chemical Company, P.O. Box 899, Clinton, Iowa. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 1078TA), filed April 20, 1977. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666 Grand Ave., Des Moines, Iowa 50309. Applicant's representative: E. Check (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, from Lansing, Iowa, to points in Illinois, Wisconsin, and Minnesota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Admistures Corporation, 5909 N. Rogers

Avenue, Chicago, Ill. 60646. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 109692 (Sub-No. 44TA), filed April 7, 1977. Applicant: GRAIN BELT TRANSPORTATION COMPANY, 340 North James St., Kansas City, Kans. 66118. Applicant's representative: Warren H. Sapp, 4420 Madison, Kansas City, Kans. 64111. Authority sought to operate at a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Irrigation systems and parts and accessories therefor, pipe, tubing, light poles, mast arms, brackets, bases and transmission poles, and equipment and supplies* used in the installation thereof (except commodities in bulk), from the plantsite of Valmont Industries, Inc., located at or near Valley, Nebr., to points in Kansas, Minnesota, Missouri, North Dakota, Oklahoma and South Dakota; (2) *equipment, materials and supplies* used in the manufacture of the commodities named in (1) above, from points in Kansas, Minnesota, Missouri, North Dakota, Oklahoma, and South Dakota; and (3) *used irrigation systems, and parts and accessories thereof, and new and used equipment, materials and supplies* used in the installation of used irrigation systems, restricted to traffic moving for the account of Valmont Industries, Inc., between points in Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma and South Dakota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Valmont Industries, Inc., Valley, Nebr. 68064. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 110525 (Sub-No. 1189TA), filed April 18, 1977. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E. Lancaster Avenue, P.O. Box 200, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrofluoric acid*, in bulk, in tank vehicles, from Houston, Tex., to all points in the State of Montana, for 180 days. Supporting shipper(s): Stauffer Chemical Company, Nyala Farm Road, Westport, Conn. 06880. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, Pa. 19106.

No. MC 113528 (Sub-No. 28TA), filed April 20, 1977. Applicant: MERCURY FREIGHT LINES, INC., P.O. Box 1247, 67 Midtown Park East, Mobile, Ala. 36601. Applicant's representative: Joy Stephenson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Fort Worth, Tex., to Columbus, Griffin, Vidalia and Macon, Ga., for 180 days. Supporting shipper: Dixie Beer Co., P.O. Box 308, Columbus, Ga. 30912; Macon Beer Co., 202 7th St., Macon, Ga. 31201; Jackson Distr. Co., Inc., P.O. Box 377–878 East Broadway, Griffin, Ga. 30224; Rushing Distributing Company, Inc., 407 E. Main St., Vadalia, Ga. 30474. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 1616–2121 Building, Birmingham, Ala. 35203.

No. MC 113678 (Sub-No. 666TA), filed April 14, 1977. Applicant: CURTIS, INC., 4810 Pontiac St. Commerce City (Denver), Colo. 80022. Applicant's representative: David L. Metzler, P.O. Box 16004 Stockyards Station, Denver, Colo. 80216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpets, rugs, floor coverings, and related products*, from points in Georgia, North Carolina, and South Carolina, to points in California, Idaho, Oregon, and Washington, for 180 days. Supporting shipper(s): There are approximately twenty-nine (29) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, Colo. 80202.

No. MC 113843 (Sub-No. 240TA), filed April 18, 1977. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., Boston, Mass. 02210. Applicant's representative: Lawrence T. Sheils, 316 Summer St., Boston, Mass. 02210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food stuffs*, from: Napoleon, Ohio, to points in New Jersey, New York, and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Campbell Soup Company, East Maumer Avenue, Napoleon, Ohio 43545. Send protests to: District Supervisor John B. Thomas, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, Mass. 02114.

No. MC 114632 (Sub-No. 109TA), filed April 13, 1977. Applicant: APPLE LINES, INC., 212 SW. 2d St., Madison, S. Dak. 57042. Applicant's representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Dugdale Packing Company located at or near Cozad, Nebr., to points in Colorado, Illinois, Iowa, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New York, Missouri, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin, for 180 days. Supporting shipper: Dugdale Packing Company, P.O. Box 166, Cozad, Nebr. 69130, Darold E. Mapes, Traffic Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 115162 (Sub-No. 356TA), filed April 22, 1977. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and wood products*, from points in Oxford County, Maine; Lamoille County, Vt., and Caledonia County, Vt., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, for 180 days. Supporting shipper: Vermont Weatherboard, Inc., P.O. Box 536, 15 West Church St., Hardwick, Vt. 05943. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 115311 (Sub-No. 219TA), filed April 20, 1977. Applicant: J. & M. TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, Ga. 31061. Applicant's representative: Kim C. Meyer, 1600 First Federal Bldg., Atlanta, Ga 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum and gypsum products and materials and supplies* used in the installation and distribution thereof, from Brunswick, Ga., to points in Georgia, Kentucky, and Maryland, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Georgia-Pacific Corporation, 1062 Lancaster Ave., Rosemont, Pa. 19010. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

No. MC 115322 (Sub-No. 131TA), filed April 20, 1977. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: L. W. Fincher, P.O. Box 426, Tampa, Fla. 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products, and pulpboard;* and (2) *materials and supplies* used or useful in the production of paper, paper products, and pulpboard, (1) from Plymouth, N.C., to points in Massachusetts and New York; and (2) from points in Massachusetts and New York, to Plymouth, N.C., for 180 days. Supporting shipper: Weyerhaeuser Company, P.O. Box 787, Plymouth, N.C. 27962. Send protests to: District Supervisor, G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Com-

mission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 116254 (Sub-No. 177TA), filed April 12, 1977. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium aluminate*, in bulk, in tank vehicles, from South Pittsburgh, Tenn., to Listerhill and Sheffield, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reynolds Metals Company, Sheffield, Ala. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, Ala. 35203.

No. MC 117686 (Sub-No. 170TA), filed April 21, 1977. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Blvd., P.O. Box 417, Sioux City, Iowa 51102. Applicant's representative: George L. Hirschbach (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refined sugar*, in containers, from Gramercy, La., to points in North Dakota, South Dakota, Minnesota, and Nebraska, for 180 days. Applicant has filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: O. G. Stine, Traffic Manager, Colonial Sugars Co., Borden Inc., Gramercy, La. 70052. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 118159 (Sub-No. 208TA), filed April 18, 1977. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Warren Taylor (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, from the facilities of Elm Hill Meats Co., located at or near Lexington, Ky., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Elm Hill Meats, Inc., P.O. Box 496, Lexington, Ky. 40501. Send protests to: District Supervisor Joe Green, Room 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 120257 (Sub-No. 35TA), filed April 6, 1977. Applicant: K. L. BREEDEN & SONS, INC., 401 Alamo St., Terrell, Tex. 75160. Applicant's representative: Bernard H. English, 6270 Firth Rd., Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing materials, composition shingles, rolled roofing, roofing compounds, and accessories*, from the plant-site and storage facilities of Elk Corporation located at or near Stephens, Ark., and Camden, Ark., to points in Alabama, Louisiana, Mississippi, Oklahoma, Kentucky, Tennessee, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Elk Corporation, P.O. Box 37, Stephens, Ark. 71764. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75242.

No. MC 124679 (Sub-No. 77TA), filed April 19, 1977. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South St., Salt Lake City, Utah 84119. Applicant's representative: Daniel E. England, 300 Arrow Press Sq., P.O. Box 2465, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Van Nuys and Fairfield, Calif., to Moab, Utah, for 180 days. Supporting shipper: Archer Distributing Co., Box 596, Price, Utah 84501. Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.

No. MC 126555 (Sub-No. 47TA), filed April 21, 1977. Applicant: UNIVERSAL TRANSPORT, INC., P.O. Box 3000, Rapid City, S. Dak. 57701. Applicant's representative: Barry C. Burnett (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zeolite* (natural) from points in Mineral County and Larimer County, Colo., to points in the United States (except Hawaii), for 180 days. Supporting shipper: Colorado Lien Company, P.O. Box 1961, Ft. Collins, Colo. 80522. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 126844 (Sub-No. 39TA), filed April 7, 1977. Applicant: R. D. S. TRUCKING CO., INC., 1713 North Main Road, Vineland, N.J. 08360. Applicant's representative: Terrence D. Jones, 2033 K Street NW., Suite 300, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in mechanically refrigerated vehicles, from the plant sites and storage facilities of Standard Brands Incorporated located at Franklin Park and Bensenville, Ill. to Jersey City, N.J. and Cockeysville, Md., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Standard Brands Incorporated, 625 Madison Avenue, New York, N.Y. 10022. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 East State St., Room 204, Trenton, N.J. 08608.

No. MC 127047 (Sub-No. 24TA), filed April 22, 1977. Applicant: ED RACETTE & SON, INC., 6021 North Broadway, Wichita, Kans. 67219. Applicant's representative: John E. Jandera, 641 Harrison, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Component parts* for mobile homes and recreational vehicles (except in bulk), from Hutchinson and Newton, Kans., to points in Idaho, Montana, Utah, Wyoming, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Weyerhauser, Inc., Newton Manufacturing Co., Newton, Kans. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, Kans. 67202.

No. MC 135425 (Sub-No. 25TA), filed April 18, 1977. Applicant: CYCLES LIMITED, P.O. Box 5715, Jackson, Miss. 39208. Applicant's representative: Morton E. Kiel, Suite 6193–5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by a manufacturer of abrasives and abrasive products and industrial materials and supplies and materials, supplies and equipment used in the conduct of such business (except in tank vehicles) (1) between Watervliet and Buffalo, N.Y., on the one hand, and, on the other, Brownsville and Stephenville, Tex.; and (2) from Brownsville and Stephenville, Tex., to points in California, Washington, Oregon, and Greensboro, N.C., Memphis, Tenn. and Cleveland, Ohio, under a continuing contract or contracts with Norton Company, Worcester, Mass. 01606. Supporting shipper: Norton Company, Worcester, Mass. 01606. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Rm. 212, 145 East Amite Bldg., Jackson, Miss. 39201.

No. MC 135425 (Sub-No. 26TA), filed April 18, 1977. Applicant: CYCLES LIMITED, P.O. Box 5717, Jackson, Miss. 39208. Applicant's representative: Morton E. Kiel, Suite 6193–5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by a manufacturer of abrasives and abrasive products and industrial materials and supplies, and materials, supplies and equipment used in the conduct of such business (except in tank vehicles), from Watervliet and Granville, N.Y. and Worcester, Mass., to points in California, Oregon, Washington and Nevada, under a continuing contract with Norton Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippetr: Norton Company, Worcester, Mass. 01606. Send protests to: Allan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Bldg., Jackson, Miss. 39201.

No. MC 135437 (Sub-No. 13TA), filed April 8, 1977. Applicant: TRI-NORTH-

EASTERN TRANSPORT, INC., South Main St. (P.O. Box 80), Lyndonville, N.Y. 14098. Applicant's representative: John M. Nader, Route 3, Box 4, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pelletized agricultural gypsum and limestone, in bags* (except in bulk), from Irvington, Ky., to points in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, Massachusetts, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Connecticut, Rhode Island, and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Pelletizing Corp., P.O. Box 3628, Des Moines, Iowa 50322. Send protests to: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 910 Federal Bldg., 111 West Huron St., Buffalo, N.Y. 14202.

No. MC 135874 (Sub-No. 84TA), filed April 22, 1977. Applicant: LTL PERISHABLES, INC., 550 E. 5th St. South, South St. Paul, Minn. 55075. Applicant's representative: Randy Busse (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen packaged potatoes and potato products* (except in bulk) from the facilities of Wiscold, Inc. located at or near Beaver Dam, Wis., to points in Kentucky, North Carolina, South Carolina, Virginia and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wiscold, Inc., 11400 West Burleigh St., Wauwatosa, Wis. 53222. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 136464 (Sub-No. 29TA), filed April 21, 1977. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3961, Gastonia, N.C. 28052. Applicant's representative: Eric Meierhoefer, Suite 712, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Floor coverings, and materials and supplies* used in the installation, manufacture, packaging and sale thereof, from Sparks, Nev. to points in California, Washington, and Oregon, under a continuing contract or contracts with Bigelow-Sanford, Inc., restricted to service from Sparks, Nev. and further restricted to partial pickups in conjunction with shipments originating at any other Bigelow-Sanford, Inc. facility or warehouse, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bigelow-Sanford, Inc., Box 3089, Greenville, S.C. 29602. Send protests to: District Supervisor, Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Bldg., Charlotte, N.C.

No. MC 138274 (Sub-No. 43TA), filed April 19, 1977. Applicant: SHIPPERS BEST EXPRESS, INC., 2151 North Redwood Road, Salt Lake City, Utah 84116. Applicant's representative: D. Michael Jorgensen, 300 Arrow Press Square No. 2, P.O. Box 2465, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and meat products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities in bulk), from Denver, Colo. and its commercial zone to points in California, Arizona, Oregon and Washington, for 180 days. Supporting shipper: Flavorland Industries, P.O. Box 16345, 5590 High St., Denver, Colo. 80216. Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.

No. MC 138328 (Sub-No. 36TA), filed April 13, 1977. Applicant: CLARENCE L. WERNER, doing business as WERNER ENTERPRISES, 14507 Frontier Rd., Omaha, Nebr. 68137. Applicant's representative: Donna Ehrlich (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Tires*, from Kansas City, Mo., to points in Montana, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): John T. Cowden, Vice President and General Manager, Big O Tires of Idaho, P. O. Box 5539, Boise, Idaho. 83705. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 No. 14th St., Omaha, Nebr. 68102.

No. MC 139227 (Sub-No. 2TA), filed April 20, 1977. Applicant: ROYAL TRANSPORTS, INC., P.O. Box 12628, North Kansas City, Mo. 64116. Applicant's representative: Harold D. Holwick (same address as applicant). Authority sought to operate as a *common carrier*, by motor over irregular routes, transporting: *Crude oil*, in bulk, in tank vehicles, from Richardson County, Nebr. to points in Miami and Johnson Counties, Kans., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Blue Bird Oil Company, 5540 Raytown Road, Raytown, Mo. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 139269 (Sub-No. 11TA), filed April 8, 1977. Applicant: C. P. CRASKA, INC., 10422 Cosby Manor Rd., Utica, N.Y. 13502. Applicant's representative: Murray J. S. Kirshtein, 118 Bleecker Street, Utica, N.Y. 13501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in mechanically temperature controlled vehicles, from Jersey City, N.J. and 25 miles thereof and New York, N.Y., to points in Vermont, New Hampshire and New York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately (5) statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor, Morris H. Gross, Interstate Commerce Commission, Rm. 1259 U.S. Court House & Federal Bldg., 100 So. Clinton St., Syracuse, N.Y. 13202.

No. MC 141033 (Sub-No. 22TA), filed April 13, 1977. Applicant: CONTINENTAL CONTRACT CARRIER CORP., 15045 E. Salt Lake Ave., P.O. Box 1257, City of Industry, Calif. 91749. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (not frozen, not bulk) in mixed shipments with liquid bleach, dry bleach, animal litter, cooking oils, and cleaning compounds, from (a) the plantsites or facilities of the Clorox Company located at Charlotte, N.C. to points in Kentucky, Tennessee and West Virginia; (b) from the plantsites or facilities of the Clorox Company located at Chicago, Ill. to points in Iowa, Kentucky, lower peninsula of Michigan, Missouri and Wisconsin; (c) from the plantsites or facilities of the Clorox Company located at Houston, Tex. to points in Arkansas, Georgia, Missouri, New Mexico, Oklahoma, and Tennessee; (d) from the plantsites or facilities of The Clorox Company located at Jersey City, N.J. to points in Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont; (e) from the plantsites or facilities of The Clorox Company located at Los Angeles, Calif. to points in Oregon, Utah and Washington; and (f) from the plantsites or facilities of The Clorox Company located at Oakland, Calif. to points in Colorado, Idaho, Montana, Utah and Wyoming, restricted to shipments originating at the above-named described plantsites or facilities, for 180 days. Supporting shipper: The Clorox Company, 1221 Broadway, Oakland, Calif. 94612. Send protests to: Irene Carlos, Interstate Commerce Commission, Rm. 1331 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 141774 (Sub-No. 7TA), filed April 19, 1977. Applicant: R & L TRUCKING INC., 105 Rocket Avenue, Opelika, Ala. 36801. Applicant's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic bags, plastic can liners, plastic*

containers and plastic articles; and (2) *materials and supplies* used in the manufacture of plastic bags, plastic can liners, plastic containers, and plastic articles (except commodities in bulk, in tank vehicles), (1) from the facilities utilized by Bes-Pak & Company, Inc., in Montgomery County, Ala., to points in Florida; Louisville, Ky.; St. Louis, Mo.; and Memphis, Tenn.; and (2) from Florida; and Louisville, Ky.; St. Louis, Mo.; and Memphis, Tenn. to the facilities utilized by Bes-Pak & Company, Inc. in Montgomery County, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bes-Pak & Company, Inc., P.O. Drawer 2190, Montgomery, Ala. 36103. Send protest to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 1616-2121 Bldg., Birmingham, Ala. 35203.

No. MC 142335 (Sub-No. 1TA), filed April 18, 1977. Applicant: C & E TRUCKING COMPANY, INC., 8434 Tepic Drive, Paramount, Calif. 90723. Applicant's representative: Jerry Solomon Berger, 433 North Camden Drive, Beverly Hills, Calif. 90210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Waste and scrap paper* for recycling, from points in Maricopa and Pima Counties, Ariz., to plant facilities utilized by Crown Zellerbach Corporation located at or near Antioch, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Crown Zellerbach Corporation, One Bush Street, San Francisco, Calif. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-13341 Filed 5-9-77;8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

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Consumer Product Safety Commission	1
Federal Communications Commission	2
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Indian Claims Commission	5
Postal Rate Commission	6
Securities and Exchange Commission	7
Tennessee Valley Authority	8

1

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

DATE AND TIME: May 5, 1977, 9:30 a.m.

LOCATION: 3rd Floor Hearing Room, 1111 18th St. NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

The Commission met with staff to discuss a proposed corrective action plan and settlement of a civil penalty in a substantial product hazard case involving "Mr. Coffee" coffee makers manufactured by North American Systems. In voting to hold the meeting, the Commission determined that Agency business required that the Commission meet without the normal seven days advance notice.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th St. NW., Washington, D.C. 20207. Telephone (202-634-7700).

[S-356-77 Filed 5-5-77;11:58 am]

2

AGENCY HOLDING THE MEETING: Federal Communications Commission.

TIME AND DATE: 9:30 a.m., May 11, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission Meeting.

MATTER TO BE CONSIDERED:

Fifth Notice of Inquiry relative to preparation for the 1979 World Administrative Radio Conference (Docket No. 20271).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number (202-632-7260).

Issued: May 4, 1977.

[S-362-77 Filed 5-6-77;8:45 am]

3

AGENCY HOLDING THE MEETING: Federal Election Commission.

DATE AND TIME: Thursday, May 12, 1977, at 10 a.m.

PLACE: 1325 K St. NW., Washington, D.C. 20463.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion of meeting open to the public:
- I. Future meetings.
- II. Correction and approval of minutes, April 28, 1977.
- III. Election of Commission Chairman and Vice Chairman.
- IV. Certification:
  - A. Certification of a Supplemental Payment to the Democratic National Convention Committee, Inc.
  - B. Repayment Request pursuant to 26 U.S.C. § 9038.
- V. Advisory opinions:
  - A. AO 1977-6.
  - B. AO 1977-8.
  - C. AOR 1977-2 (preliminary discussion).
- VI. FEC computer program recommendations.

Portion of meeting closed to the public:
- VII. Executive Session:
  - A. Compliance.
  - B. Personnel:

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, Telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-357-77 Filed 5-5-77;2:34 pm]

4

AGENCY HOLDING THE MEETING: Federal Power Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (Sent to F.R. of 4-27-77.)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 4, 1977, 2 p.m.

CHANGE IN THE MEETING:

Addition of G-19, Docket Nos. CP77-100, CP77-101, and CP77-102, Tenneco Atlantic Pipeline Company; Docket No. CP77-103, Tennessee Gas Pipeline Company.

Addition of G-20, Hartsville Gas Company and Creal Springs, Illinois.

Addition of G-21, Docket No. CP77-286, Transcontinental Gas Pipe Line Corporation; Docket No. CP77-316, United Gas Pipe Line Company.

KENNETH F. PLUMB,
Secretary.

[S-358-77 Filed 5-5-77;2:44 pm]

5

AGENCY HOLDING THE MEETING: Indian Claims Commission.

TIME AND DATE: 10:15 a.m., May 18, 1977.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open to the public.

Docket 29-J, *Hannahville* (Potawatomi).
Docket 100-B-1, *Klamath and Modoc.*
Docket 272, *Creek.*
Docket 342-G, *Seneca.*

FOR MORE INFORMATION:

David H. Bigelow, Executive Director, Room 640, 1730 K Street NW., Washington, D.C. 20006. Tel. (202)-653-6184).

[S-364-77 Filed 5-6-77;8:50 am]

6

AGENCY HOLDING THE MEETING: Postal Rate Commission.

TIME AND DATE: 9:30 a.m. Thursday, May 12, 17977.

PLACE: Conference Room, Room 500, 2000 L St. NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. MC76-1.
2. Docket No. MC76-3.
3. Docket No. MC76-4.

CONTACT PERSONS FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268. Telephone (202-254-5614).

[S-365-77 Filed 5-6-77;10:58 am]

7

AGENCY HOLDING THE MEETING: Securities and Exchange Commission.

PREVIOUS NOTICE DATED: May 3, 1977:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, May 12, 1977.

CHANGES IN THE MEETING:

The Commission will hold an open meeting to consider alternative courses

of action with respect to Off-Board Trading Restrictions of National Securities Exchanges at 10 a.m. on Thursday, May 12, 1977.

The items previously scheduled for consideration on Thursday, May 12, 1977, will be considered at an open meeting on Wednesday, May 11, 1977, at 3 p.m.

Chairman Williams, Commissioners Loomis, Evans, and Pollack determined that Commission business requires the above changes, that no earlier notice thereof was possible and the said Commissioners voted to approve the changes.

FOR INFORMATION CONTACT:

Lawrence A. Horn (202-755-1563).

Dated: May 5, 1977.

GEORGE A. FITZSIMMONS,
Secretary.

[S-363-77 Filed 5-6-77;8:45 am]

8

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

TIME AND DATE: 10:30 a.m., Thursday, May 12, 1977.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A—PERSONNEL ACTIONS—NONE

B—CONSULTING AND PERSONAL SERVICE CONTRACTS

1. Renewal of consulting contract with Gordon F. Palm & Associates, Inc., Lakeland, Florida—Division of Chemical Development.

C—PURCHASE AWARDS

1. Req. No. 821322—Electrical penetration assemblies for Bellefonte Nuclear Plant.
2. Req. No. 822199—Requirement contract for steel reinforcing bars for proposed Hartsville Nuclear Plant.
3. Amendment to Contract 74C61-85499 with Brown Boveri Corporation, North Brunswick, New Jersey, for turbogenerators for proposed Hartsville and Phipps Bend Nuclear Plants.
4. Negotiation No. 143538—Completely bladed high pressure rotor and accessories for Widows Creek Steam Plant.
5. Req. No. 821398—Structural steel for auxiliary building for proposed Hartsville and Phipps Bend Nuclear Plants.
6. Req. No. 821400—Structural steel for control building for the proposed Hartsville and Phipps Bend Nuclear Plants.
7. Req. No. 543370—Indefinite quantity term contract for stainless steel for any TVA project or warehouse.
8. Amendment to Contract 74C57-83659 with Ecokel, Cincinnati, Ohio, for cooling towers for Sequoyah Nuclear Plant, units 1 and 2.
9. Req. No. 820721—Gate, globe, and check valves for proposed Hartsville and Phipps Bend Nuclear Plants.
10. Req. No. 87381—Gate, globe, and check valves for proposed Hartsville and Phipps Bend Nuclear Plants.
11. Req. No. 822167—Fire detection systems for Sequoyah and Watts Bar Nuclear Plants.

D—PROJECT AUTHORIZATIONS

1. No. 3230—1977 emergency flood relief for the Upper Clinch-Powell area of Tennessee and Virginia.
2. No. 3226—Evaluation of Dowa SO_2 scrubbing system (in collaboration with Electric Power Research Institute and the Dowa Mining Company, Ltd.).

E—FERTILIZER ITEMS—NONE

F—POWER ITEMS

1. Resolution relating to change in funding authority in exploration and milling agreement between TVA and Federal-American Partners.
2. New power contract with City of Murfreesboro, Tennessee.
3. Lease-purchase and amendatory agreement with the City of Dyersburg, Tennessee—lease of TVA's West Dyersburg Substation and termination of 13.2-kV delivery point.
4. Letter agreement with the U.S. Energy Research and Development Administration—power supply for Oak Ridge and Puducah projects.

G—REAL PROPERTY TRANSACTIONS

1. Grant of 30-year recreation easement to the State of Tennessee, Department of Conservation, affecting 73 acres of land in Polk County, Tennessee—tract XTAR-6RE.
2. Resolution relating to sale of cabin site land in Sequoyah Landing Subdivision, Anderson County, Tennessee—tract XNR-601:10.
3. Resolution relating to modification of deed to approximately 1.75 acres of a 26.9-acre tract on Fort Loudoun Reservoir to permit location of a substation—tract XTFL-78.
4. Resolution relating to grant of permanent highway easement affecting 2.05 acres of Hiwassee Reservoir land in Cherokee County, North Carolina—tract XTFBR-27H.
5. Filing of condemnation suits.

H—UNCLASSIFIED

1. Resolution relating to settlement agreement with Randall K. Osborne d.b.a. Osborne Coal Company in connection with alleged breach of contract.
2. Resolution relating to delegation of authority with respect to amendments to uranium mineral rights contracts.
3. Agreement with Coppers & Lybrand, New York, New York, for professional accounting services.

In connection with the Board's quarterly financial review, data, and information concerning current and anticipated conditions and costs affecting TVA's power operations and the adequacy of revenues to meet the requirements of the TVA Act and the tests and provisions of its bond resolutions will be discussed with the Board. This data and information will be considered by the Board in its determination to be made at a future date as to whether an adjustment of the rates and charges for the sale of electric power will be necessary during the quarter beginning July 1, 1977.

DATED: May 5, 1977.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-343-4537.

[S-361-77 Filed 5-6-77;8:45 am]

federal register

TUESDAY, MAY 10, 1977
PART II

FEDERAL ENERGY ADMINISTRATION

INTERPRETATIONS ISSUED IN 1975

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Interpretations Issued in 1975

AGENCY: Federal Energy Administration.

ACTION: Notice of interpretations.

SUMMARY: Attached are all interpretations issued by FEA in calendar year 1975. This is one of a series of notices intended to make FEA interpretations available to the public through publication in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Cliff Russell, 202-566-9567.

SUPPLEMENTARY INFORMATION: In accordance with FEA's notice concerning the publication of 1976 Price and Allocation Interpretations (42 FR 7923, February 8, 1977), appended hereto are the Interpretations issued by the FEA General Counsel and Regional Counsels during calendar year 1975 pursuant to 10 CFR Part 205, Subpart F.

Also appended hereto is an additional Interpretation issued in 1976 by FEA Region I, which was inadvertently omitted from the 1976 Interpretations appended to the Notice at 42 FR 7923. This Interpretation has been designated 1976-25.

Certain Interpretations issued in 1974 will be published in the FEDERAL REGISTER as soon as they are reviewed for publication in accordance with the uniform classification headings and editorial standards used for publication of 1975, 1976, and 1977 Interpretations.

FEA would normally prefer to number Interpretations by year and the order in which they were issued—e.g., Interpretation 1975-1, 1975-2, etc.—as in the manner of FEA Rulings. Many Interpretations issued in 1975 have already been reprinted in FEA's Compliance Manual under such a sequential numerical designation system. That system does not, however, reflect a complete listing of Interpretations issued in 1975 (all regional Interpretations were omitted) and does not entirely follow the chronological order in which the Interpretations reprinted therein were issued. Because FEA's Compliance Manual is available to the public through Freedom of Information procedures and Interpretations as numbered therein have been cited in proceedings before FEA and elsewhere, FEA believes that unnecessary confusion would result if FEA were to seek to renumber all 1975 Interpretations strictly in accordance with the date of issuance.

Therefore, FEA has assigned numerical designations to 1975 Interpretations as follows: (1) Interpretations 1975-1 through 1975-48 are the same as Interpretations 1975-1 through 1975-48 in the Compliance Manual, except that (a) a non-interpretive letter reproduced in the Compliance Manual as Interpretation 1975-36 is omitted here, (b) Interpretation 1975-38, which was neither reproduced nor listed by name in the Compliance Manual, is included herein, and (c) Interpretation 1975-46, which was also not reproduced or listed by name in the Compliance Manual, is listed by name, date, "rules interpreted" heading and classification code herein, but the text is omitted because of its similarity with Interpretation 1975-8; and (2) Interpretations 1975-49 through 1975-74 are all other Interpretations issued in 1975 (all regional Interpretations), numbered in accordance with the chronological order of their issuance.

All 1975 Interpretations except one, 1975-25, are Interpretations of the Mandatory Petroleum Price and Allocation Regulations. The symbol "OI," included in the code assigned to 1975-25, stands for "Other Interpretation," and indicates that 1975-25 is an Interpretation of FEA rules other than those found in the price and allocation regulations.

Older Interpretations are more likely to relate to regulations, rulings or laws which have been amended, revised or revoked, compared with more recent Interpretations. Thus, for example, 1975 Interpretations construing and applying FEA's definition of "property" may be of little interest or questionable continued validity in view of significant changes in that definition effective September 1, 1976. FEA has not attempted to review the Interpretations published today for continuing applicability and validity. Interested persons should therefore note with particular attention the limitations on the applicability of Interpretations as stated below.

FEA Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, Interpretations are subject to appeal (§ 205.86). Several of the Interpretations published herewith have been affirmed on appeal to date and none of them has been modified or reversed on appeal. The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the FEA Notice cited above.

Issued in Washington, D.C., April 27, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

APPENDIX.—*Table of interpretations*

No.	To	Date	Category
	1975		
1975-1	Skelly Oil Co	Jan. 21	Allocation/price.
1975-2	Monsanto Co	Feb. 19	Price.
1975-3	Enterprise Products Co	Feb. 12	Do.
1975-4	Shell Oil Co	Feb. 14	Do.
1975-5	Phillips Petroleum Co	do	Do.
1975-6	Cheker Oil Co	do	Do.
1975-7	Pasco, Inc	do	Do.
1975-8	Continental Airlines	do	Allocation.
1975-9	Norman Wooten, Inc	do	Price.
1975-10	Twin Montana, Inc	do	Do.
1975-11	Calumet Industries, Inc	do	Do.
1975-12	Longview Refining Co	Feb. 25	Do.
1975-13	Southern Gulf Oil Distributors Association, Inc	Mar. 18	Allocation.
1975-14	Can Manufacturers Institute	do	Do.
1975-15	Department of the Navy	Mar. 20	Price.
1975-16	Murphy Oil Corp.; System Fuels, Inc	Apr. 15	Do.
1975-17	Agents Alliance, Inc	do	Allocation.
1975-18	Oregon Department of Transportation	Apr. 21	Price.
975-19	National Association of Texaco Consignees, Inc	Apr. 24	Allocation.
1975-20	U.S. Marine Corps	Apr. 29	Do.
1975-21	Shell Oil Co	May 12	Do.
1975-22	Northeast Petroleum Corp	June 10	Price.
1975-23	Consolidated Paper, Inc	June 13	Allocation.
1975-24	A. Johnson & Co	June 18	Price.
1975-25	Babcock & Wilcox Co	June 24	Other.
1975-26	Pan American World Airways, Inc	June 27	Allocation.
1975-27	Pacific Lighting Exploration Co	June 30	Price.
1975-28	(No interpretation designated 1975-28 was issued.)		
1975-29	G. E. Kadane & Sons	July 12	Do.
1975-30	Continental Oil Co	June 27	Allocation.
1975-31	do	Aug. 20	Allocation/price.
1975-32	Tesoro Petroleum Corp	Aug. 21	Do.
1975-33	Midwest Oil Co	do	Allocation.
1975-34	Baltimore Gas & Electric Co	Aug. 27	Do.
1975-35	Wickland, Inc	Sept. 24	Do.
1975-36	(No interpretation designated 1975-36 was issued.)		
1975-37	Farmland Industries, Inc	Oct. 2	Do.
1975-38	B. R. Peters, Inc	Oct. 6	Do.
1975-39	National Institute of Infant Services	do	Do.
1975-40	Japanese Air Lines Co., Ltd	Oct. 7	Do.
1975-41	U.S. Oil & Refining Co	Oct. 6	Price.
1975-42	Petroleum, Inc., and Don M. Rounds Co	Oct. 31	Do.
1975-43	Berry Holding Co., et al	Nov. 10	Do.
1975-44	Moore-McCormack Resources, Inc	Nov. 12	Allocation.

No.	To	Date	Category
1975-45	J. & W. Refining, Inc	Dec. 12	Do.
1975-46	Trans World Airlines	Nov. 22	Do.
1975-47	Pacemaster, Inc	do	Price.
1975-48	Rotary Gasoline Dealers	Nov. 24	Do.
1975-49	Gas Club, Ltd	Jan. 2	Allocation/price.
1975-50	Cook & Cooley, Inc	Jan. 3	Allocation.
1975-51	East Oil, Inc	Jan. 10	Price.
1975-52	Idaho Transportation Department	Jan. 15	Allocation.
1975-53	Independent Drivers Organization of Oahu	Mar. 5	Do.
1975-54	Boston Housing Authority	Mar. 10	Do.
1975-55	Pleasant Street Co	Mar. 24	Price.
1975-56	Day & Zimmerman, Inc	Apr. 1	Allocation.
1975-57	Body Beautiful Car Wash	Apr. 7	Do.
1975-58	Estate of Anna Signore	Apr. 16	Allocation/price.
1975-59	Kramer Service Center, Inc	Apr. 28	Price.
1975-60	WESO Corp	May 4	Allocation.
1975-61	Simmons Oil Corp	June 17	Do.
1975-62	Boron Oil Co	July 24	Do.
1975-63	Campbell Oil Co., Inc	do	Price.
1975-64	Derby Refining Co	Aug. 4	Do.
1975-65	Dollar Rent-A-Car Systems	Aug. 13	Allocation.
1975-66	DeBlois Oil Co	Aug. 15	Price.
1975-67	William S. Bronson, et al	Oct. 10	Allocation.
1975-68	Mid-State Oil Co., Inc	do	Do.
1975-69	Cyr Oil Co	Oct. 17	Price.
1975-70	E. L. Danielson and F. D. Thurman	Oct. 24	Allocation.
1975-71	Gordon H. Wallace	Nov. 11	Do.
1975-72	Joseph L. Castor	Nov. 20	Do.
1975-73	Benkema Petroleum Co	Nov. 28	Do.
1975-74	Albina Fuel Co	Dec. 15	Price.
	1976		
1976-25	Callahan Oil Co	May 10	Allocation.

INTERPRETATION 1975—1

To: Skelly Oil Co.

Date: January 21, 1975.

Rule Interpreted: EPAA.

Code: GCW—AI,PI—Definition of Refined Petroleum Products.

You recently requested that I advise you as to whether the chemicals phenol or acetone come within FEA's authority under the Emergency Petroleum Allocation Act of 1973 (the "Act"). It is my understanding that phenol (C_6H_5OH) is produced by reacting benzene, a refined petroleum product, with propylene to form cumene, which is then converted to phenol by a chemical reaction. Acetone (C_3H_6O) is produced by subjecting propylene, which is not a refined petroleum product, to a chemical reaction.

The Act provides for the mandatory allocation of crude oil, residual fuel oil and certain refined petroleum products at prices specified in or determined in a manner prescribed by regulation. Neither phenol nor acetone is crude oil or residual fuel oil, as defined in the Act, nor are they among the products enumerated in the definition of "refined petroleum products" set forth in the Act. Further, neither of these two products could chemically be considered to fall within one of the generic categories of products which are listed in the definition of a refined petroleum product. Therefore, it is my opinion that phenol and acetone are not refined petroleum products within the meaning of the Act and are not subject to the Mandatory Petroleum Allocation or Price Regulations issued pursuant thereto.

INTERPRETATION 1975—2

To: Monsanto Co.

Date: February 10, 1975.

Rules Interpreted: §§ 212.72, 212.74.

Code: GCW—PI—Definition of Property, New and Released Crude Oil, Unitization.

This is in response to your August 12, 1974 request for an interpretation concerning the definition of "property," 10 CFR § 212.72, for purposes of determining "new and released crude petroleum," 10 CFR § 212.74. This interpretation is based on information submitted by Monsanto Company, August 12, 1974, and by Lion Oil Company, September 19, 1974.

FACTS

Monsanto Company is the operator of the Schuler Field, Union County, Arkansas. On January 15, 1941 the owners of oil and gas leases of the Jones sand horizon of the Schuler Field entered into a Unit Operation Agreement and a Royalty Pooling Agreement. The Arkansas Oil and Gas Commission approved, Order Reference 6-41, these agreements on February 5, 1941 to become effective February 15, 1941. Pursuant to Section III, Paragraph 24 of the Unit Operation Agreement, the agreements applied only to the Jones sand horizon. However, the parties to the agreements amended the Unit Operation Agreement and the Royalty Pooling Agreement on September 6, 1941 to include all horizons lying above the Jones sand horizon. In Part A the amendment to the Royalty Pooling Agreement states:

"From the effective date of the order of the Arkansas Oil and Gas Commission approving the Amendment to the Unit Operation Agreement * * * and approving this amendment, each horizon above * * * the Jones sand * * * which horizon is now or may hereafter be capable of producing oil or gas, shall be merged into and become part of the unitized area. * * *"

The amendment to the Unit Operation Agreement states in Paragraph C that contingent upon the Arkansas Oil and Gas Commission's approval,

"Each horizon above that portion of the Jones sand which constitutes the unitized area *. * * shall be merged into and become a part of the unitized area and shall henceforth be operated under the terms of that agreement to the same extent and with the same effect as though said horizons lying above the Jones sand had been included in the unitized area as originally described in the Unit Operation Agreement of January 15, 1941."

The Arkansas Oil and Gas Commission ordered, Order Reference 28-41, Paragraph A, effective December 18, 1941, that:

"Each horizon, or portion thereof, which now is, or may hereafter be, capable of producing oil or gas, and which lies above the unitized area of the Jones sand, unitized by Order No. 6-41 * * * be operated * * * as a part of said unitized area of Jones sand * * *"

You have requested an interpretation that the Jones sand horizon (Schuler-Jones sand), Schuler Field and the horizons above the Jones sand horizon (Schuler-Shallow sands) be considered as separate properties as defined in § 212.72 for purposes of calculating "new and released crude petroleum." Your arguments are: Monsanto has historically treated the two sands as separate production areas; the state of Arkansas requires that production from different sands or formations be accounted for and reported separately; the quality of crude produced from the two sands varies in that crude oil produced from the Shallow sands is of a higher gravity and has a lower sulfur content; and secondary recovery methods are used only on the Jones sand.

INTERPRETATION

Section 212.74 of the FEA regulations states:

"* * * a producer of crude petroleum may sell in each month, without respect to the ceiling price, the new crude petroleum and the released crude petroleum produced and sold from a property in that month."

A "property" is defined, in § 212.72, as "[t]he right which arises from a lease or from a fee interest to produce domestic crude petroleum."

The issue raised by your request for interpretation is whether, in determining the "new and released crude petroleum produced and sold from a property in a month," one looks to the area subject to the unitization agreement as amended or to each source of production which has been combined to form the unitized area covered by the unitization agreement as amended. Our conclusion is that the area subject to the unitization agreement as amended including all sources of production constitutes a "property" as defined in § 212.72.

The purpose of the Unit Operation Agreement was "to install * * * a plant for the introduction of gas, air and other fluids into that horizon, to restore and maintain reservoir pressure * * *." Unit Operation Agreement, Introduction. To accomplish this purpose the agreement states in Section II that "each of the parties * * * shall own, in lieu of the former interest of said party * * * the undivided interest in oil and gas produced from the Jones sand horizon under that tract of land, and each of the leases * * *." Furthermore, the Royalty Pooling Agreement states: "oil and gas leases * * * which are the subject of the unit operation agreement * * * may be operated as one unitized area * * * just as though all of the land * * * had been originally included in one single oil and gas lease * * *." Thus, the agreements clearly state that the Jones sand horizon is to be treated as a single lease owned severally by the parties to the agreements.

The amendments to the Unit Operation Agreement and to the Royalty Pooling Agreement, as ordered by the Arkansas Oil and Gas Commission, merge into and make a part of, as if they had been included in the unitized area, all horizons lying above the Jones sand horizon. The Arkansas Oil and Gas Commission's order makes all the horizons lying above the Jones sand horizon "a part of said unitized area of Jones sand." Also, as quoted above, this was the intent of the parties to the amendments.

A lease to produce crude petroleum is considered a "property" pursuant to § 212.72. Accordingly, because the unitized area includes the Jones sand horizon and all horizons lying above it and because the unitized area is considered as "one single oil and gas lease," the Jones sand horizon and all horizons lying above it are con-

sidered to be one lease. Thus, for purposes of determining "new and released crude petroleum" Monsanto must treat the areas of the Schuler Field subject to the unitization agreement as amended as a single property.

The quality of the crude petroleum, the method of recovery, the historical treatment of an area subject to one lease as two areas of production, and the conservation reports required by a state do not alter the FEA's definition of property. An exception to the regulations may be applied for pursuant to Part 205, Subpart D of the FEA regulations.

INTERPRETATION 1975—3

To: Enterprise Products Co.

Date: February 12, 1975.

Rules Interpreted: §§ 212.31, 212.83, 212.91, 212.111.

Code: GCW—PI—Definition of Firm.

This is in response to your letter to the Federal Energy Office (FEO), which is now the Federal Energy Administration (FEA), dated April 9, 1974, in which you requested an interpretation as to the maximum lawful prices permissible in a series of actual, related transactions between a reseller, Enterprise Products Company, Inc. ("Enterprise"); two retailers affiliated with Enterprise, Holicer Gas, Inc. ("Holicer") and French L. P. Gas, Inc. ("French"); and an unrelated purchaser, American Oil Company ("Amoco"), during the period January 7–17, 1974. The transactions involved the sale of propane.

FACTS

Enterprise is a large propane wholesaler, and is a "reseller" as defined in 10 CFR 212.31 (6 CFR 150.352 under regulations in effect prior to January 15, 1974). It is owned, for all purposes relevant to price controls, 50 percent by Mr. Dan L. Duncan ("Duncan"), and 50 percent by Mr. Joe D. Havens ("Havens").

Holicer and French are small retail propane dealers which have historically sold to residential and small commercial customers. They are "retailers" as defined in 10 CFR 212.31 (6 CFR 150.352).

On or about November 1, 1973, Duncan and Havens purchased 8 percent of the outstanding stock of French as part of an agreement under which Duncan and Havens would acquire more than 50 percent of outstanding stock over a period of time.

On or about November 30, 1973, Duncan and Havens purchased 29 percent of the outstanding stock of Holicer as part of an agreement under which Duncan and Havens would, over a period of time, acquire all of the shares of Holicer.

Early in January, 1974, Enterprise sold 2,100,000 gallons of propane to Holicer and 630,000 gallons to French. The price charged in these transactions was x per gallon, which Enterprise calculated to be its maximum lawful selling price for the class of purchaser concerned at that time.

Within a few days, Holicer sold 2,100,000 gallons of propane to Amoco at x per gallon (F.O.B. Arcadia) and 1,470,000 gallons of propane to Amoco at x per gallon (F.O.B. Mt. Belvieu), and French sold 630,000 gallons of propane to Amoco at x per gallon (F.O.B. Mt. Belvieu). Amoco was not and is not a consumer of propane. These prices to Amoco were those that were determined by Holicer and French, respectively, as their applicable maximum lawful selling prices at that time. The difference between the total of 2,730,000 gallons provided by Enterprise to Holicer and French and the total 4,200,000 gallons sold to Amoco by Holicer and French were obtained from suppliers other than Enterprise.

On February 1, 1974, a general investigation into the propriety of the foregoing and similar transactions involving Enterprise was commenced, at the instigation of Mr. James C. French, formerly the sole owner of French, by the Internal Revenue Service (IRS) which, at the time, had enforcement authority with respect to FEO price regulations. Enterprise subsequently decided to treat its sales to French and Holicer as intra-company transfers. Accordingly, Enterprise made refunds to French and Holicer totalling approximately x and French and Holicer, in turn, made refunds to Amoco which totalled approximately x. However, Enterprise reserved the right to rebill in order to recoup these refunds should the FEO rule, as requested by Enterprise in this request for interpretation, that it was lawful for Enterprise to charge French and Holicer x per gallon for the propane sold them for resale to Amoco and that French and Holicer, in turn, may lawfully charge x and x per gallon to Amoco, as agreed in the original transactions.

The Enterprise - French / Holicer - Amoco transactions, as well as other similar "oil brokerage" transactions involving Enterprise and other firms, were the subject of public hearings before the Permanent Subcommittee on Investigations, Committee on Government Operations, U.S. Senate, on April 10, 1974. The affidavit of Mr. French was discussed and admitted into the record of the Subcommittee on that date in the presence of Havens and Duncan, whose appearance before the Subcommittee had been obtained by subpoena. The record of those hearings, as it relates to the transactions which are the subject of this interpretation, has been used, pursuant to 10 CFR 205.84(a), as an additional source of information in evaluating and reaching a decision on the subject request for interpretation.

On June 6, 1974, the IRS issued a final report on its general investigation of compliance by Enterprise, French and Holicer with applicable price regulations. The report states that as a result of this investigation, Enterprise agreed to refund a total of x on account of what IRS termed "technical adjustments due to incorrect cost pass-through" (all customers) and to refund a total of x on account of what IRS called "sham transactions" (all customers), including a total of x refunded or to be refunded to Amoco by French and Holicer. The IRS also listed x as "inter-company refunds" which Enterprise had made or agreed to make to French and Holicer, relating to the same Amoco transactions.

The IRS recommended that the case be closed without further action "since Enterprise has agreed to take corrective action and refund all of the overcharges." The IRS report noted, however, that in agreeing to make refunds Enterprise did not admit any violations and that Enterprise had reserved the right to rebill Amoco pending a determination by FEO on this request for interpretation.

The IRS report of June 6, 1974, has been used, pursuant to 10 CFR 205.84(a), as an additional source of information in evaluating and reaching a decision on this request for interpretation.

In its request for interpretation, Enterprise argues that Enterprise, French and Holicer are separate firms, and do not constitute a single "firm," so that Enterprise could sell propane to French and Holicer at its maximum lawful selling price, as it may to any unaffiliated firm, and so that French and Holicer could similarly sell propane to Amoco and to other customers at their own independently-determined maximum lawful selling prices.

Enterprise further argues that even if Enterprise, French, and Holicer are determined to constitute a single firm, Enterprise may nevertheless charge French and Holicer its maximum lawful selling prices as though French and Holicer were independent firms, on the theory that each entity within a "firm" is a "separate pricing unit."

Finally, Enterprise argues that the price at which French and Holicer sold to Amoco (the price which reflected a markup by Enterprise and a further markup by French or Holicer) was lawful for the additional reason that the sale to Amoco was a sale to a "new market" by French and Holicer under 10 CFR 212.111(a)(2), which provides that the price rules for "new items" apply to sales to "new markets," with a "market" stated to be "one or more members of the following groups: resellers; retailers; consumers; manufacturers; or service organizations." All previous sales by French and Holicer had been to consumers. Amoco is not a consumer.

INTERPRETATION

In the opinion of FEA, all of the arguments raised by Enterprise are disposed of by the determination that Enterprise, French and Holicer constitute a single firm, for purposes of FEA price regulations. In other words, there is no need to determine whether the prices charged by French and Holicer, if they were separate firms, would have been lawful as sales to "new markets" and there is, in any event, no basis under the regulations for the "separate pricing entities" theory.

With respect to the central question as to whether Enterprise, French and Holicer constitute a single firm, the key element in the definition of firm, for purposes of this interpretation, is the statement that the firm includes the parent and any entities "which it directly or indirectly controls." (10 CFR 212.31, 212.91) The FEA interprets "firm," for purposes of cost pass-through, in the widest possible sense—i.e., the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls. This is provided for refiners by express provision in 10 CFR 212.83(b) and for resellers and retailers by implication under 10 CFR 212.91.

Where the FEA has, pursuant to its authority under 10 CFR 212.31, applied a different interpretation to "firm" (as in 10 CFR 212.11(a), for profit margin purposes) the inclusion of entities "directly or indirectly controlled" has not been altered. That is, where the "firm" has been broken down for special purposes it has been divided into consolidated vs. unconsolidated portions, or into portions conducting unrelated activities, without changing the requirement that the firm or portion of the firm under consideration must include those applicable sub-entities which are directly or indirectly controlled. Neither of the special situations indicated above apply to the case at hand. The profit margin test does not apply to resellers or retailers, and all three firms concerned are engaged in the same basic activity of selling L.P. gas.

In a series of rulings during Phase II of the Economic Stabilization Program the major questions concerning inter-corporate control and control by individuals for purposes of price regulations were fully answered and settled. Under Phase IV Q and A 8–5, CLC Release 367, August 20, 1973, Phase II rulings were deemed not legally binding during Phase IV but were to be used as guidance in the absence of any specific legal interpretation which might be issued. Nothing in the few rulings issued by CLC in Phase IV or by FEA is contrary to the pertinent Phase II rulings discussed in this in-

terpretation. Since these Phase II rulings thus firmly settled this area of the law, and since the same applicable definitions and concepts to which those rulings relate were continued essentially unchanged in Phase IV and under the FEA regulations, the FEA believes that it is appropriate to apply the pertinent Phase II rullings in this interpretation.

The Phase II definition of "firm," the meaning of which was the chief subject to the Phase II rulings referred to in this interpretation, was as follows:

"Firm" means any person, corporation, association, estate, partnership, trust, joint-venture, or sole proprietorship of any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal and state and local governments. For purposes of this definition, a firm includes any entity listed in the preceding sentence that is part of or is directly or indirectly controlled by the firm. A person will be deemed to control any firm which is controlled directly or indirectly by such person, his spouse, children, grandchildren, or parents. 6 CFR 101.2, 37 F.R. 9457 (May 11, 1972).

This concept of "direct or indirect control," which brings within the "firm" all entities "controlled" by the firm, was continued essentially unchanged in Phase IV and remains applicable under the FEA regulations today. See definitions of "firm," "parent and its consolidated entities," and "unconsolidated entity," 6 CFR 150.31, 38 FR 21592 (August 9, 1973); 10 CFR 212.31, 39 F.R. 1924 (January 15, 1974).

The first Phase II ruling in point made clear that when A held more than a 50 percent interest in B it was deemed to control B for the purposes of the Economic Stabilization Program. Price Commission Ruling 1972-169 (37 FR 9641, May 13, 1972). It made no difference that the controlling entity was an individual; the individual and the controlled firm or firms, taken all together, constituted a single "firm" under the Program. CLC Ruling 1972-55, 37 FR 11694 (June 10, 1972), CLC Rulings 1972-81 and -82, 37 F.R. 15010 (July 27, 1972).

When an entity held less than a 50 percent interest in another entity control might still be shown. It was a question of fact to be determined in each case. PC Ruling 1972-179 (CLC Ruling 1972-51), 37 FR 10962 (June 1, 1972). In a specific hypothetical example in which A owned 45 percent of the stock of B, A was found to control B because A had a sufficient interest in B to dictate the pricing policies of B. CLC Ruling 1972-97, 37 F.R. 16025 (August 9, 1972).

It was also made clear that the division of ownership or control into exactly equal shares or interests (e.g., 50 percent-50 percent, 33⅓ percent-33⅓ percent-33⅓ percent) would not serve to defeat the purpose of the regulations and rulings concerning control. Specifically, where A and B each owned a one-half interest in C on a joint-venture basis, control on the part of both A and B (whether deemed direct or indirect) would be presumed. The result was that A plus C was considered a single entity and B plus C was considered a single entity, for the purpose of determining the size of the annual sales or revenues of the firm (price category determination), while for other purposes under the Economic Stabilization Program A and B were required to decide which of them would consider C as belonging to it in its entirety. PC Ruling 1972-216 (CLC Ruling 1972-77), 37 FR 13652 (July 12, 1972).

A firm seeking a formal interpretation from FEA generally bears the burden of providing the facts that are necessary with respect to the position the firm is asking the FEA to take. This rule is especially applicable in cases such as the present one where the question at issue depends upon facts that are not such as would ordinarily be known to FEA, except through the presentation made by the requesting party. In other words, since Enterprise has requested the FEA to rule that it does not control Holicer and French, it rests with Enterprise to provide facts to show convincingly that it does not control them.

In our judgment, Enterprise has not satisfactorily demonstrated lack of control. Enterprise stated in the "facts" section of its presentation that Duncan and Havens own no more than 8 percent of the outstanding stock of French and no more than 29 percent of the outstanding stock of Holicer; that neither the board of directors of French nor that of Holicer have "any compulsion to do the will of Duncan and Havens;" and that the arrangements for the acquisition of interest in French and Holicer were not made for the purpose of circumventing the regulations of either the CLC or the FEA, but were motivated by a legitimate desire to enhance the competitive position of Enterprise or of Duncan and Havens vis-a-vis the dominant firms in the industry which have long enjoyed the advantages of vertical integration (e.g., ownership or control of a wholesale and a retail marketing system). However, Enterprise fails to make a convincing case of lack of control for two main reasons:

(1) Enterprise's presentation on pages 7-8 of its argument that Enterprise, Holicer and French do not constitute a "firm" under 10 CFR 212.31 consists of a largely irrelevant analysis of FEA's definition of "firm" and related terms. The fact that the definition of "firm" contains a proviso permitting the FEA by regulation or ruling to vary the inclusiveness of "firm" depending upon the subject at hand (e.g., profit margin test, reporting requirements, base price determination, etc.) does not bear in any way upon the need for a factual examination of the question of control in a particular case in absence of a regulation or ruling determinative of the question. The only discussion of lack of control in the "argument" section of the Enterprise submission (apart from the stock ownership and other points already noted herein from the "facts" section) is the assertion that neither the admitted "communality of interest" between the entities concerned nor the assistance lent by Enterprise to the other two firms in connection with the Amoco sale necessarily indicates anything more than mere affiliation. But the fact that control does not necessarily result when these two particular and fairly common conditions are present does not avoid the need to examine further the question of control in light of all the considerations relevant to this issue.

(2) Information available to FEA in this case from other sources strongly indicates control of Holicer and French by Enterprise. This information, all of which has been known and available to Enterprise since the time its request for interpretation was submitted, was not directly commented upon or otherwise contradicted in the Enterprise submission or in any of several subsequent communications by Enterprise in connection with this request.

In a sworn affidavit dated March 30, 1974, and submitted to a Senate subcommittee investigating "oil brokerage" transactions, the president and former sole owner of French, Mr. James C. French, made the following main points:

(a) He understood that "one of the main considerations [of Havens and Duncan] in electing to purchase" French was French's allowable markup under the Economic Stabilization Program. He was told prior to the "purchase" of his company that Enterprise would be routing large wholesale transactions through French to third parties. When he expressed reservations concerning the propriety of such transactions and a desire to "get out of the company," Havens said there would be "no deal" unless he stayed on as President. "In order for these transactions to be within the rules of the Economic Stabilization Program," Havens explained, it would be necesary for Mr. French to stay on "as President and controlling shareholder."

(b) While Mr. French did stay on as President and, on paper, as "controlling shareholder" after the purchase on or about November 7, 1973, of his company by the Havens-Duncan group, he testified that on November 12, 1973, Havens gave him "instructions" to sign an agreement for a specific purchase of L. P. Gas from Enterprise at x per gallon; that on November 14, 1973, Havens "instructed" him to sell the same amount of L. P. gas to Westinghouse at x a sale characterized by Mr. French as a "paper transaction" because French neither took possession of the propane concerned nor made delivery; that on January 7, 1974, Havens "instructed" him to sign a sales agreement for the purchase of a specific quantity of propane from Enterprise at x per gallon, with respect to which he "received instructions" from Havens on January 17, 1974, to bill Amoco for the entire amount at x per gallon; and that subsequent to the investigation of the Internal Revenue Service in connection with these transactions Havens "dictated to [Mr. French's] secretary the wording to use" in Mr. French's letter to Amoco explaining the refund to Amoco as agreed between Enterprise and the IRS.

The foregoing, taken from "Current Energy Shortage Oversight Series—Oil Brokers," Hearings before the Permanent Subcommittee on Investigations, Committee on Government Operations, U.S. Senate, April 4 and 10, 1974, pp. 814-816, indicates that even though at the time of these transactions Mr. French retained ownership of 88 percent of the outstanding stock of French, Mr. French clearly believed, and acted upon the belief, that Enterprise, or Havens and Duncan, had obtained effective control of French. This view was reasonable in view of the fact that the stock purchase agreements and other documents executed on or about November 7, 1973, in addition to providing for eventual complete control (by 1976) of French by the Havens-Duncan group, prohibited French from making any distribution of profits in the meantime, and that, pursuant to these agreements, Mr. French was put on a salary basis. These facts, taken from the Senate Subcommittee Report, pp. 813, 817, 818 (n. 3), obviously bear importantly on the question of control.

Mr. French's understanding that he had given up effective control was also supported by the fact that while he controlled two out of three seats on the board of directors of French (the Havens-Duncan group had the right to appoint one director), no action could be taken requiring approval of the board of directors or by the shareholders except by the unanimous action of the board or the shareholders. The foregoing facts were taken from the Senate Subcommittee Report, p. 818, n. 3. The assertion in the request for interpretation that the board was not under "any compulsion to do the will of Duncan and Havens," although true in a literal sense, is not meaningful because under the agreements relating to the stock purchase there was little or nothing of any importance left for the board affirmatively to do. The control of the Duncan-Havens group was effected or protected in this respect by the negative or veto power which the group held

over any attempts which the majority of the board might make toward independent action.

Nothing in the record suggests any misunderstanding between Mr. French and the Havens-Duncan group as to who would exercise effective control of French, and nothing discloses any attempt by Mr. French to resist effective control of French by Havens and Duncan. On the contrary, Mr. French had reason not to resist Havens and Duncan in this matter. In the opinion of the IRS, as stated in the IRS report of June 6, 1974, the shareholders of French and Holicer before the agreements with Havens and Duncan were entered into had no incentive to resist operational control by Havens and Duncan because they knew that the substantial additional profits which would result from the business routed by Enterprise through French and Holicer would assure the availability of ample funds for the eventual purchase by the two companies of the remaining majority interests of the previous shareholders, in accordance with the stock purchase agreements.

In addition to the sum of x paid to Mr. French by Havens and Duncan at the time of the initial stock purchase in 1973 and the sum of x to be paid to him in 1974 and 1976 by Havens and Duncan for additional stock purchases, Mr. French was to be paid by French, in 1976, from accumulated profits, the sum of x for his net remaining stock in French. Thus, Mr. French's compensation for the sale of his stock in French (in addition to his salary of x per week as president of French) came to a total of x. This amount appears to have been influenced by the expectation of multiple profits which were to be generated under the planned propane sale and resale program. These considerations further support the view that Havens and Duncan obtained effective control of French and Holicer.

Mr. French's lack of independence in this situation is further illustrated by the fact that at the time the documents relating to the purchase by the Havens-Duncan group were executed Mr. French was asked to sign, and did sign, as President of French, a blank promissory note the purpose of which was not explained to him. He later learned that Havens, without consulting Mr. French, obtained for French a x bank loan with the promissory note. Senate subcommittee Report, p. 815.

Under the arrangements outlined above, the Havens-Duncan group had total control of the profits of French beginning November 1, 1973. Profits could not be distributed and would accumulate until the Havens-Duncan group was in a position to obtain and use them. Under such a plan, it is highly unlikely that the Havens-Duncan group would fail to obtain effective management of French's operations. We note in this connection that Havens hired the new general manager of French and Holicer, who negotiated the sale to Amoco by French and Holicer. By every indication, the Havens-Duncan group did obtain effective control of Holicer and French from the beginning of November, 1973, throughout the period in which the transactions concerned occurred.

The summary of the Senate subcommittee staff stated that the documents relating to the acquisition of Holicer are, in all material respects, identical with those relating to the acquisition of French, except for the participation of an associate of Havens and Duncan in the purchase of the French stock, and the fact that the initial stock position which Havens and Duncan acquired in Holicer is somewhat larger (29 percent) than the initial stock ownership in French by the Havens-Duncan-White group (12 percent). Senate Subcommittee Report, p. 818, n. 3.

In view of all of the foregoing considerations, we conclude that Havens and Duncan had effective control of French and Holicer and that "the firm," therefore, for purposes of price controls for the period in which the transactions concerned occurred, consisted of Havens, Duncan, Enterprise, French, Holicer, and any other firm directly or indirectly controlled by Havens and Duncan or Enterprise.

The import of this interpretation is that the sales made to Amoco by French and Holicer, ostensibly as independent firms, were in fact sales made by the single "firm" which included French and Holicer as controlled sub-units, and that therefore the maximum lawful selling price applicable to sales to the class of purchaser of which Amoco was a part was the maximum lawful selling price to that class of purchaser as determined for that "firm." Assuming Enterprise's maximum lawful selling price for propane for the class of purchaser concerned was properly calculated at x per gallon, that is the maximum lawful selling price by the "firm" with respect to all purchasers in that class.

As noted above, since Enterprise, French and Holicer constitute a single "firm," the "firm" does not qualify under the "new market" rule because the "firm," thus understood, previously sold the product to the reseller or retailer market of which Amoco is a part, for purposes of 10 CFR 212.111.

Finally, there is no basis under the regulations for the theory that a single firm may be regarded as consisting of "separate pricing units." Since Enterprise, French and Holicer constitute a single "firm," the prices which that total "firm" charges, in sales external to the "firm," are the prices which are regulated under 10 CFR, Part 212 (previously, 6 CFR, Part 150, Subpart L). The general pricing rule, 10 CFR 212.10, applies to the price charged by the "firm." The price rules specifically applicable to resellers and retailers, 10 CFR, Part 212, Subpart F, apply to sales by "resellers," "reseller-retailers," and "retailers." The definition of each of these terms incorporates the definition of "firm." The rule which permits a "firm" which is a reseller or retailer to pass through increases in the "cost" of the item to be resold, 10 CFR 219.93, obviously means the cost to the "firm." Moreover, that regulation contains the express limitation that increased product costs may be passed through on a "dollar-for-dollar basis" only—meaning that no profit may be included in the pass-through of the cost increases. Since pricing to reflect profit margin maintenance is not authorized under the regulations, the result is that the portion of the current selling price which consists of profit is limited to that which was included in the firm's May 15, 1973, lawful selling price. Nothing in the regulations cited on pages 8 and 9 of the request for interpretation, and nothing in any other price regulation permits a "firm" to increase its lawful selling price by denominating as "costs," for cost pass-through purposes, the "firm's" own profits in intra-firm sales or in multiple sales and resales within the "firm." We therefore conclude that the basic unit to which the price regulations generally apply is the "firm" rather than a pricing entity which is a part of a "firm," and that the view that Enterprise, French and Holicer may each add their own markup to the product sold, even though the three entities constitute a single "firm," must be rejected as totally without basis in the regulations.

INTERPRETATION 1975—4

To: Shell Oil Co.

Date: February 14, 1975.

Rules Interpreted: §§ 210.32, 212.72, 212.74.

Code: GCW — PI — Definition of Property, Stripper Well Lease Exemption, Unitization.

This is in response to your request of August 6, 1974, for an interpretation concerning the term "property," as defined in Parts 210 and 212 of the Federal Energy Administration Regulations.

FACTS

You have asked, when a firm produces oil on a given lease from more than one producing zone, (a) whether each zone may be categorized as a separate property for purposes of the "stripper well lease" exemption of § 210.32, or (b) whether each zone may be categorized as a separate property for purposes of the "new crude petroleum" price regulations of § 212.74. You have also asked (c) whether a "newly formed unit," consisting of several leases which produced crude oil in 1972, may be regarded as a new property which had no production in 1972, for purposes of the "new crude petroleum" price rules of § 212.72.

INTERPRETATION

(A) The first sale of domestic crude petroleum produced from a stripper well lease is exempt from the federal energy pricing regulations pursuant to § 210.32(a). Pursuant to § 210.32(b) a stripper well lease "means a 'property' whose average daily production of crude petroleum * * * did not exceed 10 barrels per day during the preceding calendar year." "Property" is defined as "the right which arises from a lease in existence in 1972 * * *." Accordingly, for purposes of defining a "property," a lease is not divided into units smaller than that encompassed by the lease. Thus, when more than one production zone is located on a single lease, for purposes of § 210.32, "property" means the lease and not the individual production zones.

(B) New and released crude petroleum produced and sold from a property may be sold without respect to the ceiling price pursuant to § 212.74. Property for purposes of § 212.74 is defined in § 212.72 as "the right which arises from a lease or from a fee interest to produce domestic crude petroleum." Accordingly, a lease which encompasses more than one production zone may not be divided into more than one "property" for purposes of § 212.72.

(C) Production of new and released crude petroleum is determined under § 212.72 according to whether production exceeds the base production control level of a property. Pursuant to § 212.72 "base production control level crude petroleum" 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 * * * ." (§ 212.72). Accordingly, because the 1972 production from a property is required to calculate "base production control level crude petroleum," a firm must use the lease which was in existence in 1972 to define the property involved. Furthermore, § 210.32, which defines "property" as "a lease in existence in 1972," states that a property for purposes of § 210.32 "is coextensive with that property used in Section [Part] 212 for purposes of determining 'base production control level'."

Production from a newly formed unit consisting of several leases which produced crude oil in 1972 cannot be considered as production from a property which had no production in 1972, because the FEA definition of "property" relates back to leases in existence in 1972. Thus, all of the production from the leases in existence in 1972, which now are

part of a newly formed unit, must be taken into account in determining the base production control level of the newly formed unit.

INTERPRETATION 1975—5

To: Phillips Petroleum Co.

Date: February 14, 1975.

Rules Interpreted: §§ 212.82, 212.83.

Code: GCW—PI—Base Price, Class of Purchaser, Equal Application Rule.

This is in response to your October 24, 1974 request for an interpretation of Federal Energy Administration (FEA) petroleum price regulations on behalf of Phillips Petroleum Company (Phillips) concerning the determination of lawful prices which a refiner may charge for gasoline.

FACTS

As described by your letter, Phillips performed certain calculations of its base prices for gasoline during the period January 1974 through May 1974. These calculations were then administered through the two principal marketing areas served by Phillips: the "West Coast" area, served through Phillips' refinery at Avon, California, and the "East" area, the remainder of the markets. For each of these areas, Phillips has customarily determined separate prices for gasoline. In performing its calculations, Phillips determined an amount of increased product costs per per gallon (the "d_t" factor of the refiner's cost allocation formula of § 212.83(c) (2) (i)) which it used to determine base prices. Phillips then determined a lesser amount of this increased cost figure, which it used in setting prices actually charged in the West Coast area, and a different lesser amount which it used in setting prices actually charged in the East area. The increase applied in the East area during this time was 2¢ per gallon less than that applied in the West Coast area, except that in May, the applied increases were the same in both areas.

Because the increases actually charged were in all cases less than the increase determined in calculating base prices, and because the East area increases were lower than the West Coast area increases, Phillips states that it sustained substantial amounts of unrecovered costs which it carried forward to subsequent months pursuant to 10 CFR 212.83(d) (now § 212.83(e)).

In August, 1974, FEA notified Phillips that the above-described calculation of West Coast area and East area price increases was considered inconsistent with FEA regulations. Following further correspondence with FEA personnel, Phillips has submitted this request seeking an interpretation of §§ 212.82 and 212.83 as applied to Phillips' West Coast-East pricing calculations, described above.

INTERPRETATION

The provisions of the Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159 (EPAA), require in Section 4(b)(2), that FEA regulations under the EPAA shall provide for—

(A) A dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products to all marketers or distributors at the retail level; and

(B) The use of the same date in the computation of markup, margin, and posted price for all marketers or distributors of crude oil, residual fuel oil and refined petroleum products at all levels of marketing and distribution.

Section 4(b)(1)(F) of the EPAA specifies that one objective of FEA regulations is to provide for "equitable distribution of * * * refined petroleum products at equitable prices * * *." The conference report accompanying Pub. L. 93-159 explains the Congressional focus that FEA regulations "harmonize the objective of equitable allocation of fuels with the objectives of the Economic Stabilization Act." The report emphasizes that FEA price regulations should prevent price discrimination which Congress feared might occur (House Rep. No. 93-628, Nov. 10, 1973, p. 26).

FEA price regulations issued January 15, 1974 (39 FR 1924), were specifically designed to implement these expressed Congressional concerns. Adopted from the Cost of Living Council's Phase IV Regulations for the petroleum industry (6 CFR Part 150, Subpart L), FEA price regulations focused on the concepts of a single price for an item sold to a class of purchaser (10 CFR 212.82(f) now § 212.82(b)) and a single determination of increased product costs (10 CFR 212.83).

With respect to motor gasoline, the calculation of the cost increase, which is applied to calculate the base prices for that product, is stated in § 212.83(c)(1)(i) and expressed mathematically in § 212.83(c)(2)(i).

The general cost allocation rule for "special products" in § 212.83(c)(1)(i), applicable to gasoline, is that a refiner, to compute its base prices, may increase its calculated May 15, 1973 weighted average selling price to each class of purchaser by an amount to reflect increased costs attributable to gasoline sales, calculated in accordance with § 212.83(c)(2)(i). The rule further provides that increased product costs not so allocated to the special product (gasoline) may be included in the refiner's calculations of prices for covered products other than special products.

The cost calculation required by this rule (§ 212.83(c)(2)(i)), is one which results in a per unit dollar increment which a refiner may apply to the May 15, 1973 weighted average selling price for gasoline to each class of purchaser, to compute the base price of gasoline to each class of purchaser. This formula calculation represents FEA's policy under the EPAA to avoid discriminatory pricing patterns, by requiring a single per unit cost determination and a single per unit cost application.

In calculating increased product costs to be applied to compute base prices, FEA regulations also provide an option not to allocate all allowable increased costs to a particular special product. Section 212.83(c)(1)(i) permits those costs which are not applied to gasoline base prices to be applied to base prices of other products, as determined under the calculations of § 212.83(c)(1)(ii).

The price regulations, therefore, provide a framework for calculating only a single increase of costs to be applied to each class of purchaser of a particular covered product. The differences in prices which result through this technique are those which have historically existed; their maintenance is fully intended by FEA in carrying out its objective to prevent discriminatory pricing.

Phillips asserts that during the period in question nothing in the FEA price regulations prohibited the charging of prices different from the calculated base prices, as long as the base prices were not exceeded. Phillips points out that, in its view, unrecovered costs permitted to be carried forward to a subsequent month, can be generated by "failure to sell the product at the full amount of the increased [sic] base price."

The language apparently relied upon by Phillips appears in § 212.83(e), "Carryover of Costs," and states:

(1) If * * * 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 * * * pursuant to paragraph (c)(1)(ii) of this section, [those costs] * * * may be added to * * * compute the base prices for that special product for a subsequent month.

This language does not, by its terms, authorize the disparate application of costs as suggested by Phillips. Rather, the quoted regulation relies upon the calculations of § 212.83 (c)(1)(i) and (c)(2), which, as discussed earlier, deal only in terms of a single increment of costs applied to each class of purchaser. The quoted paragraph does refer to prices "charged," but does not support an assertion that these prices may be calculated by using costs applied in a manner different than that authorized by the general rule and the general formula. Indeed, the reference to prices charged was intended by FEA to serve as recognition of the economic fact that often a firm may be unable actually to charge the "base prices" (e.g., FEA Ruling 1974-12, 39 FR 18423, May 28, 1974). Recognition of this fact, however, does not imply FEA sanction of an unequal application of or selective failure to apply a single cost in establishing prices.

The primary purpose of § 212.83(e) was simply to provide a self-correcting mechanism for over or under recoupment of increased costs, in recognition of the fact that base price determinations in each month must necessarily rely on estimated sales volumes, which may turn out to be inaccurate.

The interpretation urged by Phillips is, in essence, that § 212.83(e) permits the application of any increment of increased product costs to determine the actual selling price of a covered product to any class of purchaser, as long as the increment is less than the maximum permitted under § 212.83 (c)(2)(i). To adopt this interpretation would render meaningless the requirement of the FEA price regulations that a single increment of increased costs be calculated and equally applied to classes of purchaser, and the base price rule and class of purchaser concepts described above. It is, in short, unreasonable to assume that the regulatory system carefully structured to preserve historical pricing differentials could be circumvented by the interpretation of § 212.83(e) which is urged by Phillips.

To clarify the meaning of § 212.83(e) in this regard, FEA found it advisable to issue the clarifying amendment of September 1, 1974 (39 FR 32306, September 5, 1974) referred to by Phillips. This amendment served to make explicit the requirement discussed here, that prices charged must reflect the equal application of increased product costs. The amendment did not alter the concepts and implications of the pricing policies and regulatory framework described above.

It is therefore our interpretation that the provisions of §§ 212.82 and 212.83, in effect between January and May, 1974 did not authorize the unequal application of costs in the manner described by Phillips, and do not permit the carryover to a subsequent month of those increased product costs not recovered due to that unequal cost application.

INTERPRETATION 1975—6

To: Cheker Oil Co.

Date: February 14, 1975.

Rules Interpreted: § 212.93, Ruling 194-18.

Code: GCW—PI—Temporary Discounts on May 15, 1973, Class of Purchaser.

This is in response to your December 31, 1974, request of interpretation on behalf of Cheker Oil Company (Cheker) concerning the calculation of May 15, 1973 selling prices under 10 CFR 212.93.

FACTS

According to statements submitted by Cheker, Cheker instituted on May 2, 1973, certain revisions in its published Dealer Tankwagon (DTW) prices for gasoline. Although these published revisions constituted Cheker's "official" prices for gasoline in sales to retail dealers, Cheker was, on May 15, 1973, actually charging prices less than the published DTW prices prevailing during that time. These lower prices resulted from certain discounts off DTW prices that were made available throughout Cheker's distribution systems to certain dealers, "to preserve their competitive pricing posture in their specific local markets." Cheker removed its discounts and began charging only its published DTW prices on or about June 8, 1973.

In determining its maximum lawful prices under petroleum price regulations first issued by the Cost of Living Council (CLC) and later adopted by FEA, Cheker used its DTW prices as set forth on the revised schedule which was issued May 2, 1973 and in effect on May 15, 1973. Cheker did not use the actual discounted prices which had been charged on May 15, 1973, in performing its calculations.

Upon initiation of an investigation by FEA personnel in Region V, Cheker was advised that its use of the revised DTW prices, as published on May 2, 1973, instead of prices actually charged on May 15, 1973, in determining lawful prices, was erroneous. Relying upon certain language in FEA Ruling 1974-18 and in 10 CFR 212.93, Cheker asserts its calculations were proper, and has requested this interpretation of the application of the FEA price regulations to confirm that its calculations were correct.

INTERPRETATION.

The price rule of 10 CFR 212.93(a), which Cheker asserts it is applying in calculating its prices for gasoline, states:

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.

Section 212.93(d) requires, in part, that:

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.

This language of § 212.93(d) construes precisely the language of § 212.93(a) relating to the calculation of a seller's May 15, 1973 weighted average prices, and requires, contrary to Cheker's assertion, that the May 15, purchaser be determined upon prices actually charged, and not merely upon the prices published. To the extent that a published schedule reflects prices actually charged to some customers by a seller, those prices may of course be used, but not because they were "official" published prices, but rather because they were the prices actually charged. However, in cases where a published price existed, but a "sale" price, or a discounted price lower than a published price was actually charged, a seller must include those lower prices by using them in its calculations of May 15, 1973 weighted average prices under § 212.93(a).

Ruling 1974-18, issued on June 12, 1974 (39 FR 21042), is not relevant to the issue of whether "discounted" prices must be taken into account in determining May 15, 1973 weighted average prices. The ruling is addressed solely to the issue of the extent to which particular types of discounts serve to establish a customary price differential for purposes of making class of purchaser determinations. In that regard, the ruling drew a distinction between "customary" and "temporary" discounts for purposes of determining a class of purchaser to which a discounted price prevailed. It did not provide, however, for a seller to exclude, from its May 15, 1973 weighted average price calculation for each class of purchaser prices actually charged which were less than published or posted prices. The ruling simply stated, as Cheker notes, that a purchaser charged such a lower price because of a "temporary" discount, "may be included in the class of purchaser which includes purchasers customarily paying the full tankwagon price."

In fact, Ruling 1974-18 reaffirmed the requirements of § 212.93(d), since the calculation of a single May 15, 1973 weighted average price for a DTW class of purchaser is accomplished precisely by determining a "weighted average" of the prices charged: the lower, temporary discount price, and the full, higher DTW price. In the example of Ruling 1974-18, both such prices were "charged" to purchasers on May 15, 1973.

The language of Ruling 1974-18 therefore cannot support Cheker's views. The fact that under Ruling 1974-18 a seller is not, in the case of the temporary discount, required separately to maintain the discount, simply indicates that a separate "class of purchaser" will not be created by the presence of temporary discounts. Indeed, no separate maintenance of the discount could occur in that case, since that lower price is required to be included in the "weighted average" determined under § 212.93(a).

These requirements are entirely consistent with FEA's purpose under its Reseller rules, to which Ruling 1974-18 applies as fully as it applies to the Refiner rules. Those rules do not focus on the individual mark-up applied in discounted prices, but rather focus on the weighted average of the prices charged to a class of purchaser. They provide no basis for a seller to omit, in calculations of a lawful price to a class of purchaser, the prices actually charged, even if those prices were less than the seller's published prices.

Accordingly, it is our interpretation that the calculations performed by Cheker are not consistent with the provisions of 10 CFR 212.93 (a) and (d), which require a seller to include all prices actually charged to a particular class of purchaser on May 15, 1973; nor with Ruling 1974-18, which serves only as a guide for determining whether or not separate classes of purchaser exist, where a certain type of discount was in effect on May 15, 1973.

INTERPRETATION 1975-7

To: Pasco, Inc.

Date: February 14, 1975.

Rule Interpreted: § 212.83.

Code: GCW—PI—Refiner Price Formula ("*V*" Factor).

This is in response to your request for interpretation dated October 22, 1974, concerning whether the "V_4^n" and "V^n" factors in the cost allocation formulae of 10 CFR 212.83(c)(2) include the volume of all the product or products sold by the refiner concerned, whether or not refined from crude oil by that refiner. You have asked that these volume factors be interpreted in such a way that the volume of product purchased by the refiner concerned be excluded from that refiner's sales volume of that product.

FACTS

Pasco, Inc. ("Pasco"), a refiner which entered the petroleum refining business in December, 1972, owns and operates one refinery. Approximately *xx* percent of Pasco's total sales volume is derived from the sale of gasoline, which it markets through a wholly-owned subsidiary, Pasco Marketing, Inc. ("PMI"). Approximately *xx* percent of the volume of products marketed by PMI is obtained from the Pasco refinery. The remainder is purchased from suppliers other than Pasco.

Under the cost allocation formulae of 10 CFR 212.83(c)(2), Pasco may, in general, increase the price of a "special product," such as gasoline, to reflect (1) the total increased cost of crude oil input to the refinery, multiplied by the ratio that the total volume of gasoline sold in a given period bears to the total volume of all covered products sold in the same period, plus (2) the total increased cost of gasoline purchased for resale, plus (3) an adjustment to reflect any unrecovered increased costs from previous months which the refiner now wishes to pass through, plus or minus (4) a permitted adjustment to reflect certain allowable re-allocation of costs as between different products produced by the refiner. The sum of (1), (2), (3) and (4) is divided by the total estimated volume of gasoline sales for the current month to determine the total maximum dollar cost-justified price increase on a per-unit basis.

As indicated above, a relatively large portion of gasoline sold by Pasco is not produced in its refinery but is purchased product. Assuming that this large volume of purchased product must be included in the sales volume ratio in (1), above, the formula permits a larger share of increased crude oil costs to be passed through on gasoline and thus permits a price for gasoline which is higher than that which could be charged if the purchased product were permitted to be excluded from the sales volume ratio. An additional result under the same assumption is that the maximum permissible selling price for other refined products, such as No. 2 home heating oil, is correspondingly lower. Increased costs may be reallocated from No. 2 heating oil to gasoline, but may not be reallocated from gasoline, or any other product, to No. 2 heating oil.

Thus, when competitive circumstances are such that current gasoline selling prices are significantly lower than those which are permissible under the cost allocation formulae, the "unused" costs allocated to gasoline may not be reallocated to No. 2 home heating oil, a product which market conditions are more likely to permit to be priced at the maximum permissible level. However, if the maximum permissible price for gasoline were permitted to be determined under the cost allocation formula by excluding the volume of purchased product from the sales volume ratio in (1), above, the result would be a direct allocation of a larger share of crude oil cost increases to No. 2 home heating oil, and thus a corresponding increase in maximum permissible prices for that product.

INTERPRETATION

The definitions of "V^n" and "V_4^n" in 10 CFR 212.83(c)(2) indicate that purchased products as well as those refined from crude oil by the refiner concerned are included in the defined sales volumes, except in the case of propane. This is shown by the clear and necessary implication of the parenthetical "propane" clause which is found in both definitions, and which became effective August 1, 1974. For example, the definition of "V^n" begins as follows:

"V^n=The total volume of all covered products (other than propane, *which may be included only to the extent that it was refined by the refiner from crude petroleum*) * * * sold in the period "n" * * * [emphasis

added]." It is also shown by the express statement made in the preamble to the regulation amendment which inserted the parenthetical "propane" clause, that, prior to that amendment, the use of the unqualified words "all covered products" in V[a] "results in an allocation of increased costs of crude petroleum * * * in an amount which reflects not only the volume of propane refined from crude petroleum *but also the volume of propane purchased by the refiner and propane produced from natural gas liquids* [emphasis added]." 39 F.R. 30828 (August 26, 1974).

The view of the FEA as expressed in the above-quoted statement is that the words "all covered products," taken literally, require inclusion of purchased products in the sales volume of those products. The appropriateness of a literal interpretation in this case is supported by the practical consideration that purchased products are often commingled with refinery products, both in the sense of the fungible nature of certain purchased and refined final products and in the sense of the admixing of certain other products (blending ingredients) during the refining process.

INTERPRETATION 1975—8

To: Continental Airlines.

Date: February 14, 1975.

Rules Interpreted: §§ 210.21, 210.33, 211.51.

Code: GCW—AI—Definition of United States, Bonded Fuel; Bonded Fuel Exemption; Guam.

This is in response to your November 13, 1974 request for interpretation on behalf of Continental Airlines (Continental) regarding the applicability of FEA regulations to sales of aviation fuel at Guam, and whether such fuel sold there by Mobil Oil Corporation (Mobil) is "bonded" fuel for purposes of FEA programs. Your letter further requests that any earlier documents relating to "this general subject matter" be made available to you. We are not aware of any such documents in the Office of General Counsel, and suggest that your request should be pursued under the guidelines established in 10 CFR Part 202 for the production or disclosure of material or information by FEA.

FACTS

The facts as stated by Continental are that Continental purchases aviation fuel at Guam from Mobil. Mobil asserts, and has asserted since before the implementation of FEA regulations, that the aviation fuel which Continental purchases at Guam is "bonded" fuel. Based on this assertion, Mobil has required Continental to pay a price for aviation fuel which Continental asserts is higher than the prices being charged by other suppliers of aviation fuel on Guam and in the Trust Territory area pursuant to FEA regulations applicable to prices charged for domestic (non-bonded) aviation fuels.

Continental further states that, to its knowledge, the aviation fuel it purchases from Mobil is shipped directly to Mobil in Guam from foreign countries, but is not held in United States Customs' bond at Guam. Continental believes that Mobil is the only supplier of aviation fuel in Guam that asserts that such fuel is bonded fuel. In a telephone conversation of December 27, 1974, you advised this office that the aviation fuel involved is used by Continental only in flights which begin and end in the United States, its territories and possessions.

Continental requests an interpretation of whether its purchases of aviation fuel at Guam are subject to FEA regulations.

INTERPRETATION

Pursuant to the Emergency Petroleum Allocation Act of 1973, (Pub. L. 93-159 (EPAA)), FEA price and allocation regulations apply to each sale of certain petroleum products, including aviation fuel, in the United States. "United States" is defined by FEA, under the EPAA, at 10 CFR § 210.21, as follows:

"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.

Since Guam and the Trust Territory are part of the "territories and possessions of the United States," FEA regulations apply generally to all transactions in Guam which involve aviation fuel, unless exempt by virtue of a specific exemption in the regulations. Although "aviation fuels" are among the petroleum products regulated by FEA (see 10 CFR § 211.142 and 10 CFR § 212.31), there is an exemption provision of Subpart C of Part 210, CFR which states, in § 210.33, that: Bonded fuels, as defined in Subpart B of Part 211 of this Chapter, are exempt from the provisions of Parts 211 and 212 of this Chapter.

The definition of "bonded fuels" in § 211.51, describes these as: (f)uels 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.

Thus, if the aviation fuel purchased by Continental at Guam fell within this definition of "bonded fuels," it would be exempt from FEA regulations pursuant to 10 CFR § 210.33.

FEA regulations, as noted above, require that the bonding of fuels conform to federal Treasury Department Regulations. A review of the pertinent federal laws and Treasury Department Regulations discloses that bonding can, by definition, only take place within the Customs Territory of the United States, and that Guam is not within the Customs Territory. "Customs Territory of the United States" means only the several States, the District of Columbia and the Commonwealth of Puerto Rico (Pub. L. 87-456, 76 Stat. 72, as amended by Pub. L. 87-794, 76 Stat. 882, 19 USC § 1202, Tariff Schedules of the United States (1962), as amended; and 19 CFR § 7.8, note 15). The jurisdictional authority of the United States Customs Service is coextensive with the described customs territories, and does not encompass Guam and the Trust Territory (19 U.S.C. § 1401, et. seq.; 19 CFR § 1.2, et seq.).

Accordingly, based upon the facts as stated by Continental, it is our interpretation that the aviation fuel it purchases from Mobil is not "bonded fuel" as defined by FEA regulations, since it is not capable of being "held in bond under continuous United States customs custody," and is not "destined for use outside of the United States, its territories or possessions." Thus, the fuel does not come within the exemption provisions of 10 CFR § 210.33, noted above.

Because we reach this interpretation, it is not necessary to consider Continental's request that FEA direct an exchange of aviation fuel for Continental's benefit. Should such relief nevertheless be desired by Continental, it should be requested pursuant to the general provisions of Subparts A and H of Part 211 of FEA regulations.

INTERPRETATION 1975—9

To: Norman Wooten, Inc.

Date: February 14, 1975.

Rules Interpreted: §§ 212.111, 212.93.

Code: GCW—PI—New Item Rule, Acquisition Rule.

Your letter of March 28, 1974, submitted to the Federal Energy Administration (FEA) on behalf of Mr. Norman Wooten, Inc. ("Wooten"), requested a "determination" of the effect upon certain pending transactions described herein of § 212.111 of the FEA Price Regulations, which pertain to the computation of base prices for "new items."

More recently, the FEA received a supplement to your initial submission dated August 15, 1974, and signed by Mr. Daniel C. Kaufman. On September 3, 1974, a meeting was held in Room 5134A of the Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. to discuss the disposition of the supplemented request. During the meeting it was agreed among yourself, Mr. Kaufman, and Mr. Stewart Stone of the Office of General Counsel, FEA, that Wooten's request would be treated as a request for interpretation and that upon receipt of additional data regarding the computation of lawful prices under the FEA regulations, the Office of General Counsel would issue its formal interpretation. The additional information has been received.

FACTS

The request was engendered by the following fact situation:

(1) Wooten has been doing business as a midstream refueler for 2½ years, under the name of Ohio River Service and Supply, as a commissioned agent for Standard Oil of Kentucky ("Kentucky");

(2) Reduced to its most important elements, the relationship between Wooten and Kentucky consists of the sale by Kentucky, through its agent Wooten, of fuel (basically diesel fuel) and lubricating oil. Wooten receives commissions of _____ per gallon on diesel fuel sales and __% of the selling price on lubricating oil;

(3) Presently, Kentucky pays rent on the real estate used by Wooten, owns the tugboat and two barges with special refueling capabilities, pays all major operating expenses, maintains product inventory, and is responsible for all bookkeeping and billing relating to the midstream refueling operation;

(4) Kentucky does not wish to maintain Wooten as an agent for the midstream refueling operation. Kentucky would prefer to sell the assets, including a wharfboat, towboat and two barges, to Wooten and establish Wooten as a retail dealer on the river. In conjunction with the contemplated sale of assets, Wooten would also assume responsibility for bookkeeping, billing, operating expenses, rental on the real estate, and maintenance of product inventory. Although there is no sale of customer lists involved, Wooten would serve as an independent retailer substantially the same customers as it now serves as a commissioned agent.

ISSUE

The question presented relates to the method by which Wooten shall establish its maximum lawful price under FEA price regulations which it may charge at retail for fuel and lubricating oil in the event that Wooten purchases Kentucky's assets. Wooten argues that it would be entering a new business and that § 212.111 calls for the treatment of the sale of fuel by Wooten as a

"new item" whose base price should be determined under § 212.111(b)(3) by reference to "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."

INTERPRETATION

Section 212.111(b)(3) does not apply to sales by Wooten because, although Wooten, as an entity, did not sell fuel during the one year period immediately preceding the date on which it offered fuel for sale, the component of Kentucky which will be acquired by Wooten did make such sales.

Accordingly, Section 212.111(c) of the FEA regulations indicates the method by which Wooten shall determine its maximum lawful price for covered products, since this is the Section which provides for prices to be charged upon acquisition of a legal entity or a component of a legal entity which previously engaged in the sale of such products in the same market area. The basic objective of § 212.111(c) is to insure that changes in ownership do not result in unwarranted price increases or otherwise serve to avoid the FEA price regulations. Thus, where there is a change in ownership of an entity engaged in the distribution of petroleum products, but where the distribution of a particular covered product is not otherwise affected, prices for that product under the FEA regulations should generally not be affected. Section 212.111 states in paragraph (c), that:

(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.

While the phrase "entity or a component of a legal entity" is not defined in the regulations, it ordinarily connotes an on-going, identifiable business or a subsidiary or division thereof. Wooten argues that the phrase contemplates "something more than a towboat and three barges" and this may be correct. The acquisition of physical assets may not, in and of itself, constitute the acquisition of "a legal entity or a component of a legal entity" within the meaning of §212.111(c). However, where as here, the acquiring firm takes over an on-going business activity including operating assets, a leasehold interest, books and records, supply obligations, product inventory, etc., such acquisition of an identifiable business activity constitutes the acquisition of "a legal entity or a component of a legal entity" within the meaning of § 212.111(c).

Accordingly, upon acquisition of Kentucky's midstream refueling operation, as set forth in the request for determination, Wooten shall determine its maximum lawful price, for products previously sold on behalf of Kentucky, by reference to § 212.111(c)(1). This means that, if at the time of acquisition Kentucky's current lawful price being charged to a class of purchaser for diesel fuel sold through Wooten were 25.5 cents per gallon, the maximum lawful price which Wooten could charge for diesel fuel sold to that class of purchaser upon acquisition of Kentucky's assets, would be 25.5 cents per gallon, pursuant to § 212.111(c) of the regulations, but subject to the further price increases permitted to resellers and retailers pursuant to § 212.93(b) of the regulations.

In determining its maximum lawful price subsequent to the date of acquisition, Wooten shall be subject to § 212.93 provided that:

(1) in applying the price rule contained in § 212.93(a), Wooten shall calculate 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," by substituting the weighted average price at which the item was lawfully priced by Kentucky in transactions with the class of purchaser concerned on the date of acquisition;

(2) in calculating "increased costs" as defined in § 212.92 for use in the price rule of § 212.93(a), Wooten shall calculate the "weighted average unit cost of that product in inventory on May 15, 1973," by substituting the weighted average unit cost of that product in inventory on the date of acquisition.

It should be noted that, upon the acquisition, Kentucky will be required to compute its prices for covered products sold to Wooten in a different manner than it computed the prices at which those products were sold through Wooten, as Kentucky's agent. Thus, Kentucky formerly sold at retail on the river, and therefore was permitted to compute its prices by reference to its May 15, 1973 prices for classes of purchaser who purchased at retail. The contemplated acquisition will, however, result in sales by Kentucky to Wooten at a non-retail level. Therefore, Kentucky's price to Wooten, for inventory sold on the date of acquisition and for supplies sold subsequent to that date, will have to be determined with respect to Kentucky's prices to classes of purchasers which purchased at a non-retail level. For example, in pricing diesel fuel sold to Wooten, Kentucky will be required by the FEA regulations to place Wooten in the class of purchaser which is most similarly situated (e.g., other midstream refuelers in the area purchasing comparable volumes at wholesale), and to charge Wooten the same price as is charged to other members of that class.

INTERPRETATION 1975—10

To: Twin Montana, Inc.

Date: February 14, 1975.

Rule Interpreted: § 210.32.

Code: GOW—PI—Stripper Well Lease Exemption, Unitization.

This is in response to your March 12, 1974 request for an interpretation concerning the applicability of 10 CFR § 210.32 (the stripper well lease exemption of the FEA Mandatory Petroleum Price and Allocation Regulations), to the production of domestic crude petroleum which is attributed to leases subject to the "Unit Agreement" for the "Lupton Unit." I regret the delay which occurred in responding to your request.

FACTS

The information submitted by you was contained in a report prepared by Mr. Frank Jennings, Esq. and sets forth certain facts which form the basis of your request. According to that report, Twin Montana, Inc. ("Twin Montana") is a party to an agreement unitizing the crude petroleum production from certain tracts, known as the "Lupton Unit." This agreement was entered into prior to the effective date of the Emergency Petroleum Allocation Act of 1973 (P.L. 93-159) under which the FEA issued the subject regulation.

Certain provisions of the Lupton Unit Agreement have given rise to the question presented by Twin Montana. That Agreement states that the crude petroleum produced from the "Unit Area" shall be considered as crude petroleum produced from each lease within the Lupton Unit, as if the producing wells had each been operated from each lease within the Lupton Unit (Section 3.4 of the Unit Agreement). This provision imputes all production and operations of the Unit to each and every lease in the Unit. The Agreement also specifies the method for allocating shares of the production from the Unit to particular leases within the Unit.

On the basis of these provisions, Twin Montana asserts that a particular lease within the Lupton Unit may be considered a "stripper well lease" if the annual share of the Unit's production allocated to the lease in the preceding calendar year, divided by the product of the number of days in the year times the number of wells producing crude petroleum within the Unit Area, is less than ten barrels.

Twin Montana requests an interpretation that, on this basis, oil allocated to a lease under the Lupton Unit Agreement is exempt from FEA Mandatory Petroleum Price Regulations pursuant to the regulation concerning the first sale of domestic crude petroleum produced from a "stripper well lease." That regulation is set forth in § 210.32 of the FEA regulations.

INTERPRETATION

Section 210.32 of the FEA regulations states, in paragraph (a), that:

The first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids produced from any stripper well lease is exempt from (the Mandatory Price and Allocation Regulations).

A stripper well lease is defined, in § 210.32(b), as

* * * a "property" whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids, per well did not exceed ten barrels per day during the preceding calendar year.

A "property" is, in turn, also defined in § 210.32(b) as

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."

"Average daily production" is also defined in § 210.32(b), in pertinent part, to mean

The qualified maximum total production of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from a property during the preceding calendar year, divided by a number equal to the number of days in that year times the number of wells which produced crude petroleum and petroleum condensates, including natural gas liquids, from that property in that year.

The issue raised by your request for interpretation is whether, in determining the "average daily production" for purposes of the stripper well lease exemption, one may consider all of the producing wells in the unit as being producing wells with respect to each lease subject to the Unit Agreement (as provided in Section 3.4 of the Unit Agreement). Our conclusion is that the entire Lupton Unit Area subject to the Unit Agreement constitutes the single "property" for purposes of determining "average daily production," and that the total production from the Lupton Unit must be divided by the total number of producing wells in the Unit to determine average production per well.

This conclusion follows from the fact that an essential element for purposes of computing average daily per well production is "the number of wells which produce crude petroleum * * * from that property in that year". Under a unit agreement the location of producing wells with respect to individual leases cannot be determined, and the only number of producing wells that can be taken into account for this computation is with respect to the entire Unit Area.

The purpose of a Unit Agreement is to conduct secondary and other recovery programs.

Thus, the language of Section 3.4 of the Unit Agreement, noted earlier, provides that operations conducted on any part of the Unit Area "shall be considered as operations upon or production from each Tract, * * * just as if such operations had been conducted and a well had been drilled on and was producing from each such Tract."

Thus, under the Unit Agreement, it is no longer possible to ascribe rights or make determinations based on whether a producing well is physically located on the area covered by a particular lease, since all production is considered to take place on all leases covered by the Unit Agreement. Typically, in methods of secondary recovery or pressure maintenance, which the Unit Agreement is designed to permit, a number of producing wells are closed in or are used for injection, and are therefore no longer used for production.

A determination of average daily production for a lease, based upon the share of production from the Unit allocated to that lease, but using the number of producing wells within the Unit, is not permissible because it compares production allocated to a single lease within a Unit with the total number of wells producing in the Unit, so that although the production from the Unit might well be in excess of ten barrels per well per day, each lease owner subject to the Unit could claim a stripper well lease exemption. On the other hand, the determination of average daily production based upon physical location of producing wells with respect to particular leases would be arbitrary and contrary to the terms of the Unit Agreement, since only those owners which retained production wells physically located on their lease could possibly calculate a per well production figure for purposes of the stripper well exemption, whereas those owners whose leases contained former production wells that were closed in or used for injection could not possibly claim a stripper well exemption. It is a necessary conclusion, then, that the "property" to be considered under a unit agreement, when applying the provisions of 10 CFR § 210.32, is the Unit itself, and not each separate participating lease.

The FEA is currently considering whether, and how, its regulations should be amended in order to facilitate secondary recovery (and unitization agreements intended to promote secondary recovery). It should be noted, however, that the stripper well lease exemption was intended to ensure that wells producing at low production levels be continued in operation, rather than be shut in because of high operating costs in relation to the volume produced. Since the Lupton Unit Agreement was effective before the stripper well lease exemption was adopted, it would not appear that further price incentives could be justified as necessary to facilitate unitization or to insure that production under the Unit Agreement is sustained.

INTERPRETATION 1975—11

To: Calumet Industries, Inc.

Date: February 14, 1975.

Rule Interpreted: § 212.126.

Code: GCW—PI—Refiner Reporting Requirements.

On March 6, 1974 the FEA Regional Office, Chicago, Illinois, received a S-16, Application for Exception, from Calumet Industries, Inc., hereinafter referred to as Calumet. The Application for Exception was forwarded to the FEA National Office, Washington, D.C. On October 31, 1974, the Office of Exceptions and Appeals dismissed without prejudice the exception request. The dismissal was based on the fact that Calumet was requesting an interpretation of § 212.126 of the FEA regulations rather than an exemption from the FEA regulations.

FACTS

Calumet operates a division, Calumet Refining Company, which produces lubricants, diesel fuel, and No. 4 and No. 6 heating oils. Calumet derives less than x from the sale of the covered products it produces. Calumet does not sell the domestic crude petroleum it produces as an operator. Calumet produces no No. 2 heating oil.

INTERPRETATION

Pursuant to § 212.126(b), each firm which refines a covered product is subject to the FEA's reporting requirements. Section 212.126(b) states: "Each firm which refines covered products * * * shall prepare and file with the FEA periodic reports in accordance with the forms and instructions issued by the FEA." Accordingly, all refiners, regardless of their annual sales, capacity, or products produced are subject to the FEA's reporting requirements.

INTERPRETATION 1975—12

To: Longview Refining Co.

Date: February 25, 1975.

Rules Interpreted: §§ 212.83(e), 205.194, Economic Stabilization Act § 210.

Code: GCW—PI—Over-recoupment, Refunds.

This is in response to your letter of September 30, 1974, and the enclosed request for interpretation filed on behalf of the Longview Refining Company ("Longview"). This interpretation is based upon the information provided in the request and other documents filed with the request, and is expressly limited to the facts set forth therein.

FACTS

The request is for an interpretation of § 212.83(e) (§ 212.83(d) until this paragraph was redesignated § 212.83(e) on December 1, 1974 (39 FR 42368 (December 5, 1974))), which specifies the manner in which overrecoupment of increased product costs is to be dealt with in subsequent months. Longview's position is that this section prescribes price adjustments in subsequent months as the exclusive method of treating overcharges, and that refunds to identified purchasers of overcharges do not satisfy the requirements of that section or discharge the responsibility for compliance with that section. A refund to particular purchasers of the overcharges, Longview asserts, would require a refiner to refund the amount of any overcharge two times, once in direct refunds to purchasers, and again to all purchasers in subsequent months through the mechanism of the price adjustments called for by the price formula.

During the months of December 1973 and January 1974, Longview sold motor gasoline and diesel fuel to its wholesale purchasers at prices substantially in excess of the prices permitted under the Cost of Living Council regulations (6 CFR 150.355) and, subsequent to January 14, 1974, under the Federal Energy Office regulations (10 CFR 212.82). This overcharge was due to an inaccurate estimate of the cost of crude oil to Longview. For the purposes of this interpretation it is assumed that the wholesale purchasers and the total volumes of each product purchased by each purchaser are known.

INTERPRETATION

Section 212.83(e)(1) provides in relevant part:

"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 substracted from the May 15, 1973 selling prices to compute the base prices for that special product for the subsequent month."

This paragraph provides the general rule for computing prices in a subsequent month when there has been an overrecovery in a preceding month. It was included in the regulations in recognition of the fact that prices charged in a particular month are based in part on estimated sales volumes for that month, which may prove to be inaccurate, so that there would be a month-by-month self-adjustment, to prevent recovery by refiners in excess of the "* * * dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products to all marketers or distributors at the retail level * * *" specified in § 4(b)(2)(A) of the Emergency Petroleum Allocation Act of 1973 (P. L. 93-159).

Where the identity of purchasers of a covered product is unknown, a subsequent refund to the marketplace pursuant to § 212.83(e) is clearly the only means of compensating for a previous overrecoupment. However, when the identity of purchasers and the exact volumes of covered products purchased by each are known, it is possible for a refiner to bring itself into compliance with the regulations by retroactively adjusting prices (and thereby refunding overpayments made) so that the prices actually charged for that month will not "* * * result in the recoupment of more total revenues than the entire amount of increased product costs calculated for that product * * *."

This result, although not explicitly stated in the regulations, is consistent with both the Economic Stabilization Act of 1970, as amended (P.L. 92-210, as amended by P.L. 93-28) and the FEA Procedural Regulations (10 CFR Part 205).

Moreover, § 210 of the Economic Stabilization Act is expressly incorporated and made applicable to the regulations promulgated under the authority of the Emergency Petroleum Allocation Act. That section establishes a right of action for refunds of amounts paid in excess of the applicable ceiling on the goods or services involved. It should also be noted that § 205.194 of the FEA regulations specifically provides that one of the remedies which may be ordered by the FEA is the refund by a person to whom a remedial order is issued of amounts received that are in excess of amounts permitted under Part 212 of the price regulations. Thus, FEA regulations themselves contemplate refunds in appropriate circumstances.

In order for FEA regulations to be consistent both with the Economic Stabilization Act, and with the dollar-for-dollar passthrough requirement of the Emergency Petroleum Allocation Act, they must be read as permitting refunds where individual purchasers and the amount of overcharges can be identified. It is therefore our interpretation of § 212.83 that a retroactive downward adjustment of prices for the months of December 1973 and January 1974, such that the prices charged no longer result in the recoupment of excess revenues, constitutes a means of compliance with the requirements of § 212.82 and § 212.83. Such downward adjustment must, of course, be extended equally to all classes of purchasers and to all members of each class. All amounts refunded pursuant to such adjustments would constitute reductions in the amounts of revenues received in sales of covered products for purposes of

§ 212.83(c)(1), and no adjustment to May 15, 1973 prices in a subsequent month would be required with respect to such amounts.

In circumstances where the entire amount of overcharges for a particular month cannot be accounted for by refunds to identified purchasers, the balance of the overcharged amounts should be applied to reduce prices in subsequent months to classes of purchaser other than those classes whose members received refunds.

FEA approval of any plan for refunds, consistent with this interpretation, shall be obtained from the Director of the Refinery Audit Review Program, Fred Stuckwisch, Room 5002, 2000 M Street, NW., Washington, D.C. 20508. Telephone: (202) 254-8877.

INTERPRETATION 1975—13

To: Southern Gulf Oil Distributors Assoc., Inc.

Date: March 18, 1975.

Rule Interpreted: § 211.51.

Code: GCW—AI—Consignee, Wholesale Purchaser-Resellers.

Southern Gulf Oil Distributors Assoc., Inc. (the "Association") recently requested an interpretation of the Mandatory Petroleum Allocation Regulations concerning the status of consignee agents under those regulations.

FACTS

We understand that each member (a "distributor" of the Association normally distributes Gulf Oil Corporation products under the terms of a form contract entitled "Wholesale Consignment Agreement" (Gulf 1140-L). The agreement establishes a relationship whereby the distributor receives a commission for selling and delivering products, title to which remains with Gulf until they are sold. The agreement authorizes the distributor to make credit sales for the account of Gulf, but provides that any such sales not approved by Gulf in advance are made at the distributor's sole risk. We understand that members of the Association often extend credit at their own risk. The distributor is fully responsible for Gulf's products in his possession.

The entire charge, control and management of the distributor's business of selling and distributing Gulf's products are expressly left to the complete discretion and judgment of the distributor. He is required to furnish all necessary facilities and equipment (including bulk stations and trucks) involved in the storage, handling, and sale of Gulf's products as well as make provision for, and assume all responsibilities and expenses connected with, all necessary labor. All operating expenses including assessments, taxes, fees, and licenses arising out of his business or property are to be paid by the distributor.

Neither the distributor nor his employees are deemed to be employees of Gulf, under the form of agreement, and the distributor is required by its terms to provide all appropriate employer's liability, workmen's compensation and public liability insurance for his employees and to indemnify and hold Gulf harmless for any claims against Gulf arising from the operation of the distributor's business. The distributor is expressly prohibited from representing himself or his employees as agents or employees of Gulf.

ISSUE

The issue presented for interpretation is whether distributors of Gulf products operating pursuant to this agreement qualify as wholesale purchaser-resellers as defined in 10 CFR 211.51.

INTERPRETATION

It is my opinion that firms which sell and distribute allocated products pursuant to the terms of the contractual arrangement set forth above qualify as wholesale purchaser-resellers as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations.

Wholesale purchaser-reseller is defined in § 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Firms which obtain and resell or otherwise transfer allocated products are not excluded from the definition solely on the grounds that they fail to take legal title to the product.

Conversely, however, firms exercising only physical control over the delivery of a supplier's products do not qualify as wholesale purchaser-resellers. To qualify as a wholesale purchaser-reseller under FEA regulations, a consignee must have a substantial degree of operational independence in the conduct of the consignee's business of transfer and sale of a supplier's products.

According to the terms of the Gulf Wholesale Consignment Agreement, distributors retain a substantial measure of functional autonomy in distributing and selling Gulf products. Although distributors must account fully to Gulf for all products received, and such products must be sold at a price fixed by Gulf, they are fully responsible for all aspects of conducting the business and are expected to exercise independent judgment and discretion in its operation. While Gulf permits the distributor a qualified association with its product name, it provides, under this agreement, no facilities, equipment, labor, organizational or employee benefits and explicitly disavows any agency relationship to the distributor and its employees.

Thus, any firm which is in the business of selling and distributing allocated products under the terms of the Gulf Wholesale Consignment Agreement operates as a functional entity that is sufficiently independent of its supplier so as to qualify as a wholesale purchaser-reseller, as defined in 10 CFR 211.51.

This interpretation is limited to the factual situation set forth above and shall not be construed to apply to any relationship where the existence of other agreements, amendments, modifications or practices of any kind have the effect of changing the relationship described above.

INTERPRETATION 1975—14

To: Can Manufacturers Institute.

Date: March 18, 1975.

Rule Interpreted: § 211.83.

Code: GCW—AI—Propane Allocation.

Your letter of May 29, 1974, on behalf of the Can Manufacturers Institute requested an interpretation of § 211.83 of the Mandatory Petroleum Allocation Regulations (10 CFR § 211.83) concerning the proper allocation level for propane used to operate forklift trucks by the can manufacturing industry.

FACTS

We understand from your letter that the can manufacturing industry uses forklift trucks primarily in enclosed areas where clean burning fuels are required both to protect the safety and health of workers and to avoid contamination of food cans. Although some forklift trucks may be convertible to electricity, most can manufacturers have historically relied upon propane as the sole fuel source for these vehicles.

ISSUE

Whether forklift trucks used in the can manufacturing industry are entitled to a propane allocation level of one hundred percent of base period use subject to an allocation fraction?

INTERPRETATION

Section 211.83(c)(2)(iii) of FEA's regulations establishes a propane allocation level of one hundred percent of base period use subject to an allocation fraction for "industrial use as a process or plant protection fuel or where *no substitute for propane is available*" (emphasis added). The phrase "where no substitute for propane is available" is specifically defined in § 211.83 as follows:

"Where no substitute for propane is available" means those circumstances in which no alternate fuel is available or in which a firm has historically relied upon propane as its sole fuel source.

In view of the regulatory provisions set forth above, it is our opinion that those can manufacturers which have historically relied on propane as the sole fuel source for their forklift trucks are entitled to an allocation of propane equal to one hundred percent of base period volume subject to an allocation fraction.

This interpretation assumes that a can manufacturer receives propane from his supplier into a storage facility at the manufacturing plant from which the manufacturer refills the individual bottles on forklift trucks. If a can manufacturer's propane supplier refills or replaces the individual bottles (which are normally less than 100 pound capacity) on each forklift truck, FEA regulations would not apply because the propane allocation regulations are not applicable to sales of bottled propane. See § 211.81(a)(1) of the Mandatory Petroleum Allocation Regulations.

INTERPRETATION 1975—15

To: Department of the Navy.

Date: March 20, 1975.

Rules Interpreted: § 212.52, EPAA.

Code: GCW—PI—Sales by Federal Government, EPAA Supercession of Other Federal Laws.

This is in response to your letter of August 27, 1974, requesting the formal views of the Federal Energy Administration on your determination that, as a matter of law, FEA price regulations (specifically 10 CFR § 212.52) are inapplicable to sales of crude oil from the naval petroleum and oil shale reserves. On the basis of what we understand to be the facts, as set forth herein, we have concluded that the appropriate response to your request is the interpretation that follows.

FACTS

Section 7421, chapter 641 of the United States Code, Title 10 (Armed Forces), vests the Secretary of the Navy with possession of "all properties inside the naval petroleum and oil shale reserves that are or may become subject to the control of and use by the United States for naval purposes," subject to an exception not presently relevant. The same section confers in the Secretary exclusive jurisdiction and control over certain lands inside reserves numbered 1 and 2.

The reserves subject to the Secretary's jurisdiction are administered by the Secretary under section 7422, for exploration, prospecting, conservation, development, use, and operation. As contemplated by the House Committee on Naval Affairs, oil may be produced under that section for two purposes only: (1) protection, conservation, testing,

and maintenance of the reserves, and (2) when the Secretary, subject to presidential approval and joint resolution of Congress, "finds that it is needed for national defense." (See H.R. Rep. No. 1529, 78th Cong., 2d Sess. 6-7 (1944)).

Section 7426 authorizes: joint, unit, or other cooperative plans of exploration, prospecting, conservation, development, use, and operation of lands owned or controlled by the United States inside naval petroleum reserve numbered 1 and lands owned or leased by private interest—(1) inside naval petroleum reserve numbered 1; or (2) outside naval petroleum reserve numbered 1 on the same geologic structure.

Each party to such cooperative agreements (except the United States) is permitted under section 7426 to produce and receive petroleum, which is charged to that party's share, as reimbursement for surrendering control of its rate of production and for current expenses of "protecting, conserving, testing, and maintaining a good oil-field condition the lands, wells, and improvements thereon, and its real and personal taxes levied or assessed thereon * * *." In administering the reserves, the Secretary is permitted under section 7430 to "use, store, sell or exchange for other petroleum or refined products, the oil and gas products" produced from the reserves. Sales under section 7430 are required to be made at public sale to the highest qualified bidder.

The thrust of the Navy's argument, as we understand it, is that if the Secretary is not allowed freely to price the limited quantities of crude oil that are produced to protect, test, and maintain the reserves, and to compensate its unit partner at reserve numbered 1 for its share of the operating expenses there, the Navy will be required to produce crude oil in greater quantities than it otherwise would, which is inconsistent with its statutory duty to preserve the oil in the ground until it is needed for national defense purposes. The Secretary suggests, therefore, that FEA price regulations do not apply to the reserves as a matter of law.

INTERPRETATION

As you know, section 212.52 of the Mandatory Petroleum Price Regulations originally contained an exemption for sales of covered products, including crude oil, by Federal, State, and local governments. On February 21, 1974, the Federal Energy Office terminated a rulemaking proceeding that had been initiated by the Cost of Living Council in October, 1973, and removed that exemption for State and local government sales. On March 5, 1974, FEO issued a notice of public hearing and a request for written comments on the question whether FEO should reconsider the amendment that withdrew the exemption. Thereafter, on April 2, 1974, after evaluating written comments and oral statements received in connection with the rulemaking, FEO issued an amendment to the price regulations sustaining the February 21 amendment and also deleting section 212.52(b), which had previously exempted sales of covered products by the Federal government. At that time FEO determined that continuation of the Federal exemption was inequitable in light of the removal of the State and local exemptions.

The Emergency Petroleum Allocation Act of 1973 vests the President with broad regulatory authority over petroleum products. If the President is to discharge his statutory responsibilities effectively, we have concluded that the Allocation Act must be interpreted to supersede conflicting provisions of chapter 641 of Title 10. The emergency nature of the Allocation Act supports the view that the Allocation Act must necessarily supersede all conflicting Federal and State legislation not specifically exempted from the scope of its operation. The fact that Federal, State, and local governments are not specifically exempt from the reach of the Allocation Act also supports the conclusion that Congress intended activities by those entities to fall within the reach of regulatory control.

The foregoing conclusion is further supported by judicial construction of the Emergency Price Control Act of 1942 (as amended by the Act of October 2, 1942, 50 U.S.C.A. App., § 961, et seq.). Inasmuch as the EPCA was enacted subsequent to the Interstate Commerce Act, the emergency act was held to supersede the prior legislation "to whatever extent may be necessary to achieve its own purposes." *Henderson* v. *Washington, Marlboro & Annapolis Motor Lines*, 132 F. 2d 729 (D.C. Cir. 1942).

Pursuant to the Allocation Act, the President has delegated his authority to allocate and price petroleum products first to FEO (E.O. 11748, 38 FR 33575, December 6, 1973) and then to FEA (E.O. 11790, 39 FR 23185, June 27, 1974). The authority so delegated encompasses authority for the promulgation of regulations required by section 4(b)(1)(a) to provide for the protection of public health, safety, and welfare * * * and *the national defense*" (emphasis supplied). Thus, the Allocation Act confers the President with broad regulatory authority over crude oil, residual fuel oil, and refined petroleum products, including the responsibility to promulgate regulations consistent with the national defense. The authority respecting regulations under the Allocation Act pertaining to the national defense and production from the reserves might have been delegated by the President to the Secretary of the Navy. It has, however, been delegated by the President to FEA. We have concluded, pursuant to our authority under the Allocation Act and Executive Order 11790, that exemption of the naval petroleum and oil shale reserves from FEA Mandatory Petroleum Price Regulations would not comport with FEA responsibilities, including its responsibility to consider the effects of its regulations on the national defense.

FEA is aware that sales of the Navy's production at the regulated price might involve the disposition of larger quantities of crude oil than sales at a free market price. We note, however, that the Cost of Living Council in December of 1973 (38 FR 34985, December 21, 1973), increased by $1 per barrel the ceiling price for domestic crude oil, and the ceiling price is now $1.35 per barrel above the May 15, 1973 price. Thus, the production of similar amounts of crude oil, even at controlled prices, results in substantially more revenues now than it would have at May, 1973 market prices. We appreciate your concern for maintaining the oil in the ground, but must conclude that the Mandatory Petroleum Price Regulations apply uniformly to Federal, State, and local governments.

INTERPRETATION 1976—16

To: Murphy Oil Corp.; System Fuels, Inc.

Date: April 15, 1975.

Rule Interpreted: § 212.83(e).

Code: GCW—PI—Carryover of Increased Product Costs, Contracts Entered Into On or Before September 1, 1974.

This is in response to your January 21, 1975 request for an interpretation of Federal Energy Administration (FEA) petroleum price regulations on behalf of Murphy Oil Corporation (Murphy), and joined in by System Fuels, Inc. (SFI), concerning an interpretation of 10 CFR 212.83(e), as applied to a certain contract between Murphy and SFI. The question to be determined is whether a proposed modification of a price term in a contract entered into in January, 1972, will mean that prices charged pursuant to that contract no longer qualify as "price(s) charged * * * because of price term of a written contract * * * which was entered into on or before September 1, 1974 * * *." under § 212.83(e) of the FEA price regulations, in which case any difference in prices charged for a product by Murphy that reflected unequal application of increased costs because of the price term of the contract between Murphy and SFI could not be carried forward as unrecovered increased costs for recovery in a subsequent month pursuant to § 212.83 (e).

FACTS

As outlined in your written request, and discussed in a meeting with FEA personnel on January 17, 1975, and subsequent telephone conversations with this Office, the pertinent facts in this request are stated below. Murphy and SFI entered a contract in January 1972, pursuant to which Murphy agreed to sell and SFI agreed to buy, quantities of No. 2 and of No. 6 fuel oil. The term of the contract is five years commencing in September 1972 and expiring August 31, 1977.

The contract contains a price term which states that the selling prices of the No. 2 and No. 6 fuels sold and delivered under the contracts "shall be subject to increasing or decreasing cent for cent, with the arithmetic average of Gulf Coast posted prices for 40° API gravity and above crude oil of * * * four major oil companies * * *."

This price term was to be effected from the date the contract was entered "thru [sic] the expiration of the Sales Agreement (August 31, 1977)." The effect of this price term was to place Murphy's price to SFI for No. 6 fuel at x per barrel less than the specified average crude oil price, and for No. 2 fuel at x per barrel more than the specified average crude oil price.

When the Cost of Living Council (CLC) instituted a crude oil price control system which involved one price for "old" crude oil and another higher price for "new" crude oil (the so-called "two-tier" system), a disagreement arose between Murphy and SFI regarding how to determine the "average" Gulf Coast posted price for crude oil to be used under the quoted contract term. Murphy, attempting to construe the contract under those CLC regulations, contended that the cost to be applied was Murphy's total weighted average cost of crude, a figure which Murphy was required to use in its own cost calculations, and which, for Murphy, was composed of its costs of "old" domestic crude oil (run in its refinery in Meraux, Louisiana) and costs of imported Canadian crude oil (run in its refinery at Superior, Wisconsin). SFI, relying upon the fact that its purchases, according to the contrate, were made out of the Meraux refinery, asserted that the proper measure of the cost of crude oil was Murphy's cost of crude oil at that refinery (i.e., the cost of "old" crude oil).

In January 1974, FEA adopted the CLC's crude oil price and cost rules, and the disagreement between Murphy and SFI continued. Both Murphy and SFI, however, recognized that the intent of the contract clause was to provide for adjustments to selling prices. In May 1974, SFI instituted suit in a Federal District Court, seeking a declaratory judgment regarding the proper application of the price term of the contract, in light of the events described. Since the filing of the suit, which is now pending, and continuing to the present, Murphy and SFI have continued their negotiations in an effort to settle this issue.

In September 1974, FEA issued certain amendments to its price regulations that

relate to the application of increased product costs by a refiner to its prices, where such prices are specified in a contract. In pertinent part, the amendment states:

Where an equal amount of increased product cost is not included in the price charged to a purchaser because of a price term of a written contract * * * which was entered into on or before September 1, 1974, that portion of the increased product costs not included in the price charged to such a purchaser need not be included in the calculation of revenues. (10 CFR 212.83(e)). (30 FR 32306, September 5, 1974)

In December 1974, FEA issued regulations regarding the allocation of quantities of "old" oil under a system of "entitlements" to such oil (39 FR 42246, December 4, 1974). These regulations were designed to reduce disparities in crude oil costs incurred by refiners because of varying access to quantities of inexpensive "old" oil and higher priced "new" oil and imported oil. In light of this cost leveling effect, which has been implemented with respect to all domestic refiners, SFI has indicated a willingness to accept Murphy's weighted average crude oil cost between Murphy's two refineries (the Meraux and Superior refineries), as the basis for pricing the No. 2 and No. 6 fuel oil purchased under the contract after January 1, 1975. On its part, Murphy is willing to accept, as the measure of adjusting the product prices under the contract, the Meraux weighted average crude oil cost, for the period of the dispute prior to January 1, 1975. Both measures are intended to carry out the intent of the price adjustments first provided for in the contract by reference to the Gulf Coast average prices.

In addition, the parties have proposed as part of their settlement that certain volumes of No. 2 oil, which Murphy must make available to SFI under the contract, be exchanged by SFI to Murphy for related volumes of No. 6 oil. This exchange would be performed using prices established for each of the fuel volumes pursuant to the contract price terms agreed upon in the proposed settlement.

As a condition of the proposed regulation between Murphy and SFI, Murphy has requested this interpretation. Murphy expects to determine and charge, under present FEA regulations, base prices for these fuels that include greater increments of increased product costs than would be included in prices charged to SFI under the contract price term now proposed to be used by the parties. Under § 212.83(e) Murphy would be unable to carry forward the difference in its increased product costs, if unequally applied between SFI under the contract, and other classes of purchaser, if the proposed revision of this contract price term were to alter the status of the agreement between Murphy and SFI as a written contract "entered into on or before September 1, 1974," for purposes of § 212.83(e).

INTERPRETATION

Section 212.83(e) was amended, effective September 1, 1974, to limit the conditions under which a refiner could permissibly charge a price to a purchaser for a product which reflected the unequal application of the refiner's increased product costs among all its classes of purchaser of the product. The amendment was issued in express recognition by FEA of the existence and effect of long-term contracts which, by their price terms, prevented a seller from charging a price otherwise lawful under FEA regulations. Absent such a contract, the amendment makes it clear that an unequal application of increased product costs will result in the seller's inability to subsequently recover the difference between the highest amount of increased cost and the lowest amount of increased cost applied in sales of the product. The amendment of § 212.83 therefore offers "protection" to the seller if such a contract exists, by permitting the seller to carry forward for recovery in a subsequent month, the cost differential, to the extent it was necessitated by the contract.

FEA recognized, however, that this protection against cost "losses" under contract price terms might be misused if a seller could choose those parties with whom favorable low-price contracts would be entered, while recovering the resulting cost differentials in sales to purchasers with whom the seller declined to enter such contracts. In short, the seller's cost "protection" under the § 212.83(e) amendment was potentially a basis upon which selected buyers could be offered price "protection." To avoid this potential discriminatory use of contracts, FEA established September 1, 1974, the effective date of the amendment, as the date on or before which such contracts must have existed in order to fall within the provisions of § 212.83(e). In addition, FEA noted that even such pre-existing contracts might provide a shelter for discriminatory cost application, stating that the protection of § 212.83 (e):

* * * will apply only to the extent that the maximum price which may be charged under the contract is less than the price that would otherwise result from the equal application of increased product costs. Thus, to the extent that a seller charges a price which is less than it is entitled to charge under a fixed-price contract and which is less that the price reflecting equal application of increased product costs, it may not carryover to a subsequent month the unrecouped increased costs represented by the difference between the actual price charged and the highest price that could have been charged under the contract. (39 FR 32306, September 5, 1974)

The effect under FEA regulations of the price term now proposed between Murphy and SFI may be analyzed in terms of the considerations addressed by FEA in its September 1, 1974 amendment to § 212.83(e).

The language of § 212.83(e) specifically applies to "a price term of a written contract * * * entered into on or before September 1, 1974." Read in a broad sense, this language would include the written contract between Murphy and SFI, since the contract in issue was entered into in January 1972. The amendment, however, has for its focus the "price term" of such a contract, and the prices charged pursuant to such a price term. The amendment does not, however, address the case of an adjustment in the price term of a contract.

Although FEA cannot characterize the contractual aspects of the parties' proposed settlement, particularly in light of the litigation context, and interpretation of the applicability of § 212.83(e) to the proposed settlement is appropriate. Thus, without deciding whether the proposed settlement is a "reformation" an "amendment," a "renegotiation" or other contractual adjustment, we note that if no price adjustment clause existed in the original contract between the parties, the language of § 212.83 (e) would permit Murphy to carry forward the full amount of its cost differential resulting from sales to SFI under a fixed price contract.

In our view, the parties here seek only to apply reasonable meaning to language that was originally contained in the contract, but which became incapable of application because of changed circumstances, including the institution of Federal petroleum price regulations. We conclude, therefore, that the proposed change in the contract does not contravene FEA's purposes under § 212.83(e).

The amendment to § 212.83(e) also reflected FEA's concern that a seller's inability to recover costs because of preexisting contractual price terms would not result in the permanent loss of those costs. Thus, any cost differential not recovered by Murphy because of its contracts, using the original contract terms, could clearly be carried forward for subsequent recovery under § 212.83 (e). The resolution suggested by the parties, which would alter the means to measure the movement of the purchase price of the products under the contract, is not contrary to this purpose.

Furthermore, the proposed settlement terms are not inconsistent with FEA's intent to prevent a discriminatory application of favorable contract clauses to preferred customers. Price terms, "favorable" to SFI in relation to any other, non-contract purchasers of the products, have been available to SFI since 1972. The modified price terms now contemplated by the parties would therefore not represent discriminatory preference for SFI and against others, such as was proscribed by the September 1, 1974 date, since SFI historically received such a preference. In short, neither Murphy nor SFI receives "new" protection by revising the measure of product prices under the contract.

FEA has intended generally to preserve relationships established in advance of its regulatory program, and it is therefore relevant in this case not only that the parties to the contract remain the same through the relevant date (September 1, 1974), but also that both parties have joined in the present interpretation request. It appears that both parties would consider the proposed settlement satisfactory, and that both parties agree with, or consent to, the requested treatment of the proposed settlement under § 212.83(e).

One final aspect of the proposed settlement that is also relevant is the unchanged duration of the contract itself. An important reason for the provisions of § 212.83(e) was the recognition of the cost impact of a long-term contract, which could prevent the full recovery of costs under FEA rules. The provisions of § 212.83(e) were not intended to discourage stable long-term sales relationships, and nothing contained in the proposed settlement appears to alter the original term of this contract. At the same time, neither Murphy nor SFI would receive a benefit of any longer duration than that which would otherwise have prevailed.

The proposal to adjust product volumes on an exchange basis does not fall directly within the price focus of § 212.83(e). Where the proposed substitution of product is not precluded by other aspects of FEA regulations, such an exchange would raise, for purposes of Part 212, only the question of the proper price term to be applied. The proposed exchange would permit SFI to purchase a volume of No. 6 oil, in exchange for No. 2 oil, on the basis of the prices for No. 6 oil and No. 2 oil pursuant to the contract. We conclude that this proposed exchange would not, for purposes of § 212.83(e), constitute a contract made after September 1, 1974, since the overall dollar benefit to SFI, in relation to other purchasers of these fuels, is not altered by the exchange.

It is therefore our interpretation that the proposed settlement terms do not alter the status of the January 1972 contract between Murphy and SFI as a "contract * * * entered into on or before September 1, 1974," and that those terms themselves are not a contract entered into after September 1, 1974, for purposes of calculations under 10 CFR 212.83(e).

INTERPRETATION 1975—17

To: Agents Alliance, Inc.

Date: April 15, 1975.

Rule Interpreted: § 211.51.

Code: GCW—AI—Wholesale Purchaser-Resellers.

By letter dated March 17, 1975, Agents Alliance, Inc. requested an interpretation of the Mandatory Petroleum Allocation Regulations concerning the status of certain distributors of Atlantic Richfield Company's products under those regulations.

FACTS

We understand that distributors operating in the states of Arizona, Nevada, Idaho, Washington, Oregon and California normally distribute Atlantic Richfield Company (Arco) products under the terms of a form contract entitled "Commission Distributor Agreement" (RD 537 Rev. 1-68). The agreement establishes a relationship whereby the distributor receives a commission for selling and delivering products within a defined marketing territory, title to which remains with Arco until they are sold. The agreement authorizes the distributor to make credit sales for the account of Arco but provides that any such sales made in excess of those approved by Arco are made at the distributor's risk. The distributor is fully responsible for Arco's products and sales revenues in his possession. Arco agrees to provide quantities of products as the distributor shall require and to furnish the distributor with promotional materials for the sale of products.

Full control of the distributor's independent business of selling and distributing Arco's products is expressly retained by the distributor. He is required to furnish and bear all expense connected with necessary facilities and equipment (including his bulk plant and trucks) involved in the storage, handling and sale of Arco's products, and to make provision for, and assume all responsibilities and expenses connected with, all necessary labor. All operating expenses including assessments, taxes, fees, and licenses arising out of his business are to be paid by the distributor.

The agreement expressly provides that the distributor's employees are not employees of Arco, and the distributor is required by its terms to provide all appropriate employer's liability, workmen's compensation and public liability insurance for his employees and to indemnify and hold Arco harmless for any claims against Arco arising therefrom. The distributor is expressly prohibited from signing any contract on behalf of Arco.

ISSUE

The issue presented for interpretation is whether Arco distributors operating pursuant to this agreement qualify as wholesale purchaser-resellers as defined in 10 CFR 211.51.

INTERPRETATION

It is my opinion that firms which sell and distribute allocated products pursuant to the terms of the contractual arrangement set forth above qualify as wholesale purchaser-resellers as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations.

Wholesale purchaser-reseller is defined in § 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Firms which obtain and resell or otherwise transfer allocated products are not excluded from the definition solely on the grounds that they fail to take legal title to the product.

Conversely, however, firms exercising only physical control over the delivery of a supplier's products do not qualify as wholesale purchaser-resellers. To qualify as a wholesale purchaser-reseller under FEA regulations, a consignee must have a substantial degree of operational independence in the conduct of the consignee's business of transfer and sale of a supplier's products.

According to the terms of the Commission Distributor Agreement submitted by you, Arco distributors retain a substantial measure of functional autonomy in distributing and selling Arco products. Although, distributors must account fully to Arco for all products and sales revenues received, and such products must be sold at a price approved by Arco, they are fully responsible for all aspects of conducting the business and are expected to exercise independent judgment and discretion in its operation. While Arco permits the distributor an association with its product name, it bears no expenses under this agreement, for facilities, equipment, labor, organizational or employee benefits and explicitly recognizes the distributorship as an independent business.

Thus, any firm which is in the business of selling and distributing allocated products under the terms of the Commission Distributor Agreement submitted by you, operates as a functional entity that is sufficiently independent of its supplier so as to qualify as a wholesale purchaser-reseller, as defined in 10 CFR 211.51.

This interpretation is limited to those Arco distributors which operate under the Commission Distributor Agreement described above and shall not be construed to apply to any relationship where the existence of other agreements, amendments, modifications or practices of any kind have the effect of changing the relationship described above.

INTERPRETATION 1975—18

To: Oregon Department of Transportation.

Date: April 21, 1975.

Rules Interpreted: § 212.93, Ruling 1974-4.

Code: GWC—PI—State Tax Increase Passthrough.

This is in response to your request for interpretation, dated April 18, 1975, filed on behalf of the Oregon Department of Transportation.

FACTS

The State of Oregon currently has a law which imposes a "license" tax of seven cents per gallon on "dealers," defined as the importer, producer, refiner or other acquirer of motor vehicle or aircraft fuel who subsequently sells, uses, or distributes fuel within the state on which no previous license tax has been paid or, in effect, those distributors that constitute the first level of distribution within the state. This tax has been in effect since prior to 1973, and has traditionally been included as part of the price charged by such dealers.

Amendments to this law are now being considered. The initial proposal was simply to increase the current license tax by two cents per gallon. Upon the informal advice of the FEA that FEA price regulations would not permit the amount of such an increased tax to be passed on by the companies required to pay the tax in the form of higher prices, a new tax has been proposed in alternative form, in the event that federal regulation would preclude the passthrough of the increase in the license tax, on the effective date of the tax.

The alternate form of the tax would require "dealers" to collect two cents per gallon from each purchaser, and to remit that amount to the state, and also to pay two cents per gallon for all fuel consumed by each dealer. The proposed statutory language specifically authorizes each subsequent seller to collect the tax from each subsequent purchaser. In addition, both forms of the tax provide an exemption for volumes of fuel not sold or used within the state, including provisions for the refund of amounts paid for such volumes.

The Oregon Department of Transportation has requested an interpretation on two points. First, would dealers be able to include an increase in the current license tax of two cents per gallon in the price charged to their purchasers? And second, would the alternate form of the tax, by which the two cents per gallon tax is imposed on the purchaser at the time of sale, permit the inclusion of the tax increase by such purchaser in prices charged to its purchasers?

INTERPRETATION

The increase in the current tax initially proposed could not be included by a dealer in prices charged to its purchasers under FEA price regulations now in effect. Such a tax increase would not represent an increase in the cost of the product to the dealer, but rather an increase in the cost of doing business. Because the responsibility to pay the tax remains with the dealer, it also could not be regarded as a tax imposed on purchasers, which is collected by sellers, and therefore it could not be added by the seller to the maximum lawful price of the product, as provided by Ruling 1974-4.

The result is different with regard to the alternate form of the tax, which is imposed on ultimate purchasers and merely collected by the dealers. Ruling 1974-4, a copy of which is enclosed, dealing with a state gross income tax, provides in part that "* * * it has the same impact as a sales tax since it is in fact a tax imposed on the customer based on retail selling prices and collected by the retail seller. State sales taxes collected under an agency arrangement would not be considered part of the price charged by [the dealer] in retail sales subject to the pricing rule in § 212.93." Because the proposed Oregon alternate tax has the same impact as a sales tax and is merely collected by the dealer for the state, it comes within the rationale of this Ruling. It is not an increase in the price charged by the dealer, but is a sum in excess of the dealer's maximum lawful price collected by the dealer as agent of the state. However, this agency theory is only applicable to sums collected for volumes sold for use within the state, in the same sense that a sales tax only applies to such volumes.

The rationale of Ruling 1974-4 also applies to each subsequent sale, since the proposed state law requires that the amount of the tax be included in the selling price by each subsequent seller. Thus, as long as the tax in question retains the characteristics of a sales tax (i.e., is applicable to sales of the product for use in the state) and is merely collected by the seller as agent for the state, it may be added to the maximum lawful selling price by the seller.

It is therefore our interpretation of § 212.93 that an increase in state taxes may only be added to maximum lawful prices in the following circumstances. The tax must be imposed on the purchaser and merely collected by the seller as agent for the state; the tax must be imposed in lieu of a state sales tax; and the tax must have no extraterritorial effect.

Under the facts presented by the State of Oregon in its request for interpretation, the alternate form of the tax appears to meet these criteria. Therefore it could be col-

lected in addition to the maximum lawful selling price by each seller, consistent with the current FEA price regulations.

INTERPRETATION 1975—19

To: National Association of Texaco Consignees, Inc.

Date: April 24, 1975.

Rule Interpreted: § 211.51.

Code: GCW—AI—Wholesale Purchaser-Reseller.

By letters dated March 5 and March 7, 1975, the National Association of Texaco Consignees, Inc., requested an interpretation of the Mandatory Petroleum Allocation Regulations concerning the status of certain distributors of Texaco Inc.'s products under those regulations.

FACTS

We understand that distributors normally distribute Texaco's products under the terms of a form contract entitled "Consignment Agreement" (Form S-32, 1-65). The agreement establishes a relationship whereby the distributor receives a commission for selling and delivering products to customers that he selects, title to which, remains with Texaco until sold. The distributor is prohibited from mixing Texaco's products for sale with other products or from selling to re-sellers not authorized by Texaco. The agreement authorizes the distributor to make credit sales for his own account or for the account of Texaco, but provides that sales for his own account and credit sales made in excess of those approved by Texaco are made at the distributor's risk. The distributor is fully responsible for Texaco products and sales revenues in his possession, and Texaco retains a right to inspect inventories and records pertaining thereto.

Control of the distributor's independent business of selling and distributing Texaco's products is retained by the distributor. He is required to furnish and bear all expenses connected with necessary facilities and equipment (including his bulk plant and trucks) involved in the storage, handling and sale of Texaco's products, and to make provision for, and assume all responsibilities and expenses connected with, all necessary labor. All expenses incident to the conduct of his business and sale of Texaco's products are to be paid by the distributor.

The agreement expressly provides that the distributor shall exercise full direction, control and responsibility over all employees required for the operation of his business, and the distributor is required by its terms to provide all appropriate employer's liability, workmen's compensation and public liability insurance for such employees and to indemnify and hold Texaco harmless for any claims against Texaco arising therefrom.

ISSUE

The issue presented for interpretation is whether Texaco distributors operating pursuant to this agreement qualify as wholesale purchaser-resellers as defined in 10 CFR 211.51.

INTERPRETATION

It is my opinion that firms which sell and distribute allocated products pursuant to the terms of the contractual arrangement set forth above qualify as wholesale purchaser-resellers as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations.

Wholesale purchaser-reseller is defined in § 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Firms which obtain and resell or otherwise transfer allocated products are not excluded from the definition solely on the grounds that they fail to take legal title to the product.

Conversely, however, firms exercising only physical control over the delivery of a supplier's products do not qualify as wholesale puchaser-resellers. To qualify as a wholesale purchaser-reseller under FEA regulations, a consignee must have a substantial degree of operational independence in the conduct of the consignee's business of transfer and sale of a supplier's products.

According to the terms of the Consignment Agreement submitted by you, Texaco distributors retain a substantial measure of functional autonomy in distributing and selling Texaco products. Although distributors must account fully to Texaco for all products and sales revenues received, and such products must be sold at a price authorized by Texaco, they are fully responsible for conduct of the business and are expected to exercise independent judgment and discretion in its operation. While Texaco permits the distributor an association with its product name, it bears no expenses under this agreement, for facilities, equipment, labor, organizational or employee benefits and implicitly recognizes the distributorship as an independent business.

Thus, any firm which is in the business of selling and distributing allocated products under the terms of the Consignment Agreement submitted by you, operates as a functional entity that is sufficiently independent of its supplier so as to qualify as a wholesale purchaser-reseller, as defined in 10 CFR 211.51.

This interpretation is limited to those Texaco distributors which operate under the agreement described above and shall not be construed to apply to any relationship where the existence of other agreements, amendments, modifications or practices of any kind have the effect of changing the relationship described above.

INTERPRETATION 1975—20

To: United States Marine Corps.

Date: April 29, 1975.

Rules Interpreted: §§ 211.9, 211.10, 211.102.

Code: GCW—AI—Purchase of Surplus Motor Gasoline, Supplier/Purchaser Relationship.

Your letter of March 28, 1974 (your file CLA-1j), on behalf of the Marine Corps Exchange System ("Exchange") requested an interpretation of §§ 211.9 and 211.10 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.9 and 211.10) concerning the purchase of surplus motor gasoline by the Exchange from a non-base period supplier and the effect of such a purchase upon the regulatory supplier/purchaser relationship between the Exchange and its base period suppliers.

FACTS

We understand that the Exchange has opportunities at a number of locations in its system to purchase surplus motor gasoline from non-base period suppliers. The Exchange wishes to purchase the surplus offered to it but does not wish to jeopardize its right to purchase motor gasoline in the future from it base period suppliers.

ISSUE

The issue presented for consideration is whether a wholesale purchaser-reseller (the Exchange) may purchase surplus product from a non-base period supplier without affecting it regulatory supplier/purchaser relationship with its base period suppliers.

INTERPRETATION

The applicable provisions of the Mandatory Petroleum Allocation Regulations are 10 CFR 211.9 and 211.10, which read in pertinent part as follows:

§ 211.9 *Supplier/purchaser relationships.*

(a) *Supplier/wholesale purchaser relationship.* (1) Each supplier of an allocated product shall supply all wholesale purchaser-resellers and all wholesale purchaser-consumers which purchased or obtained that allocated product from that supplier during the base period as specified in Subparts D through H of this part.

(2) (i) Unless otherwise provided in this part or directed by FEA, the supplier/wholesale purchaser-reseller relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be waived or otherwise terminated without the express written approval of FEA.

* * * * *

§ 211.10 *Supplier's method of allocation.*

* * * * *

(9) * * *

(7) *Purchaser's rights.* Notwithstanding the provisions of § 211.12, any wholesale purchaser or end-user may purchase allocated product from any supplier which certifies that it has surplus product to distribute and that it has complied with the provisions of [10 CFR 211.10(g)].

* * * * *

Under these regulations, as a general rule, a wholesale purchaser-reseller has a right to purchase an allocated product, such as motor gasoline, only from its base period supplier. A supplier has an obligation to allocate product to wholesale purchaser-resellers which it supplied during the base period. The base period for motor gasoline is the month of 1972 corresponding to the current month (10 CFR 211.102). Hence, each month a base period supplier of motor gasoline must offer its base period wholesale purchaser-resellers the same amount (as adjusted pursuant to FEA's regulations) of motor gasoline which the purchasers bought in the corresponding month in 1972 subject to reductions (by use of an allocation fraction) if the supplier does not have enough product to meet its supply obligations as defined under the regulations.

A wholesale purchaser-reseller, however, is not required to purchase the product allocated to it by its base period supplier. The fact that a purchaser does not purchase product from his base period supplier does not terminate the supplier/purchaser relationship required by 10 CFR 211.9(a)(2)(i). Therefore, if during a particular month a wholesale purchaser-reseller chooses not to purchase from its base period supplier because the purchaser is able to acquire surplus product from another supplier under terms advantageous to the purchaser, the base period supplier is not freed from its responsibility to allocate product to the purchaser in any succeeding period which corresponds to a base period.

A supplier may, of course, apply to FEA to be relieved of its supply obligation to a wholesale purchaser-reseller. If the supplier is able to demonstrate that serious financial hardship or gross inequity will result if the supplier/purchaser relationship is continued, FEA may order the termination of the relationship.

A wholesale purchaser-reseller must obtain a certification that any surplus he plans to buy from a supplier is in fact surplus and that the supplier has complied with the requirements of 10 CFR 211.10(g). Thus, it is our opinion that a purchaser, such as Exchange, could secure its supplies from non-base period suppliers having surplus product

and still maintain its allocation entitlement from its base period supplier unless FEA ordered a termination of the relationship on the grounds previously mentioned. However, we would caution you that the Exchange will not know from month-to-month which supplier will be able to make the certification required by 10 CFR 211.10(g) and in fact supply surplus product to the Exchange.

INTERPRETATION 1975-21

To: Shell Oil Co.

Date: May 12, 1975.

Rule Interpreted: § 211.67(d)(2).

Code: GCW—AI—Entitlements Program, Export Sales Deduction.

This is in response to response to Shell Oil Company's letter of December 16, 1974 requesting an interpretation as to the scope of the export sales deduction set forth in 10 CFR 211.67(d)(2) under the old oil allocation program.

FACTS

Shell Oil Company operates a gas processing plant located in Kalkaska, Michigan. The raw mix stream of natural gas liquids extracted at the Kalkaska gas processing plant is transferred by pipeline to Marysville, Michigan where it is sold to Dome Petroleum Corporation. Thereafter, Dome exports the liquids by pipeline to Sarnia, Ontario, Canada.

ISSUE

The issue presented for consideration is whether the liquified petroleum gas (LPG) content of the volumes of natural gas liquids exported to Canada from the Kalkaska gas processing plant must be deducted from Shell's crude oil runs to stills under § 211.67(d)(2) for purposes of the old oil allocation program.

INTERPRETATION

Section 211.67(d)(2) of the Mandatory Petroleum Allocation Regulations provides:

(2) The volume of a refiner's crude oil runs to stills for purposes of calculating its old oil supply ratio and the adjusted national old oil supply ratio shall be reduced by that refiner's volume of export sales in that month of refined petroleum products (except refined lubricating oils), including sales to a domestic purchaser which certifies the product is for export.

The purpose of this provision was stated in the preamble to FEA's November 7, 1974 further notice of proposed rulemaking as follows:

Since the purpose of the [entitlements] program is directed toward placing domestic refiners and marketers on a more competitive basis, the proposed rule provides for a deduction, on a barrel for barrel basis, from a refiner's volume of crude oil runs to stills of the volume of sales by that refiner for export. FEA does not believe that it would be appropriate to permit refiners to receive entitlements under the program based on export sales. (39 FR 39742; November 11, 1974.)

It is clear from the stated purpose of § 211.67(d)(2) that FEA intended that the barrel for barrel deduction from crude runs apply only to refined petroleum products which are produced at a refinery and not those produced at a gas processing plant. However, the definition of "refined petroleum product" set forth in § 211.51 includes LPG's regardless of where they are produced:

"Refined petroleum product" means gasoline, kerosene, middle distillate (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

Thus, a literal interpretation of § 211.67(d)(2) might indicate that since the volumes of LPG's contained in the natural gas liquids exported from Shell's Kalkaska gas processing plant are defined as refined petroleum products in § 211.51, they must be deducted from Shell's crude runs under § 211.67(d)(2). The purpose of § 211.67(d)(2), however, is to prevent refiners from receiving entitlements based on crude runs resulting in export volumes. This purpose is not served by deducting from a refiner's crude oil runs to stills export volumes which are extracted at a gas processing plant.

Our conclusion is that the LPG's extracted at a gas processing plant are not "refined petroleum products" for the purposes of § 211.67(d)(2). Shell, therefore, is not required to deduct the volume of export sales of LPG's extracted at its Kalkaska plant from the volume of its crude oil runs to stills for purposes of the old oil allocation program.

INTERPRETATION 1975—22

To: Northeast Petroleum Corp.

Date: June 10, 1975.

Rules Interpreted: § 212.31, Ruling 1975—2.

Code: GCW—PI—Class of Purchaser.

This is in response to your November 7, 1974 Request for Interpretation on behalf of Northeast Petroleum Corporation (Northeast) concerning the determination of Northeast's "class of purchaser" in its purchases of gasoline from Chevron Oil Company (Chevron). We have also received further data from you concerning this matter in various TWX messages. Also, on December 3, 1974, we received a letter from Chevron Oil Company, Eastern Division, advising us of its interest in this matter, and on December 20, 1974, we received a further letter from Chevron which set forth Chevron's additional statement of facts and its view of the requirements of the regulations. These submissions by Chevron have not been relied on by FEA in this response to your request for interpretation, but copies are enclosed for your information.

FACTS

Northeast purchased gasoline on May 15, 1973 from Chevron pursuant to a sales agreement that was entered into in May, 1972. The contract provided for the sale of a specific amount of gasoline at fixed prices (x per gallon for Regular gasoline and x per gallon for Premium gasoline) for a period of 12 months, beginning in June, 1972.

Northeast states that the foregoing prices "were cargo prices as opposed to merely discounted prices off Chevron's dealer tank wagon posting;" that Northeast "as a contract cargo buyer was on May 15, 1973 purchasing product from Chevron * * * at prices which were x per gallon for Regular gasoline and x per gallon for Premium gasoline below Chevron['s] * * * posted dealer tank wagon prices," but that, since the effective date of FEA regulations, "the price differential has been only x per gallon for Regular gasoline and x per gallon for Premium gasoline below Chevron['s] * * * posted dealer tank wagon prices."

Northeast maintains that it "is a class of purchaser separate and distinct from the distributors and/or dealer tank wagon customers of Chevron."

Chevron states in its December 17, 1974 submission that, pursuant to the May, 1972 sales agreement between Chevron and Northeast, Northeast was not a cargo buyer, but that deliveries were to be made in "barge or part cargo." Chevron also states that:

"Chevron has always treated Northeast as a customer that purchases at prices less than the dealer tank wagon posted prices. Northeast and Chevron's other reseller customers share the common denominator that all take delivery by direct shipment. Delivery by direct shipment means that the customer takes delivery by means capable of transporting substantial quantities (for instance, barge, pipeline or tanker shipments) and not by methods of transportation capable of transporting only small quantities, such as deliveries by tank wagon or deliveries in drums."

Chevron concludes that "The base prices to Northeast are the base prices to a class of purchaser comprising customers that purchased at substantial discounts off Chevron's dealer tank wagon posted prices for motor gasolines on May 15, 1973."

Chevron accounts for the reduction in the amount of the May 15, 1973 price differential between the prices charged to Northeast for gasoline and its posted dealer tank wagon prices for gasoline by stating that:

"When Chevron's contract with Northeast expired on May 31, 1973, Chevron's prices for motor gasoline to Northeast were no longer restricted contractually, and Chevron thereafter charged Northeast the lawful base prices to the class of purchaser into which Northeast falls."

The issue posed by this Request for Interpretation is whether Chevron has properly determined the class of purchaser (and the corresponding lawful price) for its sales of gasoline to Northeast, pursuant to the FEA Mandatory Petroleum Price Regulations.

INTERPRETATION

FEA price regulations provide generally that sellers may charge prices for covered products that reflect their May 15, 1973 lawful selling prices and a dollar-for-dollar pass-through of the amount by which their product costs have increased since that time. Thus, each selling price determined under FEA price regulations has at least two components: that portion which represents a May 15, 1973 lawful selling price and that portion which represents a pass-through of increased product costs. (In addition, a further increment to some selling prices is permitted, subject to certain conditions, to reflect increased non-product costs.)

The portion of the selling price that represents a May 15, 1973 selling price is, with respect to each product sold to each buyer "* * * the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973 * * *." (§ 212.82(b))

In making the computation of this "weighted average price * * * in transactions with the class of purchaser concerned on May 15, 1973," a firm "* * * may not exclude any temporary special sale, deal or allowance in effect on May 15, 1973." (§ 212.82(b).)

Since increased product costs are generally required to be applied equally among classes of purchaser of a particular covered product, differences in weighted average May 15, 1973 selling prices among classes of purchaser are generally reflected in like differences in current lawful selling prices for that product among those classes of purchaser, and a principal function of the class of purchaser concept is to preserve the price distinctions among purchasers that customarily existed under free market conditions. To achieve the objective of making covered products available at equitable prices, FEA regulations require sellers to group together customers that are similarly situated and to compute a weighted average of their May 15, 1973 selling prices in sales to those customers. Sellers are thus required to maintain a single lawful price for a product to all customers that fall into a particular class, rather than having to establish individual maximum lawful prices to individual customers.

The FEA has acknowledged that class of purchaser determinations pursuant to the FEA Mandatory Petroleum Price Regulations pose many difficult problems for both sellers

and purchasers. On March 7, 1975, Ruling 1975-2 was published in the FEDERAL REGISTER (40 F.R. 10655), to outline the rationale for the class of purchaser concept and to provide further guidance as to how class of purchaser determinations are to be made.

The basic guidelines for class of purchaser determinations are set forth in § 212.31, where the term "class of purchaser is defined as:

"Purchasers or lessees to whom a person has charged a comparable price for a comparable property or service pursuant to customary price differentials between those purchasers or lessees and other purchasers or lessees."

The term "customary price differential" is defined in the same section as including:

"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.

The purpose of Ruling 1975-2 was to set out more explicitly the key elements that must be taken into account in determining the existence of separate and distinct classes of purchaser. The ruling stated that the determination of what constitutes a "comparable price" charged pursuant to a "customary price differential" should begin with the § 212.31 definition of "customary price differential," which lists illustrative factors to be taken into account. The important factors are differences in location, type of purchaser, volume, and term or condition of sale or delivery.

In applying the regulations and the guidelines of Ruling 1975-2 to the facts as stated by Northeast and Chevron, several conclusions can be drawn.

First, it is clear, as asserted by Northeast, that a class of purchaser may have only one member, where the May 15, 1973 price to a particular purchaser reflected a customary price differential between that purchaser and all other purchasers (Rulings 1974-17 and 1975-2).

Second, it is also clear, as asserted by Chevron, that the expiration of a fixed price contract after May 15, 1973 may result in a price increase to a former contract purchaser which properly belongs in a class of purchaser that includes other purchasers which paid higher lawful prices on May 15, 1973. In such a case, the weighted average May 15, 1973 selling price to all members of the class of purchaser concerned would be higher than the May 15, 1973 price that was paid by the former contract purchaser alone.

Finally, it is clear that Chevron has not supplied sufficient facts to indicate that it has applied fully the guidelines of Ruling 1975-2, particularly those relating to type of purchaser and volume, in determining the class of purchaser into which Northeast properly falls.

As stated in Ruling 1975-2: (1) In evaluating its sales from a particular location, a seller should * * * look to the types of customers it had, on May 15, 1973, for purposes of making price determinations. There are certain readily apparent distinctions to be made in this regard, such as those relating to recognized levels of distribution (e.g., wholesale, retail, end-user, etc.), those relating to types of use (e.g., re-sale, industrial, commercial, residential, etc.). It should be noted in this regard that although certain industry-wide practices have existed in regard to certain "customer types," as to which customary price differentials existed, other practices as to price distinctions based on customer types may have varied from seller to seller, depending on circumstances. (See also Example 2 of Ruling 1975-2.)

Having determined those types of customers which were treated differently from other types of customers for pricing purposes on May 15, 1973, a firm must next determine, as to each such type of customer, the extent to which prices of product were differentiated according to volumes purchased (e.g., sales in cargo lots, barge sales, pipeline sales, tankwagon sales, sales made pursuant to a sliding volumetric discount scale, etc.). (See also Example 4 of Ruling 1974-2.)

Thus, for example, if Chevron has grouped together in a single class of purchaser Northeast and other buyers which operate at essentially different levels of distribution than Northeast, with differences in selling prices between such sales at essentially different levels of distribution reflecting customary price differentials, it would have improperly applied the FEA class of purchaser regulation and guidelines, notwithstanding the fact that "Chevron has always treated Northeast as a customer that purchases at prices less than the dealer tank wagon posted prices," as stated in Chevron's December 17, 1974 submission.

Similarly, if Chevron has grouped together in a single class of purchaser Northeast and other buyers which purchased in significantly different volumes than Northeast, with differences in selling prices between such sales in significantly different volumes reflecting customary price differentials, it would have improperly applied the FEA class of purchaser regulation and guidelines.

It is immaterial in this regard whether sales to Northeast are characterized as "cargo lots" or as "part cargo lots." The key question is whether Northeast purchased in significantly different volumes than did other members of the class of purchaser into which Chevron has placed it.

Finally, as noted in Ruling 1975-2, the terms and conditions under which a buyer bought product on May 15, 1973, are important for making class of purchaser determinations. Although it is not possible to determine with accuracy from the facts submitted, the extent to which Chevron may have grouped together in a single class of purchaser Northeast and other buyers which bought on significantly different terms and conditions than Northeast, there is a suggestion that Chevron may have placed Northeast in the same class of purchaser as those purchasers that bought from Chevron in tank truck loads, at so called "rack prices." It would clearly not be proper to place such "rack buyers" in the same class of purchaser as a terminal operator that bought in cargo lots, or in barge or part cargo lots, since the terms and conditions under which such sales are made would differ significantly.

Northeast included in its request for interpretation a request that FEA enjoin Chevron from continuing its present pricing policies and require Chevron to remit overcharges to Northeast. Such relief is not available under the specific purposes of requests for interpretations, as prescribed in 10 CFR 205.2.

Although this interpretation does not provide a definitive resolution of the matters in dispute between Northeast and Chevron, it is as full a statement of the principles of FEA regulations as the facts submitted to FEA will permit.

Complete resolution of these matters can only be achieved through a complete factual analysis of the selling practices of Chevron on May 15, 1973. Once these practices are factually established, Ruling 1975-2 and this interpretation will control the result. Since these patterns are best disclosed through a review of the seller's pricing practices, FEA has determined to initiate an investigation of the factual issues raised in Northeast's request. We have, therefore, referred this matter to the FEA Refinery Audit Review Program, to conduct an investigation through its Chevron audit team.

The investigation will be conducted in the context of FEA's regular audit, and is intended to resolve, consistent with Ruling 1975-2, the questions of fact regarding Northeast's "class of purchaser" placement. Should you have any questions, regarding this matter, you may contact Mr. Fred Stuckwisch, Director, Refinery Audit Review Program, 2000 M St. NW., Room 5002, Washington, D.C. 20508, 202-254-8877.

INTERPRETATION 1975—23

To: Consolidated Paper, Inc.

Date: June 13, 1975.

Rule Interpreted: § 211.22.

Code: GCW—AI—Inventories.

Your letter of May 23, 1975, on behalf of Consolidated Paper, Inc. ("Consolidated") requested an interpretation of § 211.22 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.22) concerning the accumulation of No. 2 fuel oil during the summer months for the forthcoming winter in anticipation of an increased need for this product.

FACTS

We understand that Consolidated is a manufacturer of paper products and that its customary energy fuel is natural gas, although it has alternative capability to use No. 2 fuel oil.

Consolidated has recently received written notification from the Wisconsin Public Service Corporation that natural gas curtailments will result in a reduction in natural gas to Consolidated of 91.2% during the winter of 1975-1976. In view of this anticipated curtailment, Consolidated wishes to purchase surplus No. 2 fuel oil and accumulate during the 1975 summer a fuel oil inventory substantially greater than its 1972 summer inventory.

ISSUE

The issue presented for consideration is whether a firm may purchase surplus No. 2 fuel oil pursuant to 10 CFR 211.10(g) thereby accumulating a substantially greater inventory than it had in previous summers in anticipation of a significantly greater need for that fuel next winter.

INTERPRETATION

The applicable provision of the Mandatory Petroleum Allocation Regulations is 10 CFR 211.22(a), which reads in pertinent part as follows:

§ 211.22 *Administrative actions.*

(a) *Inventories of crude oil and allocated products.*

No * * * wholesale purchaser * * * shall accumulate inventories of any * * * allocated product which exceed customary inventories maintained by that * * * wholesale purchaser * * * in the conduct of its normal business practices unless otherwise directed by the FEA * * *.

This provision of the regulations permits inventory accumulation of products such as No. 2 fuel oil without FEA action so long as the accumulation is a normal business practice. What constitutes a normal business practice depends on the facts in each situation. However, where a wholesale purchaser-consumer, such as Consolidated, has demonstrated increased requirements for No. 2 fuel oil as an alternative fuel for natural gas, we believe that it would be a normal business practice to prepare for the anticipated curtailment by acquiring greater volumes of the alternative fuel commensurate with its increased needs.

Further, § 211.22 was promulgated to prevent hoarding of available supplies during a

period of shortage when supplies are to be shared on an equitable basis by all purchasers. Thus, when an allocated product is generally available in surplus quantities, as during the summer months in the case of heating fuels, it would not be contrary to the purpose of § 211.22 for a firm to accumulate reasonable quantities of the product for use during the forthcoming heating season.

In light of the foregoing discussion, it is our opinion that Consolidated may accumulate greater quantities of No. 2 fuel oil in inventory during the summer of 1975 than it did during the corresponding period in 1972. The increased inventory would be permitted under FEA's regulations in view of the substantial anticipated increase in Consolidated's use of No. 2 fuel oil and current surplus supplies of No. 2 fuel oil.

INTERPRETATION 1975—24

To: A. Johnson & Co., Inc.

Date: June 18, 1975.

Rules Interpreted: §§ 212.2, 212.53.

Code: GCW—PI—Import Exemption.

On June 11, 1974, FEA received from A. Johnson & Co. (hereinafter "A. Johnson") a "Request for Determination." The request, which has been treated by the FEA as a request for an interpretation pursuant to 10 C.F.R., Part 205, Subpart F, seeks an interpretation concluding that the herein described transactions between A. Johnson's foreign branch and Trans Ocean Petroleum, Inc. (hereinafter "Trans Ocean") and transactions between Trans Ocean and Pace Oil Company, Inc. (hereinafter "Pace") are not subject to price controls imposed by FEA regulations. In support of its request, A. Johnson has set out in the request the factual and legal basis for its claims. Comments were solicited from Trans Ocean by this office in view of the impact on it of any decision on this matter. After initially deciding to submit no comment, Trans Ocean's parent company, Ingram Corporation, responded on August 14, 1974 and concurred in A. Johnson's memorandum.

A. Johnson's request came as a result of its receipt of a letter from the Internal Revenue Service, which was at the time responsible for enforcement of FEA regulations, on May 10, 1974, suggesting that prices charged for sales of naphtha by A. Johnson to Trans Ocean were subject to and in violation of petroleum pricing regulations established by the Cost of Living Council and subsequently adopted by FEA in its mandatory allocation and pricing regulations. Specific mention was made by the IRS of that portion of FEA regulations which prohibit a seller from charging for any item subject to § 212.93 a price in excess of the lawful weighted average price which the item had on May 15, 1973, plus an amount which reflects, on a dollar-for-dollar basis, increased costs of the item.

FACTS

A. Johnson is a U.S. corporation with its principal place of business in the United States. Among its business activities is the purchase and sale on the world market of various products, including petroleum products. It conducts such transactions through foreign branches which apparently are not separately incorporated but whose financial operations are separately maintained for purposes of internal accounting. The particular division of the company involved here is its Venezuelan branch, hereinafter referred to as "Foreign Branch," which is qualified to do business in and is subject to taxes in Venezuela. In a recent fiscal year, more than 50 percent of Foreign Branch's sales were to firms in Western Europe.

In the transactions at issue here, Foreign Branch purchased naphtha from Compania Shell de Venezuela (hereinafter "C.S.V."), a non-U.S. company with a refinery operation in Venezuela. The physical transfer of the unfinished naphtha to A. Johnson, as well as transfer of title, took place in Venezuela. Information obtained by FEA investigations indicates that A. Johnson & Co., New York, New York, made payment to C.S.V. for the naphtha delivered to Foreign Branch.

Foreign Branch then sold the unfinished naphtha to Trans Ocean, a U.S. corporation wholly owned by Ingram Corporation of New Orleans, Louisiana. Such sales were made pursuant to a long-term supply contract with Trans Ocean. Physical delivery and transfer of title to Trans Ocean occurred in Venezuela, although information provided to FEA investigators indicates that the proceeds from the sale were received in New York by A. Johnson from Trans Ocean.

Trans Ocean subsequently imported the unfinished naphtha into the United States and, pursuant to a long-term supply contract, sold the unfinished naphtha to Pace, a U.S. petroleum refiner. Pace took title to the product at its dock facility in Wilmington, Delaware. Pace then refined and processed the naphtha into gasoline and marketed the gasoline in the United States.

ISSUE

Which, if any, of these transactions is subject to FEA price regulations?

INTERPRETATION

Section 212.2 of FEA's regulations (and predecessor Cost of Living Council regulations) provides, in pertinent part:

"This part applies to each sale, lease or purchase of a covered product *in the United States* * * *." (*Emphasis added.*)

Section 212.53(b) of FEA's regulations provides an exemption from the price regulations for:

"The prices charged for imports, but only *the first sale into U.S. Commerce* are [sic] exempt."

The term "first sale into U.S. Commerce" is not defined in the regulations. Moreover, it has not heretofore been defined in any previous decision or interpretation issued by the FEA and was given only cursory interpretation by the Cost of Living Council. Therefore, the very important issues raised by A. Johnson's request for interpretation present in effect a case of first impression for the FEA, and for that reason an extended discussion of the rationale for the present interpretation is warranted.

At the outset it should be noted that there is a distinction between the purposes and language of §§ 212.2 and 212.53(b), a distinction which A. Johnson has failed to recognize in its request for interpretation. The former merely defines the scope of the FEA's intended jurisdiction over sales for purposes of the price regulations. It makes it clear that the FEA will not impose price controls on sales transactions occurring wholly without the United States (i.e., transactions in which the product is physically located outside the United States, title to the product is transferred outside the United States and the parties to the transaction are not United States companies or owned or controlled by such companies). The basis for this rule is the obvious practical problem of obtaining jurisdiction over the parties to such transactions and detecting violations arising therefrom. But the fact that all regulated sales must occur in significant part within the U.S. to provide a basis for jurisdiction does not mean that the first sale into U.S. commerce, which is an exempted sale, must necessarily occur after the product which is the subject of the transaction has physically entered the U.S.

In arriving at a proper interpretation of the first sale exemption, the FEA has looked at a number of factors. First is the language of the exemption itself, which refers not only to the first sale "into" (not "in") U.S. commerce, but also to "the prices charged for imports." The juxtaposition of these terms suggests that the first sale into U.S. commerce is one that is closely related in terms of timing and function with the actual importation process.

Second is the rationale for the exemption, which in part was to minimize to the extent possible disincentives to the importation of crude oil and petroleum products which might result from domestic price regulations. It was believed that the imposition of price controls at too early a stage in the importation process would have the effect of encouraging suppliers to divert oil to other countries where they could realize higher world market prices. A second rationale was the same as that noted above for § 212.2—namely, that the U.S. Government has practical and jurisdictional problems in regulating transactions in foreign countries. Thus, proper application of the "first sale" exemption must take cognizance of whether the designation of a particular transaction as the first sale might have the undesirable result of diverting imports and whether it would present practical difficulties in regulating subsequent transactions.

On the basis of these considerations, the FEA has concluded that the first sale into U.S. commerce is the transaction pursuant to which the product in question is actually imported into the United States. A factual determination must be made in each case as to which of several transactions was the one "pursuant to which" importation in fact occurred. This question can usually be resolved by considering the domicile of the importer (i.e., the entity that has title to the product at the time it physically enters the U.S.) and its normal business practices. Thus, as a general rule, if the importer is a foreign corporation, the first sale into U.S. commerce is the first sale to a customer within the United States. However, if the importer is a U.S. company which purchases the product abroad for the purpose of importing it into the United States, the FEA will consider the first sale into U.S. commerce to be the sale to such importer, even though it may occur abroad. Furthermore, the FEA will presume that a U.S. firm which purchases a product abroad and subsequently imports it made the purchase for the purpose of importation. Such presumption can be rebutted by evidence that the importer had no intention of importing the product at the time it was purchased and arrived at the decision to import it only later.

The rule set forth herein accomplishes the objective of § 212.53(b), in that it exempts from controls that transaction which set in motion the importation process, thus avoiding a disincentive to importation, but at the same time achieves the desired purpose of making price controls as comprehensive as possible. Moreover, such an interpretation is full consistent with the language of § 212.53(b) and provides a relatively simple test that can be readily applied by firms involved in importation of oil to determine their obligations under the FEA price regulations.

Applying these rules to the factual situation presented in A. Johnson's request for interpretation, the FEA concludes that the first sale into U.S. commerce is the sale from A. Johnson to Trans Ocean. This is so, even though actual delivery and transfer of title occurred in Venezuela, because Trans Ocean is a U.S. corporation and because its subsequent importation of the product creates the presumption that it purchased naphtha from

A. Johnson for the purpose of importing it into the United States. Thus, Trans Ocean's sale to Pace is the second sale in U.S. commerce and is subject to FEA price controls.

The conclusion reached herein is consistent with the Cost of Living Council's few formal interpretations of the first sale exemption, some of which were cited by A. Johnson in its request for interpretation. One such interpretation held in effect that the mere foreign domicile of a company doing business in the United States does not exempt it from U.S. price controls.[1] (CLC Ruling 1972-33, 37 F.R. 6118, Mar. 24, 1972.) A. Johnson asserts that this ruling implies that, conversely, a U.S. company's sales transactions in a foreign country are not subject to U.S. price controls. It seems apparent to the FEA that no such implication was intended by the authors of Ruling 1972-33, but such a conclusion does seem to be supported by § 212.2, cited above. But in any event, the interpretation the FEA has adopted herein does not result in any of the subject transactions occurring in a foreign country being subjected to U.S. price controls. It finds only that the first sale into U.S. commerce—a sale that is exempt from U.S. controls—can occur when the product is physically located in a foreign country and does so occur in this instance.

Another Cost of Living Council interpretation referred to by A. Johnson does seem more closely in point with the present facts, although the FEA disagrees with A. Johnson's reading of it. Cost of Living Council Q & A No. 13 (Release 411, September 19, 1973) c ntained the following relevant question and answer:

"Q. A U.S. firm receives imported goods which it processes and ships from a bonded warehouse. Under the customs laws, these goods are not imports until they are sold to a U.S. purchaser and leave the bonded warehouse. Is the sale from the bonded warehouse exempt under the Phase IV regulations?

"A. No. Only the first sale of an import into U.S. commerce is exempt. A sale to a U.S. purchaser is considered to be the first sale into U.S. commerce regardless of whether delivery is taken inside or outside of the customs territory of the U.S. Thus, the sale which brings the items to the bonded warehouse, although the sale does not subject the goods to import duties, is the first sale into U.S. commerce for purposes of the Economic Stabilization Programs."

A. Johnson asserts, for reasons that are not entirely clear, that the firm in the present set of facts which most closely resembles the seller in the foregoing Q & A is Pace. However, such a conclusion ignores the following plain language of the answer: "A sale to a U.S. purchaser is considered to be the first sale into U.S. commerce *regardless of whether delivery is taken inside or outside of the customs territory of the U.S.*" (Emphasis added.) The plain import of the Q & A is to the effect that the sale to a U.S. firm which is responsible for the importation is the first sale into U.S. commerce, regardless of where it occurs. Thus, the Cost of Living Council Q & A fully supports the conclusion reached herein and is directly contrary to the conclusion reached by A. Johnson that the first sale into U.S. commerce must actually occur in the United States.

This interpretation is based upon information submitted to FEA by A. Johnson and as supplemented by FEA's own investigation to the extent noted herein. This interpretation depends for its authority on the accuracy of the factual statement contained herein and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based. See 10 CFR, Part 205. In addition, this interpretation is based on the assumption that the transactions described herein were entered into a good faith without any intention of circumventing applicable petroleum price regulations. This interpretation will not be binding on FEA should it subsequently be determined that the referenced transactions were entered into principally for the purpose of evading the price regulations, and in that event the FEA will not be precluded from taking appropriate action pursuant to 10 CFR § 205.201.

[1] This ruling was subsequently clarified by Ruling 1972-71, which held that when a foreign corporation sells to a U.S. customer either directly or through a U.S. subsidiary acting as a sales agent, that sale is the first sale into U.S. commerce and is exempt from price controls. But where the foreign corporation transfers title to its U.S. affiliate, which in turn resells to a U.S. customer, the first sale is the sale between affiliates, and all subsequent sales are subject to controls. (39 FR 13273, July 6, 1972.)

INTERPRETATION 1975—25

To: Babcock and Wilcox Co.

Date: June 24, 1975.

Rules Interpreted: §§ 215.3, 215.5.

Code: GCW—OI—Burning of Petroleum Products by Power Generators.

By letter dated March 25, 1975, the Federal Energy Administration's ("FEA") Office of Exceptions and Appeals advised the Babcock and Wilcox Company ("B&W") that, pursuant to 10 C.F.R. §§ 205.50(b) and 205.80(b), its request for an exception to 10 C.F.R. §§ 215.3 and 215.5 was being treated solely as a request for interpretation of FEA's regulations and, therefore, the request was being referred to the FEA Office of General Counsel, which has the responsibility for interpreting the regulations. The request for exception was dismissed without prejudice.

FACTS

This request for interpretation pertains to power generators proposed to be installed at B&W's welded tube mill ("Plant") located in Alliance, Ohio. The Plant currently operates two coal fired boilers that are used to provide process and space heating steam. B&W has asserted in documents provided to FEA that continued operation of the two coal fired power generators is impracticable because repair of the units is impossible; spare parts are no longer available; and the units will not accommodate the planned expansion of the Plant. In addition, the continued use of coal to fire the power generators will, without use of coal with a sulfur content of .75 percent or lower, or the installation of flue gas desulfurization equipment, place the Plant in violation of the Ohio Environmental Protection Agency's regulations upon the July 1, 1975 expiration of a variance granted by that agency. For these reasons, B&W asserts that replacement of the power generators is essential, and B&W is proposing to replace those units with new oil fired power generators.

INTERPRETATION

Issue: Is the burning of petroleum products by B&W's power generators proscribed by § 215.3, or are such generators "new power generators" within the meaning of § 215.5.

B&W has in its submission stated that it intends to replace the power generators that on December 7, 1973 were fired with coal, with new oil-fired generators. FEA assumes, therefore, that oil firing is not being obtained by modification of the existing coal-fired power generators. In addition, FEA assumes that the new power generators have, individually or in combination, a total firing rate of 50 million Btu's per hour or greater. It is apparent from the factual presentation that the new units will be utilized in commercial operation.

There are two sections of 10 C.F.R. Part 215 that potentially are applicable to the situation described by B&W.

§ 215.3 *Power generators burning nonpetroleum products.*

(a) No petroleum product shall be sold or otherwise provided to or accepted by any firm for burning under power generators that were not using a petroleum product on December 7, 1973.

§ 215.5 *New power generators.*

Any firm with power generators which commenced commercial operations after December 7, 1973 shall not utilize any petroleum products with sulfur content by weight lower than that needed to meet Primary Ambient Air Quality Standards or to comply with EPA [Environmental Protection Agency] new source performance standards (40 C.F.R. Part 60) or for startup until 30 days prior notice of such intended use had been provided the FEA pursuant to § 215.7.

If the "new" B&W power generators are in replacement of the coal fired units, rather than modification of such units, the prohibition against the purchase by or sale to B&W of petroleum products for use in such generators, as stated in § 215.3(a), is not applicable. Section 215.3 only applies to power generators in commercial operation on December 7, 1973, that were not using petroleum products on that date.

Since the proposed power generators would be commencing commercial operations after December 7, 1973, they are now power generators within the meaning of Part 215 and are subject to the requirements of § 215.5. That section, however, does not allow new power generators to burn petroleum products with a "sulfur content by weight lower than that needed to meet Primary Ambient Air Quality Standards or to comply with EPA new source performance standards (40 C.F.R. Part 69) * * *." In addition, such petroleum products shall not be utilized until "30 days prior notice of such intended use has been provided the FEA pursuant to § 215.7." Subject to the sulfur content restrictions, there is no prohibition in Part 215 against the burning of petroleum products by B&W's new power generators, but the 30-day notice requirement must first be satisfied.

INTERPRETATION 1975—26

To: Pan American World Airways, Inc.

Date: June 27, 1975.

Rules Interpreted: §§ 210.21, 210.33, 211.51.

Code: GCW—AI—Definition of United States, Bonded Fuel; Bonded Fuel Exemption; Guam.

(Text omitted because Interpretation 1976—26 has similar facts and presents essentially the same issue and FEA interpretive statement as Interpretation 1975—8.)

INTERPRETATION 1975—27

To: Pacific Lighting Exploration Co.

Date: June 30, 1975.

Rule Interpreted: § 212.72.

Code: GCW—PI—BPCL, Unitization, Definition of Property.

This is in response to your request of October 1, 1974 for an interpretation, filed in behalf of Pacific Lighting Exploration Company ("Pacific"), as to whether crude oil production from "Well No. 34-A" located in the Sooner Trend Middle Layton Sand Unit (STMLS Unit) in Kingfisher County, Okla-

homa, is subject to the ceiling price rule of § 212.73 of the Federal Energy Administration Regulations.

FACTS

The STMLS Unit was unitized in 1967. Under the "Plan of Unitization" for the STMLS Unit, the oil and gas rights arising from leases or fee interests respecting several separately owned tracts of property are brought under the common control of a single "unit operator" for the purpose of facilitating the use of enhanced recovery techniques in producing crude oil from the oil and gas formation underlying the STMLS Unit. In June of 1973, a new well identified as Well No. 34-A was drilled on the Foreman Lease which is located within the STMLS Unit and which is subject to the Plan of Unitization.

Pacific asserts that the drilling of Well No. 34-A increased the production and the recoverable reserves from the Foreman Lease. Pacific further asserts that the drilling of Well No. 34-A did not result in the diminution of production from any other leases in the STMLS Unit.

ISSUE

The question presented relates to the method by which Pacific shall establish the lawful price under FEA price regulations for crude oil production from the Foreman Lease. Pacific argues that, in light of the fact that the drilling of Well No. 34-A enhanced both the production and the recoverable reserves from the entire STMLS Unit, the amount of production for the Foreman Lease which exceeds the base production control level for that lease should be deemed "new crude petroleum," as defined in 10 CFR 212.72, which may be sold without regard to the ceiling price rule of 10 CFR 212.74.

INTERPRETATION

Section 212.74 of FEA's Mandatory Petroleum Price Regulations provides that "new" and "released" crude petroleum produced and sold from a property may be sold without respect to the ceiling price applicable to "old" crude petroleum under § 212.73.

Production of "new" and "released" crude petroleum is determined under § 212.72 according to whether production exceeds the base production control level of a property. Pursuant to § 212.72 "base production control level crude petroleum" 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 defined in § 212.72 as "the right which arises from a lease or from a fee interest to produce domestic crude petroleum." Because the 1972 production from a property is required to calculate "base production control level crude petroleum," a firm must make reference to the lease or fee interest which was in existence in 1972 to define the property involved. This requirement is reflected in § 210.32, which defines "property" as "the right that arises from a lease in existence in 1972 or from a fee interest to produce crude oil in existence in 1972, and is coextensive with the term 'property' used in § 212.72 for purposes of determining 'base production control level crude petroleum.'"

Where, as in this case, the right to produce domestic crude petroleum arises from the combination of several leases and/or fee interests, a firm must aggregate those leases and interests in determining the "property" to which reference is made in establishing the base production control level. See, for example, Paragraphs 4.1 and 4.2 of the "Plan of Unitization" which have the effect of pooling the production from the unit, and of amending the prior rights, leases and contracts to the extent necessary to accomplish such pooling. It is in fact, the essence of the "Plan of Unitization" that the former lease or fee interest on which a particular well is located is irrelevant. See, for example, the definition of "unit production" in Paragraph 1.3, which means "all Oil * * * produced from the Unit Area * * * regardless of the well or tract within the Unit Area from which same is produced." Accordingly, the entire STMLS Unit constitutes the "property" which is relevant for the purpose of establishing the amounts of "old," "new," and "released" crude petroleum which are currently produced from the unit. Thus, all the production from the lease subject to the Plan of Unitization during 1972 must be taken into account in determining the base production control level of the STMLS Unit, and, similarly, the total of current production from the entire unit must be considered in calculating the amounts of "new" and "released" crude petroleum which may be sold without respect to the ceiling price.

INTERPRETATION 1975—28

(No Interpretation designated 1975—28 was issued.)

INTERPRETATION 1975—29

To: G. E. Kadane & Sons.

Date: July 12, 1975.

Rule Interpreted: Supart D.

Code: GCW—PI—Definition of Crude Oil, Residual Fuel Oil.

This is in response to your letter of December 4, 1974, requesting an interpretation of FEA regulations as they apply to the production of crude oil from the Banning Lease at the West Newport Field in Orange County, California. After consideration of the information contained in the request (both written and verbal), and the relevant authorities, the Federal Energy Administration has determined that the proper interpretation is that which follows.

FACTS

G. E. Kadane & Sons ("Kadane") is the producer of crude oil from the Banning Lease at the West Newport Field in Orange County, California. Since 1958, Kadane has operated an enhanced recovery project (the so-called "fire flood" technique), which involves the ignition and controlled burning under controlled pressure (in situ combustion) of a part of the heavy crude oil in the reservoir on the Banning Lease. Kadane has, since 1956, sold the crude oil produced from the Banning Lease to Standard Oil of California ("Standard") for use as a refinery feedstock.

Kadane requests an interpretation that the production from the Banning Lease is not "crude oil", as that term is defined under FEA regulations, because the in situ combustion process significantly alters the chemical composition of the crude oil in the reservoir, and the resultant production meets the technical specifications for—and therefore should be classified as—"residual fuel oil", as that term is defined under FEA regulations. Kadane proposes to terminate its contract with Standard—under which the product is currently sold as crude oil—and to market the product instead as residual fuel oil through the services of Armour Oil Company, a refiner, to various end-users for use in ships' bunkers or as industrial fuel, as the market and FEA allocation requirements applicable to residual fuel oil warrant. The product would be priced as a "new item", under the Kadane proposal, pursuant to § 212.111.

ISSUE

The issue presented by this request is whether the production from the Banning Lease is properly treated as crude oil or as residual fuel oil for purposes of FEA regulations.

INTERPRETATION

The Mandatory Petroleum Price Regulations provide a regulatory scheme that is structured in terms of the four major segments of the petroleum industry. While the price regulations are accordingly divided basically into four subparts, corresponding to activities by producers, refiners, gas processors, and resellers and retailers, respectively, they apply to all facets of the petroleum industry involving a "sale, lease or purchase of a covered product in the United States" (10 CFR 212.2). Thus, by virtue of this regulatory framework, each particular activity must generally be regulated pursuant to one of the defined subparts, to the exclusion of the others, even though that particular activity may not be precisely the same as the majority of those activities to which the subpart is expressly directed. For example, before the adoption of special provisions in Subpart K (§ 212.161, et seq.) for the pricing of natural gas liquids, gas processors were subject as refiners to the refiners' price rules in Subpart E (§ 212.81, et seq.). In another example, FEA has ruled that a firm that reclaims crude oil from the salt water generated by oil and gas wells and from the bottoms of pits in which the salt water is often stored, is a producer of crude petroleum within the meaning of Subpart D of the price regulations. (*Tesoro Petroleum Corp.*, 2 FEA ¶ 80,514.)

Subpart D of the price regulations (§ 212.71, et seq.) applies to producers of crude petroleum. Based upon the facts presented in your request, it is our interpretation that the operation in which Kadane is involved is properly regarded as the production of domestic crude petroleum (and therefore subject to the producers' price rules in Subpart D), even though the crude oil produced from the Banning Lease might arguably satisfy the technical specifications of "residual fuel oil" as well as being included within the generic classification of "crude oil." The substance produced from the Banning Lease has, since 1956, been sold pursuant to a contract with Standard as "crude oil" for use as a refinery feedstock. To interpret FEA regulations as calling for the treatment of the crude oil produced from the Banning Lease as "residual fuel oil" would require a radical departure from the historical treatment of the Banning Lease production by Kadane itself.

Despite the surface appeal of Kadane's argument that the "fire flood" technique operates partially to crack the crude oil in the reservoir, and that the resulting operation qualifies Kadane as a "refiner", as that term is defined in § 212.31, attempting to apply the refiners' price rules—which are based on May 15, 1973 prices plus the increased cost of crude oil purchased or landed each month—reveals the inherent flaw in the proposal. In sum, notwithstanding the arguably dual characteristics of the crude oil produced from the Banning Lease, the operation of the lease is nevertheless properly categorized as a production activity yielding crude oil, no different than it has been since well before the advent of the FEA regulations.

INTERPRETATION 1975—30

To: Continental Oil Co.

Date: June 27, 1975.

Rule Interpreted: § 211.25(c).

Code: GCW—AI—Borrow-Pay Back Rule.

Your letter of January 17, 1975 on behalf of Continental Oil Company ("Conoco") requested an interpretation of § 211.25(c) of the Mandatory Petroleum Allocation Regulations [10 CFR 211.25(c)] regarding the borrow-pay back" provision available to suppliers and wholesale purchasers.

FACTS

During 1974 Conoco placed some of its petroleum supplies in storage facilities not under the control of Conoco employees and from which certain of Conoco's purchasers withdrew product from time-to-time. These facilities are located in areas where Conoco's wholesale purchasers conduct their businesses. The operators of these facilities maintain records of withdrawal which are periodically sent to Conoco.

Conoco is aware that some of its wholesale purchaser-resellers withdrew more allocated products than they were entitled to purchase during 1974 under FEA's regulations. However, because of accounting delays, Conoco states it could not know which of its purchasers had overdrawn during 1974 and by what amount until early 1975.

Conoco would like to deduct during 1975 an amount of product equal to the 1974 overdraw from the amount of product a purchaser is entitled to purchase during 1975.

ISSUE

The issue presented for consideration is whether a supplier may deduct in 1975 from a wholesale purchaser's allocation entitlement an amount of product equal to the volume of that product which the wholesale purchaser overdrew during 1974.

INTERPRETATION

The applicable provision of the Mandatory Petroleum Allocation Regulations is 10 CFR 211.25(c), which reads as follows:

(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 on a volume for volume basis 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.

For the purpose of this interpretation we will assume that Conoco's customers agreed with Conoco to repay any overdraws of their entitlement. Section 211.25(c) permits "borrow-pay back" on a volume for volume basis of allocated products between suppliers and wholesale purchasers within a calendar year. A definite period of time during which all transactions under § 211.25(c) must be completed is necessary so that FEA can test compliance with the regulations. Section 211.25(c) clearly refers to a calendar year as the definite period during which transactions for that period must be completed. Consequently, adjustments pursuant to § 211.25(c) for 1974 must have been made during 1974, not partly in 1974 and partly in 1975.

Therefore, it is our opinion that Conoco may not deduct from a wholesale purchaser's 1975 allocation entitlements an amount of product equal to the volume of that product which that wholesale purchaser overdrew in 1974.

It should be observed that it was Conoco's obligation under FEA's regulations to monitor its transactions under § 211.25(c) to prevent its current problem. In computing its allocation fraction for each period which corresponded to a base period during 1974, Conoco had a basis for determining well in advance of December 1974 which of its purchasers were in danger of causing a violation of § 211.25(c) and could have acted to make a compensating adjustment before the end of 1974.

INTERPRETATION 1975—31

To: Continental Oil Co.

Date: August 20, 1975.

Rules Interpreted: §§ 211.25, 212.31.

Code: GCW—AI, PI—Base Period Supplier, Commission Agent, Class of Purchaser.

By letter of May 7, 1975, Continental Oil Company (Continental) requested an interpretation of the Mandatory Petroleum Allocation and Price Regulations as they apply to a proposed change in Continental's marketing operations.

FACTS

We understand that Continental proposes to change its marketing operations in the States of Arkansas and Texas. At the present time, Continental supplies refined petroleum products (motor gasoline, middle distillates, lubricating oils and greases) in Arkansas and Texas directly to the following various types of purchasers:

(1) Continental owned and operated retail sales outlets, each of which is a wholesale purchaser-reseller;

(2) Continental owned retail sales outlets leased to and operated by branded independent marketers, each of which is a wholesale purchaser-reseller;

(3) Jobbers, which are branded independent marketers and each of which is a wholesale purchaser-reseller;

(4) Commission agents which operate bulk plants, each of which may be a wholesale purchaser-reseller; and

(5) Wholesale purchaser-consumers and end-users supplied directly by Continental.

According to its request, Continental is planning to sell to various purchasers (the "Purchasers") x of its Conoco brand service stations and x bulk plants and x "vacant sites" in Texas and Arkansas. Specifically, Continental would convey to the various Purchasers its title to real estate and improvements involved, and where Continental leases the real property or improvement, it would secure an assignment of the lease to the Purchaser. The request further states that Continental intends to assign lease agreements and contracts with wholesale purchasers and end-users to the various Purchasers, who would then be responsible for fulfilling the terms of the lease agreements and contracts.

Continental would enter into ten year supply contracts with each Purchaser. As stated by Continental, "The supply contract is subject to the FEA Mandatory Petroleum Allocation Regulations and obligates each Purchaser, with FEA approval, to assume Continental's supply obligations for the transferred properties and accounts. Continental's supply obligations for the * * * properties and accounts would, then, apply only to the * * * purchasers."

ALLOCATION ISSUES FOR INTERPRETATION

The allocation issues for interpretation are whether a supplier substitution pursuant to 10 CFR § 211.25(a) requires FEA approval and whether a base period supplier which uses a substitute supplier is relieved of its supply obligation to its customers which are supplied by the substitute supplier.

INTERPRETATION

General

10 CFR § 211.25(a) provides that

Any supplier may arrange to supply any purchaser which is entitled to receive an allocation from it through another supplier or suppliers in accordance with normal business practices. The purchaser shall, however, be entitled to receive the same amount of an allocated product from the substituted supplier that it would receive if it were directly supplied by the original supplier using that supplier's allocation fraction.

Thus, § 211.25(a) provides a means for base period suppliers to meet their supply obligations to base period and assigned customers other than by direct delivery of product by the base period supplier. Such arrangements are discretionary under the clear language of the rule and therefore may be entered into voluntarily with the consent of the base period supplier and the substitute supplier. In addition, a base period supplier's customers supplied by a substitute supplier are entitled to receive allocations based upon the base period supplier's allocation fraction, rather than that of the substitute supplier. No provision in the rule requires prior FEA approval of such arrangements. FEA may, however, under certain circumstances order the termination of substitute supplier arrangements. E.g., Whitco, Inc., 2 FEA 83,170 (June 3, 1975).

A supplier which arranges to supply its base period and assigned customers through a substitute supplier is not relieved of its regulatory supply obligation to those customers. Thus, while the substitute supplier may have a contractual obligation to the base period supplier to supply products to the base period supplier's customers, the regulatory obligation to supply still rests with the base period supplier. Of course, as long as the substitute supplier arrangement in fact provides a customer with his proper allocation, the regulatory obligation of the base period supplier is discharged.

In order to terminate the regulatory supplier/purchaser relationships between Continental and its customers and have relationships assigned to other suppliers, there are several avenues open to Continental. 10 CFR § 211.14(d), for example, provides as follows:

(d) Any refiner, importer, or other supplier which has significantly reduced or which intends to reduce marketing or distribution activities in any region or area and which is required by FEA regulations to supply its base period and assigned wholesale purchasers in that region or area may apply to the National FEA to seek a change in the method of supplying such wholesale purchaser. The FEA may order the reassignment of wholesale purchasers or end-users from one supplier to another. Pending action by the National FEA on such application, such refiners, importers and suppliers are under a continuing obligation to provide allocations to all their base period and assigned wholesale purchasers in any region or area either directly or through a substitute supplier in accordance with § 211.25.

Further, as you know, FEA will consider terminating supplier/purchaser relationships on a case-by-case basis where the customer agrees to the termination and another supplier is willing to have the customer assigned to it.

Commission agents

I note that you have not asked whether your bulk plant commission agents are wholesale purchaser-resellers within the meaning of 10 CFR § 211.51, although from the materials submitted in connection with your request, it would appear that they do

qualify as wholesale purchaser-resellers. As you may know, FEA Ruling 1975-8 provides guidance with respect to this issue and I am enclosing a copy for your information.

I would observe, however, that if your commission agents are wholesale purchaser-resellers, the customers which they serve would have a supplier/purchaser relationship with the commission agent as their base period supplier and not with Continental. Therefore, a decision to substitute a Purchaser as a supplier for a commission agent's customer would involve the commission agent, as the base period supplier, and the Purchaser as the substitute supplier.

Further, to the extent that a commission agent is a wholesale purchaser-reseller, his conversion to jobber status would not require Continental to consider him as a substitute supplier in dealing with his base period and assigned customers. As a wholesale purchaser-reseller, the commission agent is the supplier of the firms it currently serves and Continental is presently required to allocate directly to the commission agent and the agent, as a supplier, then allocates to its customers.

Finally, if your commission agents are wholesale purchaser-resellers, you may supply them through a substitute supplier as you would any other purchaser.

PRICE ISSUE FOR INTERPRETATION

The price issue for interpretation is what prices may be charged by Continental to the Purchasers of its marketing assets in view of the fact that some of those Purchasers already buy product from Continental, either in the same class of purchaser context or in another such context, and some of those Purchasers do not now buy product from Continental.

INTERPRETATION

While FEA has a "new product" rule, under which special pricing provisions apply to govern the prices which may be charged when a producer or seller markets an entirely new product or enters an entirely new distribution level for the first time, the FEA has no special pricing rule for sales of the same product to a new purchaser in the same market (i.e., a new purchaser falling within an established class of purchaser) or to an old purchaser purchasing for the first time or as a member of another established class of purchaser.

The FEA has no special pricing rules in these cases because the general pricing rules may be applied in these situations without difficulty.

The refiner price rules apply to the product and to "the class of purchaser concerned." 10 CFR § 212.82(b). "Class of purchaser" means purchasers to whom the seller has charged a comparable price for comparable property pursuant to customary price differentials between those purchasers and other purchasers. 10 CFR § 212.31.

Thus, the maximum price which the seller may charge for an established product in an established market when the sale is made to a new customer (one to whom the seller had not previously sold the product) is the ceiling price applicable to the product concerned and the class of purchaser into which the new customer falls.

Where the seller currently sells the product concerned to an estblished customer who now wishes to begin purchasing the same product as a member of another class of purchaser (e.g., wishes to purchase at a different location and location forms the basis for a valid class distinction, or wishes to purchase at a different level of distribution), the ceiling price applicable to that "transfer" customer's current purchases no longer applies to him when he begins to purchase as a member of another class. As in the case of a new customer, the seller may charge to the transfer customer whatever higher or lower price ceiling applies to the class of purchaser that the transfer customer will enter.

It should be noted that the question referred to under the allocation issues, above, as to whether your bulk plant commission agents qualify as "wholesale purchaser-resellers," for purposes of the allocation regulations, is not relevant to the price issue. A Purchaser who is now a bulk plant commission agent and who will become a jobber or reseller upon consummation of the sale of assets should be treated as a new purchaser for price purposes since Continental has been transferring product to its commission agents by consignment and not by sale.

INTERPRETATION 1975—32

To: Tesoro Petroleum Corp.

Date: August 21, 1975.

Rules Interpreted: §§ 211.51, 212.31.

Code: GCW—AI,PI—Definition of Firm.

This is in response to your communications of June 23 and July 29, 1975, relating to your request for a determination that your client, Tesoro Petroleum Corporation ("Tesoro") does not control Commonwealth Oil Refining Company, Inc. ("CORCO").

As you know, the FEA informed you by letter dated July 14, 1975, that your request for exception dated June 23, 1975, was dismissed without prejudice to refiling at a later date and was being treated by FEA as a request for interpretation concerning the threshold question of whether Tesoro "controls" CORCO within the meaning of the definition of "firm" in 10 CFR 212.31 and 211.51.

FACTS

1. Tesoro is a refiner subject to 10 CFR, Parts 211 and 212. It owns refineries in Alaska, Texas, Wyoming and Montana with a combined capacity of 76,000 barrels per day.

2. CORCO is a refiner subject to 10 CFR, Parts 211 and 212. It operates a refinery in Puerto Rico with a capacity of 161,000 barrels per day.

3. Pursuant to a tender offer made April 18, 1975, Tesoro purchased approximately 37% of the outstanding shares of CORCO. The purchase was consummated on June 5, 1975.

4. No shareholder, other than Tesoro, owns 5 percent or more of the oustanding voting shares of CORCO.

5. At present a majority of the Board of Directors of CORCO are persons selected or designated by Tesoro.

6. The definition of "firm" in § 212.31 provides that the FEA "may, in regulations and forms issued under this part (212), 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." An identical provision, applicable to Part 211 (allocation), appears in the definition of "firm" in § 211.51.

7. Section 212.83, which provides for the passthrough of refiners' product and nonproduct cost increases, defines "firm" for the purposes of that section as "a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls."

INTERPRETATION

In a series of rulings during Phase II of the Economic Stabilization Program the major questions concerning inter-corporate control for purposes of price regulations were fully answered and settled. Under Phase IV Q&A 8-5, CLC Release 367, August 20, 1973, Phase II rulings were deemed not legally binding during Phase IV but were to be used as guidance in the absence of any specific legal interpretation which might be issued. Nothing in the few rulings issued by CLC in Phase IV or by FEA is contrary to the pertinent Phase II rulings discussed in this interpretation. Since these Phase II rulings thus firmly settled this area of the law, and since the same applicable definitions and concepts to which those rulings relate were continued essentially unchanged in Phase IV and under the FEA regulations, the FEA applies the pertinent Phase II rulings in interpretations relating to the question of control.

The Phase II definition of "firm," the meaning which was the chief subject to the Phase II rulings referred to in this interpretation, was as follows:

"Firm" means any person, corporation association, estate, partnership, trust, joint-venture, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal and state and local governments. For purposes of this definition, a firm includes any entity listed in the preceding sentence that is part of or is directly or indirectly controlled by the firm. A person will be deemed to control any firm which is controlled directly or indirectly by such person, his spouse, children, grandchildren, or parents. 6 CFR 101.2, 37 F.R. 9457 (May 11, 1972).

This concept of "direct or indirect control," which brings within the "firm" all entities "controlled" by the firm, was continued essentially unchanged in Phase IV and remains applicable under the FEA regulations today. See definitions of "firm," "parent and its consolidated entities," and "unconsolidated entity," 6 CFR 150.31, 38 F.R. 21592 (August 9, 1973); 10 CFR 212.31, 39 F.R. 1924 (January 15, 1974).

The first Phase II ruling in point made cent interest in B it was deemed to control B for the purposes of the Economic Stabilization Program. Price Commission Ruling 1972-169 (37 F.R. 9641, May 13, 1972).

When an entity held less than a 50 percent interest in another entity control might still be shown based on other considerations. It was a question of fact to be determined in each case. PC Ruling 1972-179 (CLC Ruling 1972-51), 37 F.R. 10962 (June 1, 1972). In a specific hypothetical example in which A owned 45 percent of the stock of B, A was found to control B. This was based on the fact the remaining 55 percent of the stock was so dispersed that A was able to elect a majority of the Board of Directors of B.

In a formal interpretation issued on February 12, 1975, the FEA determined that control existed where the principles concerned had purchased only 8 percent of the outstanding stock of one entity and only 29 percent of the outstanding stock of another entity, in view of all of the circumstances surrounding these purchases.

We note that in its tender offer of April 18, 1975, Tesoro announced publicly that the purpose of its offer was "to acquire 5,500,000 shares (approximately 38 percent of all the shares outstanding as of December 31, 1974) and to acquire working control of the Company (CORCO). Tesoro intends to exercise such control and to seek at least majority representation on the Company's Board of Directors." In addition, in its "Supplement and Extension" notice of April 29, 1975, Tesoro discussed certain consequences which might result "[i]f Tesoro acquires working control of (CORCO) as a result of this Offer."

From the context in which the purpose of the tender offer was explained by Tesoro,

it seems clear that the goal of obtaining working control of CORCO was to be achieved by obtaining approximately 38 percent of the outstanding shares of CORCO, a degree of ownership which would permit Tesoro to obtain majority representation of CORCO's Board of Directors because of the widely dispersed ownership of the remaining shares outstanding.

Since Tesoro did in fact ultimately purchase approximately 5,500,000 shares of CORCO (about 37 percent of outstanding shares) and did in fact thereby obtain majority representation on CORCO's Board of Directors, we conclude that Tesoro succeeded in its stated goal to obtain working control of CORCO. CORCO is, therefore, an entity which Tesoro directly or indirectly controls, for the purposes of the price and allocation regulations.

In its interpretation request, Tesoro admits that under the facts in this case FEA might conclude that Tesoro directly or indirectly controls CORCO. Tesoro argues that while it may enjoy "unexercised power to control" CORCO, and that while Tesoro and CORCO have mutually agreed "to use their best efforts to develop a plan of consolidation of the two companies," nevertheless Tesoro does not now exercise day-to-day supervisory or operational control over CORCO and no plan of consolidation has been formulated or approved. Tesoro maintains that only the actual exercise of the power to control CORCO in its day-to-day operations would constitute direct or indirect control by Tesoro under FEA rules.

In the opinion of FEA, the administrative determination of whether one firm is controlled by another must be a factual and legal determination based upon possession of the power of control and not upon the happenstance of exercise of that power. Because substantial questions concerning maximum price levels and supply/entitlements obligations are at stake, the determination must be one that is based on objective and well-established criteria. A decision which would depend upon a judgmental determination by FEA regarding the degree of Tesoro's actual supervision of CORCO's day-to-day operations, and which might be subject to review according to the changing circumstances of managerial intervention by Tesoro, would be both administratively unfeasible and too arbitrary and indefinite to permit coherent application of the price and allocation regulations to Tesoro.

The FEA appreciates the difficulties which you have outlined which result from treatment of Tesoro and CORCO as a single firm under the price and allocation regulations, particularly in view of the uniqueness of CORCO's cost and marketing situation as a company operating in Puerto Rico. These considerations, while possibly forming the basis for an exception from the price and allocation regulations, are not relevant to an interpretation of the meaning of those regulations.

INTERPRETATION 1975—33

To: Midwest Oil Co.

Date: August 21, 1975.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCW—AI—Definition of Wholesale Purchaser-Reseller.

You recently requested an interpretation of the Mandatory Petroleum Allocation Regulations concerning your status under those regulations.

FACTS

We understand the facts upon which this interpretation is based to be as follows:

You distribute Atlantic Richfield Company ("ARCO") products under the terms of a contract dated April 1, 1973 between yourself (the "Marketer") and ARCO entitled "Atlantic Richfield Company Marketer Agreement" (the "Agreement"). The Agreement was formerly a Sinclair Oil Company form contract.

The Agreement provides that you will be a "bailee for hire" except as enlarged by the terms of the Agreement. The Agreement establishes a relationship whereby Harper (defined in the Agreement as the Marketer") receives commissions for the sale and delivery of ARCO products, title to which remains with ARCO until they are sold.

Although ARCO has the right to reject any order taken by the Marketer, you have advised us that you solicit, maintain and service all customers and that rarely, if ever, does ARCO provide you with customers to service. The Marketer may not make credit sales for ARCO's account without ARCO's prior consent. Prior to the imposition of the requirement to maintain supplier/purchaser relationships under the Mandatory Petroleum Allocation Regulations, you could terminate relationships with customers you served without ARCO's concurrence.

The Marketer is required to bear all expenses for "necessary trucks, truck-tanks, motive power, drivers, labor, water, light, power, and heat * * * draying [ARCO's] products and equipment and in making sales, deliveries and collections." The Marketer is responsible for the acts of its employees and for their wages, including all taxes and contributions imposed by Federal and state governments upon such wages. Further, you agree to use no improper or illegal methods in soliciting or securing business covered by the Agreement and to "assist [ARCO] generally in promoting the successful merchandising of its products * * *."

ARCO owns the bulk plant from which you service customers although no rent is charged for use of the plant.

ISSUE

The issue presented for interpretation is whether the Marketer operating as described above qualifies as a wholesale purchaser-reseller as defined in 10 CFR § 211.51.

INTERPRETATION

It is our opinion that the Marketer to the extent that it sells and distributes allocated products under the circumstances set forth above qualifies as a wholesale purchaser-reseller as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations and clarified by FEA Ruling 1975-8 (a copy of which is enclosed for your information).

Wholesale purchaser-reseller is defined in 10 CFR § 211.51 as "any firm which purchases, receives through transfer or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form".

Ruling 1975-8 explains that the phrase "as by consignment" is included in the definition of a wholesale purchaser-reseller to make clear that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition solely on the ground that they fail to take legal title to the product. This phrase explicitly recognizes the fact that consignment relationships have long existed in the petroleum industry under which consignees perform essentially the same functions as jobbers and that such consignees should be treated under the allocation regulations in the same manner as jobbers. Therefore, those consignees which have a substantial degree of operational independence in the conduct of their business of transfer and sale of a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers and are subject to the same benefits and obligations of the allocation program which apply to jobbers.

Ruling 1975-8 notes that there are at least three different situations in the petroleum industry in which firms take possession of allocated products without taking title to the product. Only in those situations where a firm receives product through consignment and is engaged in marketing that product to the consignee's customers, acting generally like a jobber, will the firm qualify as a wholesale purchaser-reseller.

Thus, according to the ruling, a consignee which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics: (a) appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's products; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing product solely to customers designated by the supplier.

Under the factual situation described above, you retain a substantial measure of functional autonomy in distributing and selling ARCO's products. Although you must account fully to ARCO for all products received, and such products must be sold at a price fixed by ARCO, you are fully responsible for all aspects of conducting the business. You do not merely provide a delivery service for ARCO but solicit your own customers which purchase the products which you have on consignment from ARCO. We understand that ARCO may disapprove a new customer but that this occurs when the price offered by a proposed customer is not satisfactory to ARCO. ARCO provides no equipment, labor, organizational or employee benefits (such as social security contributions), although ARCO provides you without charge the bulk plant from which you withdraw supplies. We do not believe that in the context of the foregoing fact situation ARCO's provision of the bulk plant without charge to you affects your status as a wholesale purchaser-reseller. Accordingly, it is our opinion that you are a wholesale purchaser-reseller as defined in 10 CFR § 211.51 and explained in Ruling 1975-8.

INTERPRETATION 1975—34

To: Baltimore Gas and Electric Co.

Date: August 27, 1975.

Rules Interpreted: § 211.29, Special Rule No. 1.

Code: GCW—AI—SNG Feedstock Allocation.

Your letter of April 29, 1975 requested an interpretation of section 211.29 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.29), and of Special Rule No. 1 which follows that section of the regulations.

FACTS

Baltimore Gas and Electric Company ("BG&E") is a public utility which, among other things, purchases and sells natural gas in central Maryland. BG&E purchases virtually all of its natural gas requirements from Columbia Gas Transmission Corporation. Columbia has notified BG&E that BG&E may expect curtailed deliveries of approximately

25 percent below 1972 delivery levels during the 1974–1975 heating season. Because of increasing natural gas curtailments in past years leading to the current projected curtailment, BG&E decided prior to 1972 to build a naphtha-based synthetic natural gas (SNG) plant. Negotiations began in 1972 with Amerada Hess Corporation ("Hess") to supply the required quantities of naphtha from the Hess refinery located in the Virgin Islands. Although BG&E claims that BG&E and Hess entered into a contract in late 1972 with respect to the naphtha feedstocks to be supplied when the proposed SNG plant would be completed, it appears that the contract for supply of specific volumes of naphtha feedstock was not entered into until April 1, 1975.

As of April 30, 1974, BG&E had expended $6,174,940 in connection with the design, engineering and physical construction of the plant. Expenditures are stated to be as follows:

General contractor (Stone and Webster Engineering Corp.)	$5,756,080
BG&E supervision and engineering	166,338
General conditions	186,617
Temporary utilities	22,392
Equipment (electric substation)	43,513
Total	6,174,940

Of the $5,756,080 paid to the general contractor, it appears from the cost audit of April 30, 1974 prepared by Stone and Webster and included as Exhibit B to BG&E's request for interpretation that expenditures for construction (labor, equipment and supplies) amounted to $678,141.55. This sum, when added to the expenditures for temporary utilities and the electric substation, amounts to $744,046.55 for the construction of the SNG facility prior to May 1, 1974. The remaining $5,430,893.45 expended by BG&E was in connection with design, engineering, supervision, office overhead, estimating costs and similar items.

ISSUE

The question presented for consideration is whether BG&E may petition for assignment of a naphtha supplier and base period volume pursuant to 10 CFR 211.29 and paragraph 4 of Special Rule No. 1 which follows that section of the regulations.

INTERPRETATION

Section 211.29 of the Mandatory Petroleum Allocation Regulations [10 CFR 211.29] reads in pertinent part as follows:

§ 211.29 *Synthetic natural gas production.*

Notwithstanding any inconsistent provisions of §§ 211.12 and 211.13, a firm which purchases * * * allocated products for use as a feedstock in a synthetic natural gas plant which has requirements which exceed its base period volume or which has no base period volume may seek an adjustment of its base period volume or establishment of a base period volume only upon application to the FEA National Office * * *.

The above referenced section of the regulations was amplified by an Appendix—Special Rule No. 1 issued on July 31, 1974 (39 FR 27910, August 2, 1974). Paragraph four of the Special Rule reads in pertinent part as follows:

4. *Allocation of naphtha to synthetic natural gas plants where groundbreaking has occurred.* In considering the petition for assignment of suppliers and base period volume * * * under § 211.29 made on behalf of a synthetic natural gas plant which utilizes naphtha as an exclusive feedstock and with respect to which groundbreaking has occurred, the FEA shall grant such petition to the extent that contracts for supply calling for delivery of specific volumes are currently in effect * * *.

The term "groundbreaking" is defined in paragraph 3 of the Special Rule to mean "the on site expenditure of at least five million dollars on the actual physical construction of an SNG facility prior to May 1, 1974."

Section 211.29, as amplified by Special Rule No. 1, states that FEA will automatically grant petitions for assignment of supplier and base period volumes of naphtha for SNG plant feedstock use if three conditions are met—the plant will utilize naphtha as its exclusive feedstock, ground-breaking has occurred and there are contracts currently in effect for delivery of specific volumes of naphtha.

Under the facts presented, only the first requirement—exclusive use of naphtha feedstock—has been met. The information submitted by BG&E and its general contractor show only $744,046.55 for items which constitute expenditures for actual physical construction. The requirement that there be "on site expenditure * * * on actual physical construction" is not satisfied by payments for design, overhead, engineering and like items. On site expenditures for actual physical construction includes equipment costs, labor and construction materials.

BG&E's contract with Hess for delivery of specific volumes of naphtha for the SNG plant was not in effect on the date of issuance of Special Rule No. 1; that is, in effect on July 31, 1974. We believe that the requirement in paragraph 4 of Special Rule No. 1 that supply contracts be "currently in effect" means such contracts must have been in effect on the date of issuance of the Special Rule.

In view of these considerations, FEA should not review BG&E's application for assignment of supplier and base period volume in light of the "grandfathering" provisions of paragraph four of Special Rule No. 1. Therefore, if BG&E wishes to obtain assignment to Hess and allocation of naphtha as feedstock for its SNG plant, it must follow the requirements in 10 CFR 205.30 et seq. and 211.29 and paragraph 6 of the accompanying Appendix—Special Rule No. 1.

INTERPRETATION 1975-35

To: Wickland, Inc.

Date: September 24, 1975.

Rule Interpreted: § 211.11(d).

Code: GCW—AI—Transfer of Allocation Entitlement.

Your letter of July 8, 1975 on behalf of Wickland, Inc. ("Wickland") requested an interpretation of the Mandatory Petroleum Allocation Regulations regarding the transfer of motor gasoline allocation entitlements upon the dissolution of a subsidiary and the assimilation of its assets, obligations and operations by the parent firm.

FACTS

Addison Oil Company ("Addison") is a nonbranded, independent marketer which owns and operates 38 motor gasoline retail sales outlets in the State of California. Addison does not supply any other purchasers. Addison is the wholly-owned subsidiary of Wickland, which is itself a nonbranded, independent marketer of motor gasoline which also operates retail sales outlets.

Wickland plans to dissolve Addison and assume all of Addison's assets, obligations and operations, including Addison's 38 retail sales outlets.

Both Addison and Wickland purchase gasoline from Atlantic Richfield Company ("ARCO") and physically transport it to the Addison and Wickland retail sales outlets in trucks operated or chartered by Addison and Wickland, respectively.

ISSUE

The issue presented for consideration is whether the proposed transaction will affect the allocation entitlements of the gasoline retail sales outlets owned and operated by Addison.

INTERPRETATIONS

It is my opinion that the proposed transaction will not affect the allocation entitlements of the gasoline retail sales outlets operated by Addison. Addison and Wickland operate in dual capacities under the Mandatory Petroleum Allocation Program. From the viewpoint of their retail sales outlets, the two companies are suppliers of motor gasoline since they physically transport gasoline to their purchasers. See 10 CFR 211.106 (d). For regulatory purposes, Addison is not treated as a separate supplier from Wickland since "for purposes of defining a supplier * * * a firm shall mean the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls." 10 CFR 211.10(a).

From the viewpoint of ARCO, Addison and Wickland are wholesale purchaser-resellers as defined in 10 CFR 211.51. However, for the purposes of this interpretation, it is not important to determine whether Addison and Wickland are treated separately or as a single wholesale purchaser-reseller since the same result is obtained under the regulations whether they are separate wholesale purchasers or a single purchaser. If Addison and Wickland are a single firm, the internal reorganization of the firm would not affect the firm's right to an allocation. If Addison and Wickland are separate wholesale purchaser-resellers, Addison's entitlement to motor gasoline from ARCO would also be transferred to Wickland.

Section 211.11(d) of the regulations (10 CFR 211.11(d)) reads as follows:

(d) *Transfer of entitlement.* The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the ongoing business or established end use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm is transferred to a successor firm.

It is our opinion that the dissolution of a subsidiary and assumption of its assets, obligations and operations by the parent would constitute a transfer of the entire business of the subsidiary to the parent. The subsidiary's right to an allocation would be transferred to the parent pursuant to 10 CFR 211.11(d) if the subsidiary has a separate allocation entitlement.

INTERPRETATION 1975—36

(No Interpretation designated 1975—36 was issued.)

INTERPRETATION 1975—37

To: Farmland Industries, Inc.

Date: October 2, 1975.

Rules Interpreted: §§ 211.201, 211.202, 211.203 (c) (2) (iii), 211.51.

Code: GCW—AI—Wholesale Purchaser-Consumer, Wholesale Purchaser-Reseller, Allocation Entitlement.

This is in response to your request for an interpretation of the Mandatory Petroleum Allocation Regulations as they affect the obligation of Farmland Industries, Inc. ("Farmland") to supply lubricant base stock oils and lubricants to base period purchasers.

FACTS

Farmland is a refiner of crude oil which produces, among other products, lubricant

base stock oils ("stock oils"). During 1973, Farmland blended in excess of 55,000 gallons of its stock oils into lubricating oils. Farmland also sold 6.4 million bbls, of its stock oils to other blenders of lubricants.

The lubricating oils blended by Farmland from its stock oils are sold to agricultural associations. The associations in turn sell the lubricating oils to ultimate consumers who use them almost exclusively in agricultural production.

So far as Farmland can determine, the stock oils sold by Farmland to other blenders are blended into lubricants and greases sold eventually to ultimate consumers who do not use these products in agricultural production or for Department of Defense use. The use pattern of the products by ultimate users remains approximately the same now as during the 1973 base periods.

Farmland's customers for lubricating oils have certified volumes of lubricants currently required for agricultural production which exceed the quantities blended by Farmland in 1973. To fill 100 percent of this demand, Farmland would have to increase its use of its own stock oils for blending with a resultant decrease in the supply of stock oils it could sell to those blenders and compounders which purchased stock oils from Farmland in 1973.

ISSUE

The issue for consideration is whether Farmland may increase the blending of its stock oils to make more lubricants for agricultural production and decrease its supply of stock oils from which it is required to allocate to base period purchasers.

INTERPRETATION

Stock oils and lubricants as separate allocable products. Section 211.201 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.201) sets out the scope of Subpart K—Other Products—in the following language:

(a) This subpart applies to the mandatory allocation of those allocated products which are not subject to allocation under Subparts D through J of this part, including benzene, toluene, mixed wylenes, hexane *lubricants*, greases, special naphthas (solvents), *lubricating base stock oils* and process oils produced in or imported into the United States. (Emphasis added.)

Section 211.202 (10 CFR 211.202) defines "lubricants" and "lubricant base stock oils" as follows:

"Lubricants" means all grades of lubricating oils which have been blended with the necessary lubricant additives so as to produce a lubricating oil composition in a form that is designed to be used for lubricating purposes in industrial, commercial and automotive use without further modification, wherein said lubricating oils are comprised of greater than ten (10) percent of refined petroleum products by weight.

"Lubricant base stock oils" means those refined petroleum products which are primary components used in the compounding and blending of lubricants and greases including but not limited to bright stocks, solvent neutrals, coastal oils, pale oils and red oils.

The intent of these regulatory provisions is to require the allocation of lubricants and stock oils as separate products. The definitions also show that whereas there may be a use for lubricants in agricultural production, there is no such use for stock oils.

Farmland as supplier and wholesale purchaser-consumer. Section 211.51 (10 CFR 211.51) defines "supplier" as follows:

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including, but not limited to, refiners * * *

Section 211.202 (10 CFR 211.202) defines "wholesale purchaser-consumer" as follows:

"Wholesale purchaser-consumer" means any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into storage substantially under the control of that firm at a fixed location and purchased or obtained more than 20,000 gallons of lubricants, 10,000 pounds of greases or 55,000 gallons of any other product subject to (Subpart K—Other Products) in any completed calendar year subsequent to 1971.

Farmland is a supplier of stock oils since it refines and supplies that allocated product to wholesale purchasers. In addition, Farmland is a wholesale purchaser-consumer of stock oils, because it obtained in excess of 55,000 gallons of that product in a calendar year subsequent to 1971 from a supplier (itself), placed it in storage at a fixed location under its control and consumed it by blending it into lubricating oil.

The dual capacity in which Farmland is placed under the regulations results in Farmland's allocating to itself as a wholesale purchaser-consumer. Farmland as a wholesale purchaser-consumer may not be treated any different than any other of its wholesale purchaser-consumers.

As specified in 10 CFR 211.203(c)(2)(iii), wholesale purchaser-consumers and end-users are entitled to 100 percent of base period use of stock oils for blending and compounding of lubricants. Farmland must allocate at this level to all base period purchasers of stock oils, including itself. Therefore, we conclude that Farmland may not increase the level of use of its own stock oils to satisfy the increased demand for lubricants from its purchasers of those finished products if such increased use would reduce the available supply of stock oils from which Farmland must supply its other base period wholesale purchasers.

If Farmland is able to increase its available supply of stock oils so that it has an allocation fraction in excess of 1.0, it may increase the supply of stock oils to itself in the same manner in which it increases supplies to its other base period wholesale purchasers pursuant to 10 CFR 211.10(g) of the Regulations.

INTERPRETATION 1975—38

To: B. R. Peters, Inc.

Date: October 6, 1975.

Rule Interpreted: § 211.51.

Code: GCW—AI—Definition of Wholesale Purchaser-Reseller.

By letter dated May 23, 1975, you requested an interpretation of the Mandatory Petroleum Allocation Regulations concerning the qualifications of B. R. Peters, Inc. as a "wholesale purchaser-reseller" under those regulations.

FACTS

You have stated that B. R. Peters, Inc. distributes product for Texaco, Inc. under the terms of a form Texaco contract entitled "Consignment Agreement" (Form S-82 1-65) (hereinafter "form contract").

ISSUE

The issue presented for interpretation is whether B. R. Peters, Inc. operating pursuant to the form contract qualifies as a wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION

As you know, by an interpretation issued on April 24, 1975, it was my opinion that any firm which is in the business of selling and distributing allocated products under the terms of the form contract qualified as a "wholesale purchaser-reseller" under § 211.51 of FEA's Mandatory Petroleum Allocation Regulations. Therefore, it is my opinion that, to the extent that B. R. Peters, Inc., sells and distributes allocated products pursuant to the terms of the form contract, it qualifies as a "wholesale purchaser-reseller" as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations.

This interpretation is limited to the stated facts and shall not be construed to apply where the existence of other agreements, amendments, modifications or practices of any kind have the effect of changing the relationship between Texaco and B. R. Peters, Inc. under the form contract.

INTERPRETATION 1975—39

To: National Institute of Infant Services.

Date: October 6, 1975.

Rules Interpreted: § 211.51, Ruling 1974-15.

Code: GCW—AI—Definition of "Sanitation Services."

This is in response to your request on behalf of the National Institute of Infant Services ("NIIS") for an interpretation of the definition of "sanitation services" as that term is used in § 211.51 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.51).

FACTS

NIIS is a national trade association representing diaper service firms in the United States. Its members provide diaper and adult pad service to homes, doctor's offices, hospitals, nursing homes, orphanages and other institutions.

NIIS members recycle diaper and adult pads for any members of the public willing to pay for such services. As part of their operations, NIIS members collect and dispose of solid wastes.

ISSUE

The issue presented for consideration is whether NIIS members are engaged in "sanitation services" as defined in 10 CFR 211.51.

INTERPRETATION

"Sanitation services" is defined in 10 CFR 211.51 as follows:

"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. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

Entities engaged in sanitation services are doing so because such services are essential for the general health and safety of all members of the public. Sanitation services, however, do not include operations which merely provide conveniences to the public.

In FEA Ruling 1974-15 (39 FR 21042, June 18, 1974) FEA determined that the portable sanitation industry was within the meaning of "sanitation services." The basis of the determination, however, was that portable sanitation facilities almost invariably are utilized when no alternative facilities for solid waste disposal exist. In fact, state and local laws often require that these port-

able facilities be furnished at construction sites and recreation areas.

The services provided by NIIS members, on the other hand, do not fall within the rationale behind FEA Ruling 1974-15. Disposal of solid wastes by operators of diaper services is a convenience to members of the public who choose to pay for such services. However, families and institutions have the alternative of disposing of solid wastes through use of available sewerage facilities. The services performed by NIIS members are not essential to the maintenance of the public health and safety. Therefore, we conclude that the services furnished by NIIS members are not "sanitation services" as that term is defined in 10 CFR 211.51.

INTERPRETATION 1975—40

To: Japanese Air Lines Co., Ltd.

Date: October 7, 1975.

Rule Interpreted: § 205.26(d).

Code: GCW—AI—Procedural.

Your letter of April 10, 1975, on behalf of Japanese Air Lines Company, Ltd. (JAL) requested an interpretation of the application of the Federal Energy Administration's (FEA's) procedural regulations to certain orders issued by FEA and FEA's predecessor, the Federal Energy Office (FEO), concerning JAL's use of jet fuel at its Moses Lake, Washington flight crew training center.

FACTS

On February 17, 1974, FEO issued the following adjustment order to Exxon Company. JAL's base period supplier of jet fuel for crew training flights at Moses Lake:

According to the Mandatory Fuel Allocation Program, you are directed to adjust the base period supply volume (annual) from 8,523,286 to 10,931,000 gallons of jet "A" turbine fuel to Japan Air Lines at Moses Lake, Washington, for international airline training flights to be applied beginning January 1, 1974. The allocation fraction should be applied to the monthly volumes negotiated between supplier and purchaser. This directive revokes recent relief order.

The adjustment order was clarified by FEA on July 18, 1974 to indicate that the volume specified in the initial order as JAL's adjusted annual base period supply volume had been reduced by application of the then current allocation level for crew training of 75 percent. The clarifying order was as follows:

Reference to our TWX February 17, 1974, authorizing Exxon to supply 10,931,000 gallons of aviation turbine fuel to Japan Air Lines at Moses Lake, WA for 12 months beginning January 1, 1974. The 10,931,000 gallon net figure resulted from the application of the then current training allocation level of 75 percent applied to the adjusted annual gross volume of 14,574,819 gallons. Therefore the remaining 6 month period volume (July-Dec. 1974) is clarified to be 7,287,409 gallons. The current allocation level for training of 95 percent and allocation fraction will apply.

ISSUE

The issue presented for consideration is whether the adjustment order of February 17, as clarified by the order of July 18, provided for a permanent or a temporary adjustment to JAL's base period volume for jet fuel.

INTERPRETATION

The duration of adjustment orders issued under Subpart B of Part 205, "Administrative Procedures and Sanctions," is governed by 10 CFR § 205.26(d) which provides:

(d) Any order issued pursuant to this subpart unless otherwise specified, shall be effective for the duration of the Mandatory Petroleum Allocation Program, according to its terms.

While this paragraph was not promulgated until December 18, 1974 (39 FR 44030, December 20, 1974) the preamble to the rulemaking adopting the provision points out that its purpose is to make clear that previously issued adjustment orders, unless clearly intended as temporary orders, would be effective for the duration of the Mandatory Petroleum Allocation Program. The preamble provided:

"The purpose of these amendments is to clarify that orders adjusting a purchaser's base period use * * * for periods corresponding to base period, unless clearly intended as interim or temporary orders, should remain effective beyond the end of 1974."

Thus, all adjustment orders issued pursuant to Subpart B of Part 205, whether issued before or after the adoption of § 205.26 (d) constitute permanent adjustments unless otherwise specified in the order.

The February 17 adjustment order issued to Exxon Company with respect to JAL's crew training program contained no express termination date or other indication that the adjustment therein granted was for a period less than the duration of the Mandatory Petroleum Allocation Program. Further, nothing in the July 18 clarifying order can fairly be construed as indicating a termination date for the adjustment. The references therein to specific twelve month and six month periods do not limit the duration of the adjustment granted JAL by the February 17 order, but rather define the time periods during which the indicated volumes of fuel were to be made available. Therefore, it is my opinion that the February 17 adjustment order as clarified on July 18 provided a permanent adjustment to JAL's base period volume and is effective pursuant to 10 CFR § 205.26(d) for the duration of the Mandatory Petroleum Allocation Program.

INTERPRETATION 1975—41

To: U.S. Oil and Refining Co.

Date: October 6, 1975

Rules Interpreted: § 210.32, Rulings 1974-29, 1975-12.

Code: GCW—PI—Stripper Well Lease Exemption, Definition of Average Daily Production.

This is in response to your letter of May 5, 1975, requesting an interpretation of 10 CFR 210.32 (Stripper well leases) as clarified by Ruling 1974-29 (Production Wells for Purposes of the "Stripper Well Lease" Exemption of 10 CFR § 210.32, 39 FR 44414, December 24, 1974). After consideration of the information contained in your request, and all the relevant authorities, the Federal Energy Administration has determined that the appropriate interpretation is the one that follows.

FACTS

As we understand the facts, U.S. Oil and Refining Co. ("the Company") is the producer of crude oil from the Ritchie (Baker Sand) Unit located in Union County, Arkansas. On January 1, 1969, the Ritchie Field was unitized for the purpose of implementing an enhanced recovery project utilizing carbon dioxide (CO_2) in an experimental CO_2 immiscible displacement and recovery project. This system involves the introduction of CO_2 into the reservoir, which, when dissolved in the heavy crude oil, lowers the viscosity of (and acts as a propellant for) the reservoir crude oil, thereby increasing producing rates and ultimate recoveries.

During calendar years 1973 and 1974, there were sixteen wells located on the Ritchie Unit. Of the total of six wells utilized during that period as reservoir fluid lift wells, two wells were employed part of the time exclusively to inject carbon dioxide into the reservoir. The remaining ten wells "have been, and remain, standby recovery wells immediately available as lift wells when and if it should be technically sound to employ them in that fashion." Four of the ten "standby wells" were used as injection wells: two for injecting CO_2, and two for injecting water for pressure maintenance. Not all sixteen wells were in use because of the availability of only limited quantities of carbon dioxide. A new supply is anticipated late in 1975, when the Company expects to resume the operation of all sixteen wells for the lifting of reservoir fluids, and the injection of CO_2 and water.

You have requested the interpretation that the wells not used as lifting wells should have been included as "production wells" for purposes of the stripper well lease exemption of 10 CFR 210.32, in calculating average daily production during the calendar years 1973 and 1974.

ISSUE

The interpretation requested turns on the issue whether a standby well—which acts neither as a producing well nor as an injection well due to the temporary unavailability of sufficient quantities of carbon dioxide for maximum efficient operation of the project—may nevertheless be considered a well that produces crude oil and counted as such for purposes of determining average daily production, as the term "well" is used in the stripper well lease exemption as clarified by Rulings 1974-29 and 1975-12.

INTERPRETATION

The stripper well lease exemption of 10 CFR 210.32 exempts from the provisions of the Mandatory Petroleum Allocation and Price Regulations the first sale of crude oil, including condensates, produced from any property whose average daily production of crude oil, including condensates, per well did not exceed ten barrels per day during any preceding calendar year beginning after December 31, 1972.

"Average daily production" means the qualified maximum total production of crude oil, including condensates, produced from a property, divided by a number equal to the number of days in the year times the number of *wells that produced crude oil*, including condensates, from that property in that year. 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. (Emphasis added.)

In Ruling 1974-29 the FEA made it clear that "[w]hile injection techniques help to 'produce' crude petroleum, they are not wells which themselves 'produce' crude petroleum. Therefore, wells which did not actually yield or produce crude petroleum during the [measuring] calendar year are not production wells for this purpose."

During the calendar years 1973 and 1974, the sixteen wells located on the Ritchie Unit fell basically into four categories: (1) Four reservoir lift wells that were operated on a most nearly continual basis exclusively to produce crude oil; (2) two wells that were used alternatively for the injection of CO_2 and the lifting of crude oil; (3) four injection wells; and (4) six wells that were used neither to produce crude oil nor for injection purposes.

The proper treatment of the 10 wells in categories (3) and (4) is governed by Ruling 1974–29, as these wells were "not wells which themselves 'produce[d]' crude petroleum." The fact that these wells might have been "immediately available as lift wells when and if it [was] technically sound to employ them in that fashion" does not alter the fact that during calendar years 1973 and 1974 they did not "produce" crude oil as that term is used in 10 CFR 210.32. (Emphasis added.) Until such time as they actually do produce crude oil they cannot be counted as production wells in the calculation of "average daily production" from the Ritchie Unit. Accordingly, they should not have been included in the calculation of average daily production during calendar years 1973 and 1974.

With respect to the two wells in category (2) that were used alternatively for the injection of CO_2 and the lifting of crude oil, it is clear that for a least some period of time each year, these were wells that produced crude oil as contemplated by 10 CFR 210.32 and Ruling 1974–29. Ruling 1974–29 establishes that only producing wells are to be counted for purposes of 10 CFR 210.32. Therefore, it is our interpretation that only that portion of each calendar year during which these wells were operated in the producing mode is to be considered in determining the number of producing wells in the calculation of average daily production for the property during the calendar year. Ruling 1975–12 (a copy of which is enclosed) delineates the method of calculating the average daily production, and applies to these wells during the time they were operated in the producing mode. As stated in Ruling 1975–12:

FEA will presume that if, for any reason, a well has not operated for a period of more than 24 consecutive hours, production has been significantly curtailed or disrupted and, unless that presumption is overcome, appropriate adjustments must be made in the calculation of average daily production.

The presumption may be overcome upon the showing, by production records or otherwise, that the time lost for mechanical repairs or maintenance was not in excess of the historical norm or was subsequently recouped.

Inasmuch as your interpretation request does not contain sufficient information, such as the amount of time each well was operated in the injection versus the producing mode, or the extent of and reasons for any curtailments or disruptions while in the producing mode, FEA cannot render a determination as to the fraction of each well in category (2) that should be counted for determining average daily production pursuant to 10 CFR 210.32. However, it is our interpretation that these two wells must be counted as partial producing wells so as to reflect only the time that they were operated in the producing mode. Application of Ruling 1975–12 may further reduce the producing well fraction, if down-time periods exceeding 24 hours occurred and the presumption of significant curtailment or disruption is not overcome. Accordingly, these wells are to be considered as partial wells based upon the ratio of the number of days that they were operated in the producing mode, to the number of days in the measuring calendar year. For example, if the particular well was operated in the producing mode for 292 days of the measuring calendar year, it would be considered $\frac{4}{5}$ of a well (i.e., $292/365=\frac{4}{5}$).

The wells in category (1) are producing wells and, as such, are subject to Ruling 1975—12 insofar as there have been any disruptions or curtailments in production.

Therefore, the sixteen wells are characterized as follows: (1) four producing wells; (2) two partial producing wells; and (3) ten non-producing wells that cannot be counted in determining average daily per-well production from the Ritchie Unit.

This interpretation is issued in response to a request based upon information available for calendar years 1973 and 1974. However, the principles set forth in this interpretation are also applicable to calendar years 1975 and thereafter, as information for those years becomes available.

INTERPRETATION 1975—42

To: Petroleum, Inc. and Don M. Rounds Co.

Date: October 31, 1975.

Rule Interpreted: Ruling 1975—15.

Code: GCW—PI—Definition of Property.

This is in response to your February 10, 1975 request for interpretation submitted by you to Gordon L. Allott, Jr., Regional Counsel for Region VIII. The request—together with the names and addresses of all interest owners, copies of the leases involved, and a schedule of production levels through October 1974—was transmitted to this office by Region VIII for our review. After consideration of all the information contained in the request, and all the relevant authorities, the Federal Energy Administration has determined that the appropriate interpretation is the one that follows.

FACTS

Your request for interpretation has been filed on behalf of Petroleum, Inc. (operator of the property that is the subject matter of the request), and Don M. Rounds Company (owner of the largest working interest therein). Other owners and parties in interest, which are listed in Exhibit "A" attached to your request, are incorporated herein by reference.

As we understand the facts, the right to produce crude oil from the property that is the subject of this request derives from two leases: The first, dated October 23, 1967, from Wasyl Buczkowskyj, as lessor, to D. M. Rounds, as lessee (Document No. 1509928, Book 588); and the second, dated October 14, 1968, from Louisiana Land and Exploration Company as lessor, to Don M. Rounds Company, as lessee (Document No. 1523337, Book 601). On July 16, 1974, there was executed a partial assignment of oil and gas rights under those leases to Kenneth L. Tipps.

Since 1967, seven wells have been drilled on the property, of which five produce from the Cretaceous "D" formation, and two (one of which is the No. 1 Tipps well) produce from the Cretaceous "J_2" formation. The two wells producing from the "J_2" formation—the No. 1 Tipps well and the No. 7 Buczkowskyj well—were drilled in April and August of 1974, respectively.

You have requested the interpretation that under the Mandatory Petroleum Price Regulations, the production obtained from the "J_2" sand under the Buczkowskyj No. 7 well is "new" oil and therefore not subject to the ceiling price rule of § 212.73, but is governed instead by the provisions of § 212.74.

ISSUE

The requested interpretation turns on whether the Cretaceous "J_2" formation under the Buczkowskyj lease constitutes a "property", as that term is defined in the price regulations, that is separate and distinct from the property that encompasses the Cretaceous "D" formation.

INTERPRETATION

The issue raised in your request is governed squarely by the principles announced in Ruling 1975–15 (40 FR 40832, September 4, 1975), a copy of which is enclosed for your convenience. Since, as the Ruling makes clear, the concept of "property" relates to the right to produce crude oil, whether arising from a lease or from a fee interest, and since the base production control level relates to the production from the property in 1972, your contention that "no 'base production control level crude petroleum' is established for the "J_2" sand under the Buczkowskyj lease prior to 1974" is inapposite to the regulatory criteria for determining "new" and "released" crude oil. Inasmuch as during the base period the right to produce crude oil from the "J_2" formation was not separate and distinct from the right to produce crude oil from the "D" formation, the two formations do not constitute separate properties. Rather, a base production control level must be established for the right to produce crude oil, as that right existed in 1972, which in this case arises from the two leases previously mentioned. As pointed out in Ruling 1975–15, "new" oil is not established by the assignment in 1974 of the Tipps lease, or by the commencement of production from a previously undeveloped reservoir. Therefore, in any month, crude oil produced from the Buczkowskyj No. 7 well or from the Tipps No. 1 well will not qualify as "new" crude oil unless the production therefrom, when aggregated with the production from all of the other wells on the property, exceeds the entire production from the property in the corresponding month in 1972.

INTERPRETATION 1975—43

To: Berry Holding Co., et al.

Date: November 10, 1975.

Rules Interpreted: § 210.32, Rulings 1974–29, 1975–12.

Code: GCW—PI—Stripper Well Lease Exemption, Definition of Average Daily Production.

This is in response to your letter of May 14, 1975, requesting an interpretation of 10 CFR 210.32 (Stripper well leases), on behalf of the producers named below. After consideration of all the information contained in the request, and all the relevant authorities, the Federal Energy Administration has determined that the appropriate interpretation is the one that follows. Accordingly, this interpretation is issued to Berry Holding Company, Berry Oil Company, Berry & Ewing, Big Ten Oil Company, and Surprise Oil Company. Use of the term "Berry" is intended only as an abbreviated reference to the firms listed above, and does not limit the applicability of this interpretation to less than all of those firms.

FACTS

Berry is a producer of crude oil from properties located in the Midway-Sunset oil field of Kern County, California. Production from each of these properties is enhanced by a technique involving steam or thermal stimulation, described by Berry as follows:

The steam or thermal stimulation technique for secondary recovery as employed by [Berry] is commonly known as the "huff and puff" or "steam soak" method. [Berry's] practice is to inject steam directly into a well and to allow the steam to penetrate producing zones in order to heat and thereby increase the fluid movement of the oil. It is absolutely impossible to inject steam down a well without at the same time taking that well temporarily off production. The shut in period on the average may extend for approximately two weeks to two months depending upon subsurface geology and other technical considerations. When a well is returned to production, the effect of the heat resulting from the steam stimulation causes the well to produce at an abnormally high daily rate for a relatively short period of time, after

which the daily rate of production is gradually reduced as the thermal energy is dissipated and without further steam stimulation would eventually return to its primary rate of production.

ISSUE

Berry has requested an interpretation of 10 CFR 210.32 as applied to the following issues:

(1) Whether a well that performs the dual function of a producing well and an injection well is a well for purposes of calculating average daily production for the property concerned.

(2) Whether there is any specific time during which a well must produce crude oil in order to be considered a well for purposes of calculating average daily production for the property concerned.

INTERPRETATION

The stripper well lease exemption of 10 CFR 210.32 exempts from the provisions of the Mandatory Petroleum Allocation and Price Regulations the first sale of crude oil, including condensates, produced from any property whose average daily production of crude oil, including condensates, per well did not exceed ten barrels per day during any preceding calendar year beginning after December 31, 1972. "Average daily production" means the qualified maximum total production of crude oil, including condensates, produced from a property, divided by a number equal to the number of days in the year times the number of *wells that produced crude oil*, including condensates, from that property in that year. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasibility rate of production, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production. [Emphasis added.]

In Ruling 1974–29 the FEA made it clear that "[w]hile injection techniques help to 'produce' crude petroleum, they are not wells which themselves 'produce' crude petroleum. Therefore, wells which did not actually yield or produce crude petroleum during the [measuring] calendar year are not production wells for this purpose."

With respect to wells that during the measuring calendar year were used alternately for the injection of steam (or other stimulant) and the lifting of crude oil, it is clear that for at least some period of time during that year, these were wells that produced crude oil as contemplated by 10 CFR 210.32 and Ruling 1974–29. Ruling 1974–29 establishes that only producing wells are to be counted for purposes of 10 CFR 210.32. Therefore, it is our interpretation that only that portion of each calendar year during which these wells were operated in the producing mode is to be considered in determining the number of producing wells in the calculation of average daily production for the property during the calendar year. Ruling 1975–12 (a copy of which is enclosed) delineates the method of calculating the average daily production, and applies to these wells during the time they were operated in the producing mode. As stated in Ruling 1975–12:

FEA will presume that if, for any reason, a well has not operated for a period of more than 24 consecutive hours, production has been significantly curtailed or disrupted and, unless that presumption is overcome, appropriate adjustments must be made in the calculation of average daily production.

The presumption may be overcome upon the showing, by production records or otherwise, that the time lost for mechanical repairs or maintenance was not in excess of the historical norm or was subsequently recouped. See Ruling 1975–12 for a complete discussion of this presumption.

Inasmuch as your interpretation request does not contain sufficient information, such as the amount of time each well was operated in the injection versus the producing mode, or the extent of and reasons for any curtailments or disruptions while in the producing mode, FEA cannot render a determination as to the fraction of each well that should be counted for determining average daily production pursuant to 10 CFR 210.32. However, it is our interpretation that these wells must be counted as partial producing wells so as to reflect only the time that they were operated in the producing mode. Application of Ruling 1975–12 may further reduce the producing well fraction, if down-time periods exceeding 24 hours occurred and the presumption of significant curtailment or disruption is not overcome. Accordingly, these wells are to be considered as partial wells based upon the ratio of the number of days that they were operated in the producing mode, to the number of days in the measuring calendar year. For example, if the particular well was operated in the producing mode for 292 days of the measuring calendar year, it would be considered 4/5 of a well (i.e., 292/365=4/5).

INTERPRETATION 1975—44

To: Moore-McCormack Resources, Inc.

Date: November 12, 1975.

Rule Interpreted: § 211.183.

Code: GCW—AI—Naphtha Allocation.

This is in response to your letter of August 29, 1975, on behalf of Moore-McCormack Resources, Inc. ("MME") requesting an interpretation of § 211.183 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.183).

FACTS

MME plans, with other firms, to develop a processing facility to convert naphtha into nitration grade benzene, fuel gas (composed of less than ten percent propane or butane by weight), liquid butane and pentane, and heavy aromatics. Some toluene and xylene will be produced in an intermediate process but will be converted through hydrodealkylation into nitration grade benzene.

The output of the plant, by weight, will be as follows:

	Percent
Nitration grade benzene	48.91
Fuel gas	33.78
Liquid butane and pentane	16.29
Heavy aromatics	1.02

ISSUE

The issue presented for consideration is whether the naphtha to be utilized in MME's plant would be allocated under the allocation level for petrochemical feedstock use.

INTERPRETATION

It is our opinion that the naphtha input to the proposed plant would be petrochemical feedstock under the Mandatory Petroleum Allocation Program.

Allocation levels for end-uses of naphtha are specified in § 211.183 of the Mandatory Petroleum Allocation Regulations (10 CFR 211.183). That section reads in pertinent part as follows:

§ 211.183 *Allocation levels.*

* * * * *

(b) *Allocation levels (not subject to an allocation fraction).* (1) One hundred (100) percent of current requirements for the following uses:

* * * * *

(iii) Petrochemical feedstock use.

* * * * *

Section 211.51 of the allocation regulations (10 CFR 211.51) defines "petrochemical feedstock use" as usage of crude oil, residual fuel oil, and refined petroleum products for processing in a petrochemical plant.

Section 211.51 further states that "petrochemical plants" means those industrial plants, regardless of capacity, that process petrochemical feedstocks and obtain at least thirty (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 (30) percent of the initial petrochemical feedstock fed to the plant under consideration.

Finally, § 211.51 provides that "Petrochemicals" are the organic chemicals defined as petrochemicals in § 213.27(q) of this chapter, plus any other analogus organic chemicals similarly derived.

Section 213.27(q) of the Oil Import Regulations (10 CFR 213.27(q)) and related provisions of § 213.27 make it clear that benzene is a petrochemical. Since the benzene to be produced by MME is obtained by conversion of 48.91 percent by weight of the naphtha input, MME's new plant would be a petrochemical plant. Therefore, the naphtha would be utilized by MME for petrochemical feedstock use and the applicable allocation level would be 100 percent of current requirements not subject to an allocation fraction.

It should be noted that the liquid butane and pentane plus the heavy aromatics which will be produced in the proposed plant are allocable products. Before MME and its associates may allocate these products, including the butane and pentanes to be used by MME and its associates, the requirements of 10 CFR 211.10(e) and 211.12(e) with respect to FEA approval of MME as a new supplier and approval of MME's arrangements for accepting wholesale purchasers must be satisfied.

INTERPRETATION 1975—45

To: J&W Refining, Inc.

Date: December 12, 1975.

Rule Interpreted: § 211.63(a).

Code: GCW—AI—December 1 Rule.

Your letter of February 26, 1975 on behalf of J&W Refining, Inc. ("J&W") requested an interpretation of and exception to the provisions of 10 CFR 211.63(a). On April 25, 1975, FEA's Office of Exceptions and Appeals granted an exception to J&W from the provisions of § 211.63(a), which permitted J&W to receive prospectively volumes of Federal royalty oil under the program administered by the United States Geological Survey ("USGS"). Therefore, this interpretation will address only the questions you raised with respect to the termination of a crude oil supplier/purchaser relationship by the mutual consent of the parties to the relationship. The interpretation expressed herein is based upon the facts set forth in your February 26, 1975, request for interpretation and the supplemental information you furnished to this office by your letter of September 10, 1975.

FACTS

In March 1973, J&W was organized to reactivate a refinery in Anderson County, Texas. In order to obtain supplies of crude oil, J&W participated in the USGS royalty oil lottery held on September 20, 1973 and was advised on October 2, 1973 that it had been awarded certain production, a portion of which was being purchased at that time

by Shell Oil Company ("Shell"). Delivery of these volumes to J&W was to commence on November 1, 1973. However, due to delays in making the necessary arrangements to implement the USGS award, J&W did not begin to receive delivery of the royalty oil from Shell until February 1974. On February 8, 1974, the royalty oil purchase agreement between J&W and USGS was finalized and by letter dated February 8, 1974, the previous purchasers of the oil (including Shell) were directed by USGS to deliver specified volumes of royalty oil to J&W.

On June 10, 1974 Shell terminated its deliveries of royalty oil to J&W after informing USGS that Shell construed § 211.63(a) as entitling it to the volumes of USGS royalty oil received on December 1, 1973, irrespective of the February 8, 1974, directive from USGS.

ISSUE

The issue presented for interpretation is whether Shell's compliance through June 10, 1974, with USGS's February 8, 1974 directive constituted Shell's consent under § 211.63(a) to a termination of the supplier/purchaser relationship which existed between Shell and USGS on December 1, 1973.

INTERPRETATION

Section 211.63(a) provides in pertinent part:

(a) All supplier/purchaser relationships in effect under contracts for sales, purchases and exchanges of domestic crude oil 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 such supplier/purchaser relationship may be terminated by the mutual consent of both parties; * * *

It is uncontested that, with respect to the volumes of royalty oil in question, a December 1, 1973, supplier/purchaser relationship existed between Shell and USGS. Further, as made clear by FEA's Ruling 1974-22, § 211.63 applies to sales of crude oil made by the Federal government and thus supersedes awards under the USGS royalty oil program to the extent that such awards are inconsistent with § 211.63. Therefore, in order to find that J&W was entitled to the volumes of royalty oil covered by the February 8, 1974, royalty oil purchase agreement, Shell must be found to have consented to the termination of its supplier/purchaser relationship with USGS.

You have urged that Shell's consent to the termination of its supplier/purchaser relationship with USGS can be implied from the fact that on February 9, 1974 Shell commenced deliveries to J&W of the royalty oil which Shell had previously received from USGS. You have further stated that Shell had either constructive or actual notice of the application of § 211.63(a) to its relationship with USGS and that Shell, in making deliveries to J&W, thereby consented to the termination of its relationship with USGS.

However, in commencing deliveries of royalty oil to J&W, Shell acted in accordance with what it could at that time justifiably consider a lawful USGS directive, since until the issuance of FEA Ruling 1974-22 on July 3, 1974 it remained unclear as to whether § 211.63 superseded the USGS royalty oil program. There is no indication in any of the contracts or correspondence submitted by J&W that Shell intended to relinquish its rights under § 211.63 when it commenced deliveries under the February 8, 1974 USGS directive. FEA has consistently ruled that a termination by mutual consent requires that the purchaser give its affirmative written consent thereto in light of the promulgation of § 211.63. Since there is no evidence that Shell so intended to waive its rights under § 211.63, its compliance with the February 8, 1974 USGS directive cannot be construed as a consent to the termination of its supplier/purchaser relationship with USGS under § 211.63(a)(1).

INTERPRETATION 1975—46

To: Trans World Airlines.

Date: November 22, 1975.

Rules Interpreted: §§ 210.21, 210.33, 211.51.

Code: GCW—AI—Definition of United States, Bonded Fuel; Bonded Fuel Exemption; Guam.

(Text omitted because Interpretation 1975-46 has similar facts and presents essentially the same issue and interpretive statement as Interpretation 1975-8.)

INTERPRETATION 1975—47

To: Pacemaster, Inc.

Date: November 22, 1975.

Rules Interpreted: §§ 212.31, 212.82, Ruling 1975-2.

Code: GCW—PI—Class of Purchaser.

This is in response to your letter of May 9, 1975, requesting an interpretation on behalf of Pacemaster, Inc. ("Pacemaster"). This interpretation also reflects certain information supplied by you in telephone conversations with this office.

FACTS

Pacemaster distributes gasoline through retail outlets operated in Florida and is a "retailer" as defined in § 212.31. SuperTest Oil and Gas Company, Inc. ("SuperTest"), is a subsidiary of a refiner that obtains in excess of percent of the product it sells from that refiner, and is therefore a "refiner" as defined in § 212.31.

On May 15, 1973, Pacemaster was purchasing gasoline from SuperTest pursuant to a contract under which the gasoline was priced according to the current Gulf Coast Low Price as reported in Platt's Oilgram. As a function of this contract, the price paid by Pacemaster for gasoline purchased from SuperTest's Tampa terminal was, on May 15, 1973, $0.0115 per gallon higher than the price paid by other so-called "under-the-rack" purchasers, which bought comparable volumes of product, under identical payment terms and identical delivery arrangements to those afforded to Pacemaster.

The provisions of Pacemaster's contract with SuperTest had initially afforded Pacemaster a number of benefits not enjoyed by SuperTest's other customers. At the time the contract was entered into, these benefits included a low-interest loan, the principal of which was to be repaid at a rate reflecting the volume of gasoline purchased by Pacemaster, and the lease of 16 retail outlets to Pacemaster by SuperTest. Although the price provision in the contract did not specifically refer to the loan, Pacemaster states that the price term reflected the basis upon which the contract was initially executed, including the availability of the low-interest loan and the lease of 16 retail outlets.

On February 13, 1973, Pacemaster states that SuperTest demanded immediate payment of the outstanding balance of its loans to Pacemaster, and conditioned future sales of product to Pacemaster on Pacemaster's payment. Pacemaster states that it acceded to this request because of the unavailability of alternate sources of supply, but that despite Pacemaster's discharge of its indebtedness, SuperTest continued to charge the contract price for gasoline.

On October 4, 1973, the contract between Pacemaster and SuperTest was extended by court order, through March 31, 1974. Pacemaster states that this was based on Pacemaster's contention that SuperTest's supply obligation under the contract endured despite full repayment of Pacemaster's indebtedness. On November 1, 1973, Pacemaster returned to SuperTest the retail outlets it had been leasing.

ISSUES

The issues raised by this request for interpretation are:

(1) Whether the contractual relationship pursuant to which the price paid by Pacemaster was different from that paid by SuperTest's other "under-the-rack" purchasers on May 15, 1973, served to establish Pacemaster as a class of purchaser distinct from SuperTest's other "under-the-rack" purchasers, and, if so,

(2) Whether SuperTest may continue to maintain Pacemaster in that class of purchaser after termination of the contract pursuant to which the May 15, 1973, price differential between Pacemaster and SuperTest's other "under-the-rack" purchasers was established.

INTERPRETATION

As a refiner, SuperTest is subject to the refiner price rules of Subpart E of 10 CFR Part 212. Section 212.82(a) of that subpart provides in relevant part that:

A refiner may not charge to any class of purchaser a price for a covered product in excess of the base price for that covered product * * *

"Base price" is defined in § 212.82(b) as:

The weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, plus increased product costs incurred between the month of measurement and the month of May 1973 * * *

A reading of these two sections makes clear that the maximum lawful price to any purchaser will depend upon the class of purchaser to which it belongs and upon the weighted average unit price to that class of purchaser on May 15, 1973.

Section 212.31 defines "class of purchaser" as:

Purchasers or lessees to whom a person has charged a comparable price for a comparable property or service pursuant to customary price differentials between those purchasers or lessees and other purchasers or lessees.

That same section defines "customary price differential" as including:

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.

Because of the complexities that arise with regard to the proper application of the class of purchaser doctrine, the FEA issued Ruling 1975-2 (40 FR 10655, March 7, 1975).

That ruling states in part:

The principal function of the doctrine is to maintain the price differentials that existed on May 15, 1973 between groups of purchasers which were not similarly situated then and are not now similarly situated.

The ruling goes on to state:

It is in [the] area of differing terms and conditions of sale, and particularly where such terms and conditions, including price terms, were established by written contract on May 15, 1973, that class of purchaser determinations become most difficult.

In some instances, the fact that sales were made pursuant to contractual terms and conditions may serve to distinguish those purchasers from purchasers that did not buy under contract, and in others it may not. For example, if a seller sold a product to both contract and non-contract purchasers on

identical terms and conditions, there would be no basis for establishing separate classes of purchaser. If, however, a firm's contract purchasers were generally those purchasers that bought all of their requirements from the firm over a given time period, whereas the firm's non-contract purchasers bought from the firm only on an occasional and upredictable basis, and if this difference in methods of purchaser were reflected in a customary price differential, it would not be proper for the selling firm to place its contract and non-contract purchasers in the same class.

Under the facts stated above, it is our interpretation that Pacemaster constituted a separate class of purchaser for SuperTest on May 15, 1973, by virtue of its contractual relationship with SuperTest. The contractual relationship differentiated Pacemaster from SuperTest's other "under-the-rack" purchasers because the price computed under the contract was based upon the previous loans to Pacemaster and the lease by Pacemaster of SuperTest's retail outlets.

Implicit in the principle that the class of purchaser doctrine is "to maintain the price differentials that existed on May 15, 1973, between groups of purchasers which were not similarly situated then and are not now similarly situated" is the converse, that is, if the groups of purchasers are now similarly situated, then the May 15, 1973, price differentials should not be maintained.

Ruling 1975-2 states in this regard:

Rulings 1974-17 and 1974-18 have been incorrectly construed by some persons as requiring a supplier generally to maintain certain discounts in effect on May 15, 1973, to the same purchasers which received them on that date, possibly because the rulings were stated as hypothetical examples involving particular purchasers. No such construction was intended, however. Rather, a supplier must maintain the applicable customary price differential to the same class of purchaser. The membership of the class is to be determined by the same objective standards applied by the seller on May 15, 1973. Thus, for example, if a particular customer was receiving a volume discount on May 15, 1973, because its purchases exceeded a certain prescribed volume, the seller does not have to continue to offer the applicable price differential to the same purchaser if that purchaser's volumes decline below that level. On the other hand, a seller is required currently to offer such a price differential to a purchaser which now meets the minimum prescribed volume, even though it may not have done so on May 15, 1973.

The logic of this position obviously applies equally whether one class of purchaser is perceived as receiving a discount or the other class of purchaser is perceived as paying an add-on. If, by applying the objective standards that determined the different classes of purchaser on May 15, 1973, it is determined that all purchasers are now similarly situated, then all such purchasers should now be in the single appropriate class.

That a change in class of purchaser can result from the termination of a previously existing contractual relationship is shown by the Decision on Appeal in *Greenbelt Consumer Services, Inc., Silver Spring, Maryland.* In that case, termination of a franchise agreement resulted a change in the class of purchaser in which Greenbelt was placed, from the class that included branded independent marketers to the class that included non-branded independent marketers. Greenbelt contended that termination of the services included in the franchise agreement resulted in a price increase. The interpretation concluded that nothing in the FEA regulations required the supplier to continue the franchise agreement.

Consequently, there is no merit in Greenbelt's argument that BP has managed to obtain a de facto price increase in excess of permissible levels through its termination of the dealer franchise agreement and the elimination of services and other benefits formerly provided to Greenbelt under the franchise agreement. Termination of the franchise agreement resulted in the shift of Greenbelt from one class of purchaser to another. Under the provisions of 10 CFR, Part 212, BP must therefore base its prices to Greenbelt upon the prices charged to members of the class of purchaser to which Greenbelt was shifted upon termination of the franchise relationship, i.e., the class of non-branded distributors. (*Greenbelt Consumers Services Inc., Silver Spring, Maryland.* 1 FEA ¶20,211).

As noted above, Pacemaster constituted a class of purchaser separate and distinct from SuperTest's other "under-the-rack" purchasers on May 15, 1973, by virtue of its contractual relationship with SuperTest. That relationship, however, was terminated as of April 1, 1974. Pacemaster currently purchases gasoline from SuperTest under the same terms and conditions of sale and delivery as SuperTest's other "under-the-rack" purchasers in all respects except price. The volumes of product sold are comparable and the sales are made under identical payment and delivery terms. All sales are made from SuperTest's Tampa terminal.

It is therefore our interpretation of §§ 212.-31 and 212.82 that Pacemaster no longer constitutes a class of purchaser separate and distinct from SuperTest's other "under-the-rack" purchasers, but is, and has been since the termination of its contractual relationship with SuperTest, a member of the class of purchaser which includes other purchasers who are currently similarly situated. Despite the fact that these purchasers were not similarly situated on May 15, 1973, application of the objective standards used to determine classes of purchasers on that date reveals that Pacemaster now has all the characteristics of the class including of SuperTest's other "under-the-rack" purchasers from its Tampa terminal. As stated in Ruling 1975-2, quoted above, FEA regulations do not require that class of purchaser membership be maintained as it existed on May 15, 1973, but that the customary price differential be maintained with regard to persons who now qualify for membership in that class.

INTERPRETATION 1975—48

To: Rotary Gasoline Dealers.

Date: November 24, 1975.

Rule Interpreted: § 212.93(b).

Code: GCW—PI—Increased Non-Product Costs, Commission Agents.

This is in response to your request for an interpretation, dated May 20, 1975, filed on behalf of the Rotary Gasoline Dealers. The Rotary Gasoline Dealers are identified in Exhibit "A" attached to your request, which is incorporated herein by reference.

FACTS

The Rotary Gasoline Dealers ("Dealers"), as individuals, executed agreements for the distribution of petroleum products with the Southern Oil Company of New York, Inc. ("Southern"). Each dealer also executed a lease agreement, providing for the rental of a retail outlet from Southern for the sale of Southern petroleum products.

The agreements between Southern and each of the Dealers established a commission schedule, effective May 1, 1973, which provided for increases in the commission to be paid to each dealer based upon increases in the selling prices of Southern's petroleum products. The information submitted by the Dealers indicates that these schedules were adhered to by Southern until November 27, 1973.

On November 27, 1973, Southern notified the Dealers that, because Cost of Living Council Phase IV price controls did not permit Southern "to recover in retail prices any increased commission or profit without specific approval," increased commissions reflecting increased selling prices would no longer be paid, and the commissions would be computed on the basis of May 15, 1973, selling prices and would remain at that level.

Although Southern's retail selling price has increased since that time, Southern has not increased the commissions paid to the Dealers above those computed on the basis of May 15, 1973, selling prices. Southern's apparent basis for not adhering to the commission schedule has been that payment of increased commissions is precluded by FEA price regulations.

ISSUE

Do FEA price regulations prohibit an increase in commissions paid by suppliers to commission agents for the distribution of petroleum products?

INTERPRETATION

The private contractual relationships between suppliers (refiners or resellers) and commission agents are generally premised on the retention of title to the product by the supplier until that product is sold by the supplier to the ultimate purchaser, with commission agents then receiving a commission from the supplier for the services they perform in connection with the sale of the product—e.g., storage, delivery, etc. Since FEA price regulations pertain to prices charged in sales of petroleum products, the absence of petroleum product ownership by agents and the retention of ownership and control of the pricing of the product by suppliers mean that FEA price regulations apply directly to prices charged by suppliers in sales of petroleum products, even where such sales are made through commission agents. FEA price regulations do not control the commissions that may be paid to agents for distributing those products.

FEA price regulations applicable to most petroleum products, including gasoline, provide generally for an automatic dollar-for-dollar passthrough of the increased cost of the product (or of the raw material—crude oil—used to produce the product) being sold. This is accomplished through regulations that limit prices charged in sales of petroleum products to the May 15, 1973, prices for each product in sales to specific classes of purchasers, plus the increased costs of that product since May 1973, calculated pursuant to the provisions of § 212.83 or § 212.92.

Increases in non-product costs—labor, rent, interest expense, etc.—are not afforded an automatic dollar-for-dollar passthrough under FEA price regulations, but may only be passed through to the extent permitted by the regulations. Resellers are permitted, for example, to charge three cents per gallon in excess of the amount otherwise permitted to be charged "to reflect non-product cost increases that the seller incurred after May 15, 1973" (§ 212.93(b)).

As noted above, commission agents generally perform services for a seller in connection with the sale of petroleum products, for which they are compensated by the seller pursuant to the terms of a contract between the seller and the agents. There is no sale of product and, hence, no product price is established between the seller and the agent

that could be subject to FEA price regulations. The price regulations simply establish the maximum lawful prices the seller may charge in sales made through commission agents.

There are no FEA regulations applicable to the specific terms under which sellers contract for distribution services, just as there are no regulations applicable to the terms under which sellers obtain other services, such as bookkeeping, maintenance, advertising, etc. Commissions paid to consignee-agents (with certain exceptions as increased commissions paid by refiners which are outlined below) constitute non-product costs of marketing to the supplier concerned, which may be passed through in prices charged for products only to the extent permitted by the non-product cost passthrough regulations.

Although the amount of the commission paid by sellers to commission agents is not specifically regulated pursuant to the pricing authority of the FEA, the FEA has sought to be responsive to the needs of these distributors. By amendment to the regulations, effective June 1, 1974, refiners were permitted to treat as increased product costs certain increases in commissions paid to consignee or commission agents. In this way, refiners were permitted to increase commissions paid to commission agents up to a specified amount, and to passthrough the amounts of those increases in commissions paid under the automatic dollar-for-dollar passthrough provisions applicable to product cost increases. This provision afforded relief from the general increased non-product cost passthrough requirements applicable to refiners, which otherwise permitted such passthrough only if the refiner concerned remained under its based period profit margin. This amendment was intended to serve as an incentive to refiners to increase the commissions paid to commission agents in recognition of the fact that their non-product costs had increased, in amounts comparable to the amounts by which resellers and retailers were permitted to increase their prices to reflect increased non-product costs. However, the absence of such a provision prior to that time did not operate to prohibit an increase in commissions, it simply meant that refiners that were above their base period profit margins had to absorb any increase in the amount of commissions paid, just as they had to absorb increases in other operating expenses, other than increased product costs.

With respect to increased commissions paid to consignee-agents by reseller firms, such increased commissions constitute increased non-product costs, which may be passed through in higher prices only to the extent permitted by § 212.93(b). As noted above, § 212.93(b) provides specific price increments which may be charged in sales of particular products in order to reflect increased non-product costs.

It is therefore our interpretation of the FEA Mandatory Petroleum Price Regulations that nothing in these regulations prohibits Southern from paying commissions to Dealers based upon current selling prices. Southern's current selling prices, however, must not exceed the maximum lawful prices established by the price regulations. Any increases in commissions paid to the Dealers above their May 15, 1973 levels may only be passed through in the form of increased prices to purchasers to the extent specifically authorized by the regulations applicable to the passthrough of increased non-product costs (where the supplier is a reseller) or to the extent specifically authorized by the regulations applicable to the passthrough of increased commissions paid to consignee agents (where the supplier is a refiner).

INTERPRETATION 1975—49

To: Gas Club, Ltd.

Date: January 2, 1975.

Rule Interpreted: § 210.62.

Code: GCR(IX)—AI,PI—Normal Business Practices.

The following is in response to your request for interpretation received by our office on October 3, 1974 regarding the proposed activities of Gas Club, Ltd.

You indicated in your submission, through meetings, and in telephone conversations with our staff that Gas Club's intended structure and contemplated practices would be as follows:

Gas Club is a private club with membership open to the public. As initially proposed, membership requirements consisted primarily of a fee of thirty-five dollars and a commitment to purchase a minimum gas deposit of 200 gallons. To attract membership, Gas Club advertised to the general public. Membership was to provide among other benefits: a discount on the price of gasoline, up to 40 percent discounts on all parts and services, discounts on major hotels, a guaranteed monthly allotment of gasoline and free car washes. Sales were to be made at two retail sales outlets located in Belmont and San Francisco respectively. Non-members would also purchase gasoline or service at these outlets, but they would not receive the various discounts and benefits.

On September 16, 1974, Gas Club was advised that its requirement that members commit themselves in advance to make minimum purchases was in direct violation of our regulations. Specifically, they were told that 10 CFR 210.62(b) provides, in its relevant part, that a supplier of product shall not give preferential treatment to customers who agree in advance to purchase motor gasoline in excess of normal needs. They were also advised that its guarantee of monthly allotments to members violated our allocation regulations to the extent that such guarantees were made to gasoline purchasers who did not qualify as end-users entitled to allocations.

At this time, Gas Club did modify its proposal by not requiring advance commitments and not guaranteeing allotments of gasoline to its members. This interpretation reviews their proposed plan of operation in light of these modifications.[2]

Our review of Gas Club's proposed practices leads us to the conclusion that, first of all, the granting of discounts only to members would constitute a discriminatory practice in violation of section 210.62(b). Moreover, the offering of discounts to members and not the general public would deviate from customary business practices and consequently be in violation of 210.62(c). Secondly, the fee requirement for membership, which in turn is a prerequisite for the purchase of discounted gas, is in itself an illegal tie-in prohibited by 210.62(c). In addition, such a fee arrangement violates 210.62(b) in that it grants preferences based on what in effect is a commitment to purchase volumes of gasoline in excess of normal use.

I. Preferential Discounting at Retail Sales Outlets is Prohibited by 210.62(b) and 210.62 (c).

Section 210.62 states: "No supplier shall engage in any form of discrimination among purchasers of any allocated product. For purposes of this paragraph, 'discrimination' means extending any preference of sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this chapter or of the ACT, * * *"

Gas Club presently has two retail sales outlets which are open to the public. Those who have membership cards with Gas Club will be given a discount of 5 percent on the sale price for gasoline, and others will have to purchase at pump prices. This preferential treatment of Gas Club members is in violation of 210.62(b). Contrary to initial impressions, the practice of giving a discount preference alone does not impair our pricing objectives.[3] However, preferential pricing does impair the objective of equitable product distribution. Purchasers at the distribution level of the retail outlet are generally referred to as "end-users" under our regulations. Unless they are specifically given allocation preferences, end-users must be treated equally with respect to the distribution of gasoline. (FEA, H & A decision, paragraph 20,107, Attorney General of the Commonwealth of Massachusetts, Boston, Massachusetts (Case No. 00013-INT, Filed 4-1-74, Decided 5-17-74;) End-users are generally not allocated specific volumes; and therefore, practices which potentially affect their rights to product must be closely scrutinized and strictly regulated. When a preferential discount is given, the general public's right to gasoline at Gas Club outlets is diminished to the extent that the discount affects their purchasing power and the actual availability of product. Preferences to a select group of motorists increase this group's purchasing power, induce them to purchase at Gas Club outlets exclusively and thus diminish availability of product to the public in general. The regulatory objective of insuring equal rights to gas for end-users is impaired by the discount preference and such discriminatory discounting is prohibited by 210.62(b).

The only exception to the equal treatment requirement is in the case of "commercial accounts." Giving preference to commercial accounts is a historical practice which is sanctioned as a normal business practice under 210.62(b). Normal business practices are allowed unless specifically prohibited by the regulations. (FEO Ruling 1974-3.) It should be noted that any preferences given to commercial accounts must be of the variety that are within the established business practice of the retail sales outlet industry. (FEO Ruling 1974-6.) Gas Club does not qualify for this exception in that it is neither using established business practices nor does it purport to be giving preferences only to commercial accounts.

In addition to being a prohibited discriminatory practice, the preferential discounting based on the payment of a membership fee is prohibited by section 210.62(c). Members of Gas Club, which can be any member of the general public, must pay a $35 fee to be entitled to discounted gasoline.

[2] Gas Club was ordered to refrain from giving discount preferences to its members on the price for gasoline during the period its requests for interpretation was being reviewed.

[3] Our pricing rules only intended that a price not be charged in excess of a figure based on a historical index. The beneficiaries of this limit are those who have historically been sold to as a class. This historical class of purchaser concept insures the maintenance of a historical index. The pricing rules in this way set the maximum price and it assures a member of that class a price not in excess of a figure based on the historical index. However, discounting to certain members of a historical price is not prevented as long as the creation of this new class of purchaser does not result in the exacting of a price higher than the legal price to that class of purchaser.

Section 210.62(b) prohibits the imposition of uncustomary terms and conditions on the sale of an allocated product. The allocation and pricing scheme as envisioned by the regulations relies on the maintenance of customary practices to meet its objectives. At the distribution level of the retail sales outlet, purchasers are customarily treated equally with respect to the purchase of a particular grade of product. If discounts are given at all, they are available to all purchasers. This practice fosters equitable distribution.

Gas Club's proposed practice of giving discounts only to fee paying members is uncustomary and results in maldistribution. The $35 fee will not be, and at times, cannot be paid by some members of the public. This means a pricing differential will be maintained. The distribution consequences of the resulting preferential discounting have already been described. For these reasons, preferential discounting, as practiced by Gas Club, is prohibited by 210.62(c).

A form of preferential discounting occurs at retail sales outlets with self-service islands. This has recently become an established practice with the retail sales industry. Such discounting practices are distinguishable from the proposed practices of Gas Club in that self-service discounts are available cost free to all the public. Therefore, self-service discounting does not result in inequitable distribution, and thus, not prohibited.

II. The Charging of Membership Fees to Obtain the Privilege of Purchasing Discounted Gasoline is Prohibited by 210.62(c) and 210.62(b)

The $35 fee requirement for Gas Club membership constitutes an illegal tie-in practice which violates 210.62(b). In effect, a purchaser at a Gas Club outlet has to pay $35 to have the privilege of purchasing discounted gasoline. Not only is this tie-in uncustomary; but also, in a large number of instances, it will result in the exacting of a higher price for gasoline than that permitted under the regulations. The initial payment of $35 is part of the price for gas, and as long as it is not recouped through the purchase of discounted gas or the exercise of other Gas Club benefits, the actual price for gas to the member is higher than the discounted price at the pump. At a discount rate of 5 percent, the amount of gas that must be purchased before the $35 membership fee is recouped is substantial. It is our judgment that the public will utilize Gas Club only on a temporary or an intermittent basis. Thus, the likelihood the fee will never be recouped is high. For many, the actual price paid will be greater than the legal price. Section 210.62(c) prohibits any practice which constitutes a means to obtain a price higher than is permitted by the regulations.

Moreover, the charging of the $35 membership fee induces Gas Club members to purchase at Gas Club outlets sufficient volumes of discounted gasoline to recoup their $35 fee. Those who feel they must recoup their fee will in effect be committed to purchasing a set volume of gasoline. Purchasing patterns of members will be distorted. Their purchases at a given Gas Club outlet will be in excess of what they would usually purchase at any given retail sales outlet. Section 210.62(b) specifically prohibits arrangements which give preferences based on commitments to purchase volumes in excess of normal use to prevent this very type of distortion. Although, the Gas Club plan, as presented, does not contain a specific requirement on pre-purchased commitments, the consequences of the fee requirement are substantially the same. For this reason, the charging of membership fees to acquire the privilege of purchasing discounted gas is prohibited by 210.62(b).

INTERPRETATION 1975—50

To: Cook & Cooley, Inc.

Date: January 3, 1975.

Rules Interpreted: §§ 211.12, 211.13.

Code: GCR(IX)—AI—Base Period Volume.

The following is in response to your November 26, 1974 request for interpretation received by our office on November 29, 1974.

In your submissions, you indicated that Cook and Cooley is a Texaco jobber serving Texaco branded stations. On October 18, 1974, Cook and Cooley received an FEA assignment order to supply gasoline to A and A Service, located at 3115 Lincoln Blvd., Santa Monica, California. This order was based on your consent to assume the obligation to supply following a termination of supplier-purchaser relationship pursuant to 10 CFR 211.9(a)(2)(i). On November 4, 1974, Cook and Cooley received an FEA assignment order pursuant to 10 CFR 211.12(e)(3) to supply another gasoline reseller; (Target Independent Stations, located at 16425 Pioneer Blvd., Norwalk, California.) Both assigned customers had non-priority entitlements subject to an allocation fraction. In both instances, Texaco was unwilling to increase deliveries to Cook and Cooley to meet Cook and Cooley's increased supply obligations.

On June 10, 1974 prior to the assignment in question, Cook and Cooley had received a letter from our Hearings and Appeals Division stating that a supplier (Texaco) is obligated to increase deliveries to meet a purchaser's (Cook and Cooley's) increased supply obligation when such an increase is due to FEA assignment orders pursuant to 211.12 (e), or adjustments to the purchaser's customers' base period volumes pursuant to 211.13 (b) and (c). This letter indicated that, at the time, FEA regulations allowed 100 percent "pass-throughs" in the instances just mentioned.

In your request for interpretation, you desire to know whether 100 percent "pass-throughs" are still available. In particular, you desire to know if Texaco is obligated to deliver gasoline in sufficient amounts to meet Cook and Cooley's increased supply obligations due to the FEA assignment orders dated October 18, 1974 and November 4, 1974 respectively.

It is our determination that, as of June 1, 1974, a jobber of gasoline cannot receive an automatic adjustment to its entitlement because of an assignment of a wholesale purchaser pursuant to 211.12(e) or because an adjustment is made to a customer's base period volume pursuant to 211.13 (b) or (c). The only exception is where the jobber is assigned a wholesale purchaser with a priority entitlement.

The customers assigned to Cook and Cooley do not have priority entitlements to gasoline. They are resellers who are only entitled to base period volumes subject to an allocation fraction. Therefore, Texaco is not obligated to supply increased volumes because of the FEA assignment orders above-mentioned.

A gasoline jobber is a wholesale-purchaser-reseller within the meaning of the Federal Energy Guidelines. (10 CFR 211.51) The regulations presently provide that a wholesale-purchaser-reseller's allocation entitlement to gasoline is limited to the amount it certifies to be for ultimate use under an allocation level not subject to an allocation fraction, plus an amount equal to its supplier's allocation fraction times the base period purchases from its supplier minus amounts certified for uses not subject to an allocation fraction. (10 CFR 211.12(b)) A reseller, in short is entitled to receive an amount based on its 1972 purchases, i.e. its base period volume entitlement; plus amounts which are for special priority customers. 100 percent "pass throughs" are only required when a jobber's supply obligation is increased due to the increased requirements of a priority customer. A priority customer is one whose entitlement is not limited by an allocation fraction or is eligible to receive current requirements. However, no such pass-through is available when requirements to "non-priority customers" are increased. In these instances, a jobber must supply these customers out of its base period volume entitlement. (10 CFR 211.10(c)(2)) This base period volume is set by the jobber's base period (1972) purchases from its supplier. (10 CFR 211.12(c)) The only provisions for adjustments to a purchaser's base period volume entitlement are contained in 10 CFR 211.13.

To allow automatic pass-throughs in cases where the obligation to a "non-priority customer" is increased by an FEA order would in effect give a jobber an adjustment to his base period volume entitlement. Such adjustments are only permitted when requested pursuant to 10 CFR 211.13. Presently, of the several adjustments listed in 211.13, the only adjustment which might be applicable is for "unusual growth" under 211.13(b). However, this adjustment is made only for an actual increase in sales in the year 1973 over that sold in 1972. It does not allow for adjustments due to FEA assignment or adjustment orders. The other 211.13 adjustments involve increases based on increased needs of priority customers.

Prior to June 1, 1974, pass-throughs were permitted. Jobbers were not limited in their entitlement to gasoline to a volume measured by their 1972 purchases. As a supplier themselves, jobbers were entitled to receive a base period volume measured by the base period volume of their own customers. (Section 211.51, 39 FR 1936) Thus, adjustments to the customers' base period volumes were automatically passed-through. Furthermore, adjustments to a supplier's entitlement upon the acquisition of new customers were allowed under Section 211.13(c) of the January 15th regulations (39 FR 1934).

Unfortunately, such provisions for pass-throughs are no longer available under our amended regulations effective June 1, 1974. A recent provision, 211.13(c), was utilized to aid suppliers whose supply obligations increased. It permitted adjustments to base period volumes for "changed circumstances"; but this section has been deleted from our regulations. Presently, the only means for Cook & Cooley to augment its base period volume is to apply for an "Exception" to have its base period volume increased. This request for "Exception" would be sent to this Regional Office.

In the alternative, Cook & Cooley might apply for a rescission of the October 18 and November 4, 1974 FEA assignment orders pursuant to 10 CFR Subpart J. If this application is successful, the obligation to supply would be removed.

It should be noted that Cook and Cooley may have customers who requested base period volume adjustments under 211.13(c) for changed circumstances, and their requests were acted on by FEA prior to June 1, 1974. Either the request was denied and appealed; or it was granted and the order was stayed pending appeal. Presently, it is FEA policy to process cases which were on appeal prior to the deletion of 211.13(c). These cases are being reviewed by our Hearings and Appeals Division. It is our determination that Appeal decisions based on review of pre-June 1, 1974 FEA actions on 211.13(c) requests which result in increased supply obligations to Cook and Cooley will be passed-through. As indicated earlier, adjustments to base period volumes of customers were formerly passed-on by virtue of the definition of the

supplier's base period volume entitlement. Appeal Decisions on prior FEA 211.13(c) actions will have the same effect on suppliers as they would have had when the initial action was taken.

This is a special determination which is devised to forestall inequities which may occur because of delays in processing 211.13(c) appeals due to the anticipated deletion of 211.13(c). Generally, Appeals decisions do not have retroactive effect. However, before 211.13 (c) was finally deleted, many 211.13(c) applicants were advised not to file appeals on initial decisions. But for this delay, many applicants might have had their 211.13(c) requests appealed and finalized prior to June 1, 1974.

INTERPRETATION 1975—51

To: East Oil, Inc.

Date: January 10, 1975.

Rules Interpreted: §§ 210.77, 212.31, 212.102, 212.103(a).

Code: GCR (IV)—PI—Definition of Rent.

This is in response to your formal request for a Legal Interpretation on behalf of East Oil, Inc. that was forwarded to this office under cover of your letter dated October 15, 1974.

FACTS

The issue presented for interpretation is whether a lessor is allowed under the Mandatory Petroleum Price Regulations to charge the lessee a higher price for gasoline than provided for by the terms of a lease agreement between the parties. The argument is advanced that the amount paid for the gasoline was included as part of the rent, an increase of which is prohibited by 10 CFR § 212.103(a); and that, further, even if the lease agreement was determined to include a separate and divisable gasoline supply contract, the same conclusion would be reached pursuant to § 210.77, since that section recognizes that private contracts between parties are enforceable so long as they are not inconsistent with the Regulations.

The requesting party, by attorney, has certified by letter dated October 16, 1974, that a copy of the Request for Interpretation, including attendant documentation, was mailed to the opposite party, Port Oil Company.

INTERPRETATION

The threshold issue to be determined is whether the clause in the lease relating to the price for delivered gasoline is in fact a portion of the rent paid pursuant to the leasehold interest. Generally the rights of the parties under a lease are governed by the law of the place where the demised property is situated, or, if the rights are in personam, such rights are governed by the law of the place where the lease is executed or to be performed (51 C.J.S. § 231). The law of South Carolina, therefore, would govern the rights of the parties under this lease, except with regard to those items governed by the Emergency Petroleum Allocation Act, the Federal Energy Administration Act, and appurtenant Regulations.

There are numerable difficulties in ascertaining when a chargeable item under a lease is in fact "rent"; this normally would be determined in accordance with applicable state law. Generally, "the term 'rent' will not be extended to include all payments which by the terms of the lease the tenant is bound to make, and it does not include the obligation to perform collateral contracts or covenants" (52 C.J.S. § 463). Conversely, "although a charge or payment which a tenant is bound to make under the terms of a lease which ordinarily would not be considered part of the rent may be made such by the terms of the contract, the use of the term 'rent' by the parties is not conclusive as to the character of an obligation, nor is the fact that the term is not employed, particularly where the rights of third persons are involved" (52 C.J.S. § 463).

There are two clauses in the subject lease that could be construed to be "rent" in the legal sense. Clause 5 of the lease agreement obligates the lessee to pay the lessor a "monthly rental" for the demised premises "a sum equal to the same amount which lessor is to pay to X finance company." Clause 14 begins, "For and in further consideration of lessor leasing to lessee the premises herein described, lessor agrees to sell to lessee and lessee agrees to purchase from lessor all of lessee's requirements of regular and premium gasoline, kerosene, and diesel fuel for the above-mentioned premises upon the terms and conditions hereinafter set forth:

(a) * * *

(b) The price for all products delivered hereunder shall be in transport truckload quantities of not less than six thousand (6,000) gallons and shall be lessor's cost from X oil company or any other supplier substituted for X oil company, as of the date of delivery", plus various costs.

The threshold issue, as above mentioned, is whether the amounts to be paid under Clause 14(b) constitute "rent" as defined in the Regulations.

10 CFR § 212.31 defines "rent" as follows:

"Rent" means any price for the use of personal property of any description, including any charge no matter how identified in the lease or other agreement, for the use of any property or for any service in connection with the use of leased property.

If the price paid for delivered gasoline as shown in Clause 14(b) is in fact "rent", any increase in this amount would be contrary to the provisions of 10 CFR § 212.103:

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;

Is the price for the petroleum products paid pursuant to Clause 14(b) a "charge * * * for the use for any property" or a "charge * * * for any service in connection with the use of leased property" as defined in § 212.31?

To become familiar with the general legal principles regarding this subject, and to further the consistent application of settled law, the discussion proffered in Corpus Juris Secundum is valuable:

The definition of "rent" frequently incorporates the element of periodicity * * *. (52 C.J.S. § 464).

While technically the rent must be certain as to amount and time of payment, or capable of being made certain, whether it is payable in money, chattels, or labor, there is some authority for applying the designation of "rent", although the parties have not agreed on the amount, to the sum which will reasonably compensate the landlord for the use of the premises, and which implies an agreement on the part of the tenant to pay (52 C.J.S. § 464).

The term "rent" may be employed broadly with reference to the compensation for the use of the property of any kind. Strictly speaking, however, it is applicable only to compensation for the use of the land and tenements corporeal, and not to compensation for the use of chattels (52 C.J.S. § 464).

Technically, rent is something which a tenant renders out of the profits of the land which he enjoys, and accordingly, rent is spoken of as arising from lands and tenements corporeal or issuing of the land (52 C.J.S. § 464).

The amount the lessee is to pay the lessor pursuant to Clause 5 of the subject lease agreement is termed "monthly rental of the demised premises", whereas the amount to be paid pursuant to Clause 14(b) is termed "the price for all products delivered".

This differentiation in nomenclature is an indication that the parties did not contemplate the amount in Clause 14(b) as being rental for the leasehold. Further, it would appear that the amounts paid for delivered products under 14(b) would in fact be just that; i.e., payment for petroleum products delivered rather than rental payments for use of the real property. It would be possible for the lessee to not take delivery during a certain month, thereby paying no amount pursuant to 14(b); however, the "monthly rental" would still be due and owing under Clause 5.

Based on these facts, and the general discussion in C.J.S., it is hereby determined that the sums due the lessor pursuant to Clause 14(b) are not in fact "rent" within the purview of the definition in 10 CFR § 212.31.

The requesting party asserts alternatively, in the event the lease agreement is viewed to include a separate and divisible supply contract, that the lessor still may not increase the price of the products described in Clause 14(b). 10 CFR § 210.77 is cited as recognizing the fact that private contracts between parties remain enforceable so long as they are not inconsistent with the Mandatory Petroleum Allocation and Price Regulations. We agree that this section, which provides a defense for breach of contract when such breach is caused by adherence to the Regulations, makes such a recognition. We disagree, however, with the requesting party's conclusion that any price increase allowable under § 212.93 would be violative of § 210.77. While a price increase under these circumstances would apparently be a breach of the leasing agreement by the lessor, it does not necessarily follow that such action would contravene the Regulations.

It is the conclusion of this office, therefore, that the payments contemplated under Clause 14(b) of the subject leasing agreement do not meet the definition of "rent" as defined in § 212.31, and any increase in this amount would not, therefore, be in violation of § 212.103(a). Further, such an increase, while it could well be a breach of contract by the lessor, would not be in violation of § 210.77 of the Regulations as long as such increase was made within the parameters set forth in 10 CFR § 212.93.

INTERPRETATION 1975—52

To: Idaho Transportation Department.

Date: January 15, 1975.

Rules Interpreted: § 211.51, Ruling 1974-19.

Code: GCR(X)—AI—Definition of Wholesale Purchaser, Firm.

The following is an interpretation of Federal Energy Administration Regulations as they affect the ability of the Idaho Transportation Department, Division of Highways, to procure petroleum products by competitive bidding.

FACTS

The Idaho Transportation Department, Division of Highways, states in its request that it has historically obtained petroleum products for various state departments through competitive bidding. These contracts were obtained through the State of Idaho for a period of one year on a county by county basis. The Division of Highways would, therefore, be supplied by more than

one petroleum company each year and the supplier for each county would not necessarily be the same from one year to the next. Though the contracts were awarded by the State of Idaho, the petroleum products used by the Division of Highways were paid for out of the Division of Highway funds. The Division of Highways used over 2,000,000 gallons of gasoline and 600,000 gallons of diesel fuel per year on a state wide basis. However, in only six counties out of the total of 44 counties did the Division of Highways use more than 84,000 gallons of a single product.

The request for interpretation submitted by the Idaho Transportation Department seeks to determine whether it may purchase petroleum products as an "end-user" or a "wholesale purchaser" as defined by the Federal Energy Administration Regulations 10 CFR 211.51.

INTERPRETATION

10 CFR 211.9(a) requires suppliers and their wholesale purchasers to maintain the supply relationship that existed during the base period (the corresponding months of 1972). This requirement is further clarified in Ruling 1974-19 (attached) which defines the ability of consumers which normally purchase through competitive bidding to alter their base period supplier/relationship. That Ruling distinguishes between wholesale purchasers as defined in the Regulations—which may not change their base period supplier/purchaser arrangement, and end-users which may change their base period supply relationship in this manner.

* * * * *

The term wholesale purchaser consumer means:

"Any *firm* that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm in a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (b) purchased or obtained more than 50,000 gallons of that allocated product in any complete calendar year subsequent to 1971 for use in one or more multi-family residences; or (c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971," (emphasis added).

The controlling issue presented in the interpretation is whether the "firm" discussed in the definition quoted above was the Idaho Transportation Department, Division of Highways, or the local subdivisions of the Department of Highways supplied separately according to the county in which the subdivision was located. The definition of a "firm" in Section 211.51 of FEA Regulations means, among other things: "The Federal Government including corporations, departments, Federal agencies, and other instrumentalities of the State and local government. The FEA may, in Regulations and forms issued in this part treat as a firm:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls; (b) a parent and its consolidated entities, (c) an unconsolidated entity; or (d) any part of a firm."

It is the determination of the Federal Energy Administration, Region X, that the "firm" in this case is the Idaho Transportation Department, Division of Highways including local county divisions thereof. As specified in the request for interpretation, the contracts were awarded by the State of Idaho and paid for out of the Division of Highway funds. The fact that contracts were awarded on a county by county basis, and that the supplier for each county division of the Highway Division would not necessarily be the same from one year to the next, does not alter the pre-existent supplier/purchaser relationship in effect between the Department of Transportation and the suppliers involved. Therefore, pursuant to the direction found in 10 CFR 211.9(a) and Ruling 1974-19, the Idaho Transportation Department, the Division of Highways, is defined as a wholesale purchaser-consumer and must continue to be supplied by its base period suppliers unless those relationships are mutually terminated.

INTERPRETATION 1975—53

To: Independent Drivers Organization.

Date: March 5, 1975.

Rule Interpreted: § 211.106.

Code: GOR(IX)—AI—Wholesale Purchaser-Reseller.

On January 2, 1975, you requested, on behalf of the Independent Drivers of Oahu (IDO 2), an interpretation regarding the right of IDO 2 to receive the allocation entitlement of the Independent Drivers Organization (IDO 1). Secondly, you requested reconsideration and modification of the order issued by FEA on March 6, 1974 whereby IDO 1's allocation was limited for sale only to taxi drivers. In addition to the statement of facts contained in your January 2, 1975 request, our office has received additional information through telephone conversations and by the affidavit of Joseph Miller, President of IDO 2, submitted on January 27, 1975. A summary of the information submitted follows.

IDO 2 was incorporated in the State of Hawaii in April 1974, and is the business operations arm of the Hawaii Transportation and Allied Workers Union, Seafarers International Union, AFL-CIO. IDO 2 is a membership organization which provides certain benefits to its members. These benefits include access to an IDO-operated service station located at 770 Kapiolani Street, Honolulu. The primary group of members utilizing the service station are taxi drivers. In addition, the service station is available to non-members who are affiliated with AFL-CIO, including persons belonging to Unity House, essentially an umbrella organization for Teamsters, taxi drivers, and AFL-CIO Hotel and Restaurant Workers. These non-members with union affiliation purchase gasoline for commercial as well as family uses. IDO 2 has access to one taxi stand located in Honolulu, but not all taxi drivers purchasing gasoline from IDO 2 utilize the stand.

IDO 2 was formed following the dissolution of IDO 1. At its inception, IDO 1 was a non-profit organization. Like IDO 2, IDO 1 was associated with the Hawaii Transportation and Allied Workers Union, and operated a service station for the benefit of members at 1760 Ala Moana Blvd., Honolulu. This service station was managed by Joseph Miller, who is now president of IDO 2. Charles Kinha was the president-treasurer of IDO 1, and presently, Mr. Kinha is the Director of IDO 2. Lila Medeiros was the secretary of IDO 1, and is presently associated with IDO 2.

IDO 1's service station operations commenced about March, 1971. Until the station's demolition in April, 1974, IDO 1's service station, except for some temporary service modifications in 1973 during the energy crisis, sold gasoline to taxi drivers and members of the State Federation AFL-CIO, as does IDO 2. During the base period (1972), 65 percent to 70 percent of the station's sales were to taxi drivers, and the remaining portion was sold to members of the State Federation.

The service station operated by IDO 1 was demolished in April, 1974 to make way for other construction. At this time, on advice of counsel, IDO 2 was formed and IDO 2 leased the facilities where it is presently operating a service station. The leased facilities had been previously used by a firm on the site to fuel company trucks.

As far as the officers, directors, and members were concerned, IDO 1 became IDO 2. There was no formal announcement of the dissolution of IDO 1 and the incorporation of IDO 2. In fact, Union Oil Company, IDO 1's base period supplier, continues to bill IDO 2 as IDO 1 for gasoline supplies. IDO 2 verbally and informally has assumed liabilities of IDO 1 and paid outstanding debts. There were no assets except good will. As indicated above, the core members of IDO 2 are essentialy the same as those of IDO 1 although their official capacities differ slightly. The members, benefits to members, and customers of IDO 2's service station are substantially the same as those of IDO 1. The only differences between the two organizations are the name, the location, and the fact that IDO 2 is a corporation for profit, as opposed to being non-profit. The dissolution of IDO 1 and the subsequent incorporation of IDO 2 was to facilitate the operation of entities like IDO on an inter-island basis.

It should be made clear that, in servicing members, other taxi drivers, and members of AFL-CIO both IDO 1 and IDO 2's service station sold motor gasoline to these customers. Neither IDO operation used gasoline allocated from Union to operate company-owned vehicles.

Based on these facts, IDO 2 is entitled to receive the motor gasoline allocation entitlement of IDO 1. For allocation purposes, IDO 1 and IDO 2 are the same entity. A service station business, in effect, was relocated following the demolition of the original facility. The business, although relocated, was the same in that it services substantially the same customers, operates in the same manner, performs the same distribution functions for the motor gasoline market, and is managed by the same individuals. Therefore, IDO 1 and IDO 2 are the same wholesale purchaser-reseller under FEA regulations. 10 CFR 211.51 defines wholesale purchaser-reseller: "* * * any firm which purchases, receives through transfer, or otherwise obtains * * * an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form." The service station operated by IDO is a retail sales outlet within the meaning of 10 CFR 211.51: "* * * a site on which a supplier maintains an on-going business of selling any allocated product to end-users and wholesale purchaser-consumers." IDO 1 and 2 did resell product to end-users rather than consume motor gasoline in the operation of its own vehicles.

10 CFR 211.106(c) provides that a wholesale purchaser-reseller, although he has vacated a former site, may continue to receive his allocation entitlement at another location where he reestablishes the retail sales outlet business. IDO 2 relocated the retail sales business of IDO 1 to another site; IDO 1 ceased operation at the former. Therefore, the allocation follows the business and IDO 2 is entitled to IDO 1's allocation.

In your January 2 request, you also indicated a desire to have the March 6, 1974 FEA order, classifying IDO as a consumer and limiting sales to taxi drivers, modified to conform with IDO's actual 1972 practices. Such a reconsideration cannot be made without instituting the procedures set out in 10

CFR 205.130 et seq. governing modification or recision. These procedures should be instituted immediately. However, before a reconsideration can be made, an interpretation is required. The prior FEA order was based on the reasoning from an interpretation setting out the allocation rights of Charley's Taxis & Tours located in Hawaii. The interpretation, and the precedent set for retail sales outlets primarily engaged in the servicing of taxicabs must be reevaluated.

The March 6, 1974, FEA order stated that IDO was entitled to current requirements subject to an allocation fraction. This order was based on the finding that IDO was primarily engaged in sales to taxi drivers, and therefore qualified for priority treatment as a passenger transportation service. It is clear from the facts submitted that, although IDO may primarily serve taxi drivers, IDO is not a consumer of motor gasoline. IDO sold gasoline to taxi drivers as well as members of the AFL-CIO. As such, and as indicated above, IDO is a wholesale purchaser-reseller within the meaning of the Mandatory Petroleum Allocation Regulations. Its activities do not constitute consumption of motor gasoline for passenger services. Priority treatment is given only to firms actually performing passenger transportation services. Therefore, the order is erroneous in granting IDO the right to receive current requirements. In fact, although the order states that IDO was eligible to receive current requirements, the order limited IDO's monthly volume entitlement to the gallonage which IDO sold during the base period (1972). Therefore, although the order stated that IDO was eligible for current requirements it in fact limited IDO's entitlement only to that which IDO could be granted as a reseller. However, the order needs to be modified to allow IDO to market gasoline as a wholesale purchaser-reseller. As the order stands, since it is based on the determination that IDO was a consumer of product, IDO presently cannot utilize its allocation for purposes other than sale to taxi drivers.

As indicated above, the March 6, 1974 order was issued in conjunction with an interpretation involving Charley's Taxis & Tours. Charley's Taxis & Tours was treated as a consumer of motor gasoline and given the right to receive 100 percent of current requirements, subject to an allocation fraction.

Charley's is a firm which owns and operates its own individual cabs, and at the same time, franchises taxicabs which are owned by drivers. Charley's operation is a whole, including that portion which consisted of independently-owned cabs, was given the right to obtain full current requirements. To the extent this interpretation allowed current requirements treated for independently owned cabs, it may be erroneous. This interpretation, and the orders issued pursuant to it, are presently being reconsidered by FEA.

In any event, IDO does not own and operate taxicabs. IDO sells gasoline to taxi drivers who independently own the taxis. Therefore, IDO is clearly a reseller of motor gasoline. For these reasons, the March 6, 1974 order should be reconsidered and modified to reflect an accurate and proper status for IDO under FEA regulations.

While the FEA order is being reconsidered, and in view of the likelihood of success, IDO should either purchase surplus product or apply to the State Fuel Allocation Office for an emergency allocation of motor gasoline. If neither of these sources has available supply, then IDO should apply to FEA pursuant to 10 CFR 205.39 for a temporary assignment of supplier.

INTERPRETATION 1975—54

To: Boston Housing Authority.

Date: March 10, 1975.

Rules Interpreted: §§ 211.9, 211.162.

Code: GCR(I)—AI—Supplier/Purchaser Relationship.

This letter is in response to your written inquiry of October 21, as supplemented by your letter of October 29, and by a telephone conversation between Mr. Meehan of your office and Ms. Casey of the Regional Counsel's Office on November 19, 1974.

FACTS

You have stated that in the fall of 1973, the Boston Housing Authority was unable to secure a supplier for No. 6 fuel oil for 11 of your housing projects. At that time, arrangements were made with a number of suppliers, including the Alaimo Fuel Company and Clene-Heat, Inc., to supply this fuel. At this time, you state that the Alaimo Fuel Company is prepared to provide your entire supply of No. 6 fuel oil through December 31, 1974, and that all of your 1973 suppliers of this fuel, except Clene-Heat, Inc., are willing to mutually terminate their supplier/purchaser relationships with the Boston Housing Authority in favor of Alaimo Fuel's becoming the sole supplier of No. 6 fuel oil for that period. The Boston Housing Authority is now seeking permission from the Federal Energy Administration to have the 11 projects in question served by a single fuel dealer, the Alaimo Fuel Company, through December 31, 1974.

INTERPRETATION

The Federal Energy Administration, Region I, determines that under the operation of the Petroleum Price and Allocation Regulations (10 CFR Chapter II), the companies named in your letter assumed supply obligations for No. 6 fuel oil in the base year, 1973 (Sections 211.9, 211.162). Since your Housing Authority is a wholesale purchaser consumer under the Regulations (an ultimate user, Section 211.51), it is permitted for these suppliers to mutually agree with the Boston Housing Authority to terminate their supply obligations (Section 211.9(a)(2)(ii)). Any agreements to mutually terminate should be put into writing.

With regard to Clene-Heat, Inc., which appears unwilling to mutually terminate its supply relationship, the only option open to the Boston Housing Authority is to file a petition for exception requesting an assignment of supplier other than Clene-Heat, Inc., as it base period supplier (Section 205.52). Should a mutual termination occur, however, it is required that your organization, as purchaser, must apply to the FEA to have a new supplier assigned under Regulation Sections 211.9(2)(ii), 211.12(e). In view of the time constraints, however, and the difficulties of showing inequity or hardship resulting from the present arrangement, it is unlikely that this alternative would be viable in your case.

INTERPRETATION 1975—55

To: Pleasant Street Co.

Date: March 24, 1975.

Rule Interpreted: § 212.93(b).

Code: GCR(I)—PI—Definition of Firm.

This letter is in response to your written Request for an Interpretation of August 13, 1974, relative to the price rule of the Petroleum Allocation and Price Regulations (10 CFR Chapter II) as it provides for nonproduct cost allowances under Sections 212.93 (b)(1)(i) and (b)(2).

FACTS

According to documents submitted along with the Request for Interpretation, as supplemented by information supplied at a conference of November 8, 1974 with Ms. Casey of the Regional Counsel's staff, the Pleasant Street Company is a corporation organized and existing under the laws of the State of Maine since April 25, 1971. At the time of organization, Allen E. Morrell, Richard A. Morrell, and Robert L. Morrell each owned ten (10) shares of the company's stock. In 1971, Allen E. Morrell sold his shares to members of the Morrell family including two (2) shares apiece to Richard and Robert Morrell.

Among the purposes of the corporation, as stated in the "Certificate of Organization" (Exhibit A) dated April 25, 1961, are:

"To engage in the wholesale and retail business of heating fuels * * *".

"To buy and sell, wholesale and retail, * * * fuel oil * * *".

Other corporate purposes were included in the materials submitted with the Request for Interpretation:

"The purpose of the organization of Pleasant Street Co. ('Pleasant Street') was to:

(a) Pool the purchasing power of several retail corporations in one central company, thereby providing greater leverage in the marketplace;

(b) Provide terminal and storage facility spaces not available to other corporations retailing heating oil;

(c) Provide additives for the fuel oil stored; and,

(d) Own and manage several parcels of real estate on a street known as Pleasant Street in Brunswick, Maine, the use of which was unrelated to the heating oil business."

The Pleasant Street Company sells x percent of its fuel oil to, and is the sole supplier of, three retail companies which are also owned by members of the Morrell family: Brunswick Coal and Lumber Company (founded December, 1927; present shareholders Robert Morrell, Richard Morrell); Fortin Fuel Company (founded 1959, present shareholders Robert Morrell, Richard Morrell); Yarmouth Fuel Company (founded 1969; present shareholders Robert Morrell, Richard Morrell).

Under agreements with the Pleasant Street Company, the three retail companies are charged prices which guarantee a certain rate of return above list price for the fuel purchased from Pleasant Street.

INTERPRETATION

The Federal Energy Administration, Region I, determines that the Pleasant Street Company is not entitled to the non-product cost allowances under Sections 212.93 (b)(1)(i) and (b)(2) of the Petroleum Allocation and Price Regulations (10 CFR Chapter II). Under the operation of these Regulations, the FEA may treat as a single firm:

"(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm." (Sections 211.51, 212.31).

In view of the existing arrangements between the Pleasant Street Company and the Brunswick, Fortin, and Yarmouth companies, the FEA is warranted in treating Pleasant Street and the three retailing entities as a "single firm". As can be seen from the definition of "firm", the key concept is the control, direct or, indirect, which one company exercises over another and not whether the firms are consolidated in their structures. In this case, there is identity of ownership among the companies involved, and this ownership is shared by two members of the Morrell family. In addition to this, the three

retailing entities receive all their fuel from the Pleasant Street Company, and these sales constitute over x percent of Pleasant Street's sales. Based on these facts, it is reasonable to conclude that this is a closely controlled operation within the meaning of the definition which allows related entities to be treated as a single "firm".

No data has been submitted which would demonstrate that costs are generated separately by these various entities and that they should be compensated with non-product cost allowances at both the wholesale and retail levels. Absent such information, the presumption of control exercised by the Pleasant Street Company shall stand, and an additional layer of non-product cost allowances shall not be permitted.

The Pleasant Street Company has the option to apply under Section 205.52 for an Exception from the application of the price rule Section 212.93. In accord with this possibility, since it is stated in your Request for Determination that a portion of Pleasant Street's cost increases are attributable to compliance with environmental protection regulations, you might refer to FEA Case No. FEE-0891, Par. 20,667, in which a partial Exception was granted from Section 212.93 because of costs incurred for the installation of environmental protection equipment.

INTERPRETATION 1975—56

To: Day and Zimmerman, Inc.

Date: April 1, 1975.

Rules Interpreted: §§ 211.9, 211.10, Ruling 1974-19.

Code: GCR(VII)—AI—Competitive Bids.

On March 3, 1975, Day and Zimmerman, Inc. (Day) filed a request for interpretation with Region VII of the Federal Energy Administration (FEA) which basically inquired as to whether or not competitive bids could be let under the Mandatory Petroleum Allocation Regulations. Day had indicated to the FEA that it intends to let competitive bids in order to realize a lower price.

The Emergency Petroleum Allocation Act of 1973 (EPAA) requires that access to petroleum products be determined on the basis of general regulations which apply equally to all persons similarly affected. *New York City Housing Authority,* CCH Fed. Energy Guidelines, Par. 20,640 (August 5, 1974); *County of Nassau, New York,* CCH Fed. Energy Guidelines, Par. 20,691 (October 30, 1974); *State of Alaska,* CCH Fed. Energy Guidelines, Par. 20,720 (November 25, 1974).

In order to effectuate this objective, on January 15, 1974, the FEA promulgated the Mandatory Petroleum Allocation Regulations (10 CFR Part 211). Those regulations generally require that supplier/purchaser relationships in effect during the base period be maintained throughout the duration of the Program, regardless of intervening events that may have occurred since the base period. In the case of diesel fuel and motor gasoline, the specified base period is "the month of 1972 corresponding to the current month" (10 CFR 211.102, 211.122). In the case of No. 5 and No. 6 fuel oil (residual fuel oils), the specified base period is "the month of 1973 corresponding to the current month" (10 CFR 211.162).

On June 14, 1974, FEA issued *Ruling 1974-19,* CCH Fed. Energy Guidelines, Par. 16,029, which governs your request for interpretation. The *Ruling* states in part that:

"The Mandatory Allocation Regulations in 10 CFR Part 211, provide no exemption for Federal, State, or local governments. Therefore, County A, County X and State B are fully subject to all the Provisions of that Part. The competitive bid requirements of the laws and ordinances * * * are superceded to the extent they are inconsistent with the allocation regulations."

Day is a "wholesale purchaser-consumer" as that term is defined in 10 CFR 211.51 with respect to each of the above-mentioned products. The provisions of 10 CFR 211.9(a) generally require that the supplier/purchaser relationship in effect during the base period be maintained for the duration of the Mandatory Petroleum Allocation Program. As a wholesale purchaser-consumer, Day cannot solicit competitive bids as such, however, Day is free to purchase surplus product from one other than a base period supplier if that supplier has met the provisions of 10 CFR 211.10(g).

Your last three questions which generally deal with the transfer of an allocation entitlement from a base period supplier to a successful competitive bidder will not be answered as there are no regulatory provisions governing the disposition of product in that manner.

INTERPRETATION 1975—57

To: Body Beautiful Car Wash.

Date: April 7, 1975.

Rule Interpreted: §§ 211.12, 211.106(e).

Code: GCR(IX)—AI—"New" Wholesale Purchaser-Reseller.

On January 27, 1975, our office was advised by FEA's Operations Division that your client, Body Beautiful Car Wash, desired an interpretation to determine whether its retail facilities at 2045 Pacific Highway, San Diego, California, should be treated as a new wholesale purchaser-reseller operation under the Mandatory Petroleum Allocation Regulations. Based on the submissions made by your office in behalf of Body Beautiful Car Wash in support of its November 26, 1974 request for assignment of supplier, and additional submissions made in February and March in support of the proposition that Body Beautiful is a new reseller, the facts pertinent to this request for interpretation are as follows:

Consolidated Plywood of California, d.b.a. Body Beautiful Car Wash, on November 12, 1974, began operation of an integrated car wash and motor gasoline sales facility located at the above-mentioned address. Although Consolidated Plywood presently owns this property, the site had previously been owned by Phillips Petroleum during the base period (1972). During Phillips' ownership, the site was leased to a reseller, Dr. Frame, who operated a Phillips retail sales outlet in conjunction with an automatic carwash. Consolidated Plywood purchased the property in May of 1973 with the apparent purpose of demolishing the facilities on the site to make way for construction of an office building.

At this time, Dr. Frame was notified that his lease would be terminated, but he was allowed to remain on the premises on a month-to-month basis. The plans to build the office building did not materialize, but on August 1, 1974, Dr. Frame was given formal notice of termination. Consolidated Plywood had decided to construct and operate a modern car wash and gasoline sales facility on the site. Dr. Frame's business was finally abandoned and closed on September 23, 1974, when reconstruction could actually commence. During the 18-month period after the initial notice of termination by Consolidated Plywood, Dr. Frame had begun to wind down his business operations and allowed the facilities to deteriorate.

For approximately two months, the site was not used for any business because demolition and construction work was proceeding. During that time, an entire, new gasoline pumping station was erected; all new car wash facilities and equipment were installed; new exterior on the car wash structure was installed; remodeled office facilities were constructed; and new curbs, driveways, landscaping, and new signs were installed. These improvements required the investment of x. Consolidated Plywood commercially opened its Body Beautiful Car Wash operations on November 12, 1974.

Body Beautiful Car Wash utilized the following method for the marketing of motor gasoline. A free exterior car wash was provided to anyone purchasing a "fill-up" of motor gasoline. This marketing method differed from that practiced by Dr. Frame whose sales of motor gasoline were not integrated with his car wash facilities on the site. Body Beautiful's operations involved totally different and unique services and clientele than did Dr. Frame's old business. In addition, while Dr. Frame had been marketing Phillips Petroleum Products at the site, Body Beautiful Car Wash markets Standard Oil products.

The issue presented by the above set of facts is whether Dr. Frame's entitlement to motor gasoline transfers to Body Beautiful Car Wash pursuant to 10 CFR 211.106(e). If there is a transfer of entitlement under 211.106(e), then Body Beautiful Car Wash will be precluded from applying as a new reseller under 10 CFR 211.12(e). The transfer of Dr. Frame's entitlement would impose a supplier/purchaser relationship between Phillips Petroleum Products and Body Beautiful Car Wash. Although, theoretically, a transfer of entitlement pursuant to 211.106 (e) does not obligate a retailer to purchase from the historical supplier, in fact, under the Mandatory Petroleum Allocation Regulations, the retailer's only alternative is to purchase "surplus product" from another supplier. At a time when no surplus is available on the market, the retailer has only one supplier which is obligated to furnish motor gasoline, namely the supplier on whom the Mandatory Petroleum Allocation Regulations impose a supplier/purchaser relationship. If 10 CFR 211.106(e) is interpreted not to impose the historical supplier/purchaser relationship which existed on the site, then Body Beautiful Car Wash is without a supplier under the Mandatory Petroleum Allocation Regulations and would qualify as a new reseller under 211.12(e).

10 CFR 211.106(e) provides:

"Whenever a wholesale purchaser-reseller is deemed to have gone out of business in accordance with paragraph (c) of this section, the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a reasonable period of time, as determined by FEA, after its predecessor vacates the premises."

This particular provision of the Mandatory Petroleum Allocation Regulations has several distinct regulatory functions. First, in providing for the automatic transfer of an entitlement to the successor on the site, continuity of supply to a community is assured. Secondly, an entitlement to gasoline which is based on the historical sales of a predecessor, by its very nature, limits the amount of motor gasoline that retail sales outlet is eligible to receive. Therefore, the quantity of motor gasoline flowing into a community is automatically regulated. That is, since an entitlement to motor gasoline for a business which was in operation in 1972 is based on the monthly 1972 sales of that retail sales outlet, a particular retail sales outlet receives motor gasoline in proportion to its 1972 sales, and the community serviced

by that retail sales outlet is, in turn, assured that it will have available, through the outlets in the community, a proportionate share of that amount of motor gasoline available in 1972. Thirdly, an existing entitlement to motor gasoline based on 1972 quantities and supply patterns assures that the distribution line from refiner all the way down to the level of the retail sales outlet is maintained. Therefore, in providing for, and requiring an automatic transfer of entitlement to a successor on the site, continuity of supply is maintained, quantity of supply is regulated so as to assure equitable distribution, and a historical source of product to a community is maintained. The functions of 211.106(e) are particularly important during a motor gasoline shortage. At a time when motor gasoline supplies are sufficient to meet needs, 211.106(e) serves the purpose of maintaining the distribution lines and assuring quantity regulation. If a shortage recurs, a community's proportionate share of motor gasoline and the proportionate burden on suppliers to furnish a particular community is maintained.

The effectiveness of 211.106(e) in carrying out the above-mentioned functions rests on several presumptions. First of all, it assumes that if a succeeding retail sales outlet business on a site is established within a reasonable amount of time, the community will not have adjusted for the loss of the preceding outlet either by the entry of additional outlets in the area or by an FEA adjusted entitlement for the remaining outlet(s) in the area. Moreover, this provision presumes that all retail sales outlets are capable of making motor gasoline available to any motorist in the community, since any similarly situated outlet is capable of servicing substantially the same group of motorists. For these reasons, 10 CFR 211.106(e) has been interpreted to require a transfer of entitlement whenever a retail sales outlet is vacated and the succeeding retailer reestablishes another retail sales outlet business within a reasonable time. City Services Oil Company, Tulsa, Oklahoma (Case No. A-100031, filed 4-5-74, decided 7-29-74). Even though 211.106(e) specifically provides that before an entitlement will transfer, the "same ongoing business must be reestablished," this phrase has been interpreted to encompass the reestablishment of any retail sales outlet business on the same site (See case just cited). Section 211.106(e) does not require the transfer by sale of the ongoing business before a transfer of entitlement occurs, and in fact, there needs to be no business connection between the predecessor on the site and the successor on the site.

Turning to the case at hand, to determine whether Body Beautiful Car Wash is the same ongoing business as Dr. Frame's retail sales outlet business, for purposes of 211.106 (e), requires a close inspection of the facts in this case to determine whether or not the transfer of entitlement will further the purposes of 211.106(e). As stated above, 211.106 (e) generally presumes that a succeeding retail sales outlet business is capable of servicing substantially the same group of motorists in the community which was serviced by the predecessor. Although this may generally be the case, when there are radical changes in marketing methods, station facilities, services provided, type or brand of product provided, pricing, and personnel, there is no assurance that the purposes of 211.106(e) will be furthered.

Body Beautiful Car Wash has made substantial investments to remodel, refurbish, and alter the station facilities. Body Beautiful is marketing a different brand of gasoline in a substantially different manner from Dr. Frame's marketing methods. As such, Body Beautiful Car Wash will be selling to a different group of customers than that which purchased motor gasoline at Dr. Frame's station. Even if Dr. Frame's old customers desired to purchase motor gasoline at Body Beautiful Car Wash, given the new set of customers purchasing from Body Beautiful Car Wash, the availability of substantially the same amount of motor gasoline to the old customers is not assured. Unlike a change to a self-service operation, the integration of a car wash with the sale of motor gasoline makes the outlet incapable of potentially serving the same group of customers. Car washes cater to a different class of clientele. They appeal to a purchase pattern distinctly different from the usual practice of purchasing motor gasoline as needed. Patrons of car washes adjust their gasoline purchases to coincide with the need for a car wash.

There is only a limited possibility that Body Beautiful Car Wash will be capable of servicing substantially the same group of customers. It would be futile to maintain the historical distribution chain in an attempt to assure equitable distribution. Body Beautiful is in the same position as that of a new market entry. Because of the radical changes, the fact that the site was previously occupied by another retail sales outlet is irrelevant. The fact that Dr. Frame was given notice of termination and consequently wound down his business further supports this characterization.

Therefore, for purposes of 211.106(e), Body Beautiful Car Wash has not reestablished the same ongoing business. Dr. Frame's entitlement does not transfer, and Body Beautiful Car Wash must be assigned a supplier under 211.12(e).

INTERPRETATION 1975—58

To: Estate of Anna Signore.

Date: April 16, 1975.

Rules Interpreted: §§ 211.9, 211.106, 212.101, 212.102.

Code: GCR(I)—AL, PI—Base Rent Rule, Lease Termination.

This letter is in response to your written request of October 15, 1974, for an interpretation of the applicability of the Petroleum Price and Allocation Regulations (10 CFR Chapter II) to the termination of the lease agreement between the Cities Service Company and the Estate of Anna Signore.

FACTS

On December 4, 1963, the Cities Service Company agreed to lease a retail outlet at 362 Boylston Street, Newton Center, Massachusetts from the Estate of Anna Signore. Under its terms, the lease was for a period of one year and was renewable from year to year until notice (30 days) to terminate was given by either party.

On January 8, 1969, Cities Service sublet this property to Luigi Signore (a xxx legatee of the Estate of Anna Signore) at a rental of xxx cents per gallon. This rental was revised to xxx cents per gallon on November 13, 1973, retroactive to June 1, 1972.

On September 16, 1974, Cities Service sent a notice of termination of their lease from the Signore Estate as of October 31, 1974. The Estate is not engaged in the refining, reselling, or retailing of covered products (212.101).

QUESTION PRESENTED

Whether the Cities Service Company may terminate its lease of property from the Estate of Anna Signore and its sub-lease to Luigi Signore, where the result will be a change of financial arrangements between Cities Service as supplier and Luigi Signore as the purchaser/operator of a gasoline retail outlet.

INTERPRETATION

The Federal Energy Administration, Region I, has determined that where a lease may be terminated according to its provisions, the Price and Allocation Regulations will not prevent the termination from taking effect except where termination was done in retaliation for the other party's adherence to the Regulatory Program (Section 210.61). Absent a showing of a retaliatory intent on the part of the Cities Service Company, the Federal Energy Administration can do nothing to prevent the termination of this lease.

While the FEA cannot force the continuance of a properly terminable lease, the Regulations do require that a base period supply relationship be maintained for the duration of the Program (Section 211.9). Thus, under the operation of the Regulations, the Cities Service Company, as the 1972 base year supplier of gasoline for this site, is bound to supply the site with fuel for the duration of the program (Sections 211.106, 211.9).

Products sold by Cities Service to Luigi Signore, pursuant to the supplier/purchaser relationship, shall, as usual, be priced according to the price rule, Section 212.93, which requires adherence to the May 15, 1973 price with some allowable adjustments.

The rent to be charged for the property shall be governed by the "base rent" rule (Sections 212.101-102) which states that "where both the lessor and lessee (of the property) are refiners, resellers, reseller-retailers, or retailers", the rent charged must be in accord with the "contractual terms prevailing on May 15, 1973". In this instance, however, if the lease arrangement changes and the Estate leases the property directly to Luigi Signore, the "base rent rule" will not apply, since the Estate does not fall within that category of lessors to which the rent rule applies.

INTERPRETATION 1975—59

To: Kramer Service Center, Inc.

Date: April 28, 1975.

Rules Interpreted: §§ 212.31, 212.91, 212.93.

Code: GCR (II)—PI—Non-Product Cost Increase.

This will acknowledge receipt of your letter of April 14, 1975, wherein, on behalf of your above captioned client, you request our opinion as to whether Mobil Oil Corporation ("Mobil") is entitled to receive monies which reflect non-product cost increases. It is our opinion, based upon the facts you have presented, that Mobil may not do so.

In reaching this decision, the following portions of the Petroleum Allocation and Price Regulations (10 CFR) are relevant:

10 CFR Section 212.31 provides, in pertinent part: "'Refiner' means a firm (other than a reseller or retailer) or that part of such a firm which refines products or blends and substantially changes covered products and sells these products to resellers, reseller-retailers or ultimate consumers. * * *

"'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 purchases other than ultimate consumers.

"'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."

10 CFR Section 212.91 provides:

"Applicability. This subpart (Subpart F—Reseller and Retailers) applies to each sale of a covered product (other than the first sale of crude oil) by resellers, reseller-retailers, and retailers and to each sale of crude oil (other than the first sale) by a refiner. For purposes of this subpart, 'reseller' includes any entity of a refiner (other than an entity that operates in Puerto Rico) that is engaging 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 that if directly or indirectly controls and provided further that the entity has consistently and historically exercised the exclusive price authority with respect to sales by the entity."

10 CFR Section 212.93 provides, in pertinent part:

"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 No. 2 oils and gasoline: (i) In 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 non-product cost increases that the seller incurred after May 15, 1973. (ii) Beginning with March 1974, in retail sales of gasoline, a seller may charge two cents per gallon of gasoline in excess of the amount otherwise permitted * * * (iii) Beginning with April 1974, with respect to all sales of gasoline other than retail sales, a seller that had a total sales volume of covered products in calendar year 1973 of less than 100 million gallons may charge one-half cent per gallon of gasoline in excess of the amount otherwise permitted * * * and a seller that had a total sales volume of covered products in calendar year of 1973 of 100 million gallons or more may charge one-quarter cent per gallon of gasoline in excess of the amount otherwise permitted. . ."

Based upon these provisions, it is clear that although Mobil may, arguably, be engaged in making retail sales, it is a "refiner" and not a "reseller" or "retailer" in such a case. Non-product cost pass-throughs are only applicable to sales made by those other than refiners. Thus, Mobil is not entitled to receive any monies which reflect non-product cost increases.

Kramer Service Center, Inc. ("Kramer") operates a retail gasoline service station along the New York State Thruway. Its submission to FEA included a variety of documents which purport to define the nature of Kramer's relationship with Mobil. Upon examination of these documents, it is unclear to FEA whether or not Kramer makes "retail sales" of product. It is our opinion that such a determination depends upon contract and/or lease interpretation. It is also FEA's understanding that Mobil and Kramer are presently involved in litigation which we expect will resolve this issue. If Kramer does, in fact, make retail sales, it may avail itself of the non-product cost increase allowances as provided in 10 CFR Section 212.93(b). If Mobil is making the retail sales, no non-product cost increase allowance is available.

INTERPRETATION 1975—60

To: WESO Corp.

Date: May 4, 1975.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCR(V)—AI—Definition of Wholesale Purchaser-Reseller.

Your request for interpretation and the additional information which you submitted have been reviewed by this Office. You are requesting an interpretation of the definition of "wholesale purchaser-reseller" as found in 10 CFR 211.51.

FACTS

We understand the facts upon which this interpretation is based to be as follows:

You distribute products from Waco Oil through U.S. Oil through Conoco (U.S. Oil supplying Conoco gasoline on an exchange basis) without benefit of a written contract or agreement.

WESO Corporation makes all of its own distribution decisions and does all of its own customer solicitation. WESO has the responsibility and the liability for any credit extended to WESO's customers. WESO takes title to the products it sells and bears the risk of loss. WESO is responsible for and does invoice its customers for product delivered.

WESO neither owns nor operates bulk terminal facilities or trucks and transports. WESO maintains only a small staff of sales and office personnel to arrange delivery and complete all transactions.

All operating decisions are strictly made by WESO alone.

ISSUE

The issue presented for interpretation is whether WESO operating as described above qualifies as a wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION

It is our opinion that the WESO Corporation to the extent that it sells and distributes allocated products under the circumstances set forth above qualifies as a wholesale purchaser-reseller as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations.

A wholesale purchaser-reseller is defined in 10 CFR § 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

FEA Ruling 1975-8 further clarifies the definition of wholesale purchaser-reseller by highlighting elements which when present qualify the firm as a wholesale purchaser-reseller even in cases where the firm does not take title to the product. Ruling 1975-8 recognizes that some relationships exist wherein a firm functions as a "jobber" without actually having that name. The determining feature is function. Thus, firms "which have a substantial degree of operational independence in the conduct of their business of transfer and sale of a supplier's products (rather than merely providing a distribution service between a supplier and the suppliers customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers and are subject to the same benefits and obligations of the allocation program which apply to jobbers." FEA Ruling 1975-8.

Ruling 1975-8 also provides that: "[a firm] which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics: (a) appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's products; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operation; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its suppliers products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than solely being restricted to distributing product to customers designated by the supplier."

The only element of these criteria which WESO does not meet is that of having the physical facilities for handling the products.

But, the concept of wholesale purchaser-reseller envisions an entity having more than limited physical control over the distribution of product. WESO exercises direct control over the inventory, pricing, and solicitation and selection of customers. WESO takes and retains title to the product until sold and maintains total responsibility for and liability from the extension of credit and the billing of customers.

WESO does not own, operate, or maintain any of the physical equipment or facilities necessary for its distribution of product. However, WESO has complete operational control on a day-to-day basis of the entire distribution mechanisms, financial judgments, and business transactions.

On the basis of the above facts it is, accordingly, our opinion that WESO Corporation is a wholesale purchaser-reseller as defined in 10 CFR § 211.51, as clarified in FEA Ruling 1975-8.

INTERPRETATION 1975—61

To: Simmons Oil Corp.

Date: June 17, 1975.

Rules Interpreted: §§ 211.11, 211.106, Ruling 1974-3.

Code: GCR (IX)—AI—"New" Motor Gasoline Retail Sales Outlet.

The following is in response to your May 23, 1975 request for interpretation regarding whether a retail sales outlet recently purchased and rebuilt by Simmons Oil Corporation (Simmons) is qualified for treatment as a new station.

The following summary of your submissions is the factual basis for this interpretation. On or about September 10, 1974, Simmons purchased a retail sales outlet located at 2810 E. Bell Road, Phoenix, Arizona. This facility was being supplied by Powerine Oil Company with an average monthly volume of approximately 16,000 gallons of motor gasoline. The station was a self-service operation providing coin-operated dispensing facilities. For a short period of time, Simmons operated the station in substantially the same manner as the previous operator. The station was then closed for a 30-45 day period at which time the facilities were demolished and a new station facility was erected to provide full-service as opposed to self-service dispensing. In addition, new tanks were installed, several additional service islands were constructed and the station grounds were completely repaved and landscaped. Since Simmons intended to market Gulf product, Gulf signs were erected and exterior Gulf decals were applied to station and pump facilities. The construction and rebuilding of the station facilities required a total investment of approximately xxxxxx to xxxxxx.

Under the Mandatory Petroleum Allocation Regulations, no express guidelines are pro-

vided to determine what constitutes a new business. Generally, retail sales outlet operators are entitled to allocations as long as an ongoing business is maintained. (211.11) In addition, it is clear once a retail sales outlet operator ceases to maintain an ongoing business by vacating a site and not relocating elsewhere, the right to an allocation is relinquished. (211.106) Between the spectrum of a continually unchanged operation and the actual vacating of a site, a number of alterations in marketing method and/or operating facilities may occur.

Often, such modifications evidence new business intentions. The difficult question and the question presented in this request, is what, if any, modification in marketing method and station facilities will constitute the creation of a new business. Simmons, in initially operating the station site in the same manner as the previous operator, in effect, maintained the same ongoing business that had historically been maintained on that site. For that reason, the allocation of the previous operator transferred to Simmons pursuant to 10 CFR 211.106(e). Simmons then completely demolished the existing facilities and constructed new facilities. At this juncture, the question is whether Simmons must keep the old allocation or may Simmons be treated as a new business with the opportunity to apply for a new supplier and the assignment of a different base period volume.

Simmons' case is analogous to an existing reseller desiring to expand operations by alteration of facility and marketing methods. This situation is slightly different from the case where an operator vacates and a new operator rebuilds the existing station. The issue in this latter case is whether the existing allocation is transferred, thereby limiting the gallonage available to the new operator. It presents slightly different considerations from the case at hand. In Simmons' case, the transfer had clearly occurred. Simmons is now limited by it's own allocation. However, the main question presented is the same: may an operator relinquish its entitlement based on changes in its business to qualify for new, reseller treatment.

An allocation entitlement has multi-faceted regulatory purposes. Its main function is to assure to a reseller an equitable share of a scarce petroleum product. Indirectly, an entitlement also assures equitable distribution to a particular market area. Moreover, a particular reseller's right to receive an allocation is based, to a degree, on its ability to maintain its distribution function. When an individual ceases doing business, i.e., when the distribution function is no longer maintained, the entitlement must be relinquished. (211.11, FEO Ruling 1974-3.)

When modifications of a business occur, arguably, the distribution function is also changed. Under such circumstances, the basis for maintaining the same entitlement may not exist, and the right to the entitlement of the old business should be relinquishable. The reseller should be eligible for a new entitlement.

Up until the present time, however, all retail sales outlets have generally been viewed as carrying out the same distributional function. All outlets generally retail product to end-users. Therefore, under this viewpoint, as long as retailing to end-users occurs, the fact that a particular retailer changes marketing methods or modifies station facilities is irrelevant. Its distribution function, and therefore its right to an allocation, remain the same.

Although in the abstract this sounds fine, in reality, in order to assure not only equitable distribution to the retailer, but to the market area, each particular retail sales outlet must be viewed in its own market. Limiting a site to its 1972 volumes assures equitable distribution to the market only as long as substantially the same types of customers in the market area are served by the site. Although it is administratively impossible to fairly account for all market changes or distributional changes by particular resellers, there are certain marketing responses which indicate functional changes by retail sales outlets. Substantial investment for facility alterations with the object of changing marketing methods strongly evidences not only the intent of the retailer to market to either a substantially augmented or different group of customers, but the likelihood of that occurring is substantial. The retailer in this instance is analogous to a new market entry, and unless he is given similar treatment, inequities will occur. Thus, these retailers should be treated like new market entries and be allowed to apply as new stations.

Applying these principles and based on the information submitted by Simmons Oil Company showing that substantial alterations were made to their site as well as to their marketing methods, new station treatment is appropriate.

INTERPRETATION 1975—62

To: Boron Oil Co.

Date: July 24, 1975.

Rules Interpreted: §§ 210.62(a), 211.9, Ruling 1974-3.

Code: GCR(V)—AI—Normal Business Practices.

This is in response to your January 28, 1975 request for interpretation on behalf of Boron Oil Company (Boron) concerning the use of brand and trademark under 10 CFR §§ 210.62(a), 211.9, and FEA Ruling 1974-3.

FACTS

Boron is a wholly owned subsidiary of The Standard Oil Company (Ohio) which markets petroleum products in the State of Michigan. From November 1, 1969 to October 31, 1974 Boron sold gasoline to Webb's Diamond Oil Company (Webb). Webb is a wholesale purchaser-reseller who resells gasoline to some 15 retail sales outlets. Among them is William Van Ooteghen d/b/a Bill's Super Service (Van Ooteghen) at 2929 Center Road, Essexville, Michigan. The sales from Boron to Webb were made pursuant to a Products Agreement dated November 1, 1969. This said "products agreement" authorized Webb to use the "Boron" trademark in marketing. The "Boron" branded signs for each location were leased from Boron by Webb. Boron in the lease to Webb reserved the right to remove the sign should Webb "cease to be a Boron Service Jobber".

The "products agreement" between Boron and Webb was terminated at the end of a normal term on October 31, 1974. The termination of the "product agreement" included the simultaneous withdrawal of authorization to use the Boron trademark. Since the termination of the "products agreement", Boron has continued to supply Webb with allocated product.

The supply agreement between Webb and Van Ooteghen which had commenced in 1970 was terminated in December, 1973. Webb continues to supply Van Ooteghen with allocated product. At the time of the termination of the agreement between Boron and Webb, Van Ooteghen was notified that the Boron sign and credit cards would no longer be authorized. Webb offered a different brand sign, made provisions for the use of a different credit card, and made appropriate adjustments in price for an unbranded product pursuant to 10 CFR § 212.93.

The question presented for interpretation is whether under the Regulations, 10 CFR §§ 210.62(a), 211.9 and FEA Ruling 1974-3 the change in the "products agreement" and subsequent removal of the brand signs is permissible.

INTERPRETATION

It is the contention of Van Ooteghen that the removal of the trademark Boron sign constitutes a change in normal business practice as contrary to 10 CFR § 210.62(a). It is the contention of Boron and of Webb that a change in brand is permissible so long as the basic supply relationship is not altered.

The FEA has never involved itself in the peripheral contractual relationships surrounding the petroleum industry. The history and comments behind the various amendments to § 210.62(a) have never purported to involve questions other than the maintenance of the basic supply relationship carried on in a normal, non-discriminatory manner. The issue of trademark and brand have not come into issue except where they are used to vary the price in an illegal manner or to result in a discriminatory practice. This theory is reiterated by § 211.9(a) which again aims at the maintenance of the supplier/purchaser relationship regardless of changes in ownership or brand. Furthermore, there is no language in any FEA Ruling including Ruling 1974-3 which requires the maintenance of a brand name or trademark.

Boron has made the appropriate adjustments in price and service. These adjustments are only those made to be in keeping with the class of purchaser requirements of 10 CFR Part 212, Subpart E necessary for the change in class of purchaser in which Van Ooteghen has now been placed.

Accordingly, it is our interpretation that the removal of the Boron brand signs and credit cards is of itself not contrary to the normal business practices required by 10 CFR § 210.62(a).

INTERPRETATION 1975—63

To: Campbell Oil Co., Inc.

Date: July 24, 1975.

Rules Interpreted: §§ 210.61, 210.62(a), 212.31, Ruling 1975-2.

Code: GCR(VII)—PI—Class of Purchaser, Retaliatory Actions.

On behalf of the Campbell Oil Company, Inc. (Campbell) of Ames, Iowa, you have requested an Interpretation as to whether certain practices instituted by Texaco, Inc. (Texaco) in May, 1974 are prohibited by 10 CFR 210.61 and 10 CFR 210.62(a).

FACTS

Campbell is a distributor of allocated products for Texaco. In addition to its bulk plant in Ames, Iowa, Campbell also operates a retail outlet on South Duff Avenue (South Duff) in Ames, Iowa. Campbell states that prior to May, 1974 the normal business practice was for Campbell to either call the Texaco bulk plant in Des Moines, Iowa or a common carrier for a transport load of motor gasoline for delivery to South Duff. If the call was made to Texaco in Des Moines, the personnel there would call a common carrier to have the product delivered to South Duff. The common carrier had the requisite permits to allow it to deliver the product directly into South Duff's storage tanks. All transportation costs were borne by Texaco.

Campbell further states that all other deliveries of motor gasoline whether by common carrier or Texaco transporter were to its Ames bulk plant. On a few occasions Campbell would haul product from its bulk plant to South Duff at its own expense. This

was done either when someone forgot to order a transport load or when a common carrier was unavailable for immediate delivery. Time was of the essence in order to prevent South Duff from exhausting its supply. Both Texaco and Campbell are agreed that Texaco transporters do not have permits which allow them to deliver into a retail outlet's storage tanks.

Campbell further states that Texaco notified it in May, 1974 that, as a result of newly instituted procedures, Texaco would better utilize its transporters for the delivery of products. This new policy had the effect of (1) a decrease in the use of common carriers, (2) more deliveries directly to the Ames bulk plant, (3) less product delivered directly to South Duff by common carrier at Texaco's expense, (4) more back-hauling by Campbell from its bulk plant to South Duff which increased its expenses substantially, and (5) termination of Campbell's ability to call Texaco or a common carrier whenever it needed product delivered to South Duff.

Texaco states that its practice from 1972 to date has been to make as many deliveries as possible by company truck and to utilize the common carrier only when a company truck was unable to make the delivery. Texaco further states that there has been no modification of its normal business practice in not delivering directly to South Duff, but only to Campbell's bulk plant. Even though Texaco concedes that a common carrier may have delivered product directly to South Duff and that such product diversion may have been ordered by its employees in Des Moines, Texaco maintains that neither Campbell nor its Des Moines employees had authority to order the product to be delivered directly to South Duff, and that said delivery was made only when a company truck was unavailable to make delivery.

Data received by the Federal Energy Administration (FEA) indicate that, notwithstanding the Distributor Agreement between Texaco and Campbell as to product delivery, the practice from 1972 to May, 1974 was for either Campbell or employees of Texaco to call and to direct a common carrier to deliver gasoline directly to South Duff with Texaco bearing the freight-in costs. Even though the information further revealed that Campbell did haul gasoline from its bulk plant to South Duff at its own expense, the volume was insignificant in comparison to the volumes delivered by common carrier. The back-hauling occurred only when a common carrier could not be notified in time for a transport load of gasoline to be delivered in order to prevent South Duff from running out of product. Even though Texaco asserts that its practice was and is to deliver product by company truck, if possible, and to place orders in excess of its capability to handle with common carriers, this practice was not followed with respect to South Duff.

INTERPRETATION

The FEA Price Regulations provide that a refiner such as Texaco in its capacity as Campbell's supplier may not charge a price for a covered product which exceeds the weighted average price at which the product was lawfully sold by the seller in transactions with the class of purchaser involved on May 15, 1973, plus an amount which reflects increased costs. 10 CFR 212.82. "Class of purchaser" is defined in 10 CFR 212.31 to mean "purchasers * * * to whom a person has charged a comparable price for a comparable property pursuant to customary price differentials between those purchasers and other purchasers." "Customary price differential" as defined in that same section, "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.*" (Emphasis added).

As stated in FEA Ruling 1975-2, the primary function of the "class of purchaser" principle is to maintain the price differentials which existed on May 15, 1973 between groups of purchasers which were not similarly situated then and are not now similarly situated.

FEA Ruling 1975-2 discusses in detail the manner in which membership in a particular class of purchaser is determined for purposes of the FEA Price Regulations. As stated in that ruling:

A firm may, for example, make its product available to some customers on a delivered basis and to others at its terminal. Such a difference in the terms of sale to otherwise indistinguishable purchasers would serve as the basis for a customary price differential between groups of purchasers and thereby establish separate classes of purchasers.

According to the facts presented by Campbell's request for interpretation and the criteria stated in Ruling 1975-2, Campbell is clearly a member of that class of purchaser which on May 15, 1973 received product at a delivered price which included the cost of transportation. The information submitted shows that, despite the absence of a term in the contract specifically providing therefor, the South Duff outlet received product at a delivered price. Although there were occasional deliveries by Campbell from the Ames bulk plant to South Duff, these deliveries were apparently at Campbell's option. The preponderance of the product delivered to South Duff was so delivered by common carrier at Texaco's expense.

Therefore, it is our interpretation of FEA regulations that Campbell, particularly with regard to the South Duff outlet, belongs to the class of purchaser for which the terms and conditions of sale reflect a price which is determined on a delivered product basis. Membership in this class may not be and the terms and conditions of sale and delivery may not be unilaterally changed by either Texaco or Campbell. This interpretation is based upon the presumed validity of the statements, allegations and documentary material submitted to FEA for its resolution in this matter.

The FEA has also concluded from the evidence before it that no "retaliatory action," as that term is defined in 10 CFR 210.61, was undertaken in this matter. Section 210.61 provides in part that:

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 provisions of this part, or any order issued under this Chapter.

Retaliatory action as contemplated by that section must be against a firm for the exercise of rights under FEA regulations, and there has been no information submitted to support this interpretation.

INTERPRETATION 1975—64

To: Derby Refining Co.

Date: August 4, 1975.

Rule Interpreted: § 212.93(b) (1) (iv).

Code: GCR(VII)—PI—Once-A-Month Rule.

This is in response to your request for interpretation on behalf of the Derby Refining Company concerning the operational effect of Section 212.93(b) (1) (iv).

FACTS

You have asked, what price adjustments if any, are permissible to a retailer of motor gasoline under Section 212.93(b) (1) (iv). You have also asked, what constitutes a price increase to reflect a change in amount of increased costs which may only be made once in a calendar month according to Section 212.93(b) (1) (iv). It is FEA's assumption pursuant to our meeting on May 16, 1975 that these questions relate only to there being one supplier and one product cost price increase per month.

INTERPRETATION

The price rule of 10 CFR 212.93(a) which is applicable to resellers, reseller-retailers, and retailers (Section 212.91) states:

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.

Section 212.93(b) (1) (iv) states:

(b) Notwithstanding the provisions of paragraph (a) of this section:

* * * (iv) A seller may adjust its selling price for an item at any time to an amount that is equal to or less than the selling price permitted under this Subpart, except that a price increase to reflect a change of amount of increased costs may not be made more than once in any calendar month, but may be made on any day during that month.

The once-a-month rule was written during the embargo period on the assumption that a reseller would be at his maximum lawful price at all times. One of its objectives was to delay the imposition on consumers of higher prices occasioned by product cost increases. These conditions no longer exist.

The issue under current market conditions is whether the dealer's selling price is at or below his maximum lawful price. Based on the assumption that a reseller has only one supplier who passes through one product cost price increase per month, the rule does not limit a reseller as to the number of times he may raise or lower his price, so long as he does not charge a price in excess of the maximum lawful price.

INTERPRETATION 1975—65

To: Dollar Rent-A-Car Systems.

Date: August 13, 1975.

Rules Interpreted: §§ 211.51, 211.103.

Code: GCR(IX)—AI—Passenger Transportation Services.

This is in response to your June 3, 1975, letter requesting an interpretation of "passenger transportation services" as defined in 10 CFR 211.51 (copy enclosed) of the Mandatory Petroleum Allocation Regulations as applied to the car rental industry. You have asked whether Dollar Rent-A-Car Systems (Dollar) can be considered a passenger transportation service under our regulations, and thus be entitled to an allocation level of 100 percent of current requirements for allocated products purchased from your base period supplier, Atlantic Richfield Company, in accordance with 10 CFR 211.103(c) (1) (v).

In your June 3 letter, and in subsequent phone conservations and a meeting with Assistant Counsel Steven Waterson, July 24, you indicated that, in your company's method of operation, all cars are initially rented with a full tank of gasoline. The price of the gasoline is comparable to, or lower than, retail sales outlets. Your storage facilities are not used as a retail sales outlet, and the firm does not rely on gasoline sales

as a profit item, but rather as a convenience to the rental customer.

The storage facility located near Los Angeles International Airport is the primary subject of this request. The fleet serviced by that facility has doubled during the past year, business volume has increased almost 200 percent during that same period, and a large percentage of your customers at that facility are Federal and State government employees.

You believe that Dollar is entitled to favored treatment under 10 CFR 211.103 because your

"* * * service results in an overall savings of fuel in that it allows businessmen (sic) to leave his own car at home and use mass transit systems for most of his journey, therefore using the rental car for only the last portion consequently, the rental car provides an alternative means for using fuel supplies which is more efficient and more economical."

The issue, therefore, is whether a car rental service, serving the public primarily at major U.S. airports, making its vehicles available for rental on a daily or weekly basis and being a wholesale purchaser with a base period allocation entitlement and base period supplier, is entitled to one hundred percent (100 percent) of current needs (subject to supplier's allocation fraction) as a public transportation service under current FEA regulations.

We conclude that the definition of public transportation services as set forth in 10 CFR 211.51 does not include car rental agencies, used for private operation by individuals, regardless of the actual period of rental or purpose.

Section 211.103(c)(1)(v), which provides that passenger transportation services shall be entitled to one hundred percent (100 percent) of current requirements reduced by the application of the allocation fraction, is dependent on subsection (a) of that section. Section 211.103(a) states that

"The allocation levels listed in this section only apply to allocations made by supplier to end-users which are bulk purchasers and to wholesale purchaser-consumers."

Dollar is not a wholesale purchaser-consumer, but rather a wholesale purchaser-reseller, since the ultimate consumer of the allocated product received from Dollar's supplier is the lessee of the vehicle. The provisions of Section 211.103(a) through (d) do not apply to wholesale purchaser-resellers.

INTERPRETATION 1975—66

To: DeBlois Oil Co.

Date: August 15, 1975.

Rules Interpreted: Rulings 1974–17, 1974–18, 1975–2.

Code: GCR(I)—PI—Customary Discounts.

This is in response to your correspondence of June 4, 1975, requesting an interpretation of FEA Rulings 1974–17, 1974–18, and 1975–2, as they apply to the reinstatement of certain price allowances discontinued by your supplier prior to May 15, 1973.

FACTS

According to the facts presented in your request, DeBlois Oil Company has purchased fuel oil and kerosene from the Atlantic Richfield Company since 1971. During part of 1971 and all of 1972, Atlantic Richfield granted discounts to DeBlois Oil, which totalled $.008 per gallon below the posted tank car prices. Atlantic Richfield completely removed these discounts by January 20, 1973.

ISSUE

The issue presented for interpretation is whether FEA Rulings 1974–17, 1974–18, and 1975–2 provide for the reinstatement of "customary discounts" that were discontinued between January 1, 1973, and May 15, 1973.

INTERPRETATION

FEA Rulings 1974–17, 1974–18, and 1975–2 do not allow for the reinstitution of price allowances not in effect on May 15, 1973. These Rulings merely clarify the application of the "class of purchaser" concept, as it relates to the applicable price rules. A refiner's current maximum price is the price charged on May 15, 1973, plus certain allowable pass-throughs for increased product and non-product costs. The May 15, 1973 price is defined as "* * * the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on *May 15, 1973* * * *". (10 CFR 212.32(b)). (Emphasis added).

The entire discussion of discounts in the FEA Rulings refers only to those discounts that were actually in effect on May 15, 1973. Although it may be useful to examine the historic basis of May 15, 1973, discounts in order to determine whether the discount should be characterized as "customary" or "competitive", there is no indication that customary discounts that were discontinued prior to May 15, 1973, should be considered in the determination of current selling prices.

The Emergency Petroleum Allocation Act of 1973 (EPAA) is the enabling legislation under which the Mandatory Petroleum Pricing Regulations (10 CFR Part 212) were promulgated. Section 4(b)(2)(B) of the EPAA specifies that the pricing regulations should provide for "the use of the same date in the computation of mark-up, margin and posted price for all marketers or distributors of crude oil, residual fuel and refined petroleum products at all levels of marketing and distribution". Prices in effect on May 15, 1973, form the basis of the pricing regulations, and nothing in FEA Rulings 1974–17, 1974–18, or 1975–2 provides for the reinstatement of discounts terminated prior to that date.

INTERPRETATION 1975—67

To: William S. Bronson; Carl Carter Agency, Inc.; Dyer Oil Service; Golden Oil Co.; Charles Harrison; James A. Hauer; Herman F. Shields.[4]

Date: October 10, 1975.

Rules Interpreted: § 211.51, Ruling 1975–8.

Code: GCR(V)—AI—Definition of Wholesale Purchaser-Reseller.

Your request to the General Counsel for interpretation has now been forwarded to this office for response. You are requesting an interpretation of the definition "wholesale purchaser-reseller" as found in 10 CFR § 211.51.

FACTS

We understand the facts upon which this interpretation is based to be as follows:

You distribute Atlantic Richfield Company (ARCO) products under the terms of a contract dated November 1, 1967, between yourself (the "Marketer") and ARCO entitled "Atlantic Richfield Company Marketer Agreement" (Agreement). ARCO is the successor in interest to the Sinclair Refining Company.

The Agreement provides that you will be a "bailee for hire" except as enlarged by the terms of the Agreement. The Agreement establishes a relationship, whereby you, Harrison, the marketer, receive commissions for the sale and delivery of ARCO products, title to which remains with ARCO until they are sold.

Although ARCO has the right to reject any order taken by the Marketer, you have advised us that you solicit, maintain, and service all customers and that rarely, if ever, does ARCO provide you with customers to service. The Marketer may not make credit sales for ARCO's account without ARCO's prior consent. Prior to the imposition of the requirement to maintain supplier/purchaser relationships under the Mandatory Petroleum Allocation Regulations, you could terminate relationships with customers you served without ARCO's concurrence.

The Marketer is required to bear all expenses for "necessary trucks, truck-tanks, motive power, drivers, labor, water, light, power, and heat * * * draying (ARCO's) products and equipment and in making sales, deliveries and collections." The Marketer is responsible for the acts of its employees and for their wages, including all taxes and contributions imposed by Federal and state governments upon such wages. Further, you agree to use no improper or illegal methods in soliciting or securing business covered by the Agreement and to "assist (ARCO) generally in promoting the successful merchandising of its products * * *."

ARCO owns the bulk plant from which you service customers although no rent is charged for use of the plant.

ISSUE

The issue presented for interpretation is whether the Marketer operating as described above qualifies as a wholesale purchaser-reseller as defined in 10 CFR § 211.51.

INTERPRETATION

It is our opinion that the Marketer to the extent that it sells and distributes allocated products under the circumstances set forth above qualifies as a wholesale purchaser-reseller as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations and clarified by FEA Ruling 1975–8 (a copy of which is enclosed for your information).

Wholesale purchaser-reseller is defined in 10 CFR § 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Ruling 1975–8 explains that the phrase "as by consignment" is included in the definition of a wholesale purchaser-reseller to make clear that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition solely on the ground that they fail to take legal title to the product. This phrase explicitly recognizes the fact that consignment relationships have long existed in the petroleum industry under which consignees perform essentially the same functions as jobbers and that such consignees should be treated under the allocation regulations in the same manner as jobbers. Therefore, those consignees which have a substantial degree of operational independence in the conduct of their business of transfer and sale of a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers and are subject to the same benefits and obligations of the allocation program which apply to jobbers.

Ruling 1975–8 notes that there are at least three different situations in the petroleum industry in which firms take possession of al-

[4] NOTE.—This interpretation was issued to the forenamed individuals and firms in separate letters dated October 10, 1975, the texts of which were identical except that the date of the supply contract differed in most cases.

located products without taking title to the product. Only in those situations where a firm receives product through consignment and is engaged in marketing that product to the consignee's customers, acting generally like a jobber, will the firm qualify as a wholesale purchaser-reseller.

Thus, according to the ruling a consignee which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics; (a) appropriate facilities and equipment for conduct of the business of selling and distributing its supplier's products; (b) responsibility independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing product solely to customers designated by the supplier.

Under the factual situation described above, you retain a substantial measure of functional autonomy in distributing and selling ARCO's products. Although you must account fully to ARCO for all products received, and such products must be sold at a price fixed by ARCO, you are fully responsible for all aspects of conducting the business. You do not merely provide a delivery service for ACO but solicit your own customers which purchase the products which you have on consignment from ARCO. We understand that ARCO may disapprove a new customer but that this occurs when the price offered by a proposed customer is not satisfactory to ARCO. ARCO provides no equipment, labor, organizational or employee benefits (such as social security contributions), although ARCO provides you without charge the bulk plant from which you withdraw supplies. We do not believe that in the context of the foregoing fact situation ARCO's provision of the bulk plant without charge to you affects your status as a wholesale purchaser-reseller. Accordingly, it is our opinion that you are a wholesale purchaser-reseller as defined in 10 CFR § 211.51 and explained in Ruling 1975-8.

INTERPRETATION 1975—68

To: Mid-State Oil Co., Inc.

Date: October 10, 1975.

Rule Interpreted: § 211.51.

Code: GCR(V)—AI—Definition of Wholesale Purchaser-Reseller.

Your request to the General Counsel for interpretation of 10 CFR § 211.51 (wholesale purchaser-reseller) has now been forwarded to this office for response. Your request concerns your status under the above cited regulation.

FACTS

We understand the facts upon which this interpretation is based to be as follows:

You distribute Atlantic Richfield Company (ARCO) products under the terms of a contract dated March 8, 1974, between yourself and First-Miss, Inc. entitled "Contract of Sale of Petroleum Facilities at Minonk, Illinois", (the "Contract").

The Contract provides that you, Mid-State Oil Company (Fischer Oil Company), of Roanoke, Illinois is the "buyer" and First-Miss, Inc. is the "seller" of allocated petroleum products. The Contract further provides that the buyer will purchase specified quantities of distillates and gasolines at a specified price.

Incorporated by reference and included as part of the Contract is agreement between Atlantic Richfield Company (ARCO) and First-Miss, Inc. dated August 31, 1973, (Agreement). The Agreement provides that First-Miss, Inc. is the "buyer" of petroleum products and ARCO is the "seller" of petroleum products. The Agreement further provides that ARCO sell and First-Miss buy specified quantities of allocated products at specified prices subject to agreed escalation. The Agreement designates the loading meters at terminals to be the place where title to the petroleum products passes from ARCO to First-Miss.

Mid-State Oil Company as buyer from First-Miss has total responsibility for the petroleum products. Mid-State solicits customers, makes credit arrangements, bears all expenses, pays all taxes, and is responsible for its employees. Neither First-Miss nor ARCO are involved in the operation of Mid-State.

ISSUE

The issue presented for interpretation is whether Mid-State operating as described above qualifies as a wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION

It is our opinion that Mid-State to the extent that it sells and distributes allocated products under the circumstances set forth above qualifies as a wholesale purchaser-reseller as defined in § 211.51 of the Mandatory Petroleum Allocation Regulations.

A wholesale purchaser-reseller is defined in 10 CFR 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form".

There is no question that Mid-State purchases allocated product and then resells it. There can be no confusion as to the role which is played by Mid-State as they are obviously not agents, consignees, or employees. Mid-State retains functional autonomy in distributing products.

Upon expiration of the contract you must be treated as any other independent businessman. If the Mandatory Allocation Regulations are then in effect, you either have an established base period supply relationship or you must apply for some such supply relationship as provided in the Regulations. If the Mandatory Allocation Regulations are not in effect, FEA has no involvement in any contractual relationships. Since you operate as an entirely independent business, there is only one application of § 211.51 (wholesale purchaser-reseller) which is possible. Accordingly it is our opinion that you are a wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION 1975—69

To: Cyr Oil Company.

Date: October 17, 1975.

Rules Interpreted: § 212.31, Subpart G.

Code: GCR(I)—PI—Rent Regulations, Definition of Firm.

This is in response to your October 21, 1974 Request for Interpretation of 10 CFR 212.101 et seq., regarding the price rule for leases. A conference was held on December 19, 1974 to explore the facts stated in the original request. The participants in the conference were Mr. Wilfred L. Cyr, Ms. Edith Feigen, Office Manager for the Cyr Oil Company, Mr. Joseph Tanski, Attorney for Cyr, and Mr. Daniel Blessington, representing the Federal Energy Administration. At the conference, Mr. Tanski requested that FEA refrain from issuing an interpretation until he submitted some "suggested standards" on how FEA should proceed with the Interpretation. Those suggestions were received in a letter from Mr. Tanski dated January 28, 1975. The information is based upon information received from the Request for Interpretation, the conference, and the subsequent letter.

FACTS

Cyr Oil Company (Company) is a Massachusetts corporation, in existence since 1940, in which Wilfred L. Cyr owns 100 percent of the capital stock. Mr. Cyr is also the President, Treasurer and a Director of this corporate entity. The company is a distributor of petroleum products for Texaco, Inc., and owns properties in its own name.

It has supplied petroleum products to the operators of the Walpole Service Center ("Service Center"), located at Main and North Streets in Walpole, Massachusetts, since June of 1973. Prior to this time, George Levya and Kenneth Smith, the operators of the Service Center, purchased covered products from Phillips Petroleum Company. (Phillips also leased the Service Center to them until the termination of their lease agreement on June 18, 1973).

Cyr Trust (Trust) is a real estate investment company, created in 1944, which owns and rents a variety of properties. One of the trustees is the same Wilfred L. Cyr as described above. The Trust now owns the Service Center property. While it is claimed that the Trust has no employees, it is admitted that the Company's office manager, Ms. Edith Feigen, signs the Trust's checks and takes care of other details relating to the Trust's properties.

On June 11, 1973, a memo was signed by Wilfred L. Cyr and George Levya, which made reference to "Cyr". Neither the reference nor the signature indicated whether "Cyr" meant the Company and/or the Trust. The memo itself provided that "Cyr" would supply Levya and Smith at the Service Center Property with petroleum products for a period of 60 days.

This same memo provided that "Cyr" would "lease" the Service Center to the operators at a rent of $xxxx per month for the same 60-day period. (The xxx per month figure was the rent in effect on May 15, 1973 pursuant to the terms of the lease with Phillips). While no formal lease was entered into, the Company received monthly rental payments from Levya and Smith. This arrangement continued beyond the original 60-day period until November of 1974, at which time rental payments began to be made to the Trust. Mr. Cyr, in his October 21, 1974 Request for Interpretation, claims that the Company received the rental payments for the Trust, in order to avoid confusion, i.e., that Levya and Smith would have mistakenly made payments to the Company rather than the Trust, even if they were informed that the Trust was their landlord.

It has been alleged that the Trust's original intent was to lease the Service Center property to Texaco as a real estate investment only. The proposed lease between Texaco and the Trust never was signed, however, and it is the Company's position that property because the arrangement with Texaco was not consummated.

10 CFR 212, Subpart G, provides, inter alia, that a lessor which is also a reseller may not charge a rent for real property used in the retailing of gasoline in excess of that charged for the station, pursuant to the contractual terms prevailing on May 15, 1973.

The term "reseller" is defined in 10 CFR 212.31 as follows:

"'Reseller' means a firm (other than a refiner or retailer) or that part of such

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."

A "firm" is also defined in 10 CFR 212.31:

" '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 FEA 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 or a firm.

QUESTION

Should the Cyr Trust and the Cyr Oil Company be treated as a single "firm" by the FEA for the purposes of applying the provisions of 10 CFR 212, Subpart G?

ARGUMENTS BY PETITIONER

The Trust contends that although the Company is a "reseller" within the meaning of 10 CFR 212.31, the provisions of 10 CFR 212, Subpart G do not apply to the Trust since the Trust is not a "reseller". In the correspondence dated January 28, 1975, Mr. Joseph Tanski, representing the Trust, concedes that the definition of "firm" also contained in Section 212.31 of the Regulations provides that the FEA may treat related entities as a single firm. He contends that the FEA must apply appropriate standards in making such a determination. Mr. Tanski suggests that the FEA should treat related entities as a single firm only under the following circumstances:

A. If an additional entity is created solely for the purpose of circumventing a regulation,

B. If the entities are involved in similar areas of economic enterprises,

C. "If the prohibited action which is the subject of dispute * * * is otherwise in violation of the Regulations * * * the agency should consider such fact in determining whether to treat two entities as one firm * * *",

D. If the FEA demonstrates that the purposes of applicable energy legislation will not be served by treating the entities as separate firms.

INTERPRETATION

FEA concedes that its discretion in treating a firm as a reseller is not unbridled. With that in mind, the four standards suggested by Mr. Tanski will now be addressed.

The test formulated in Paragraph A involves an attempt to avoid the impact of the Regulations. FEA is not required to find the existence of such a motive.

In Paragraph B, it is proposed that entities historically engaged in different areas of economic enterprise should not be treated as the same firm. Since the Company has historically been engaged in the distribution and sale of covered products, and the Trust has been involved in real estate investments, it is argued that they should be treated seprately. It is stated that "some degree of common ownership or control" should not cause the Trust to be restricted along with the Company. This argument fails to recognize the fact that it was virtually impossible for those dealing with the Company and Trust in relation to the Service Center property to realize that there were two entities involved. As evidenced by the July 11, 1973 memo, "Cyr" conveyed to Levya and Smith an interest in the Service Center property. At the same time, "Cyr" agreed to supply covered products. The historical distinction, therefore, has been blurred insofar as it relates to the subject transactions. It should also be pointed out that the apparent "degree of common ownership or control" in the Company and the Trust by Wilfred L. Cyr is very great indeed.

The argument set forth in Paragraph C is unclear. The presence or absence of a second violation has no apparent relevancy in FEA's determination of this case.

Although a showing as suggested in Paragraph D is not specifically required, any decision by the FEA must, of course, be consistent with its objectives and purposes of controlling legislation.

Since the question of treating the Trust and the Company as a single firm is for purposes of applying the provisions of 10 CFR 212, Subpart G, it is of primary importance to measure the facts in this case against the intent of the subject Regulations.

In the introductory comments to the amendments to Subpart G of Part 212, published in 39 F.R. 15139 (May 1, 1974), the purpose of the lease price rule was stated as follows:

"The leasing of property used in the retailing of gasoline, between suppliers and retailers, is inextricably woven into the fabric of the supplier's marketing system and is directly related to the price at which gasoline is sold at retail. The price charged for product and the rent charged for property, each of which is often expressed as a flat rate in cents per gallon, constitute a combined charge to the retailer by the supplier for the purchasing and retailing of gasoline. FEA has determined that the statutory mandate to regulate the price of refined petroleum products requires the continued regulation of rents charged between retailers and suppliers in service station leases, as an integral part of its petroleum pricing regulations."

In summary, the purpose of the Regulations controlling service station rent is to prevent a rental increase to be used as a means of increasing gasoline prices. In view of Wilfred L. Cyr's position as President of the Company and trustee of the Trust, it seems clear that, if treated as separate firms, a rental increase by the Trust could be a means to effectuate a gasoline price increase by the Company. If the Company and the Trust were to be treated as separate firms, the purpose of 10 CFR 212, Subpart G would be frustrated. If there is to be any meaning to the lease price rule, the FEA must treat the Company and the Trust as a single firm, i.e. a "reseller" within the meaning of 10 CFR 212.31.

Based on the above considerations, the Federal Energy Administration, Region I, determines that for the purpose of 10 CFR 212, Subpart G of the Regulations, Cyr Oil Company and Cyr Trust are to be treated as a single firm which is a reseller. The Trust, consequently, is prevented by Section 212.103 from increasing the rent for the Service Center property located at Main and North Streets in Walpole, Massachusetts to an amount in excess of the base rent as defined by 10 CFR 212.102.

INTERPRETATION 1975—70

To: E. L. Danielson and F. D. Thurman.

Date: October 24, 1975.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCR(IX)—AI—Wholesale Purchaser-Reseller.

I am responding to two requests[5] for interpretation you have submitted to the FEA in accordance with the provisions of 10 CFR 205, Subpart F. The interpretations involve a determination as to whether your clients, E. L. Danielson, Union Oil consignee, and F. D. Thurman, Texaco consignee, can be considered wholesale purchaser-resellers in accordance with 10 CFR 211.51 of the FEA regulations.

FACTS

We understand the facts upon which this interpretation is based to be as follows: E. L. Danielson entered into a wholesale consignment agreement with Union Oil Company of California on June 10, 1955. That agreement, subject to termination by either party on 7 days' written notice to the other, has remained in full force and effect to the present time.

The Agreement provides that E. L. Danielson, as consignee, agrees to handle, advertise for sale and sell within the County of Solano, California, only those petroleum products provided by the consignor, Union Oil Company (Union). The Agreement establishes that title to all products remains in consignor until sold by consignee, at which time consignee receives a commission in accordance with provisions of a Schedule of Commissions attached to the Agreement.

The consignee is required to sell consigned product at prices authorized by the consignor; to use his best efforts in promoting the sale of consigned products within the territory assigned; to hire and pay wages of all assistants and employees required and to indemnify and hold consignor harmless from any liability for premiums, taxes and contributions necessary for Workmen's Compensation, unemployment insurance, pensions and retirement benefits due those employees; to pay all licenses and other fees required and all expenses incident to the conduct of his business and the handling, storage, transportation, distribution and delivery of consigned products; to furnish, maintain and operate trucks and any other equipment required; and to be responsible for all products consigned or for any loss or damage thereto.

Consignor, in turn, is obligated to pay the scheduled commissions for product sold by the consignee, but title in all products so consigned remains in the consignor until sold by the consignee in accordance with the terms of the Wholesale Consignment Agreement.

Consignor also retains the right of prior approval for any credit sales the consignee may desire to make and such authorization may be revoked at any time by the consignor.

The agreement between F. D. Thurman and Texaco, Inc., was entered into on January 27, 1975, and can be terminated by either party with five days' written notice.

F. D. Thurman, as consignee, agrees to sell Texaco-branded products in Sacramento, California, at prices authorized by Texaco. Title to the products remains with Texaco until sold by the consignee, at which time the consignee receives a commission according to the schedule in the body of the agreement.

The consignee is required to bear the expenses of conducting this business; furnish truck and equipment; pay his employees and assume full responsibility for them; bear the expense of workmen's compensation insur-

[5] The E. L. Davidson request, dated May 9, 1975, was originally directed to the FEA General Counsel's Office, Washington, and referred to Region IX for action by memorandum dated September 19, 1975. The F. D. Thurman request, dated October 9, 1975, was received October 10.

ance for his employees; pay social security and withholding taxes as required by applicable state and federal laws; and provide for all annuities, pension plans and profit sharing for his employees.

ISSUE

The issue presented for interpretation is whether the consignees operating as described above qualify as wholesale purchaser-resellers as defined in 10 CFR 211.51.

INTERPRETATION

It is our opinion that the consignees, to the extent that they sell and distribute allocated products under the circumstances set forth above, qualify as wholesale purchaser-resellers as defined in 211.51 of the Mandatory Petroleum Allocation Regulations and clarified by FEA Ruling 1975-8 (copy enclosed).

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Ruling 1975-8 explains that the phrase "as by consignment" is included in the definition of a wholesale purchaser-reseller to make clear that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition solely on the ground that they fail to take legal title to the product. This phrase explicitly recognizes the fact that consignment relationships have long existed in the petroleum industry under which consignees perform essentially the same functions as jobbers and that such consignees should be treated under the allocation regulations in the same manner as jobbers. Therefore, those consignees which have a substantial degree of operational independence in the conduct of their business of transfer and sale of a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers and are subject to the same benefits and obligations of the allocation program which apply to jobbers.

Ruling 1975-8 notes that there are at least three different situations in the petroleum industry in which firms take possession of allocated products without taking title to the product. Only in those situations where a firm receives product through consignment and is engaged in marketing that product to the consignee's customers, acting generally like a jobber, will the firm qualify as a wholesale purchaser-reseller.

Thus, according to the ruling, a consignee which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its suppliers' products; (b) responsibility, independent of its supplier, for its internal financial management and physical and other administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its suppliers' products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier.

Under the factual situation described above, your clients retain a substantial measure of functional autonomy in distributing and selling their supplier's products. Although they must account fully to their suppliers for all products received, and such products must be sold at a price fixed by their suppliers, they are fully responsible for all aspects of conducting their respective businesses. They do not merely provide a delivery service for their suppliers, but solicit customers who purchase the products they have on consignment from the supplier. We understand that the supplier may disapprove a new customer, but that this occurs when the price offered by a proposed customer is not satisfactory to the supplier. Union and Texaco, from the terms of the contract, apparently provide no equipment, labor, organizational or employee benefits. Accordingly, it is our opinion that your clients are wholesale purchaser-resellers as defined in 10 CFR 211.51 and explained in Ruling 1975-8.

INTERPRETATION 1975—71

To: Gordon H. Wallace.

Date: November 11, 1975.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCR(IX)—AI—Wholesale Purchaser-Reseller.

This is in response to your October 16, 1975 request for interpretation submitted to FEA in accordance with the provisions of 10 CFR 205, Subpart F. You wish to know if your client, Gordon H. Wallace, an Atlantic Richfield (ARCO) distributor, is to be considered a wholesale purchaser/reseller as defined by 10 CFR 211.51.

FACTS

We understand the facts upon which this interpretation is made to be as follows: Gordon H. Wallace (distributor) entered into a "commission tank truck distributor's agreement" with ARCO on April 29, 1969, the agreement continuing until either party terminated. ARCO would provide petroleum products to the distributor at its bulk plant, 5815 West Imperial Highway, Los Angeles, and pay the distributor according to rates specified in the agreement, generally at one month intervals.

The distributor agreed to deliver ARCO products to contractual customers and others within that territory. The agreement provided that distributor's employees would be under "his direction, supervision and control and are not employees of the company . . ." Distributor would pay all expenses necessary to perform the aforementioned services.

Paragraph 3 of the agreement states that the distributor ". . . is engaged in an independent business." The paragraph does not reserve in ARCO the right to direct the number, compensation, time or details of work of Distributor's employees.

In addition, the distributor is liable for providing workmen's compensation and unemployment insurance, annuities or retirement benefits and any other benefits or taxes imposed by Federal or state laws.

ISSUE

The issue presented for interpretation is whether the distributor operating as described above qualifies as wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION

It is our opinion that the distributor, to the extent that he sells and distributes allocated products under the circumstances set forth above, qualifies as a wholesale purchaser-reseller as defined in 211.51 of the Mandatory Petroleum Allocation Regulations and clarified by FEA Ruling 1975-8.

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Ruling 1975-8 notes that there are at least three different situations in the petroleum industry in which firms take possession of allocated products without taking title to the product. Only in those situations where a firm receives product through consignment and is engaged in marketing that product to the consignee's customers, acting generally like a jobber, will the firm qualify as a wholesale purchaser-reseller.

In the present case, a distributor is arguably in the same position as the above consignee. Thus, according to the ruling, a consignee (or distributor) which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its suppliers' products; (b) responsibility independent of its supplier, for its internal financial management and physical and other administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its suppliers' products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier.

In the factual situation posited above, your client retains a substantial amount of autonomy in distributing ARCO's petroleum products, notwithstanding the fact that ARCO generally limits the distributor's sales territory and fixes the prices for the products. The distributor is responsible for his employees' acts, compensation and other benefits. What is especially dispositive is the fact that ARCO calls this distributor an "independent businessman" so that they will not be liable for the distributor's acts. Clearly then, ARCO cannot reasonably contend that an independent businessman is synonymous with an agent or company employee. Accordingly, it is our opinion that Gordon H. Wallace is a wholesale-purchaser/reseller as detailed by 10 CFR 211.51 and FEA Ruling 1975-3.

INTERPRETATION 1975—72

To: Joseph L. Castor.

Date: November 20, 1975.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCR(IX)—AI—Wholesale Purchaser-Reseller.

This is in response to your request for interpretation, received by this office on October 31, 1975, in accordance with the provisions of 10 CFR 205, Subpart F, as to whether Joseph L. Castor (Castor), an Atlantic Richfield Company (ARCO) distributor, is a wholesale-purchaser/reseller as defined by 10 CFR 211.51.

FACTS

We understand the facts upon which this interpretation is based to be as follows: Castor entered into a commission tank truck distributor's agreement with ARCO on March 9, 1970, continuing thereafter with a right of termination reserved to either party. This agreement is still in full force and effect.

The agreement provided that title to all petroleum products would remain with ARCO until sold, and that all prices would be fixed by ARCO. Further, credit limits were set by ARCO, and the distributor assumed liability if these limits were exceeded.

Overall, numerous documentary indicia of distributor independence appear. Castor was

responsible for the products in his possession, and apparently had the authority to select customers within the marketing area. Castor bore all costs of delivery and owned all rolling stock and other equipment. Further, Castor was responsible for all his employees and paid their workmen's compensation insurance, solely provided any pensions or annuities, and paid all Federal and state taxes as imposed by law. Even more importantly, ARCO stated that Castor was "engaged in an independent business," presumably to limit its liability and exposure.

ISSUE

The issue presented for interpretation is whether the consignee described above qualifies as a wholesale purchaser-reseller, as defined in 10 CFR 211.51.

INTERPRETATION

It is our opinion that the consignee, (or whatever term may be used) to the extent that he sells and distributes allocated products under the circumstances set forth above, qualifies as a wholesale purchaser-reseller as defined in Section 211.51 of the Mandatory Petroleum Allocation Regulations and clarified by FEA Ruling 1975-8 (copy enclosed).

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Ruling 1975-8 notes that there are at least three different situations in the petroleum industry in which firms take possession of allocated products without taking title to the product and that only in situations where a firm receives product through consignment and is engaged in marketing that product to the consignee's customers, acting generally as a jobber would, will the firm qualify as a wholesale purchaser-reseller. Castor, the instant consignee, would seem, for all intents and purposes, to be in the same position as the type of consignee treated as a reseller by the Ruling.

According to Ruling 1975-8, a consignee (such as Castor) who operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's products; (b) responsibility, independent of its supplier, for internal financial management and physical and other administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (4) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier.

From the above described facts, it is apparent that Castor retains sufficient control and authority over the conduct of his business to be considered a wholesale-purchaser/reseller. Although ARCO exercises control over territory, pricing and title to the product, these are insufficient to render Castor a mere agent, as opposed to "reseller." Since he bears the expenses of conducting his business and is completely responsible for the conduct of his employees, it is our opinion that Castor is a wholesale-purchaser/reseller as defined by 10 CFR 211.51.

INTERPRETATION 1975—73

To: Beukema Petroleum Co.

Date: November 28, 1975.

Rules Interpreted: §§ 211.9, 211.10, 211.102, 211.106.

Code: GCR(V)—AI—Base Period Supplier.

This interpretation is issued in response to your request for interpretation dated July 21, 1975 as supplemented on July 25 and August 19, 1975. After consideration of the information contained in your request as supplemented, submissions filed by Admiral Petroleum Company and Four Star Service Stations Inc., and relevant authorities, the Federal Energy Administration, Region V, has determined that the proper interpretation is as follows:

APPEARANCES

Peter W. Steketee, Freihofer, Cook, Hecht, Oosterhouse and De Boer, P.C., 950 Union Bank Building, Grand Rapids, Michigan 49502, for Beukema Petroleum Company.

Robert W. White, Clary, Nantz, Wood and Van Orden, 700 Commerce Building, Grand Rapids, Michigan 49502, for Admiral Petroleum Company.

Robert D. Kullgren, Schmidt, Heaney, Howlett and Van't H of 700 Frey Building, Union Bank Plaza, Grand Rapids, Michigan 49502, for Four Star Service Stations Inc.

FACTS

From January 1, 1972 to July 1, 1972, Beukema Petroleum Company operated a branded Sunoco retail sales outlet at 2354 Eastern Avenue S.E., Grand Rapids, Michigan (the "Eastern sales outlet"). On June 1, 1972, Admiral Petroleum Company ("Admiral") agreed to supply Beukema with petroleum products for resale at the Eastern sales outlet thereby replacing Sunoco as its supplier. Admiral also agreed to sublease to Beukema and supply a retail gasoline outlet located at 821 Lake Michigan Drive N.W. in Grand Rapids (the "Lake Michigan sales outlet"). In July 1972 Beukema opened a third station located in Wyoming, Michigan which Admiral also agreed to supply. Beukema closed the Wyoming sales outlet in September 1973, and currently operates only the Eastern and Lake Michigan sales outlets.

Prior to the Beukema-Admiral agreement, Four Star Service Stations Inc. ("Four Star") approached the Marathon Oil Company ("Marathon") and inquired whether it knew of any independent retailers which Four Star could supply with minimal amounts of gasoline and was referred to Beukema by Marathon. Four Star needed to supply a gasoline retailer to preserve its federal distributor's license and apparently certain federal tax advantages. Following discussions with Admiral and Beukema, it was agreed that Four Star would sell gasoline to Admiral which Four Star would in fact deliver for Admiral to Beukema.

As of June 1, 1972, therefore, Four Star sold gasoline to Admiral at cost plus freight and then delivered the gasoline to Beukema for Admiral's account. Admiral billed Beukema at cost plus freight and taxes plus Admiral's margin for the gasoline delivered by Four Star. Orders for product were placed by Beukema with Admiral and Beukema's outlets sold gasoline under the Admiral trademark. Four Star had no credit or billing arrangements with Beaukema. This arrangement continued until October 1974 when Beukema terminated the agreement.

On January 15, 1974, the Mandatory Petroleum Price and Allocation Regulations became effective. In January 1974 Four Star applied for an adjustment to its base period volume by submitting a form FEO-17 to its base period supplier, Marathon. As justification for increased volumes based on new customers, Four Star submitted FEO-17 forms for the Eastern and Lake Michigan Drive sales outlets. The forms indicated that the Beukema retail sales outlets were operating under the Admiral trademark.

Marathon submitted Four Star's FEO-17 to Region V, FEA. On February 27, 1974, Region V notified Marathon that Four Star's base period volume had been adjusted on the basis of historical growth and a purported establishment of base period volumes for three wholesale accounts. Region V also notified Four Star that Beukema's base period volume had been adjusted to reflect the Wyoming and Lake Michigan sales outlets and an adjustment of the Eastern sales outlet's base period volume.

Beukema contends that FEA's February 27 Order assigned Four Star as Beukema's base period supplier for the duration of the Mandatory Petroleum Allocation Program and therefore terminated any supplier/purchaser relationship between Beukema and Admiral. Admiral contends that the method chosen by the parties to supply Beukema under FEA Regulations was the same as the method which had existed prior to the imposition of controls. Furthermore, Admiral claims that at the time of FEA's order no one seriously questioned that Admiral was Beukema's base period supplier under FEA regulations.

From October 1974 until July 1, 1975, Beukema operated on surplus product obtained from a non-base period supplier. In July 1975 Beukema sought product from Four Star contending that Four Star had a base period supply obligation to Beukema under FEA's February 27, 1974 Order. Four Star commenced deliveries. On July 10, 1975, Region V ordered Four Star to supply Beukema "to alleviate the immediate needs of Beukema Oil Co., and to provide an interim arrangement until the Federal Energy Administration, Region V, may rule appropriately regarding the Admiral-Beukema dispute * * *". That order was issued by the FEA, Region V Branch Office in Grand Rapids, although there is doubt that under FEA's regulations authority to issue such an order exists. On July 23, 1975 that interim authorization letter was rescinded by order of the Detroit Area Office.

Shortly after July 10, 1975 Admiral threatened legal action against Four Star unless delivery to Beukema was in accord with the Admiral, Four Star, Beukema agreement. Four Star thereupon terminated its supply to Beukema until Beukema on July 28, 1975 obtained a temporary restraining order from a United States District Court directing Four Star to supply Beukema. On August 15, 1975 a preliminary injunction was issued requiring Four Star to supply Beukema.

ISSUE

The question presented for consideration is whether Admiral or Four Star is Beukema's base period supplier for each of the months July through December under FEA's regulations.

INTERPRETATION

The base period for motor gasoline means the month of 1972 corresponding to the current month. 10 CFR 211.102. Thus, a firm's supplier during a particular month in 1972 is that firm's base period supplier for the current corresponding month.

Each of Beukema's retail sales outlets is considered a separate wholesale purchaser-reseller under 10 CFR 211.106(b)(1). Section 211.9(a)(2)(i) of the Mandatory Petroleum

Allocation Regulations provides that supplier/purchaser relationships between base period suppliers and wholesale purchaser-resellers must be maintained unless terminated by FEA. If a relationship is terminated by FEA, a new relationship with a new base period supplier must be assigned by FEA. 10 CFR 211.10(e). Supplier/purchaser relationships are not altered by the fact that the brand or franchise under which that retail sales outlet operates has changed. Thus, Sunoco is the Eastern sales outlet's base period supplier for the first six months of the year.

The Lake Michigan outlet did not begin operation until June, 1972. During the period June–December, 1972 Admiral was the supplier for both the Eastern and the Lake Michigan retail sales outlet. Accordingly, Admiral is the base period supplier for the Eastern and Lake Michigan sales outlets for the last six months of a year. Four Star is the base period supplier for Admiral for the same period of time.

Beukema has no base period supplier for the Lake Michigan outlets for the period January–June and would therefore apply for assignment of a base period supplier for that period. That application should be made to Region V, FEA, in Chicago.

The 1972 relationship between the parties is determinative of the supply obligation unless FEA has expressly, in writing, approved termination of the base period relationship. No such approval was sought nor has such approval been granted by FEA.

All documents submitted in conjunction with this Request for Interpretation (submissions by all parties, depositions, and transcripts of court hearings) indicate that the intent of the parties during the base period was that Admiral would have the obligation to supply and that Four Star would act as a common carrier for Admiral with Admiral retaining the responsibility to furnish product. Thus, Admiral is the base period supplier since Admiral was directly responsible for the physical delivery of product to Beukema with Four Star acting as a common carrier on Admiral's behalf. See 10 CFR 211.106.

FEA's issuance of the February 1974 Adjustment Order did not change the base period relationship between Beukema and Admiral. An adjustment order may increase a firm's base period volume which it may receive from its base period supplier. Such an order does not terminate the supplier/purchaser relationship between a base period supplier and its purchaser nor does it assign a purchaser to a base period supplier.

Beukema also raised a question regarding the price to be charged in the event Four Star were found to be Beukema's base period supplier. Because of our interpretation that Admiral, rather than Four Star, is the base period supplier to Beukema for the months June through December, this issue need not be discussed.

INTERPRETATION 1975—74

To: Albina Fuel Co.

Date: December 15, 1975.

Rules Interpreted: § 212.93, Rulings 1975–1, 1975–9.

Code: GCR(X)—PI—Non-product Costs, Retailer Blending Costs.

This is in response to the Request for Interpretation filed by you on behalf of your client, Albina Fuel Company of Portland, Oregon. The issue raised in your request was whether Section 212.93 of FEA Regulations can be interpreted to include a certain blending cost incurred by your client as an "increased cost of the item" which may be passed on to your client's customers.

FACTS

As stated in your Request for Interpretation Albina Fuel Company, a retail distributor, offers for sale residual fuel, PS 300 (light), PS 400M (medium), and PS 400I (industrial). When its supplier, Shell Oil Co., notified Albina of its intention to cease production of 400M on March 31, 1974, Albina determined that the refinery specifications for Shell medium called for a blending of 25% PS 300 with 75% 400I. Albina also determined that, if necessary, it could blend PS 300 and 400I in order to continue supplying its customers with 400M. On February 22, 1974, Albina was advised of Shell's indefinite suspension of its plan to cease production of 400M. Until September 19, 1974, Albina purchased these three products from Shell Oil Co., taking delivery of each item by one stop at Shell's bulk plant, then transporting the product directly to the customer.

On July 1, 1974, the cost of 400M rose xxx and the cost of 400I rose xxx, making 400M the highest priced residual fuel.

As the high-demand winter months approached, Albina calculated that it could obtain 400M by making two stops at Shell's plant (cost xxxxx/bbl), loading 25% 300 at one loading rack (cost xxxx/bbl) and 75% 400I (cost xxxxx/bbl) at a second loading rack. The fuels would be sufficiently mixed during loading and transportation to become 400M, the item offered for sale by Albina and meeting the customers' fuel oil requirements, at a saving of approximately xxx/bbl.

Beginning September 19, 1974, Albina ceased purchasing 400M outright from Shell and began acquiring 400M in its delivery truck tanks by the above process.

Albina maintains storage facilities only for a minimum amount of fuel for emergency purposes. Its inventory otherwise consists of the products in its retail delivery trucks en route from Shell's bulk plant to its customers. On June 2, 1975 Shell lowered its price of P.S. 300 to xxxxx/bbl and its price of 400M to xxxxxx/bbl. The price of 400I remained at xxxxxx. There was no longer a saving in blending 400M; therefore, since June 2, 1975 your client has purchased the product outright from Shell.

ISSUE

May the xxxxx blending cost be considered an "increased cost of the item" under Section 212.93 of FEA Regulations, resulting in a pass-through to Albina's customers of the xxx blending cost?

INTERPRETATION

As stated in your Request for Interpretation, the applicable FEA Regulations are as follows:

Section 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." (Emphasis added)

Section 212.31 Definitions.

"'Item' means a product or service unit sold, leased or offered for sale or lease to a class of purchaser."

Section 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." (Emphasis added)

Your request for Interpretation also refers to Ruling 1975–1, dealing with transportation costs. That ruling together with Ruling 1975–9 and Ruling 1975–10 allows transportation costs and certain costs associated with transportation to be treated as "increased costs of the item," (commonly referred to as "increased product costs"). In order to be so treated, the costs must be incurred in bringing product into the firm's inventory. Ruling 1975–1 turns in part on the fact that transportation costs incurred in bringing refined product into the seller's inventory have historically been treated as a cost of acquiring the product. See Ruling 1975–1, 2 FEA, Par. 16,041 at page 16,072. However, this does not appear to be case with respect to the blending costs at issue here. Similarly, the ruling notes that transportation costs are allowed as a "cost of crude petroleum" and "cost of petroleum product" under the refiner price rules (Section 212.83(b)). However, there is no corresponding recognition in the refiner price rules of blending expenses as an allowed "cost of crude petroleum" or "cost of petroleum product." Instead, such costs as "labor cost increase" and "additive cost increase" are dealt with under Section 212.87 relating to increased non-product costs for refiners. Accordingly, Ruling 1975–1 does not provide authority for the proposition that the $.42 blending cost incurred by your client is an increased cost of the item (product cost) which may be passed on to your client's customers. Instead, the blending costs appear to be a type of miscellaneous cost, or non-product cost, which may only be passed through to your client's customers pursuant to the limitations contained in section 212.93(b). With respect to residual fuel oil Section 212.93(b) provides that in retail sales a seller may charge ¾ cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of Section 212.93, to reflect non-product cost increases which the seller incurred after May 15, 1973. With respect to all other sales, the allowable charge is ¼ cent per gallon. These charges are authorized beginning with the month of April 1974. See Section 212.93 (b) (3).

The blending cost incurred by your client is not, strictly speaking, a transportation cost, and does not appear to be a type of cost associated with transportation which may be considered as increased product costs under the authority of Ruling 1975–9. Furthermore, the fact that a cost has to do in some way with bringing the product into inventory would not of itself make the cost a product cost. For example, a general increase in overhead and operating expenses would not be an increased product cost even though some portion of that increased expense could be attributed or assigned to the firm's activity in bringing product into inventory.

In light of the above, it is our opinion that the xxxxxx per barrel blending cost incurred by your client is not an "increased cost of the item" under Section 212.93(a) and that accordingly the blending cost may only be passed through to your client's customers within the limitations imposed by Section 212.93(b) (3) of FEA Regulations.

INTERPRETATION 1976—25

To: Callahan Oil Company.

Date: May 10, 1976.

Rules Interpreted: §§ 211.9, 211.25, Ruling 1974–3.

Code: GCR(I)—AI—FEA Assignment, Supplier-Substitution.

This is in response to your October 14, 1975 Request for Interpretation on behalf of Callahan Oil Company as to whether a supplier substitution pursuant to FEA regulation 10 CFR Section 211.25 is permissible in complying with an FEA order of assignment issued pursuant to 10 CFR 205, Subpart C.

FACTS

Callahan Oil Company (Callahan) is an independent marketer of gasoline in New England based in Norwich, Connecticut with a total annual volume of retail gasoline sales of about *xxxxxxxxx* gallons. It owns and operates about *xx* branded retail outlets which are not affected by this dispute and about *xx* non-branded retail outlets, including the outlets covered by the assignment orders herein. Callahan buys the major portion of its gasoline in tanker or barge quantities, which are delivered to its facilities in Norwich or New Haven.

During the Spring, 1975, FEA received FEA Forms-17, Requests for Assignment of Supplier, from Callahan requesting assignment of a supplier and specified volumes of motor gasoline to eight non-branded retail gasoline stations owned and operated by Callahan at various locations throughout New England. In processing the referenced requests, FEA contacted Gibbs Oil Company (Gibbs) as a potential supplier. Gibbs indicated its willingness to supply the Callahan locations if BP Oil Company's (BP) obligations as Gibb's supplier were increased accordingly. Subsequent discussions were held between FEA and BP during which BP indicated that if it was assigned these supply obligations BP would designate its distributor, Gibbs, as a substitute supplier pursuant to 10 CFR 211.25.

On July 31, 1975, FEA issued assignment orders which directed BP to supply motor gasoline to the eight Callahan-owned and operated retail outlets. The orders were issued in Case Nos. 01-008732, 01-008733, 01-008735, 01-008736, 01-009770, 01-009076, 01-009178 and 01-009180 and in substance required BP

To supply motor gasoline to * * * (the retail outlet) in the following assigned base period volumes * * *

On August 11, 1975 FEA Regulatory Programs Division received individual letters dated August 7 and 8 from BP acknowledging receipt of each of the assignment orders in question and stating as follows:

As advised at the time BP indicated its agreement to accept this assignment, BP is arranging to supply through its Distributor, Gibbs Oil Company, 40 Lee Burbank Highway, Revere, MA 02151 under the "Supplier Substitution" provision of Title 10, CFR, 211.25.

Copies of the aforementioned letters were sent to Callahan. On August 22, 1975 FEA sent letters to BP in each of the aforementioned cases stating in pertinent part as follows:

* * * BP Oil Inc., per FEA orders, is the assigned supplier of these outlets. However, you (BP) may, pursuant to the provisions of Section 211.25 (supplier substitution) of the Mandatory Petroleum Allocation and Price Regulations (10 CFR II), arrange to supply the outlets through Gibbs Oil Company of Revere, MA or any other supplier in accordance with normal business practices.

Copies of the aforementioned letters were sent to Callahan.

On August 14, 1975 FEA Compliance and Enforcement Division received a complaint pursuant to 10 CFR Part 205, Subpart N, from Callahan which alleged non-compliance with FEA regulations and the referenced assignment orders.

The Callahan complaint alleged in substance that the BP-Gibbs substitution was not a permissible supplier substitution under 10 CFR 211.25 in that it was neither an exchange arrangement under § 211.25 as suggested by Ruling 1974-3, which can be justified from a logistical standpoint, nor was it a normal business practice sanctioned under § 211.25 since "BP does not normally require its terminal operator customers like Callahan to purchase from terminal operators like Gibbs." The Compliance and Enforcement Division reviewed and responded to that complaint via letter dated October 31, 1975 concluding that the supplier substitution arrangement between BP and Gibbs to supply the retail outlets in question was not a violation of the assignment orders or FEA regulations and that the relief sought by Callahan should be pursued by a timely Exception request to the FEA National Office of Exceptions and Appeals. Notwithstanding a rather detailed factual finding and determination in this letter, Callahan seeks this Interpretation incorporating by reference its complaint dated August 12, 1975 and its letter dated September 12, 1975 citing the decision in Whitco, Inc., 2 FEA ¶ 83,170.

ISSUE

The issue presented for consideration is whether, under the circumstances presented, it is lawful under the Mandatory Petroleum Allocation Regulations for a reseller of motor gasoline to comply with an FEA assignment order by the substitution of another supplier pursuant to 10 C.F.R. § 211.25(a).

DISCUSSION

The FEA has recognized that the continuing supply obligations specified in 10 CFR 211 could create distribution difficulties for suppliers. To alleviate such problems and provide some flexibility in the Allocation Program, FEA created a means by which a firm can arrange to meet its supply obligations through a supplier substitution. 10 CFR 211.25(a) provides, in part, that:

Any supplier may arrange to supply any purchaser which is entitled to receive an allocation from it through another supplier or suppliers in accordance with normal business practices * * *

Ruling 1974-3 addresses itself to supplier/purchaser relationships, and among other things, discusses § 211.25. The Ruling states that a base period supplier has a continuing obligation to provide allocations to base period purchasers and that the supply obligation imposed by 10 CFR 211.9 may be accomplished indirectly "(u)nder Section 211.25 * * * *through appropriate exchange agreements with other suppliers in accordance with normal business practices.*" (Emphasis added.)

The supplier's decision to utilize substitutions under § 211.25 is not unfettered, however, as that provision has been construed by FEA's Office of Exceptions and Appeals. In *Whitco, Inc.*, 2 FEA ¶ 83,170, a decision on an Exception request, FEA's Office of Exceptions and Appeals determined that:

(1) Where valid economic reasons do not exist for doing so, a base period supplier may not use supplier substitution under § 211.25 to fulfill its base period obligations to purchasers since the insertion of an additional firm in the distribution chain does not constitute a normal business practice as sanctioned by § 211.25;

(2) even where valid economic reasons exist for the insertion of a substitute supplier, the base period supplier must realize that in marketing product through a substitute supplier, class of purchaser adjustments may be required for purposes of applying FEA's price regulations; and

(3) whenever FEA finds that the implementation of a supplier substitution has resulted in a serious financial hardship to a base period purchaser, FEA may grant exception relief which would have the effect of prohibiting that substitution.

Thus, the *Whitco* decision imposes guidelines which serve to restrict the apparently broad discretion offered suppliers under § 211.25 by prohibiting indiscriminate substitutions where serious financial hardship can be documented in the context of an application for exception relief to FEA.

Callahan urges that although it has never purchased gasoline from BP, it maintains substantial and continuing exchange agreements with BP, allegedly involving millions of gallons per month, and that since such a "business relationship" existed, that it was the proper party (in its role as a jobber), rather than Gibbs, to be substituted by BP for the supply of the Callahan-owned retail outlets.

In the instant case, however, Gibbs was the historical distributor for BP products to retail outlets in New England. It was normal business practice for BP to deliver product to Gibbs for distribution to retail outlets. Callahan was not a distributor of BP motor gasoline, and its alleged participation in exchange agreements with BP is not tantamount to a finding that Callahan is a distributor of BP products. In any event, even if it could be concluded that Callahan could be construed to be a "distributor" of BP products, this factor alone would not be sufficient to undercut the reasonableness of BP's choice of Gibbs to be the substitute supplier. It is clear that although Gibbs may not have been the only logical choice for a supplier substitution by BP, it was certainly a reasonable choice based on BP's historical business practice in serving retail stations like Callahan's in the New England marketing area.

Callahan also contends that because of its position as a bulk terminal operator it * * * cannot afford to buy substantial quantities of gasoline * * * from Gibbs, another terminal operator like themselves," and that the insertion of Gibbs into the supplier chain is economically wasteful. In support of its position, Callahan has asserted that the third guideline of the Whitco decision requires that a supplier substitution cannot be effectuated if the result of that substitution is to elevate the price charged to a customer above that which the customer would otherwise pay if supplied directly.

There is no showing, however, that the Callahan-owned retail stations are paying a higher price in purchases from Gibbs than those stations would pay if the purchases were made directly from BP at the price normally charged by BP to the class of purchaser which encompasses such retail stations. In addition, Callahan appears to be suggesting that Whitco mandates that if any profit is to be made at the middle level of distribution, Callahan, in its role as a jobber, not in its role as the owner of retail stations, should be afforded the benefit of the substitution. Such a position is untenable, since Whitco does not address this issue. Rather, Whitco concerns the potential for an adverse economic impact on the purchaser when supplier substitution occurs.

In the instant case, Callahan has presented no detailed factual information probative of financial hardship, such as severely increased prices from the substitute supplier which jeopardize Callahan's market position or which threaten Callahan's continued viability as a retailer. It should be noted that even if Callahan has presented such data, the proper avenue for relief in cases of economic hardship is a request for an exception pursuant to Subpart D of Part 205 of FEA regulations. In fact, FEA expressly recommended to Callahan in a letter dated Octo-

ber 31, 1975 that exception relief might be appropriate upon the presentation of substantive financial data. To date, Callahan has not availed itself of this opportunity.

Callahan also contends that the effect of the eight assignment orders issued relating to retail stations herein concerned was to establish a supplier/purchaser relationship between BP and Callahan in its capacity as a terminal operator, rather than between BP and each of the eight stations. Callahan views the supplier substitution, therefore, as a unilateral termination of Callahan's § 211.9 supplier/purchaser relationship with BP. Contrary to Callahan's suggestion, however, the eight supplier/purchaser relationships created by these assignment orders are not with Callahan in its capacity as a terminal operator. Rather, the eight supplier/purchaser relationships are with eight separate retail firms, notwithstanding their ownership and operation by Callahan. In addition, even if Callahan, as a terminal operator, was deemed to be the purchaser, Callahan's contention, if valid, would render the provisions of § 211.25 mere surplusage. FEA regulations expressly contemplate substitution and the language in § 211.9 regarding termination is irrelevant to the present case since in cases of supplier substitution the underlying base period obligation is not terminated, it remains unchanged.

Based on the foregoing, it appears that BP's utilization of Gibbs as a substitute supplier to the Callahan retail outlets was, and is, consistent with the normal business practices of these firms during the base period and was, therefore, permissible under 10 CFR 211.25 of the regulations.

At such time as Callahan believes that it is suffering an undue financial burden as a result of BP's supplier substitution as discussed herein, Callahan may seek exception relief in accordance with the provisions of Subpart D of Part 205 of FEA regulations.

[FR Doc.77-12696 Filed 5-9-77;8:45 am]

federal register

TUESDAY, MAY 10, 1977

PART-III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

INTRAUTERINE CONTRACEPTIVE DEVICES

Professional and Patient Labeling

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Docket No. 75N-0122]

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 310—NEW DRUGS

SUBCHAPTER H—MEDICAL DEVICES

PART 801—LABELING

Intrauterine Contraceptive Devices; Professional and Patient Labeling

AGENCY: Food and Drug Administration, HEW.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is establishing uniform professional and patient labeling for intrauterine devices (IUD's). The labeling will assist professionals and patients in deciding whether to use an IUD for contraception; it includes requirements for instructions on insertion and usage, contraindications, warnings, adverse reactions, precautions, side effects, and information on IUD effectiveness.

EFFECTIVE DATE: November 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Device IUD's—Robert Skufca, Bureau of Medical Devices and Diagnostic Products (HFK-460), 8757 Georgia Ave., Silver Spring, MD 20910 (301-427-7238).

Drug IUD's—Edwin M. Ortiz, Bureau of Drugs (HFD-130), 5600 Fishers Lane, Rockville, MD 20857 (301-443-3490).

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of July 1, 1975 (40 FR 27796), the Commissioner of Food and Drugs proposed to amend Chapter I of Title 21 of the Code of Federal Regulations by expanding § 310.502 to establish uniform professional and patient labeling for intrauterine devices. Interested persons were given until September 2, 1975 to submit written comments. In the FEDERAL REGISTER of October 15, 1975 (40 FR 48362), the Commissioner extended until November 14, 1975 the period for commenting on the proposal. Nearly 100 individuals, physicians, trade associations, consumer groups, professional organizations, and local government health departments commented on the proposal.

The comments primarily concerned the labeling directed to the physician and to the patient (the Patient Brochure). The major issues raised about labeling directed to the physician concerned informed consent and timing of delivery (whether the physician should provide the labeling to the patient before the date set for insertion or merely before insertion). In addition, numerous suggestions concerned specific items in the physician and patient labeling such as warnings, side effects, contraindications, and insertion techniques. Comments on labeling directed to the patient concerned scope, language, and format of the information. Both sets of comments are addressed in more detail below.

In this document, the terms "drug IUD's" and "device IUD's" are used in both the preamble and the final regulation itself. Drug IUD's incorporate heavy metals, drugs, or other active substances to increase the contraceptive effect, to decrease adverse reactions, or to provide increased medical acceptability. Device IUD's are fabricated solely from inactive materials, e.g., inactive metals or plastics. Device IUD's may contain substances added to improve the physical characteristics of the inactive metals or plastics if the added substances do not contribute to contraception through chemical action on or within the body and are not dependent upon being metabolized to achieve contraception.

The agency's policy of treating some IUD's as drugs and others as devices is unaffected by the revised definition of device found in the Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device Amendments of 1976 (Pub. L. 94-295).

A drug IUD cannot be marketed until FDA approves a new drug application for the product. Similar premarket approval requirements apply to device IUD's marketed for the first time subsequent to the enactment of Pub. L. 94-295. After a transitional period, device IUD's on the market before the date of enactment of Pub. L. 94-295 may also be required to comply with premarket approval requirements.

The Commissioner is aware that States and their political subdivisions may have requirements applicable to device IUD's which are different from or in addition to requirements applicable under the Federal Food, Drug, and Cosmetic Act. New section 521 of the act (21 U.S.C. 360k) preempts such local requirements until such time as the Commissioner has granted an exemption from such preemption in response to an application for exemption.

The Commissioner requests that any State or political subdivision thereof, which has requirements applicable to device IUD's for which an exemption from Federal preemption is desired, submit an application for exemption to FDA as required by section 521(b) of the act.

The Commissioner is revising § 310.502 (21 CFR 310.502) to indicate that labeling of device IUD's is governed by § 801.425 (21 CFR 801.425). The medical device regulations formerly under Subchapters A, C, and D of Chapter I of Title 21 were recodified under new Subchapter H (Medical Devices), Parts 800 through 899, as published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6896). As a result of the recodification, regulations pertaining to device IUD's are now promulgated under Subchapter H (Medical Devices), and those pertaining to drug IUD's will remain under Subchapter D (Drugs for Human Use). Regulations that apply to both drug IUD's and device IUD's will be in Subchapter D and Subchapter H, respectively. Accordingly, the final regulation based on the July 1, 1975 proposal which relates to drug IUD's is set forth under § 310.502 and that which relates to device IUD's is set forth under new § 801.425.

In addition, the final regulation contains format changes. For example, in the patient labeling information, the headings "Important Warnings" and "Complications" are combined under a new section entitled "Warnings", and a new heading "Special Warning about Pregnancy with an IUD in Place" has been added.

In preparing the final regulation, the agency has considered a report prepared under contract with FDA by the Battelle Memorial Institute, Human Affairs Research Centers, 4000 NE 41st, Seattle, Washington (Ref. 1a). This report is a review and analysis of the literature and journal articles on IUD's from 1968 through August 1975. References in the preamble are to the Battelle report, unless otherwise noted. The first number in parentheses references the narrative material in the report; the second number(s) references the appropriate page(s) in the bibliography in the report.

A summary of the comments on the proposal and the Commissioner's conclusions follow:

LABELING DIRECTED TO THE PHYSICIAN

1. One comment on "Indications and usage" for drug IUD's objected to the tabulation of event rate data (data relating to termination of use for four specifically defined categories) by the life table method which is based on the results from the number of women-months at 12- and 24-month intervals of use. The comment argued that data developed in new studies after elapse of the 12- and 24-month intervals would render obsolete any data that are included in the current IUD labeling.

The life table method of calculating rates for key events leading to discontinuation was developed by Potter and Tietze (Ref. 1), and it is the basis for all major studies utilizing contraceptive use effectiveness data. The Commissioner does not intend to substitute another statistical approach at this time because he believes that the life table method, utilizing 12- and 24-month interval data, provides consistent and necessary parameters for evaluating key events, and that data obtained for these two periods provide an effective measure of contraceptive use effectiveness. Manufacturers will be responsible for ensuring that the data used in their labeling are the latest available at the time of each printing, and they will also be responsible for amending labeling within a reasonable time after the development of new data.

2. Contraindications for IUD's are those situations in which the product should not be used because the risk clearly outweighs any possible benefit. In contrast, while precautions are appropriate where there is no absolute restriction on use of the product with the intended patient, the attending physician

is expected to decide whether a product should be used after evaluating the individual patient. The Commissioner has therefore eliminated from the "Contraindications" section of the physician labeling certain conditions in which IUD use may be indicated following positive treatment of the particular conditions. For example, anemia is now addressed in the "Precautions" section (Ref. 1a (184), pp. 193–6).

Four comments recommended that adnexal disease, bicornuate or septate uterus, history of rheumatic heart disease, menorrhagia, cervical stenosis, heart disease with valvular involvement, abnormal "Pap" smear, and Wilson's disease be added to the list of contraindications.

The Commissioner believes that the reference to a history of repeated pelvic inflammatory disease is more precise than, and therefore preferable to, a reference to "adnexal" (uterine appendages) disease. Furthermore, distortion of the uterine cavity, already listed under contraindications, includes "bicornuate or septate uterus" so that these conditions need not be specifically listed. The Commissioner believes that menorrhagia (excessive menstual bleeding) is only a contraindication for IUD's in instances where its cause is unexplained. Unexplained menorrhagia is already covered by the contraindication for "Genital bleeding of unknown etiology." Thus, the Commissioner believes that separate listing of menorrhagia as a contraindication is inappropriate as a contraindication in the proposed labeling.

The Commissioner believes that cervical stenosis (constriction) is not a contraindication to IUD use because the cervix must be sounded and often dilated in the nulliparous patient before insertion of the IUD. Therefore, it is not included in the final regulation.

The Commissioner agrees with the comments that Wilson's disease should be added to the list of contraindications for copper-containing drug IUD's since it is believed that Wilson's disease results from abnormal copper metabolism, and excessive amounts of copper have been found in the brain, liver, and urine of patients who use copper-containing drug IUD's. For drug IUD's, known or suspected allergy to copper is retained as a contraindication.

Because patients with valvular (rheumatic) or congenital heart disease are more prone than patients without such cardiac anomalies to develop subacute bacterial endocardities (infimation of the heart), some researchers recommend that contraceptives other than IUD's be used in these patients, while others suggest that only those with a valvular heart disease who are symptomatic and on therapy should be restricted to other forms of contraceptives.

The Commissioner believes that IUD's represent a potential source of septic emboli, which could lead to death, in patients with valvular or congenital heart disease. However, IUD use is not an absolute restriction for these patients because pregnancy could pose a greater risk to them than IUD's. Accordingly, the regulation requires a precaution on use of IUD's in patients with valvular or congenital heart disease to be provided in physician labeling but does not list valvular or congenital heart disease as a contraindication.

The Commissioner has determined that if there is suspicion of malignancy because of an abnormal "Pap" smear, a definitive diagnosis should be made prior to IUD use. Therefore, he includes under the "Contraindications" section "unresolved abnormal 'Pap' smear."

3. Two comments on "Warnings" in the proposed professional labeling objected to the use of the word "recent" in reference to reports indicating an increased incidence of septic abortion in patients becoming pregnant with IUD's in place. A comment on spontaneous abortion (miscarriage) suggested that a statement be included in the labeling relating to all abortions (septic or otherwise) resulting from IUD removal during pregnancy.

The Commissioner agrees that the word "recent" is inappropriate since not all reported septic abortions occurred recently. Because the critical fact is that septic abortions have occurred in patients who become pregnant with IUD's in place and not when these septic abortions have occurred, the word "recent" is deleted from the final regulation.

The Commissioner is also requiring that the physician labeling include a statement relating to the risk of spontaneous abortions in IUD users who become pregnant. Published data demonstrate that if an IUD is left in place in a pregnant patient, the rate of spontaneous abortion, especially in mid-trimester, is greater than when the article is removed. Removal of the IUD improves the chances of a live birth since an IUD sometimes interferes with the course of pregnancy. Removal is recommended in all cases where the IUD's tail or string is visible at the cervix. If the tail or string is not visible or removal proves to be difficult, termination of the pregnancy should be considered and discussed with the patient as an option since, in any event, the attempt to remove the IUD may unavoidably result in an abortion. The patient should also be warned of the increased risk of sepsis, if the pregnancy is not terminated. If, after being offered the opportunity to terminate the pregnancy, the patient elects to continue the pregnancy with the IUD in place, she should be followed closely by the physician (Ref. 1a (227, 264), pp. 244–253, 268–271).

4. Three comments suggested that the warning concerning ectopic (outside the uterus) pregnancy be clarified.

The Commissioner agrees that further explanation of the signs and symptoms of an ectopic pregnancy should be addressed in the warning, since manifestations of this condition in association with an IUD may be unlike the symptoms of normal uterine pregnancies. There are two situations in which a physician should be especially alert to the possibility of ectopic pregnancy in IUD users: (1) patients with delayed menses, slight menorrhagia, or unilateral pelvic pain and (2) patients who may want to interrupt pregnancy because of IUD failure. Moreover, to amplify and clarify the relationship between the IUD and ectopic pregnancy, the Commissioner is adding to the final regulation the requirement that the labeling state that IUD users who become pregnant are more likely to have an ectopic pregnancy than non-IUD users and that IUD users in whom pregnancy occurs should be carefully evaluated for the possibility of an ectopic pregnancy. (Ref. 1a (199), pp. 244–253).

5. Three comments expressed concern that the proposed warnings on "severe" pelvic infection was too limited. One of these comments suggested that the IUD should be removed whenever pelvic infections occur.

Because pelvic infection, including pelvic inflammatory disease can be serious and can lead to decreased fertility, ectopic pregnancy, or chronic pelvic pain, the Commissioner is revising the warnings on pelvic infection to be more informative to physicians. The Commissioner has eliminated the word "severe" from the heading so that all pelvic infections, not just severe ones, are addressed by the warning. The proposed warning directed the physician to remove an IUD if serious pelvic infection occurs. However, the Commissioner is aware that there is no consensus regarding the removal of the IUD upon discovery of general pelvic infection (acute, subacute, or chronic). Thus, the Commissioner believes that the physican may decide what course of action is appropriate for the patient (i.e., removal or nonremoval). The revised labeling, however, suggests the advisability of antibiotic treatment following appropriate bacteriological studies. If the infection does not respond to antibiotic treatment within 24 to 48 hours, the physician should remove the IUD and reassess the advisability of continuing treatment based on the culture and sensitivity reports (Ref. 1a (234, 236, 240), pp. 244–253).

6. Two comments suggested that a discussion of migration and embedment of an IUD be included under "Warnings."

Perforation is broadly defined as the complete or partial positioning of the IUD through the uterine wall including the cervix and has been included under the "Warnings" and "Adverse Reactions" sections. The term "perforation," which is used in the regulation, is an inclusive term and is the most commonly used term to denote the change in relationship of the IUD to the uterus. The term "migration" is imprecise, and the Commissioner finds that it cannot be defined for purposes of this regulation. The Commissioner agrees that the term "embedment" is distinguishable from "perforation" and is including it under the "Adverse Reactions" and "Warnings" sections.

7. One comment recommended that a discussion of the possibility of expulsion

or displacement of an IUD be included under "Warnings."

The Commissioner considers the possibility of expulsion of an IUD a serious risk that should be addressed in the final regulation as suggested. However, he finds it more appropriate to refer to this matter under "Precautions" and "Adverse Reactions" than under "Warnings," since "Warnings" addresses only the most serious of possible adverse effects. Therefore, the final regulation is amended under "Precautions" to state that, "Since expulsion is possible with IUD use, patients should be reexamined and evaluated shortly after the first post-insertion menses, but definitely within 3 months after insertion. Thereafter, patients should have a routine medical examination."

The term "displacement" is imprecise and will not, therefore, be used in the labeling.

8. One comment requested the deletion from the "Warnings" section concerning copper-containing IUD's of the statement that "minute amounts of copper may cause hemolysis in patients with a deficiency of glucose 6-phosphate dehydrogenase" on the grounds that the amount of copper released into the system is too insignificant to produce hemolysis.

The Commissioner agrees that the statement is not supported by available data, and he therefore is deleting it from the "Warnings" section.

DISTRIBUTION OF LABELING TO PATIENTS

9. A number of comments expressed concern over when the IUD patient Brochure should be given to a patient. The preamble of the proposal stated that "prior to the date" scheduled for insertion of the IUD the physician must supply the patient with a Patient Brochure so that she has adequate time to read the labeling. The proposed regulation, however, stated that "prior to insertion," the physician must provide the patient with a Patient Brochure, and that the patient must be given adequate time to read the labeling in advance of the time scheduled for insertion of the IUD. Five comments objected to providing the patient with a Patient Brochure "prior to the date" scheduled for insertion. One comment stated that to require a patient to return to the physician's office at least 1 day after she has decided to use an IUD is unfair to the woman and the physician. Another comment indicated that if the Patient Brochure must be provided during an appointment prior to the date of insertion, the number of patients who do not return and become pregnant after the first appointment would be significant. One comment stated that the intention of the IUD labeling regulation should not be to require double visits, thereby increasing the cost to the patient. The comments were in general agreement, however, that a patient should have an opportunity prior to insertion to read the Patient Brochure and discuss any questions she may have with a physician.

The Commissioner agrees that the patient should be provided with the brochure "prior to insertion." The Commissioner does not believe that it is essential that the brochure be provided at a date earlier than the one set by the physician and patient, for consideration of insertion. He does, however, believe that the patient should have adequate time to read the brochure and discuss any questions with the physician before making a final, informed, and rational decision to use an IUD, and this was the intent of the proposal. It is therefore highly desirable, although not required, that the patient receive the brochure on a date earlier than the date set for insertion. However, the Commissioner did not intend to require that the patient visit the physician twice, once to receive the brochure and again to have the IUD inserted. He believes that the term "prior to insertion" indicates it is permissible, though less desirable, for the patient to be provided the brochure the same day that she obtains the IUD.

To maximize the availability of the Patient Brochure to prospective IUD users, and to make it more likely that a patient has obtained and read the brochure prior to insertion, the Commission recommends that the following methods be used to disseminate the brochure:

a. The patient may be provided the Patient Brochure (and information about any other available birth control method) during a routine visit to a physician or a trained health professional, especially when the patient requests information on IUD's or birth control in general.

b. The patient could pick up the brochure at the physician's office without being examined by the physician. This would not require use of a physician's time and would not constitute a formal visit to the physician.

c. A copy of the brochure could be mailed to the patient from the physician's office.

To encourage adequate dissemination of the Patient Brochure, it should be understood by manufacturers that the brochure must accompany each IUD but must be packaged separately from the sterile package itself. This requirement is added to the final regulation.

10. Two comments concerning the "Precautions and routine examinations" section recommended that in addition to physicians, other appropriately trained health professionals be allowed to disseminate IUD information to the patient.

The Commissioner agrees with this recommendation. The final regulation is amended under the "Patient counseling" portion of the "Precautions" section to include a broader segment of the health community, including nurses and other trained health professionals in the dissemination of IUD information. This will ensure that more prospective IUD users are given access to the necessary patient information to allow them to make more informed judgments regarding IUD use.

11. The proposal stated that the physician should discuss fully the information in the Patient Brochure with the patient, as well as other means of contraception, and obtain the patient's consent. The proposal provided that if a patient is not competent to give informed consent, her parent or guardian must be provided with the information necessary to decide on behalf of the patient. Under the proposal, the consent could be oral or written; if oral, a notification in the patient's record was recommended.

The portion of the proposal concerning informed consent elicited 13 comments. Four comments generally approved of the informed consent provisions, while nine comments opposed such provisions as not being appropriate in IUD labeling regulations. Comments in support of the informed consent provisions suggested that, without enforcement by FDA, it is a hollow requirement. It was suggested that procedures be established to monitor compliance with informed consent provisions and that violators be prosecuted. It was also suggested that physicians' records be periodically reviewed by IUD manufacturers or the government to ensure compliance with the provisions. Physicians, according to the comment, should keep records documenting the consent whether it is oral or written. Moreover, it was suggested that witnesses should be required to sign consent forms that would then become part of the record.

Comments opposing the proposed informed consent provisions argued that such a requirement is not proper for an FDA package insert requirement. It was stated that supplying appropriate information to the patient and obtaining her consent to a particular medical procedure is a basic part of good medical practice. It was suggested that by requiring informed consent, FDA would be interfering with the practice of medicine and infringing upon the physician-patient relationship. One comment suggested that FDA does not have the authority to impose on physicians an informed consent provision, regardless of its form or content, except where an investigational procedure is used.

The Commissioner has carefully considered the comments on the informed consent issue. He concludes that the final regulation should not mandate a formal consent procedure. However, he believes it is incumbent upon the attending physician to offer the same type of patient information as would be given in any other comparable medical procedure. The Commissioner concludes that the patient's interests will be adequately protected by expanded requirements to ensure that the prospective IUD user is provided full information about marketed IUD products. Of course, formal informed consent in accordance with § 310.102 is required for use of an investigational drug IUD and will be required in investigational studies of device IUD's when proposed regulations published in the FEDERAL REGISTER of August 20, 1976 (41 FR 35282) become effective.

The primary purposes of IUD labeling are to provide physicians and patients with adequate information so that patients can make an informed choice whether to use an IUD, and so that IUD's can be used in a safe and effective manner. The final regulation accomplishes this by requiring detailed information about IUD's to accompany every IUD, and also by requiring physicians to give patients time to read IUD information so they can make a more informed judgment about IUD use.

Whether or not FDA were to include an informed consent provision in IUD labeling regulations, physicians nonetheless have a duty under the law of most States to disclose affirmatively to patients all known material risks or dangers regarding medical procedures. Moreover, recent cases indicate a trend toward requiring both manufacturers and physicians to provide complete information to patients relating to all known or potential risks associated with medical products and for physicians to obtain consent.

12. Two comments on patient examination prior to insertion suggested the test for all forms of venereal disease be performed, not simply a culture for gonorrhea as indicated in the proposed regulation.

The Commissioner agrees that under certain circumstances (e.g., known contact with a syphilitic), the patient should be tested for other forms of venereal disease as well as for gonorrhea. Therefore, the Commissioner is amending the final regulation under "Precautions" to require that prior to insertion, a pelvic examination, "Pap" smear, gonorrhea culture, and if indicated, appropriate tests for other forms of venereal disease should be done (Ref. 1a, (181–192), pp. 193–195).

13. Two comments recommended that a statement on uterine sounding with respect to depth be included in the final regulation. It was noted that an IUD is more likely to be expelled when the uterine cavity is less than 6.5 centimeters (cm) deep.

The Commissioner agrees with the comment, and he is amending the final regulation under "Precautions" to indicate that the insertion of an IUD into a uterine cavity measuring less than 6.5 cm may increase the incidence of expulsion; bleeding, and pain (Ref. 1a, (183) pp. 193–195).

14. One comment suggested that it is unfair to require inappropriate an inapplicable statements to be included in the labeling of products to which the statement has only "tangential" relevance. The section "Continuation and removal" and portions of the section on "Insertion technique," for example, may not apply to all devices.

The Commissioner agrees that specific instructions for continuation and removal and insertion techniques are best left to the manufacturer. Therefore, information on specific insertion techniques formation on the need periodically to remove a particular device will be under the heading "Directions for Use" with specific wording to be developed by the manufacturer. It is generally suggested that whenever possible an IUD should be inserted during a menstrual period because the cervical canal is more open at this time than at other times during the cycle and because the possibility of pregnancy is reduced. Accordingly, the warning concerning insertion of the device during the menstrual period will remain in the physician labeling. The Commissioner realizes that a woman may menstruate and yet be pregnant and that, as a result, insertion of an IUD is ultimately a matter of medical judgment (Ref. 1a, (181–192), pp. 193–195).

General information on continuation and removal regarding such matters as insertion during the menstrual period, anemia, pelvic infection, pregnancy, uterine or cervical malignancy, and insertion of an IUD in uterine cavities smaller than 6.5 cm are now treated under other sections of the labeling such as "Precautions."

The Commissioner has simplified the format of the proposed regulation section headed "Precautions and routine examinations" which included "Insertion Technique." Now the "Precautions" section of the labeling contains necessary information on any special care to be exercised by the practitioner for safe and effective use of IUD's. In addition to what was proposed, there is now a precaution suggesting that a complete medical history germane to IUD selection be taken; a precaution on the use of medical diathermy (replacing the proposed warning on microwave therapy, a form of medical diathermy); a separate section on bleeding problems related to anemia; and a section on instructions to the patient.

16. One comment suggested that the discussion of menorrhagia (excessive bleeding) or metrorrhagia (uneven bleeding) producing anemia under "Requirements for continuation and removal" be limited to indicate that medical removal of an IUD should occur only when there is prolonged or recurrent menorrhagia or metrorrhagia.

The Commissioner is revising the labeling with respect to anemia and other blood related problems. The "Precautions" section in the labeling will indicate that IUD's should be used with caution in patients who have anemia or a history of menorrhagia or hypermenorrhea, and that patients experiencing menorrhagia or metrorrhagia following IUD insertion may develop hypochromic microcytic anemia (iron deficiency anemia).

The labeling will also suggest that IUD's be used with caution in patients receiving anticoagulants or having a coagulopathy because such patients may be predisposed to greater uterine bleeding than patients not receiving anticoagulants or having coagulation therapy (Ref. 1a, (214–220), pp. 244–253).

17. Two comments suggested that syncope (fainting) be added to the list of adverse reactions.

The Commissioner agrees with the comment because syncope may be anticipated during manipulation of the cervix during IUD insertion or removal. Accordingly, and in light of recent information, the Commissioner adds both to the "Precautions" section and to the "Adverse Reactions" section, "Syncope, bradycardia (slowness of the pulse), or other neurovascular episodes" (Ref. 1, (200–1), pp. 244–53).

Other Changes in Labeling Requirements

In addition to the changes made above in response to comments, the Commissioner is changing the labeling with respect to the recommended timing of a patient's first postinsertion visit.

The proposal stated that the visit should occur within 3 months postinsertion. Since expulsion occurs most frequently prior to the first postinsertion menses, the Commissioner is amending the "Precaution" in the physician's labeling and "Directions for Use" in the patient labeling to suggest an examination soon after the next menstrual period but no later than 3 months after insertion (Ref. 1a, (2340), p. 477).

The Commissioner has added "fragmentation of the IUD" to the list of "Adverse Reactions" because of several reports in the literature which indicate a breakdown of IUD composition in the uteri of a small number of women (Ref. 1a, (1227, 1790, 2072), pp. 417, 447, 462).

Section 310.502 contains information on IUD's which pertains only to drug IUD's. In addition to those already discussed in the preamble, a number of other potential sources of danger have been reported in the literature.

Under "Warnings," the Commissioner adds the statement, "Long-term effects on the offspring when pregnancy occurs with (name of drug IUD) in place are unknown."

Also under "Warnings" is added a statement indicating that systemically administered sex steroids, including progestational agents, have been associated with an increased risk of congenital anomalies. It is not known whether such anomalies could occur with a progesterone-containing IUD in place; however, with the recent approval of a progesterone-containing IUD by FDA, the Commissioner believes such information is important.

A report has appeared in the literature suggesting that a copper induced urticarial allergic skin reaction developed in a woman wearing a copper-containing IUD. The Commissioner believes that if symptoms of such an allergic response should occur, the patient should be instructed to tell the consulting physician that a copper-containing IUD is being worn. Reference to the urticarial allergic reaction is made under both "Precautions" and "Adverse Reactions."

For copper-containing IUD's the Commissioner adds both to the "Precautions" and to the "Adverse Reactions" sections a vascular reaction of the skin called a "urticarial allergic skin reac-

tion," which has been reported in the literature.

In the physician's labeling under "Directions for Manufacturers," the Commissioner is requiring the manufacturer to indicate whether or not his article must be replaced every year or so in order that the patient continue to be protected from pregnancy. This information is now required under "Continuation and Removal" for the patient labeling.

CONTENTS OF LABELING DIRECTED TO THE PATIENT

18. One comment suggested that for clarity the labeling directed to the patient be revised to provide separate preinsertion and postinsertion information.

The Commissioner agrees with the comment and has determined that the Patient Brochure will contain both preinsertion and postinsertion information separately identified. The brochure is to be made available to the patient prior to insertion and must be packaged separately from the sterile IUD packaging. To maximize the opportunity for every interested patient to receive the brochure, manufacturers must recognize the necessity of printing and shipping labeling brochures in quantities greater than the number of IUD's manufactured and shipped. The Commissioner's authority under sections 502(f), 505, 520 (e) and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (f), 355, 360j(e), and 371(a)) is the basis for such a requirement.

19. One comment referring to the section on general information argued that the statement, "Your doctor can explain how the IUD and other forms of contraception prevent you from becoming pregnant and can tell you about any risks you take in using them," is inappropriate because the precise mechanism of IUD's in preventing pregnancy has not been definitely determined. The comment further stated that since all known risks cannot be foreseen, and all possible risks cannot be determined for any device or drug, the phrase "any risks" is too broad.

The Commissioner agrees with the comment and has rephrased the sentence in a new introductory paragraph to recommend that the patient should, prior to deciding on a method of birth control, discuss with the physician any questions she may have about the IUD or other methods of contraception.

20. Two comments addressed the phrase "range of effectiveness percent" under "General Information." One comment suggested that the mathematical rating for IUD's is questionable as a statistical approach for lay use. Another comment suggested that in addition to pregnancy rate, additional data relating to continuation and safety should be included in the Patient Brochure.

The Commissioner agrees that in addition to the pregnancy rate, the other data that would be meaningful to the patient and should be included are discontinuation rates and adverse reactions data relating to required medical removal. These figures should be expressed in terms of a figure per 100-woman-years of use. This information, the Commissioner believes, will be important in helping the patient select or reject a particular IUD. He therefore has required inclusion of this information in the Patient Brochure under "Use Effectiveness." He notes, however, that this particular information varies for each particular IUD and therefore will be different for each product's brochure.

21. One comment stated that the phrase "certain types of IUD's must be replaced periodically" should be revised to incorporate a statement that informs the patient whether the specific IUD referred to in the Patient Brochure is one which must be replaced periodically.

The Commissioner agrees with the comment, but will under a new section in the final regulation ("Directions for Use") require the manufacturer to supply his own information on the time interval for replacement and removal.

22. One comment suggested that the statement appearing under the heading "Checking your IUD" that "If you can feel the thread, you know the IUD is in place and working" is misleading because presence of the tail does not necessarily mean that there is no perforation or that a pregnancy has not occurred. Reference was made to the statement in the physician's labeling that pregnancy can occur with an IUD in place.

The Commissioner agrees that the referenced statement could be misleading. Therefore, the final regulation has been revised under "Directions for Use" to indicate that if the patient can feel the thread, it is likely that the IUD is working.

23. In the proposal under the heading "Checking your IUD" the patient is advised that if she thinks the IUD has come out, she should use another birth control method such as vaginal foam and condoms (rubbers) until she can be checked by her physician. One comment suggested in this light that vaginal cream and vaginal jelly should also be listed as alternate means of birth control in this type of situation.

The Commissioner agrees with the suggestion and is amending the final regulation to include contraceptive creams, jellies, and foams. The Commissioner is also adding the statement that these alternative methods are not as effective in preventing conception as the IUD (Ref. 1a, (234), p. 477).

24. Five comments indicated that the Patient Brochure should contain, in lay language, all the information including warnings, indications, contraindications, side effects, and adverse reactions contained in the physician labeling.

The Commissioner believes that the labeling directed to the patient should be comprehensible to as large a segment of the population as possible. The Commissioner finds that only by including in the Patient Brochure most of the information found in the Physician Labeling, but written in lay language, will the labeling meet requirements for comprehensibility and completeness. If because of comprehensiveness, a patient may not understand a particular complication or side effect, the physician can explain it to her.

The Commissioner, therefore, is adding to the Patient Brochure all the information necessary for the patient to make an intelligent decision regarding IUD use and continuation, including a more detailed summary of clinical trials with the IUD than was proposed and a list, in lay language, of all known risks that have been associated with IUD's.

The Commissioner has divided the Patient Brochure into two sections: "Preinsertion Information" and "Postinsertion Information." Under "Preinsertion Information," the section "What you should tell your doctor" has been expanded to include, among other aspects of patient history, prior uterine surgery, allergy to copper (for drug IUD's), heart disease, and heart murmur. A new section on "Adverse Reactions" sets forth in lay terms what is found under adverse reactions in the physician labeling. Preceding "Postinsertion Information," the Commissioner has provided an introductory paragraph advising patients to read the brochure and to discuss it with their physicians. In the section "Directions for Use" under "Checking your IUD," the Commissioner has expanded the paragraph dealing with "When to check for the thread" to indicate that it should be done after each menstrual period and to advise the patient to make sure that the IUD thread is high in the vagina.

The section headings in the proposal, "Important warnings" and "Complications," are combined in the final regulation under the new section headed "Warnings." Under "Warnings," the paragraph entitled "Tail or thread disappearance" indicates that if the thread cannot be felt, it is possible that perforation has occurred. This possibility was not described in the proposal. The Commissioner is also adding, to conform with the physician labeling, the warning that a patient using a metal IUD should not undergo medical diathermy treatments including short wave and microwave (Refs. 2 and 3).

25. One comment regarding "Side effects" suggested low backache may occur intermittently for several months or during the entire time the IUD is in place and should be listed therefore under "Complications."

The Commissioner agrees that "backache" should be included in the Patient Brochure but has listed it under "Adverse Reactions" in the final regulation rather than in "Complications" (now "Warnings").

26. One comment objected to including venereal disease as a complication occurring with the use of an IUD.

The Commissioner agrees that venereal disease is not a direct complication of IUD usage, and the final regulation is amended to delete such reference.

27. One comment suggested that a statement be included under "Side Effects" reflecting that the possibility exists that bleeding may be heavier

throughout the use of an IUD, not just within the first 2 or 3 months.

The Commissioner agrees that bleeding may be heavier than normal throughout the use of the IUD, not just within the first 2 or 3 months, depending on the nature of the placement, the design of the device, and the general physiological condition of the patient. The final regulation is amended to reflect this fact by recommending to the patient in the section headed "Side Effects" that she should see her physician if bleeding persists.

28. Three comments suggested that the proposed labeling requirements are inflexible because they do not provide manufacturers with adequate opportunity to reflect the individual differences of particular devices.

The Commissioner realizes that differences exist among various IUD's with respect to reported event rates, design, methods of insertion, etc., but he believes that the regulation as proposed is appropriate for all IUD's currently on the market and that the final regulation permits sufficient flexibility as required for the various IUD's. The regulation recognizes distinctions between drug and device IUD's and permits the labeling to reflect data unique to a particular product. Furthermore, manufacturers may supply information in the labeling that is in addition to but not in lieu of the requirements in the regulation, so long as such additional information does not undermine or detract from the required information.

29. Five comments indicated that risk/benefit information, including relative safety and efficacy data on other contraceptive products, be part of IUD labeling. In addition, two comments recommended that an explanation of the relative advantages and disadvantages of alternative forms of birth control, including sterilization and abortion, be included in the Patient Brochure.

The Commissioner believes that comparative risk/benefit information on other contraceptive products, whether IUD's or other contraceptives, should not be required in IUD labeling at this time. This type of information can best be discussed with the physician.

The physician will in all cases help the patient to select the proper IUD, or he will, after evaluating the patient, decide not to insert an IUD at all. Under the latter circumstances, other forms of birth control will be considered, and the physician can discuss the relative benefits and risks of such other forms of birth control as they apply to the particular needs of the individual patient.

In addition to the comments received on patient labeling, the Commissioner also received a petition submitted on behalf of several women's and consumer organizations in June 1975, which, among other things, requested the agency to promulgate regulations requiring patient labeling and made a number of specific suggestions as to content and format of such labeling. The suggestions in the petition concerning IUD labeling requirements have been considered during the development of this final regulation, which constitutes the agency's response to those suggestions.

Several manufacturers indicated that they may have difficulty distributing the necessary number of brochures to physicians in 90 days, as would have been required by the proposal. Accordingly, the Commissioner is extending from 90 to 180 days the effective date of the final regulation.

Device IUD requirements will be codified in § 801.425 while drug IUD requirements will be codified in § 310.502, which conforms to FDA's recodification of medical devices regulations published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6896).

As proposed, the final regulation will require submission of drug IUD labeling in supplemental new drug applications.

The following documents have been placed on file and are available for public review in the office of the Hearing Clerk.

Reference 1a. may be obtained by writing or calling: Acquisition Office, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: 703-451-3836. The NTIS number is PB 249-614. The cost is $12.50 for paperback and $2.25 or microfiche.

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(Secs. 201 (g) and (h), 502, 505, 520(e), 701 (a), 52 Stat. 1041 as amended, 1050-1053 as amended, 1055, 90 Stat. 567 (21 U.S.C. 321 (g) and (h), 352, 355, 360j(e), 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1).

Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. In Part 310 by revising § 310.502 to read as follows:

§ 310.502 Intrauterine devices for human use for the purpose of contraception.

(a) *New drug status of certain intrauterine devices for human use for the purpose of contraception.* (1) The Food and Drug Administration has become aware of the increased clinical use for the purpose of contraception of intrauterine devices (IUD's) that incorporate heavy metals, drugs, or other active substances. The amount of local irritation caused by such active materials has been reported as being correlated, in animal studies, to the effectiveness of such products in achieving their contraceptive effect. Several investigators have reported different pregnancy rates which appear to be dependent on the type of metal used and/or the amount of exposed surface of the metal. Drugs have been incorporated with otherwise inert intrauterine devices to increase the contraceptive effect, decrease adverse reactions, or provide increased medical acceptability.

(2) Intrauterine devices used for the purpose of contraception and incorporating heavy metals, drugs, or other active substances to increase the contraceptive effect, to decrease adverse reactions, or to provide increased medical acceptability (drug intrauterine devices) are not generally recognized as safe and effective for contraception and are new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act. A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD-1571 set forth in § 312.1(a)(2) of this chapter) must therefore be submitted to cover clinical investigations to obtain evidence that such preparations are safe and effective for this use. An approved new drug application is required for the marketing of such articles.

(b) *Labeling of intrauterine contraceptive devices considered new drugs (drug IUD's).* The intrauterine contraceptive device is a popular method of contraception used by several million women in the United States. Although this method of contraception is generally safe and effective, certain complications and side effects may result from its use. A Food and Drug Administration review of the labeling of intrauterine contraceptive devices currently marketed in the United States reveals that information necessary for the safe and effective use of these products is not uniformly available to either the practitioner or the patient. Based on the review of the labeling and on the recommendations of the Ad Hoc Obstetric-Gynecology Advisory Committee, the Commissioner has concluded that in the interest of safe and effective use, and prevention of misleading labeling, there is a need to establish uniform physician and patient labeling for such drugs.

(1) Labeling accompanying each drug IUD and directed to the physician shall be substantially as follows, adjusted where appropriate to the requirements of a particular drug IUD.

DESCRIPTION

(To be supplied by manufacturer)

Description shall include the following information:

1. Proprietary or established name of the IUD.
2. Major ingredients or composition.
3. Model.
4. Physical dimensions (size and shape).
5. Description of components in package or system.
6. A statement that the product is sterile.
7. Other characteristics.

MODE OF ACTION OR PRINCIPLES OF IUD DESIGN

(To be supplied by the manufacturer)

The manufacturer shall include information on the mode of action or principles of the IUD's design. At a minimum, the statement should provide that IUD's seem to interfere in some manner with nidation in the endometrium, probably through foreign body reaction in the uterus.

INDICATIONS AND USAGE

The labeling may include indications and usages other than those stated below, provided that an approved new drug application is in effect.

(*Name of drug IUD*) is indicated for contraception.

CONTRAINDICATIONS

IUD's should not be inserted when the following conditions exist:

1. Pregnancy or suspicion of pregnancy.
2. Abnormalities of the uterus resulting in distortion of the uterine cavity.
3. Acute pelvic inflammatory disease or a history of repeated pelvic inflammatory disease.
4. Post partum endometritis or infected abortion in the past 3 months.
5. Known or suspected uterine or cervical malignancy including unresolved, abnormal "Pap" smear.
6. Genital bleeding of unknown etiology.
7. Untreated acute cervicitis until infection is controlled.
8. Copper-containing IUD's should not be inserted in presence of diagnosed Wilson's Disease.
9. Known allergy to copper. (For copper-containing IUD's.)

WARNINGS

1. *Pregnancy*—a. *Long-term effects.*—Long-term effects on the offspring when pregnancy occurs with (name of drug IUD) in place are unknown.

b. *Septic abortion.* Reports have indicated an increased incidence of septic abortion associated in some instances with septicemia, septic shock, and death in patients becoming pregnant with an IUD in place. Most of these reports have been associated with the mid-trimester of pregnancy. In some cases, the initial symptoms have been insidious and not easily recognized. If pregnancy should occur with an IUD in place, the IUD should be removed if the string is visible or, if removal proves to be or would be difficult, termination of the pregnancy should be considered and offered the patient as an option bearing in mind that the risks associated with an elective abortion increase with gestational age.

c. *Continuation of pregnancy.* If the patient chooses to continue the pregnancy, she must be warned of the increased risk of spontaneous abortion and of the increased risk of sepsis, including death if the pregnancy continues with the IUD in place. The patient must be closely observed and she must be advised to report all abnormal symptoms, such as flu-like syndrome, fever, abdominal cramping and pain, bleeding, or vaginal discharge immediately because generalized symptoms of septicemia may be insidious.

2. *Ectopic pregnancy.* a. A pregnancy that occurs with an IUD in place is more likely to be ectopic than a pregnancy occurring without an IUD in place. Accordingly, patients who become pregnant while using the IUD should be carefully evaluated for the possibility of an ectopic pregnancy.

b. Special attention should be directed to patients with delayed menses, slight metrorrhagia and/or unilateral pelvic pain and to those patients who wish to terminate a pregnancy because of IUD failure to determine whether ectopic pregnancy has occurred.

3. *Pelvic infection.* Pelvic infection may occur with the IUD in place and at times result in the development of tubo-ovarian abscesses or general peritonitis. Appropriate aerobic and anaerobic bacteriological studies should be done and antibiotic therapy initiated. If the infection does not show a marked clinical improvement within 24 to 48 hours, the IUD should be removed and the continuing treatment reassessed based upon the results of culture and sensitivity tests.

4. *Embedment.* Partial penetration or lodging of the IUD in the endometrium can result in difficult removals.

5. *Perforation.* Partial or total perforation of the uterine wall or cervix may occur with the use of IUD's. The possibility of perforation must be kept in mind during insertion and at the time of any subsequent examination. If perforation occurs, the IUD should be removed. Adhesions, foreign body reactions, and intestinal obstruction may result if an IUD is left in the peritoneal cavity.

6. *Congenital anomalies.* Systemically administered sex steroids, including progestational agents, have been associated with an increased risk of congenital anomalies. It is not known whether such anomalies could occur when pregnancy is continued with a progesterone-containing IUD in place.

PRECAUTIONS

1. *Patient counseling.* Prior to insertion the physician, nurse, or other trained health professional must provide the patient with the Patient Brochure. The patient should be given the opportunity to read the brochure and discuss fully any questions she may have concerning the IUD as well as other methods of contraception.

2. *Patient evaluation and clinical considerations.* a. A complete medical history should be obtained to determine conditions that might influence the selection of an IUD. Physical examination should include a pelvic examination, "Pap" smear, gonorrhea culture and, if indicated, appropriate tests for other forms of venereal disease.

b. The uterus should be carefully sounded prior to insertion to determine the degree of patency of the endocervical canal and the internal os, and the direction and depth of the uterine cavity. In occasional cases, severe cervical stenosis may be encountered. Do not use excessive force to overcome this resistance.

c. The uterus should sound to a depth of 6 to 8 centimeters (cm). Insertion of an IUD into a uterine cavity measuring less than 6.5 cm by sounding may increase the incidence of expulsion, bleeding, and pain.

d. The possibility of insertion in the presence of an existing undetermined pregnancy is reduced if insertion is performed during or shortly following a menstrual period. The IUD should not be inserted post partum or postabortion until involution of the uterus is completed. The incidence of perforation and expulsion is greater if involution is not completed.

e. IUD's should be used with caution in those patients who have an anemia or a history of menorrhagia or hypermenorrhea. Patients experiencing menorrhagia and/or metrorrhagia following IUD insertion may be at risk for the development of hypochromic microcytic anemia. Also, IUD's should be used with caution in patients receiving anticoagulants or having a coagulopathy.

f. Syncope, bradycardia or other neurovascular episodes may occur during insertion or removal of IUD's, especially in patients with a previous disposition to these conditions.

g. Patients with valvular or congenital heart disease are more prone to develop subacute bacterial endocarditis than patients who do not have valvular or congenital heart disease. Use of an IUD in these patients may represent a potential source of septic emboli.

h. Use of an IUD in those patients with acute cervicitis should be postponed until proper treatment has cleared up the infection.

i. Since an IUD may be expelled or displaced, patients should be reexamined and evaluated shortly after the first postinsertion menses, but definitely within 3 months after insertion. Thereafter annual examination with appropriate medical and laboratory examination should be carried out. The IUD should be replaced every ____ years (information to be supplied by manufacturer).

j. The patient should be told that some bleeding and cramps may occur during the first few weeks after insertion, but if her symptoms continue or are severe she should report them to her physician. She should be instructed on how to check after each menstrual period to make certain that the thread still protrudes from the cervix, and she should be cautioned that there is no contraceptive protection if the IUD is expelled. She should be cautioned not to pull on the thread and displace the IUD. If partial expulsion occurs, removal is indicated and a new IUD may be inserted. The patient should be told to return in ____ years for replacement of the IUD.

k. The use of medical diathermy (short-wave and microwave) in patients with metal-containing IUD's may cause heat injury to the surrounding tissue. Therefore, medical diathermy to the abdominal and sacral areas should not be used.

l. Copper-containing IUD's—A copper induced urticial allergic skin reaction may develop in women wearing a copper-containing IUD. If symptoms of such an allergic response occur, the patient should be instructed to tell the consulting physician that a copper-bearing device is being worn.

ADVERSE REACTIONS

These adverse reactions are not listed in any order of frequency or severity.

Reported adverse reactions include: endometritis, spontaneous abortion, septic abortion, septicemia, perforation of the uterus and cervix, embedment, fragmentation of the IUD pelvic infection, vaginitis, leukorrhea, cervical erosion, pregnancy, ectopic pregnancy, difficult removal, complete or partial expulsion of the IUD, intermenstrual spotting, prolongation of menstrual flow, anemia, pain and cramping, dysmenorrhea backaches, dyspareunia, neurovascular episodes including bradycardia, and syncope secondary to insertion. Perforation into the abdomen has been followed by abdominal adhesions, intestinal penetration, intestinal obstruction, and cystic masses in the pelvis.

For copper-containing IUD's the following adverse reaction should also be added: urticarial allergic skin reaction.

DIRECTIONS FOR USE

(To be supplied by manufacturer)

Directions for use shall include the following:

1. Insertion technique.

2. Requirements for replacement and removal (including information on whether the IUD should be replaced periodically and, if so, how often).

CLINICAL STUDIES

Different event rates have been recorded with the use of different IUD's. Inasmuch as these rates are usually derived from separate studies conducted by different investigators in several population groups, they cannot be compared with precision. Furthermore, event rates tend to be lower as clinical experience is expanded, possibly due to retention in the clinical study of those patients who accept the treatment regimen and do not discontinue due to adverse reactions or pregnancy. In clinical trials conducted by (name of sponsor) with the (name of drug IUD), use effectiveness was determined as follows for parous and nulliparous women, as tabulated by the life table method. (Rates are expressed as events per 100 women through 12 and 24 months of use.) This experience is based on (number) woman/months of use, including (number) women who completed 12 months of use and (number) women who completed 24 months of use.

	12 mo		24 mo	
	Parous	Nulliparous	Parous	Nulliparous
Pregnancy				
Expulsion				
Medical removal				
Continuation rate				

(2) Labeling, in sufficient quantities to be available to patients who express interest in IUD's, shall accompany each drug IUD (packaged separately from the sterile packaging), be made available to the patient, and contain the following information:

PATIENT INFORMATION

This brochure provides information on the use of intrauterine contraceptive devices (IUD's). There are other birth control methods that may be suitable. Before deciding which type of birth control method to use, you should read this brochure and have the opportunity to discuss fully with your doctor any questions you may have about the IUD and other methods of contraception.

PREINSERTION INFORMATION

WHAT YOU SHOULD KNOW ABOUT THE IUD

IUD's are small articles of various sizes and shapes which are inserted into the uterus (womb). The purpose of the IUD is to prevent pregnancy.

How the IUD prevents pregnancy is not completely undersood. Several theories have been suggested. IUD's seem to interfere in some manner with the implantation of the fertilized egg in the lining of the uterine cavity. The IUD does not prevent ovulation.

The effectiveness of the IUD is measured by the pregnancy rate of women who use it and the rate of adverse reactions and side effects requiring removal of the IUD.

USE-EFFECTIVENESS

Different pregnancy and adverse reaction rates have been reported with the use of different IUD's. Because these rates are usually derived from separate studies conducted by different investigators in several population groups, they cannot be compared with precision.

In clinical trials with (name of drug IUD), _____ patients completed _____ cycles or months in use. The incidence of unplanned pregnancies was _____ per 100 woman years or _____ women out of 100 became pregnant in a year while using an IUD. The incidence of adverse reactions requiring medical removal of the IUD is _____ per 100 woman years or _____ women out of 100 discontinued using the IUD for medical reasons.

WHAT YOU SHOULD TELL YOUR DOCTOR

Before you have an IUD inserted, you should tell your doctor if you have ever had, or suspect you have ever had, any of the following conditions which might make the IUD unsuitable as a method of contraception for you:

Abnormalities of the uterus (womb).
Allergy to copper.
Anemia.
Bleeding between periods.
Cancer of the uterus (womb) or cervix.
Fainting attacks.
Heart disease.
Heart murmur.
Heavy menstrual flow.
Infection of the uterus (womb) or cervix.
Pelvic infection (pus in fallopian tubes).
Prior IUD use.
Prior uterine surgery.
Recent abortion or miscarriage.
Recent pregnancy.
Severe menstrual cramps.
Suspected or possible pregnancy.
Suspicious or abnormal "Pap" smear.
Unexplained genital bleeding.
Vaginal discharge or infection.
Venereal disease.
Wilson's disease.

ADVERSE REACTIONS

The following adverse reactions and side effects have been reported and may occur after the IUD is inserted:

Anemia.
Backache.
Blood poisoning (septicemia).
Bowel obstruction.
Cervical infection.
Complete or partial expulsion.
Cysts on ovaries and tubes.
Delayed menstruation.
Difficult removal.
Embedment.
Fainting at the time of insertion or removal.
Fragmentation of the IUD.
Intermenstrual spotting.
Internal abdominal adhesions.
Pain and cramps.
Painful intercourse.
Pelvic infection.
Perforation of the uterus (womb) or cervix.
Pregnancy.
Pregnancy outside the uterus (womb) (tubal or ovarian).
Prolonged or heavy menstrual flow.
Septic abortion (infected miscarriage) followed in some cases by blood poisoning (septicemia) which can lead to death.
Spontaneous abortion (miscarriage).
Vaginal discharge and infection.

If you decide on the IUD as your method of birth control, read the following information and instructions carefully. Please keep this brochure so that you may refer to it. If you have any questions, consult your doctor.

POSTINSERTION INFORMATION

DESCRIPTION

(To be supplied by manufacturer)

Description shall include the following information:

1. Proprietary or established name of the drug IUD.
2. Model.
3. Physical dimensions (size and shape).
4. Composition (metal or plastic).
5. Color and number of the tail or threads.
6. Other characteristics.

DIRECTIONS FOR USE

1. *Checking your IUD.* A tail or thread is attached to the IUD so you can check to see if it is still in place since the IUD can come out of the uterus (womb) without your knowing it. This occurs most often during or right after a menstrual period.

Follow these steps to make sure your IUD is in place:

a. Wash your hands.

b. Assume the squatting position or seat yourself on the toilet.

c. Insert the index or middle finger high in vagina and locate the cervix (mouth of the uterus (womb)). The cervix feels firm like the tip of your nose.

d. Feel for the tail or thread of the IUD, which should be in the cervix high in your vagina.

e. If you can feel the tail or thread it is likely that the IUD is in place and working. You should not pull on the tail or thread. This may displace the IUD.

f. After each menstrual period, you should check to make sure the tail or thread is in place in the cervix. You may check for the tail or thread more often if you wish.

g. If you think the IUD has come out or has been displaced (e.g., you cannot feel the tail or thread or you can feel the IUD itself), use another birth control method, such as contraceptive vaginal foam, cream, or jelly, or condoms (rubbers), until you can be checked. (These alternative methods are not as effective as the IUD.) Call your doctor for an examination.

h. You should return to see your doctor as soon as possible after your next menstrual period, after insertion of your IUD, but no later than 3 months after insertion. This will allow the doctor to make sure that the IUD is in the correct position.

i. After your first checkup, you should be checked at least once a year by your doctor.

2. *Continuation and removal.* While you are wearing the IUD, you may use tampons and take douches, if this is your usual practice. With some IUD's, you may wear the IUD until you wish to become pregnant. With other IUD's it is necessary that they be replaced every year or so in order for you to continue being protected against pregnancy. Check with your doctor concerning this. You should return to your doctor if you wish to have the IUD removed.

SIDE EFFECTS

The following may occur during or after the IUD is inserted:

1. Some bleeding occurs following insertion in most women. Because of this, your

doctor may choose to insert your IUD during or at the end of your menstrual period. This also reduces the possibility that you are pregnant at the time of IUD insertion.

2. Bleeding between menstrual periods, usually in the form of spotting, may occur during the first 2 or 3 months after insertion. The first few menstrual periods after the insertion may be heavier and longer. If these conditions continue for longer than 2 or 3 months, consult your doctor.

3. Pain, usually in the form of uterine cramps or low backache, may occur at the time of insertion and last for a few days. Simple pain medication usually relieves the cramping.

4. Fainting may occur at the time of insertion or removal of an IUD. This passes quickly and is not usually serious.

5. The IUD may be expelled during the first two or three menstrual cycles following insertion. Expulsion increases the risk of an unplanned pregnancy. Although not as effective as the IUD, the use of a second contraceptive method, such as a contraceptive vaginal foam, cream, or jelly, or condoms (rubbers) is recommended.

WARNINGS

1. Call your doctor for any of the following reasons:

a. *Severe or prolonged bleeding.* If the flow is heavier and lasts much longer than your usual menstrual flow, you may need to have the IUD removed to prevent the development of anemia.

b. *Pelvic pain and cramps.* This could mean an infection has developed requiring treatment.

c. *Exposure to venereal disease* (VD). If exposure to venereal disease is suspected, report for examination and treatment promptly. Failure to do so could result in serious pelvic infection because use of an IUD in itself does not prevent venereal disease.

d. *Tail or thread disappearance.* If you cannot feel the tail or thread coming through the cervix, it is possible that the IUD has been expelled or displaced or that perforation has occurred. If any of these has occurred, you are no longer protected from becoming pregnant. Use another birth control method, such as contraceptive vaginal foam, cream, or jelly, or condoms (rubbers), until you can be checked. (These alternative methods are not as effective as the IUD.)

2. Do not undergo medical diathermy (including shortwave or microwave) treatments to the abdomen or lower back areas if you are wearing a metal IUD. These treatments may cause heat injury to the surrounding tissues.

SPECIAL WARNING ABOUT PREGNANCY WITH AN IUD IN PLACE

Some women become pregnant while using an IUD. If you miss your menstrual period, or if you have a scanty flow during your period, or if you suspect that you might be pregnant, see your doctor right away. Serious complication of sepsis (severe infection), septic abortion (infected miscarriage), and death have occurred when a pregnancy continues with an IUD in place. Most of the occurrences of these serious complications have been reported in the middle third of pregnancy.

If your doctor confirms that you are pregnant, he should remove the IUD if the tail is visible. Removal of an IUD in pregnancy decreases the likelihood of serious complications.

If removal of your IUD proves to be difficult, you and your doctor should discuss at that time the question of continuing the pregnancy in view of the serious complications that may occur. In reaching a decision as to whether or not to have an abortion, it should be remembered that the risks associated with terminating a pregnancy increase with the length of time you are pregnant.

(3) Any drug IUD that is not labeled as required by this section and that is either introduced or delivered for introduction into interstate commerce, or held for sale after shipment in interstate commerce after November 7, 1977, is misbranded pursuant to section 502 of the act. However, a drug IUD in the possession of an independent wholesaler, a retailer, or a licensed practitioner before November 7, 1977, is not misbranded if labeling required by paragraph (b) (2) of this section is furnished to such independent wholesalers, retailers, or licensed practitioners in sufficient quantities to accompany each device in their possession.

(4) The holder of an approved new drug application for such device, as described in paragraph (a) (2) of this section, shall submit a supplement to his application to provide for the labeling described in paragraph (b) (1) and (2) of this section. The supplement shall be submitted before November 7, 1977, under the provisions of § 314.8 of this chapter. The labeling may be put into use without advance approval by the Food and Drug Administration.

(c) *Applicability.* Paragraphs (a) and (b) of this section do not apply to the following intrauterine contraceptive devices, which are subject to the requirements of § 801.425 of this chapter:

(1) Intrauterine devices fabricated solely from inactive materials, e.g., inactive plastics or metals.

(2) Intrauterine devices with substances added to improve the physical characteristics if such substances do not contribute to contraception through chemical action on or within the body and are not dependent upon being metabolized for the achievement of the contraceptive purpose.

(3) Intrauterine devices that contain a component, such as barium, added exclusively for the purpose of visualization by x-ray.

2. In Part 801 by adding new § 801.425 to read as follows:

§ 801.425 Professional and patient labeling for intrauterine contraceptive devices.

(a) This section applies to intrauterine devices (IUD's) that are not subject to new drug requirements under § 310.502 of this chapter. IUD's subject to this section (device IUD's) include:

(1) IUD's fabricated solely from inactive materials, e.g., inactive plastics or metals.

(2) IUD's with substances added to improve the physical characteristics if such substances do not contribute to contraception through chemical action on or within the body and are not dependent upon being metabolized for the achievement of the contraceptive purpose.

(3) IUD's that contain a component, such as barium, added exclusively for the purpose of visualization by x-ray.

(b) The intrauterine contraceptive device (IUD) is a popular method of contraception used by several million women in the United States. Although this method of contraception is generally safe and effective, certain complications and side effects may result from its use. A Food and Drug Administration review of the labeling of IUD's currently marketed in the United States reveals that information necessary for the safe and effective use of these products is not uniformly available to either the practitioner or the patient. Based on the review of the labeling and on the recommendations of the Ad Hoc Obstetric-Gynecology Advisory Committee, the Commissioner has concluded that in the interest of safe and effective use, and prevention of misleading labeling, there is a need to establish uniform physician and patient labeling for such devices.

(1) Labeling accompanying each IUD and directed to the physician shall be substantially as follows, adjusted where where appropriate to the requirements of a particular device IUD:

DESCRIPTION

(TO BE SUPPLIED BY MANUFACTURER)

Description shall include the following information:

1. Proprietary or established name of the IUD.
2. Major ingredients or composition.
3. Model.
4. Physical dimensions (size and shape).
5. Description of components in package or system.
6. A statement that the product is sterile.
7. Other characteristics.

MODE OF ACTION OR PRINCIPLES OF IUD DESIGN

(TO BE SUPPLIED BY THE MANUFACTURER)

The manufacturer shall include information on the mode of action or principles of the IUD's design. At a minimum, the statement should provide that IUD's seem to interfere in some manner with nidation in the endometrium, probably through foreign body reaction in the uterus.

INDICATIONS AND USAGE

The labeling may include indications and usages other than those stated below, provided that an approved premarket approval application is in effect. (Name of IUD) is indicated for contraception.

CONTRAINDICATIONS

IUD's should not be inserted when the following conditions exist:

1. Pregnancy or suspicion of pregnancy.
2. Abnormalities of the uterus resulting in distortion of the uterine cavity.
3. Acute pelvic inflammatory disease or a history of repeated pelvic inflammatory disease.
4. Post partum endometritis or infected abortion in the past 3 months.
5. Known or suspected uterine or cervical malignancy including unresolved, abnormal "Pap" smear.
6. Genital bleeding of unknown etiology.
7. Untreated acute cervicitis until infection is controlled.

WARNINGS

1. *Pregnancy*—a. *Long-term effects.* Long-term effects on the offspring when pregnancy occurs with (name of IUD) in place are unknown.

b. *Septic abortion.* Reports have indicated an increased incidence of septic abortion as-

sociated in some instances with septicemia, septic shock, and death in patients becoming pregnant with an IUD in place. Most of these reports have been associated with the mid-trimester of pregnancy. In some cases, the initial symptoms have been insidious and not easily recognized. If pregnancy should occur with an IUD in place, the IUD should be removed if the string is visible or, if removal proves to be or would be difficult, termination of the pregnancy should be considered and offered the patient as an option bearing in mind that the risks associated with an elective abortion increase with gestational age.

c. *Continuation of pregnancy.* If the patient chooses to continue the pregnancy, she must be warned of the increased risk of spontaneous abortion and of the increased risk of sepsis, including death if the pregnancy continues with the IUD in place. The patient must be closely observed and she must be advised to report all abnormal symptoms, such as flu-like syndrome, fever, abdominal cramping and pain, bleeding, or vaginal discharge, immediately because generalized symptoms of septicemia may be insidious.

2. *Ectopic pregnancy.* a. A pregnancy that occurs with an IUD in place is more likely to be ectopic than a pregnancy occurring without an IUD in place. Accordingly, patients who become pregnant while using the IUD should be carefully evaluated for the possibility of an ectopic pregnancy.

b. Special attention should be directed to patients with delayed menses, slight metrorrhagia and/or unilateral pelvic pain and to those patients who wish to terminate a pregnancy because of IUD failure to determine whether ectopic pregnancy has occurred.

3. *Pelvic infection.* Pelvic infection may occur with the IUD in place and at times result in the development of tubo-ovarian abscesses or general peritonitis. Appropriate aerobic and anaerobic bacteriological studies should be done and antibiotic therapy initiated. If the infection does not show a marked clinical improvement within 24 to 48 hours, the IUD should be removed and the continuing treatment reassessed based upon the results of culture and sensitivity tests.

4. *Embedment.* Partial penetration or lodging of the IUD in the endometrium can result in difficult removals.

5. *Perforation.* Partial or total perforation of the uterine wall or cervix may occur with the use of IUD's. The possibility of perforation must be kept in mind during insertion and at the time of any subsequent examination. If perforation occurs, the IUD should be removed. Adhesions, foreign body reactions, and intestinal obstruction may result if an IUD is left in the peritoneal cavity.

PRECAUTIONS

1. *Patient counseling.* Prior to insertion the physician, nurse, or other trained health professional must provide the patient with the Patient Brochure. The patient should be given the opportunity to read the brochure and discuss fully any questions she may have concerning the IUD as well as other methods of contraception.

2. *Patient evaluation and clinical considerations.* a. A complete medical history should be obtained to determine conditions that might influence the selection of an IUD. Physical examination should include a pelvic examination, "Pap" smear, gonorrhea culture and, if indicated, appropriate tests for other forms of venereal disease.

b. The uterus should be carefully sounded prior to insertion to determine the degree of patency of the endocervical canal and the internal os, and the direction and depth of the uterine cavity. In occasional cases, severe cervical stenosis may be encountered. Do not use excessive force to overcome this resistance.

c. The uterus should sound to a depth of 6 to 8 centimeters (cm). Insertion of an IUD into a uterine cavity measuring less than 6.5 cm by sounding may increase the incidence of expulsion, bleeding, and pain.

d. The possibility of insertion in the presence of an existing undetermined pregnancy is reduced if insertion is performed during or shortly following a menstrual period. The IUD should not be inserted post partum or postabortion until involution of the uterus is completed. The incidence of perforation and expulsion is greater if involution is not completed.

e. IUD's should be used with caution in those patients who have anemia or a history of menorrhagia or hypermenorrhea. Patients experiencing menorrhagia and/or metrorrhagia following IUD insertion may be at risk for the development of hypochromic microcytic anemia. Also, IUD's should be used with caution in patients receiving anticoagulants or having a coagulopathy.

f. Syncope, bradycardia, or other neurovascular episodes may occur during insertion or removal of IUD's, especially in patients with a previous disposition to these conditions.

g. Patients with valvular or congenital heart disease are more prone to develop subacute bacterial endocarditis than patients who do not have valvular or congenital heart disease. Use of an IUD in these patients may represent a potential source of septic emboli.

h. Use of an IUD in those patients with acute cervicitis should be postponed until proper treatment has cleared up the infection.

i. Since an IUD may be expelled or displaced, patients should be reexamined and evaluated shortly after the first postinsertion menses, but definitely within 3 months after insertion. Thereafter annual examination with appropriate medical and laboratory examination should be carried out.

j. The patient should be told that some bleeding and cramps may occur during the first few weeks after insertion, but if these symptoms continue or are severe she should report them to her physician. She should be instructed on how to check after each menstrual period to make certain that the thread still protrudes from the cervix, and she should be cautioned that there is no contraceptive protection if the IUD is expelled. She should be cautioned not to pull on the thread and displace the IUD. If partial expulsion occurs, removal is indicated and a new IUD may be inserted.

k. The use of medical diathermy (shortwave and microwave) in patients with metal-containing IUD's may cause heat injury to the surrounding tissue. Therefore, medical diathermy to the abdominal and sacral areas should not be used.

ADVERSE REACTIONS

These adverse reactions are not listed in any order of frequency or severity.

Reported adverse reactions include: endometritis, spontaneous abortion, septic abortion, septicemia, perforation of the uterus and cervix, embedment, fragmentation of the IUD, pelvic infection, vaginitis, leukorrhea, cervical erosion, pregnancy, ectopic pregnancy, difficult removal, complete or partial expulsion of the IUD, intermenstrual spotting, prolongation of menstrual flow, anemia, pain and cramping, dysmenorrhea, backaches, dyspareunia, neurovascular episodes including bradycardia and syncope secondary to insertion. Perforation into the abdomen has been followed by abdominal adhesions, intestinal penetration, intestinal obstruction, and cystic masses in the pelvis.

DIRECTIONS FOR USE

(TO BE SUPPLIED BY MANUFACTURER)

Directions for use shall include the following:

1. Insertion technique.
2. Requirements for replacement and removal, if applicable.

CLINICAL STUDIES

Different event rates have been recorded with the use of different IUD's. Inasmuch as these rates are usually derived from separate studies conducted by different investigators in several population groups, they cannot be compared with precision. Furthermore, event rates tend to be lower as clinical experience is expanded, possibly due to retention in the clinical study of those patients who accept the treatment regimen and do not discontinue due to adverse reactions or pregnancy. In clinical trials conducted by (name of sponsor) with the (name of IUD), use effectiveness was determined as follows for parous and nulliparous women, as tabulated by the life table method. (Rates are expressed as events per 100 women through 12 and 24 months of use.) This experience is based on (number) women/months of use including (number) women who completed 12 months of use and (number) women who completed 24 months of use.

	12 mo		24 mo	
	Parous	Nulliparous	Parous	Nulliparous
Pregnancy				
Expulsion				
Medical removal				
Continuation rate				

(2) Labeling, in sufficient quantities to be available to patients who express interest in IUD's, shall accompany each IUD (packaged separately from the sterile packaging), be made available to the patient, and contain the following information:

PATIENT INFORMATION

This brochure provides information on the use of Intrauterine Contraceptive Devices (IUD's). There are other birth control methods that may be suitable. Before deciding which type of birth control method to use, you should read this brochure and have the opportunity to discuss fully with your doctor any questions you may have about the IUD and other methods of contraception.

PREINSERTION INFORMATION

WHAT YOU SHOULD KNOW ABOUT THE IUD

IUD's are small articles of various sizes and shapes which are inserted into the uterus (womb). The purpose of the IUD is to prevent pregnancy.

How the IUD prevents pregnancy is not completely understood. Several theories have been suggested. IUD's seem to interfere in some manner with the implantation of the fertilized egg in the lining of the uterine cavity. The IUD does not prevent ovulation.

The effectiveness of the IUD is measured by the pregnancy rate of women who use it and the rate of adverse reactions and side effects requiring removal of the IUD.

USE-EFFECTIVENESS

Different pregnancy and adverse reaction rates have been reported with the use of different IUD's. Because these rates are usually derived from separate studies conducted by different investigators in several population groups, they cannot be compared with precision.

In clinical trials with (name of IUD), _____ patients completed _____ cycles or months in use. The incidence of unplanned pregnancies was _____ per 100 woman years or _____ women out of 100 became pregnant in a year while using an IUD. The incidence of adverse reactions requiring medical removal of the IUD is _____ per 100 woman years or _____ women out of 100 discontinued using the IUD for medical reasons.

WHAT YOU SHOULD TELL YOUR DOCTOR

Before you have an IUD inserted, you should tell your doctor if you have ever had, or suspect you have ever had, any of the following conditions which might make the IUD unsuitable as a method of contraception for you:

Abnormalities of the uterus (womb).
Allergy to copper.
Anemia.
Bleeding between periods.
Cancer of the uterus (womb) or cervix.
Fainting attacks.
Heart disease.
Heart murmur.
Heavy menstrual flow.
Infection of the uterus (womb) or cervix.
Pelvic infection (pus in fallopian tubes).
Prior IUD use.
Prior uterine surgery.
Recent abortion or miscarriage.
Recent pregnancy.
Severe menstrual cramps.
Suspected or possible pregnancy.
Suspicious or abnormal "Pap" smear.
Unexplained genital bleeding.
Vaginal discharge or infection.
Venereal disease.

ADVERSE REACTIONS

The following adverse reactions and side effects have been reported and may occur after the IUD is inserted:

Anemia.
Backache.
Blood poisoning (septicemia).
Bowel obstruction.
Cervical infection.
Complete or partial expulsion.
Cysts on ovaries and tubes.
Delayed menstruation.
Difficult removal.
Embedment.
Fainting at the time of insertion or removal.
Fragmentation of the IUD.
Intermenstrual spotting.
Internal abdominal adhesions.
Pain and cramps.
Painful intercourse.
Pelvic infection.
Perforation of the uterus (womb) or cervix.
Pregnancy.
Pregnancy outside the uterus (womb) (tubal or ovarian).
Prolonged or heavy menstrual flow.
Septic abortion (infected miscarriage) followed in some cases by blood poisoning (septicemia) which can lead to death.
Spontaneous abortion (miscarriage).
Vaginal discharge and infection.

If you decide on the IUD as your method of birth control, read the following information and instructions carefully. Please keep this brochure so that you may refer to it. If you have any questions, consult your doctor.

POSTINSERTION INFORMATION

DESCRIPTION

(TO BE SUPPLIED BY MANUFACTURER)

Description shall include the following information.

1. Proprietary or established name of the IUD.
2. Model:
3. Physical dimensions (size and shape).
4. Composition (metal or plastic).
5. Color and number of the tail or threads.
6. Other characteristics.

DIRECTIONS FOR USE

1. *Checking your IUD.* A tail or thread is attached to the IUD so that you can check to see if it is still in place since the IUD can come out of the uterus (womb) without your knowing it. This occurs most often during or right after a menstrual period.

Follow these steps to make sure your IUD is in place:

a. Wash your hands.

b. Assume the squatting position or seat yourself on the toilet.

c. Insert the index or middle finger high in vagina and locate the cervix (mouth of the uterus (womb)). The cervix feels firm like the tip of your nose.

d. Feel for the tail or thread of the IUD, which should be in the cervix high in your vagina.

e. If you can feel the tail or thread it is likely that the IUD is in place and working. You should not pull on the tail or thread. This may displace the IUD.

f. After each menstrual period, you should check to make sure the tail or thread is in place in the cervix. You may check for the tail or thread more often if you wish.

g. If you think the IUD has come out or has been displaced (i.e., you cannot feel the tail or thread or you can feel the IUD itself), use another birth control method, such as contraceptive vaginal foam, cream, or jelly, or condoms (rubbers), until you can be checked. (These alternative methods are not as effective as IUD's.) Call your doctor for an examination.

h. You should return to see your doctor as soon as possible after your next menstrual period, after insertion of your IUD, but no later than 3 months after insertion. This will allow the doctor to make sure that the IUD is in the correct position.

i. After your first checkup, you should be checked at least once a year by your doctor.

2. *Continuation and removal.* While you are wearing the IUD, you may use tampons and take douches, if this is your usual practice. With some IUD's, you may wear the IUD until you wish to become pregnant. Check with your doctor concerning this. You should return to your doctor if you wish to have the IUD removed.

SIDE EFFECTS

The following may occur during or after the IUD is inserted:

1. Some bleeding occurs following insertion in most women. Because of this, your doctor may choose to insert your IUD during or at the end of your menstrual period. This also reduces the possibility that you are pregnant at the time of IUD insertion.

2. Bleeding between menstrual periods usually in the form of spotting, may occur during the first 2 or 3 months after insertion. The first few menstrual periods after the insertion may be heavier and longer. If these conditions continue for longer than 2 or 3 months, consult your doctor.

3. Pain, usually in the form of uterine cramps or low backache, may occur at the time of insertion and last for a few days. Simple pain medication usually relieves the cramping.

4. Fainting may occur at the time of insertion or removal of an IUD. This passes quickly and is not usually serious.

5. The IUD may be expelled during the first two or three menstrual cycles following insertion. Expulsion increases the risk of an unplanned pregnancy. Although not as effective as the IUD, the use of a second contraceptive method, such as a contraceptive vaginal foam, cream, or jelly, or condoms (rubbers), is recommended.

WARNINGS

1. Call your doctor for any of the following reasons:

a. *Severe or prolonged bleeding.* If the flow is heavier and lasts much longer than your usual menstrual flow, you may need to have the IUD removed to prevent the development of anemia.

b. *Pelvic pain and cramps.* This could mean an infection has developed requiring treatment.

c. *Exposure to venereal disease (VD).* If exposure to venereal disease is suspected, report for examination and treatment promptly. Failure to do so could result in serious pelvic infection because use of an IUD in itself does not prevent venereal disease.

d. *Tail or thread disappearance.* If you cannot feel the tail or thread coming through the cervix, it is possible that the IUD has been expelled or displaced or that perforation has occurred. If any of these has occurred you are no longer protected from becoming pregnant. Use another birth control method, such as contraceptive vaginal foam, cream, or jelly, or condoms (rubbers), until you can be checked. (These alternative methods are not as effective as the IUD).

2. Do not undergo medical diathermy (including shortwave or microwave) treatments to the abdomen or lower back areas if you are wearing a metal IUD. These treatments may cause heat injury to the surrounding tissues.

SPECIAL WARNING ABOUT PREGNANCY WITH AN IUD IN PLACE

Some women become pregnant while using an IUD. If you miss your menstrual period, or if you have a scanty flow during your period, or if you suspect that you might be pregnant, see your doctor right away. Serious complication of sepsis (severe infection), septic abortion (infected miscarriage), and death have occurred when a pregnancy continues with an IUD in place. Most of the occurrences of these serious complications have been reported in the middle third of pregnancy.

If your doctor confirms that you are pregnant, he should remove the IUD if the tail is visible. Removal of an IUD in pregnancy decreases the likelihood of serious complications.

If removal of your IUD proves to be difficult, you and your doctor should discuss at that time the question of continuing the pregnancy in view of the serious complications that may occur. In reaching a decision as to whether or not to have an abortion, it should be remembered that the risks associated with terminating a pregnancy increase with the length of time you are pregnant.

(3) Any device IUD that is not labeled as required by this section and that is either introduced or delivered for introduction into interstate commerce, or held for sale after shipment in interstate commerce after November 7, 1977 is misbranded pursuant to section 502 of the

act. However, an IUD in the possession of an independent wholesaler, a retailer, or a licensed practitioner before November 7, 1977 is not misbranded if labeling required by paragraph (b) (2) of this section is furnished to such independent wholesalers, retailers, or licensed practitioners in sufficient quantities to accompany each device in their possession.

Effective date: This regulation shall be effective November 7, 1977.

(Secs. 201(g), (h), 502, 505, 520(e), 701(a), 52 Stat. 1041 as amended, 1050–1053 as amended, 1055, 90 Stat. 567 (21 U.S.C. 321(g), (h), 352, 355, 360j(e), 371(a)).)

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the FDA Inflation Impact Assessment is on file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

Dated: May 2, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc.77-13098 Filed 5-9-77;8:45 am]

federal register

TUESDAY, MAY 10, 1977
PART IV

SECURITIES AND EXCHANGE COMMISSION

■

FOCUS REPORTING SYSTEM

Financial Reporting Requirements

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13462; File No. S7-691]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

FOCUS Reporting System

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: This release amends the financial and operational reporting requirements collectively known as the FOCUS reporting system by adopting previously proposed amendments to the FOCUS report and accompanying rules, and revoking §§ 249.618 and 249.636. The amendments are intended to clarify and streamline the existing system.

DATES: Effective date: June 30, 1977; comments by May 30, 1977.

ADDRESS: Written comments, submitted in triplicate, should be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Piliero II, Associate Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1390.

SUPPLEMENTARY INFORMATION: On January 4, 1977, a document was published in the FEDERAL REGISTER (42 FR 782) proposing to amend §§ 240.17a-4, 240.17a-5, 240.17a-10, 240.17a-11, 240.17a-13, 240.17a-19, 240.17a-20, 240.15c3-3 and 240.617, and proposing to revoke §§ 249.618 and 249.636. The proposed amendments were designed to facilitate the application of a streamlined system of financial and operational reporting and, through the integration of Form X-17A-10 (§ 249.618) and Form X-17A-20 (§ 249.636) into the existing structure of Form X-17A-5 (§ 249.617), achieve a further reduction in the quantity and frequency of reports which must be filed by brokers and dealers. The proposals, with the exception of the proposed annual Schedule of Consolidation and Diversification ("Schedule II"), are adopted with minor modifications. Because of the significant revision of Schedule II, the original proposal is withdrawn. All comments with respect to the proposed amendments were given due consideration.

As a result of comments received, the following changes in the proposed amended rules and forms are made in addition to language changes for clarification:

(1) AMENDED FORM X-17A-5 (§ 249.617)

The Statement of Revenue and Expenses contained in Part II and Part IIA of Form X-17A-5 (§ 249.617) incorporates certain data previously required to be reported on Form X-17A-10 (§ 249.618) and Form X-17A-20 (§ 249.636), thus eliminating the need for separate filings of these forms.[1] As proposed, the Statement of Revenue and Expenses would have required a reporting of total transaction fees payable under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)). As the fee is payable on an annual basis, the reporting requirement has been eliminated from the quarterly form and will be collected on an annual report.

Three supplementary schedules were proposed to be added to Form X-17A-5 (§ 249.617) to collect economic and statistical data on a calendar year basis. Schedule I requires the reporting of general information designed to measure certain economic and financial characteristics of the broker or dealer. Schedule I is adopted as proposed.[2] Schedule II as proposed would require a listing of annual gross revenues by major categories of all majority owned and partially owned subsidiaries and affiliates of the broker or dealer. Comments have suggested that a significantly more detailed schedule should be required, and therefore proposed Schedule II is withdrawn.[3] Schedule III requires a detailed report of income information from brokers and dealers filing Part II of Form X-17A-5 (§ 249.617) with annual gross revenue related to the securities business of $10 million or more. Proposed Schedule III-A has been amended to include the subcategory "Options" under Line 2 "Market-Making."[4]

(2) REVOCATION OF FORM X-17A-10 (§ 249.618) AND FORM X-17A-20 (§ 249.636)

Amended Form X-17A-5 (§ 249.617) incorporates the data presently derived from reports on Form X-17A-10 (§ 249.618) and Form X-17A-20 (§ 249.636). Those commentators which addressed the subject of the proposed revocation of the latter forms supported the reduction in the number and frequency of required reports as an advancement of the goals of the FOCUS system, and the Commission hereby revokes Form X-17A-10 (§ 249.618) and Form X-17A-20 (§ 249.636).

(3) AMENDED § 240.17a-4

One commentator suggested the addition of the work "schedules" to the text of proposed amended § 240.17a-4(b)(8), to clarify that the records which must be preserved contain information in support of the entire report which is prepared as of the audit date. The adopted rule incorporates this suggestion.

(4) AMENDED § 240.17a-5

Paragraph (c)(3) of § 240.17a-5 as proposed would require that unaudited statements be furnished to customers within 45 days after the date as of which the statements are prepared. Several commentators have indicated that this would not allow sufficient time for the statements to be prepared and enclosed with the monthly mailing to customers, and that an additional separate mailing would incur substantial cost. Suggested alternative filing periods ranged from 60 days to 105 days after the date as of which the statements are prepared. While the Commission realizes the economic advantage of coordinated mailings, it also recognizes the necessity of providing information to customers in as timely a manner as possible, and therefore adopted paragraph (c)(3) requires that these statements be provided to customers within 65 days after the date as of which they are prepared.

Several commentators suggested that the requirements of paragraph (d)(2) be amended to include a reconciliation between the consolidated and unconsolidated balance sheets. The disparity arises as a result of the consolidation methods required by generally accepted accounting principles with respect to the annual audited report and those utilized pursuant to § 240.15c3-1 in conjunction with the quarterly reports on Form X-17A-5 (§ 249.617). The adopted version of paragraph (d)(2) requires that summary financial data be reported for subsidiaries which are not included in the balance sheet filed as part of Form X-17A-5 (§ 249.617) Part II or Part IIA.

Comments have been submitted requesting that the Commission define the term "adequacy" as that term is intended to be used in the proposed amended version of paragraph (g)(1)(iv) which requires that the auditor review the adequacy of the broker's or dealer's procedures for complying with the possession or control requirements of § 240.15c3-3. This review was proposed as part of the reporting structure intended to replace Question (2) on the Schedule of Information for Possession or Control Requirements in Part II of Form X-17A-5 (§ 249.617). The Commission has determined to adopt this provision along with the remainder of the new reporting structure, and seek public comments with respect to an appropriate definition of "adequacy" in this context. As the revised reporting structure is substantially adopted, brokers and dealers need not respond to Question (2) on the

[1] The text of the amended Part II Statement of Revenue and Expenses and the text of the accompanying instructions are attached hereto as Appendix A. The text of the amended Part IIA Statement of Revenue and Expenses and the text of the accompanying instructions are attached hereto as Appendix B. Copies are available for public inspection. Appendices filed as a part of original document.

[2] The text of Schedule I and the text of the accompanying instructions are attached hereto in Appendix C. Copies are available for public inspection. Appendix filed as a part of original document.

[3] A more detailed "Consolidation and Diversification Schedule" is proposed in place of Schedule II. See Securities Exchange Act Release No. 13461, April 22, 1977.

[4] The text of Schedule III and the text of the accompanying instructions are attached hereto in Appendix C. Copies are available for public inspection. Appendix filed as a part of original document.

Schedule of Information for Possession or Control Requirements as part of the report filed on Part II of Form X-17A-5 (§ 249.617 for the calendar quarter ending March 31, 1977.[5] However, brokers and dealers should be aware that this question must be answered in conjunction with the report prepared by the broker or dealer on Form X-17A-5 (§ 249.617) as of the audit date.

(5) AMENDED § 240.17a-10

Comments were submitted suggesting that the information necessary to prepare annual schedule III which is required to be filed in conjunction with the report on Form X-17A-5 (§ 249.617) as of the quarter ending December 31 of each year would not be readily obtainable within 17 business days. The balance of this information previously was required to be filed within 60 calendar days as part of a report on Form X-17A-10 (§ 249.618). Adopted § 240.17a-10 has been revised to increase the filing period for this schedule to 60 calendar days after the close of each calendar year.

(6) AMENDED § 240.17a-11

No adverse comments were received, and § 240.17a-11 is adopted as proposed.

(7) AMENDED § 240.17a-13

Several commentators expressed concern that the proposed amendment to § 240.17a-13 would not permit the securities count performed by the auditor in conjunction with the audit to satisfy the requirements of § 240.17a-13, even if this securities count were conducted in compliance with the requirements specified in that section. The Commission notes that brokers and dealers have, as a matter of practice, engaged an independent public accountant to conduct the securities count required by § 240.17a-13, even during those calendar quarters when an audit was not being performed. The Commission does not object to the practice of an independent public accountant conducting a securities count for or in conjunction with the broker or dealer if the securities count which is conducted fully complies with the requirements of § 240.17a-13. Further, the Commission does not object to this practice during quarters other than the one in which the audit is conducted, if the securities count which is performed fully complies with the requirements of § 240.17a-13.

(8) PROPOSED AMENDED § 240.17a-18

The proposed amendments to § 240.17a-18 are hereby withdrawn for further consideration.

(9) AMENDED § 240.17a-19

One commentator questioned whether a self-regulator would be able to provide short-term notice as to a change in status of a member organization. The Commission is of the opinion that such notice is a key factor in the early-warning and surveillance system, and therefore § 240.17a-19 is adopted as proposed.

(10) AMENDED § 240.17a-20

No adverse comments were received, and § 240.17a-20 is adopted as proposed.

(11) AMENDED § 240.15c3-3

No adverse comments were received, and § 240.15c3-3 is adopted as proposed.

TEXT OF AMENDED RULES

In § 240.17a-4, paragraph (b)(8) is revised and (b)(9) is added as follows:

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X-17A-5 (§ 249.617 of this chapter) Part II or Part IIA and in the annual financial statements and schedules required by § 240.17a-5(i)(xv):

* * * * *

(9) The records required to be made pursuant to § 240.15c3-3(d)(4).

* * * * *

In § 240.17a-5, paragraphs (a)(2)(i), (ii), and (iii), (a)(3), (b)(1), (c)(2) and (3), (d)(1)(iii), (d)(2), (e)(1)(i), (e)(2), (e)(4), (e)(4)(iii)(B), (C), (D), (E), and (F), (f)(2), (g)(1)(iv), (g)(3) are revised and (b)(6) is added to read as follows:

§ 240.17a-5 Reports to be made by certain brokers and dealers.

(a) * * *

(2)(i) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts shall file Part I of Form X-17A-5 (§ 249.617 of this chapter) within 10 business days after the end of each month.

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts shall file Part II of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of the calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than a calendar quarter. Certain of such brokers or dealers shall file Part IIA in lieu thereof if the nature of their business is limited as described in the instructions to Part II of Form X-17A-5 (§ 249.617 of the chapter).

(iii) Every broker or dealer who does not clear transactions nor carry customer accounts shall file Part IIA of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statement where said date is other than the end of the calendar quarter.

* * * * *

(3) The reports provided for in this paragraph (a) shall be considered filed when received at the Commission's principal office in Washington, D.C. and the regional office of the Commission for the region in which the broker or dealer has its principal place of business. All reports filed pursuant to this paragraph (a) shall be deemed to be confidential

* * * * *

(b) *Report filed upon termination of membership interest.* (1) If a broker or dealer holding any membership interest in a national securities exchange ceases to be a member in good standing of such exchange, such broker or dealer shall, within two business days after such event, filed with the Commission Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(2)(ii) and (iii) of this section as of the date of such event. The report shall be filed at the Commission's principal office in Washington, D.C., and with the regional office of the Commission for the region in which the broker or dealer has its principal place of business.

* * * * *

(6) Any broker or dealer who is required to file a report pursuant to this paragraph (b) by virtue of terminating its membership interest in a self-regulatory organization other than the examining authority designated pursuant to section 17(d) of the Act may seek an exemption from the requirement to file such report by submitting a written request to the Commission no later than 5 business days prior to the date of termination of the membership interest. Such request shall contain the following information:

(i) An indication as to whether the broker or dealer is in violation of the applicable requirements specified in § 240.15c3-1 or § 240.15c3-3;

(ii) An indication as to whether the broker or dealer is experiencing any significant financial, operational or recordkeeping problems;

(iii) An affirmation that the broker or dealer is in compliance with applicable rules of the Commission and each self-regulatory organization of which the broker or dealer is a member, setting forth in detail the circumstances surrounding any violations of such rules.

(iv) A detailed description of the reasons for the requested exemption.

(c) * * *

(2) *Audited statements to be furnished.* The following statements shall be furnished as required by paragraph (c)(1) of this section within 105 days after the date of the audited report required by paragraph (d) of this section:

* * * * *

(3) *Unaudited statements to be furnished.* The statements shall contain the information specified in paragraph (c)(2)(i) and (ii) of this section. Said unaudited statements shall be as of the date 6 months from the date of the audited statements required to be furnished pur-

[5] The Commission is proposing to amend Form X-17A-5 to require that this question need be answered only as part of the report prepared as of the fiscal year end and audit date.

suant to paragraphs (c) (1) and (2) of this section. Said unaudited statements shall be furnished not later than 65 days after the date as of which the statements are prepared.

(d) (1) * * *

(iii) A broker or dealer which is a member of a national securities exchange and has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance or security for any person who is defined as a "customer" in paragraph (c) (4) of this section, shall not be required to file a report under this paragraph.

(2) The annual audited report shall contain a Statement of Financial Condition (in a format and on a basis which is consistent with the totals reported on the Statement of Financial Condition contained in Form X-17A-5 (§ 249.617 of this chapter), Part II or Part IIA, a Statement of Income, a Statement of Changes in Financial Position, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and Statement of Changes in Liabilities. Subordinated to Claims of General Creditors.) Such statements shall be in a format and on a basis which is consistent with such statements as contained in Form X-17A-5 (§ 249.617 of this chapter) Part II or Part IIA. If the Statement of Financial Condition filed in accordance with instructions to Form X-17A-5, Part II or Part IIA, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the Part II or Part IIA Statement of Financial Condition as filed by the broker or dealer should be included in the notes to the consolidated statement of financial condition reported on by the independent public accountant.

* * * * *

(e) * * *

(1) (i) An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f) (3) of this section herein, and he shall give an opinion covering the statements filed pursuant to paragraph (d): *Provided, however,* That the financial statements filed pursuant to paragraph (d) of this section need not be audited if, since the date of the previous financial statements or report filed pursuant to § 240.15b1-2 or this section: (A) The securities business of such broker or dealer has been limited to acting as broker (agent) for an issuer in soliciting subscriptions for securities of such issuer, said broker has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith, and said broker has not otherwise held funds or securities for or owed money or securities to customers; or (B) its securities business has been limited to buying and selling evidences of indebtedness secured by mortgage, deed or trust, or other lien upon real estate or leasehold interests, and said broker or dealer has not carried any margin account, credit balance, or security for any securities customer.

(2) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation, (i) the financial statements and schedules are true and correct and (ii) neither the broker or dealer, nor any partner, officer, or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

* * * * *

(4) The broker or dealer shall file with the report a supplemental report which shall be covered by an opinion of the independent public accountant on the status of the membership of the broker or dealer in the Securities Investor Protection Corporation ("SIPC") if, pursuant to paragraph (e) (1) of this section, a report of the broker or dealer is required to be covered by an opinion of a certified public accountant or a public accountant who is in fact independent. The supplemental report shall cover the SIPC annual general assessment reconciliation or exclusion from membership forms not previously reported on under this subparagraph (4) which were required to be filed on or prior to the date of the report required by paragraph (d) of this section. The supplemental report, an original of which shall be submitted to the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, the principal office of the designated examining authority for such broker or dealer and the office of SIPC, shall be bound separately, be dated and be signed manually, and shall include the following:

* * * * *

(iii) * * *

(B) For all or any portion of a fiscal year ending in 1976 and each fiscal year thereafter, comparison of amounts reflected in the annual report required by paragraph (d) of this section, with amounts reported in the Annual General Assessment Reconciliation (Form SIPC-7);

(C) Comparison of adjustments reported in Form SIPC-7 with supporting schedules and working papers supporting adjustments;

(D) Proof of arithmetical accuracy of the calculations reflected in Form SIPC-7 and in the schedules and working papers supporting adjustments; and

(E) Comparison of the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or

(F) If exclusion from membership is claimed, the accountant shall review the annual report required by paragraph (d) of this section for all or any portion of a fiscal year ending in 1976 and each fiscal year thereafter to ascertain that the Certification of Exclusion from Membership (Form SIPC-7) was consistent with the income reported.

(f) * * *

(2) *Designation of accountant.* (i) Every broker or dealer which is required by paragraph (d) of this section to file an annual report of financial statements shall file no later than December 10 of each year a statement with the Commission's principal office in Washington, D.C., the regional office of the Commission for the region in which its principal place of business is located and the principal office of the designated examining authority for such broker or dealer. Such statement shall indicate the existence of an agreement dated no later than December 1, with an independent public accountant covering a contractual commitment to conduct the broker's or dealer's annual audit during the following calendar year.

(ii) The agreement may be of a continuing nature, providing for successive yearly audits, in which case no further filing is required. If the agreement is for a single audit or if the continuing agreement previously filed has been terminated or amended, a new statement must be filed by the required date.

(iii) The statement shall be headed "Notice pursuant to Rule 17a-5(f) (2)" and shall contain the following information.

(A) Name, address, telephone number and registration number of the broker or dealer;

(B) Name, address and telephone number of the accounting firm;

(C) The audit date of the broker or dealer for the year covered by the agreement.

(iv) Any broker or dealer which is exempted from the requirement to file an annual audited report of financial statements shall nevertheless file the notice specified herein indicating the date as of which the unaudited report will be prepared.

(v) Notwithstanding the date of filing specified in paragraph (f) (2) (i) of this section, every broker or dealer shall file the notice provided for in paragraph (f) (2) of this section within 30 days following the effective date of registration as a broker or dealer.

* * * * *

(g) * * *

(1) * * *

(iv) In obtaining and maintaining physical possession or control of all fully paid and excess margin securities of customers as required by § 240.15c3-3. Such review shall include a determination as to the adequacy of the procedures described in the records required to be maintained pursuant to § 240.15c3-3(d) (4).

* * * * *

(3) A material inadequacy in the accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures referred to in paragraph (g) (1) of this

section which is expected to be reported under these audit objectives includes any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to (i) inhibit a broker or dealer from promptly completing securities transactions or promptly discharging his responsibilities to customers, other brokers and dealers or creditors; (ii) result in material financial loss; (iii) result in material misstatements in the broker's or dealer's financial statements; or (iv) result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in paragraphs (g)(3) (i), (ii), or (iii) of this section.

* * * * *

In § 240.17a-10, paragraphs (a), (b), and (d) are revised to read as follows:

§ 240.17a-10 Report of revenue and expenses.

(a)(1) Every broker or dealer ►exempted from the filing requirements of paragraph (a) of § 240.17a-5 shall, not later than 17 business days after the close of each calendar year (commencing with calendar year 1977), file the Facing Page, a Statement of Income (Loss) and balance sheet from Part IIA of Form X-17A-5 (§ 249.617 of this chapter) and Schedules I and II of Form X-17A-5 (§ 249.617 of this chapter)◄ for such calendar year.

►(2) Every broker or dealer subject to the filing requirements of paragraph (a) of § 240.17a-5, shall submit Schedules I and II of Form X-17A-5 (§ 249.617 of this chapter) with its Form X-17A-5 (§ 249.617 of this chapter) for the calendar quarter ending December 31 of each year.

(3) Every broker or dealer subject to the filing requirements of paragraph (a) of § 240.17a-5 which has gross revenue related to the securities business which equals or exceeds $10 million for the calendar year shall, not later than 17 business days after the close of each calendar year (commencing with calendar year 1976), submit Schedule I, II and III of Form X-17A-5 (§ 249.617 of this chapter) with its submission of Form X-17A-5 (§ 249.617 of this chapter) for the calendar quarter ending December 31 of each year. Every broker or dealer subject to the requirements of this paragraph (a)(3) shall submit Schedule III of Form X-17A-5 (§ 249.617 of this chapter) within 60 calendar days after the close of each year.

(b) The provisions of paragraph (a) of this section shall not apply to a member of a national securities exchange or a registered national securities association which maintains records containing the information required by Form X-17A-5 (§ 249.617 of this chapter) as to each of its members, and which transmits to the Commission a copy of the record as to each such member pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be transmitted by only one specified national securities exchange or registered national securities association. For the purpose of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association shall not become effective unless the Commission, having due regard for the public interest, for the protection of investors, and for the fulfillment of the Commission's functions under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties under the Act.

* * * * *

(d) In the event any broker or dealer finds that it cannot file the annual report required by paragraph (a) of this section within the time specified without undue hardship, it may file with the Commission's principal office in Washington, D.C., prior to the date upon which the report is due, an application for an extension of time to a specified date which shall not be later than 60 days after the close of the calendar year for which the report is to be made. The application shall state the reasons for the requested extension and shall contain an agreement to file the report on or before the specified date.

In § 240.17a-11, paragraphs (a), (b)(1), and (b)(2) are revised and (b)(4) is added to read as follows:

§ 240.17a-11 Supplemental current financial and operational reports to be made by certain exchange members, brokers and dealers.

(a) Every member, broker or dealer subject to § 240.15c3-1, whose net capital at any time is less than the minimum required by any capital rule to which such person is subject and every member, broker or dealer subject to § 240.-15c3-1 whose total outstanding principal amounts of satisfactory subordination agreements exceeds the maximum allowable for a period in excess of 90 days in accordance with the provisions of § 240.15c3-1(d), shall:

(1) Give telegraphic notice as set forth in paragraph (f) of this section that such person's net capital is less than is required by any such capital rule, identifying the applicable net capital rule or rules or that such person's total outstanding principal amounts of satisfactory subordination agreements exceeds the maximum allowable in accordance with the provisions of § 250.15c3-1(d). The notice shall be given on the same day that such person's capital becomes less than required by any of the aforesaid rules to which such person is subject or, with respect to the total outstanding principal amounts of satisfactory subordination agreements, on the first day upon which such amount has exceeded the maximum allowable for a period in excess of 90 days.

(2) Within 24 hours thereafter file Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) as determined in accordance with the standards set forth in §§ 240.17a-5(a)(2)(ii) and (a)(2)(iii), and such supplementary information as may be required.

(b)(1) If a computation made by a broker or dealer pursuant to the requirements of § 240.15c3-1(c) shows, at any point during the month, that his aggregate indebtedness is in excess of 1,200 per centum of his net capital, or that his total net capital is less than 120 per centum of the minimum net capital required of him, such person shall file a report on Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) as determined in accordance with the standards set forth in §§ 240.17a-5(a)(2)(ii) and (a)(2)(iii), within 15 calendar days after the end of each month thereafter until 3 successive months shall have elapsed during which his aggregate indebtedness does not exceed 1,200 per centum of his net capital, and his total net capital does not fall below 120 per centum of the minimum net capital required of him.

(2) If a computation made by a member, broker or dealer to § 240.15c3-1(f) shows, at any point during the month, that his net capital is less than 6 percent of aggregate debit items computed in accordance with § 240.15c3-3 Exhibit A: Formula for the Determination of Reserve Requirements, or that his total net capital is less than 120 per centum of the minimum net capital required of him, such broker or dealer shall file a report on Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) as determined in accordance with the standards set forth in §§ 240.17a-5(a)(2)(ii) and (a)(2)(iii), within 15 calendar days after the end of each month thereafter until three successive months shall have elapsed during which his net capital is not less than six percent of aggregate debit items computed in accordance with § 240.15c3-3 Exhibit A, and his total net capital does not fall below 120 per centum of the minimum net capital required of him.

(3) * * *

(4) If a member, broker or dealer subject to the requirements of § 240.15c3-1(c)(2)(x)(F)(3), § 240.15c3-1(c)(2)(x)(B)(1) or § 240.15c3-1d(c)(2) fails to comply with the financial responsibility standards set forth in any of the above provisions, such member, broker or dealer shall immediately give notice of such event as specified in such provision.

* * * * *

In § 240.17a-13, paragraph (b)(5) is revised to read as follows:

§ 240.17a-13 Quarterly security counts to be made by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(5) Record on the books and records of the member, broker, or dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than 7 business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (c) of this section. *Provided*, however, That no examination, count, verification, and comparison for the purpose of this section shall be within 2 months of or more than 4 months following a prior examination, count, verification, and comparison made hereunder.

* * * * *

Section 240.17a-19 is revised to read as follows:

§ 240.17a-19 Form X-17A-19 Report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.

(a) Within 24 hours of the occurrence of the initiation of the membership of any person, or the suspension or termination of the membership of any member for which it is the designated examining authority, (unless a notice of such event previously has been filed) or upon learning that one or more of such events will occur, every national securities exchange and every registered national securities association shall give telegraphic notice of events required to be reported pursuant to Section 240.17a-19 to the Commission at its principal office in Washington, D.C., the Regional Office of the Commission for the region in which the member has its principal place of business, and the Securities Investor Protection Corporation.

(b) Every national securities exchange and every registered national securities association shall file with the Commission at its principal office in Washington, D.C., the Regional Office of the Commission for the region in which the member has its principal place of business, and the Securities Investor Protection Corporation such information as is required by § 249.635 of this chapter on Form X-17A-19 within 5 business days of the occurrence of the initiation of the membership of any person, or the suspension or termination of the membership of any member (unless a notice of such event previously has been filed) or promptly upon learning that one or more of such events will occur. Nothing in this section shall be deemed to relieve a national securities exchange of its responsibilities under § 240.17a-5(b)(5) except that to the extent a national securities exchange promptly files a report on Form X-17A-19 including therewith, inter alia, information sufficient to satisfy the requirements of § 240.17a-5(b)(5), it shall not be required to file a report pursuant to § 240.17a-5(b). Upon the occurrence of the events described in this paragraph, every national securities exchange and every registered national securities association shall notify in writing such member of its responsibilities under § 240.17a-5(b).

Section 240.17a-12 is revised to read as follows:

§ 240.17a-20 Monitoring effect of competitive commission rates.

(a)(1) Every broker or dealer subject to the filing requirements of paragraph (a) of § 240.17a-5 shall file, not later than 17 business days after the close of each calendar quarter, a report of its revenues and expenses and related financial and other information for each calendar quarter on Form X-17A-5 (§ 249.617 of this chapter.)

(2) The provisions of paragraphs (a)(1) of this section shall not apply to a member of a national securities exchange or a registered national securities association if said exchange or association maintains records containing the information required by § 249.617 of this chapter on Form X-17A-5 as to such member, and transmits to the Commission a copy of the records as to such member pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be submitted by only one designated national securities exchange or registered national securities association. For the purpose of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association shall not become effective unless the Commission, having due regard for the fulfillment of the Commission's functions under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties under the Act.

(3) Individual reports filed pursuant to paragraph (a) of this section are to be considered nonpublic information, except in cases where the Commission determines that it is in the public interest to direct otherwise.

(b) On written request of any national securities exchange, registered national securities association, broker or dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of § 240.17a-20 or § 249.617 (Form X-17A-5) of this chapter either unconditionally or on specified terms and conditions.

In § 240.15c3-3, paragraph (d)(4) is added to read as follows:

§ 240.15c3-3 Customer protection—reserves and custody of securities.

* * * * *

(d) * * *

(4) A broker or dealer which is subject to the requirements of § 240.15c3-3 with respect to physical possession or control of fully paid and excess margin securities shall prepare and maintain a current and detailed description of the procedures which it utilizes to comply with the possession or control requirements set forth in this section. The records required herein shall be made available upon request to the Commission and to the designated examining authority for such broker or dealer.

* * * * *

Section 249.617 is revised to read as follows:

§ 249.617 Form X-17A-5, Information required of certain brokers and dealers pursuant to § 17 of the Securities Exchange Act of 1934 and § 240.17a-5, § 240.17a-10, § 240.17a-11 and § 240.17a-20 of this chapter.

Appropriate parts of this form shall be used by every broker or dealer required to file reports under § 240.17a-5 (a), (b), and (d), § 240.17a-10(a), § 240.17a-11, and § 240.17a-20a) of this chapter.

Section 249.618 is revoked:

§ 249.618 Form X-17A-10, annual report of revenue and expenses to be filed by brokers and dealers pursuant to Section 17 of the Act and § 240.17a-10 of this chapter. [Revoked]

Section 249.636 is revoked:

§ 249.636 Form X-17A-20 Monitoring effect of competitive commission rates—revenue and expense information. [Revoked]

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

The amendments to §§ 240.17a-4, 240.17a-5, 240.17a-10, 240.17a-11, 240.17a-13, 240.17a-19, 240.17a-20, 240.15c3-3, and 249.617, and the revocation of §§ 249.618 and 249.636 are effected pursuant to 15, 17 and 23 of the Securities Exchange Act of 1934 ("the Act") (15 U.S.C. 78o, 78q, 78w). The Commission has determined that the amendments impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act and are not inconsistent with the public interest or the protection of investors, as the amendments lessen any existing burden on competition by reducing the number and frequency of reports required to be filed by brokers and dealers.

EFFECTIVE DATE

The amendments adopted herein are effective June 30, 1977. A primary effect of the amendments adopted herein is to integrate the reports previously required on Form X-17A-10 (§ 249.618) and Form X-17A-20 (§ 249.636) into the reports filed on Form X-17A-5 (§ 249.617). In order to provide a complete and consistent data base for calendar year 1977 and thereby permit the elimination of Form X-17A-10 (§ 249.618) and Form X-17A-20 (§ 249.636), reports for the first calendar quarter must be filed on the revised income statement of Part II or Part IIA of Form X-17A-5 (§ 249.617).* Although the utilization of the amended income statement may be inconvenient for certain firms, the alternative is the filing of separate reports on Form X-17A-10 and Form X-17A-20 for calendar year 1977. Because the revised income statement incorporates the data presently required by Form X-17A-20, brokers and dealers will not be required to file such report for the first calendar quarter of 1977.

REQUEST FOR COMMENTS

The Commission is interested in receiving comments on all aspects of the FOCUS reporting system, and in particular, with respect to an appropriate definition of the term "adequacy" as that term is used in revised § 240.17a-5(g)(1)(iv).

Written comments should be submitted in triplicate on or before May 30, 1977. Comments shoud be addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-691 and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 22, 1977.

[FR Doc.77-12630 Filed 5-6-77;8:45 am]

*Certain of the self-regulatory organizations have printed the revised income statement, and will be distributing it to their members to be utilized in conjunction with the first calendar quarter reports. Those firms which use the present version of the income statement for the first calendar quarter report will be required to refile the data in the amended format as an attachment to the report filed for the second calendar quarter.

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 249]

[Release No. 34-13461; File No. S7-690]

FOCUS REPORTING SYSTEM

Requirements for Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Amendments to Form.

SUMMARY: These amendments would update and clarify the financial reports presently required to be filed by brokers and dealers. The amendments would also provide guideline schedules to assist registrants in the preparation of these reports.

DATES: Comments on or before: May 30, 1977.

ADDRESSES: Written comments, submitted in triplicate, should be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Piliero II, Associate Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1390.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced proposed amendments to Part I, Part II and Part IIA of Form X-17A-5 (§ 249.617), a financial and operational combined uniform single report under the Securities Exchange Act of 1934. The proposed amendments are intended to revise the form in accordance with amendments to the Commission's financial responsibility rules, and to clarify certain line items and instructions. The Commission also announced the proposal of guidelines for use in the preparation of reports on Form X-17A-5 (§ 249.617), the proposal of a facing page for the annual audited report, and the republication of the annual Consolidation and Diversification Schedule.

INTRODUCTION

On December 17, 1975 the Commission adopted Form X-17A-5 (§ 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") report, to become effective on January 1, 1976.[1] Part I of Form X-17A-5 (§ 249.617) consists of 26 categories of key indicators designed to provide a comprehensive yet concise report of a broker's or dealer's financial and operational condition on a monthly basis. The form is structured so as to facilitate a trend analysis of these indicators over a calendar year period. Part II of Form X-17A-5 (§ 249.617) is a general purpose financial and operational report designed to obtain essential regulatory information on a quarterly basis and to develop financial statements in a format consistent with generally accepted accounting principles. Part IIA is an abbreviated version of Part II which is filed on a quarterly basis by brokers and dealers which neither clear transactions nor carry customer accounts.

In adopting release, the Commission stated its intention to periodically review the FOCUS Report * * * in order to continue modifying and updating the financial and operational reporting systems to keep pace with the changing securities industry."[2] In Securities Exchange Act Release No. 13100,[3] the Commission noted that the recommendations of a work group comprised of representatives of the self-regulatory organizations with respect to proposed amendments to Form X-17A-5 (§ 249.617) would be published for comment in early 1977.[4] The public comment letters sumitted, the work group's recommendations and the Commission's experience to date have indicated that technical modifications to the present format of Form X-17A-5 (§ 249.617) would be appropriate.

PROPOSED AMENDMENT OF PART I OF FORM X-17A-5 (§ 249.617)

The proposed amendments discussed below are described categorically in the order in which the particular line item appears on the proposed amended version of Part I.[5] In addition to the proposed amendments to individual line items and instructions, four blank lines would be placed at the end of the form to be utilized for reporting special information when requested by the Commission or the designated examining authority, and the overall language of line items and instructions would be clarified.

(1) EQUITY MARKETS (ITEM 2)

The instructions concerning the average number of markets made in equity securities would be clarified by including a specific reference to § 240.15c3-1(a)(4).

(2) AGED FAILS (ITEM 4)

The instruction would be amended to require the entering of ledger balances of fails to receive and fails to deliver aged eleven business days or more following settlement date (twenty-one business days or more following settlement date for municipal securities). The time periods would be revised in accordance with amended § 240.15c3-1(c)(2)(ix).

(3) 15C3-3 RESERVE (ITEM 7)

Item 7(c) would be amended to require the entry of the date on which a deposit was made if such deposit was required to be made pursuant to § 240.-15c3-3(e).

(4) TOTAL EQUITY SUBORDINATION (ITEM 16)

A new item would be added to require the entry of the total amount of approved subordination agreements which are outstanding at the report date and which are considered equity capital pursuant to § 240.15c3-1(d).

(5) UNCONSOLIDATED INCOME/EXPENSE (ITEM 17)

This item would combine the items presently appearing under the captions "Unconsolidated Income/Expense" (Item 16) and "Trading and Investment Account Gains (or Losses)" (Item 17).

(6) DEDUCTIONS/CHARGES TO CAPITAL (ITEM 21)

Operational charges and potential charges to capital, which are presently designated Items 25 (a) and (b), would be redesignated Items 21 (a) and (b).

(7) TOTAL HAIRCUTS (ITEM 22)

This requirement, which is presently designated as Item 21, would be redesignated as Item 22.

(8) AI/RESERVE FORMULA DEBITS (ITEM 24)

Items 22 (a) and (b) would be redesignated as Items 24 (a) and (b).

(9) MINIMUM CAPITAL REQUIREMENT (ITEM 25)

Item 2(c), requiring the entry of the dollar amount of the highest minimum net capital requirement to which the firm is subject, would be redesignated as Item 25(a).

A new Item 25(b) would be added to require the entry of the amount of minimum net capital required to support aggregate indebtedness or aggregate debit items (as appropriate), if such amount is greater than the minimum capital requirement reported in Item 25(a).

(10) RATIO AND EXCESS NET CAPITAL (ITEM 26)

Item 24(a), requiring the entry of the ratio of aggregate indebtedness to net capital, would be redesignated as Item 26(a). A new line item would be added as Item 26(b) to require the entry of the ratio of net capital to aggregate debit items when the alternative method is used. Items 24(b) (1) and (2), requiring the entry of the amount of excess net capital, would be redesignated Items 26 (c) and (d). A new requirement would be added as Item 26(e), to record the ratio of certain options deductions to net capital.

(11) SCHEDULED CAPITAL WITHDRAWALS WITHIN 6 MONTHS (ITEM 27)

Item 25(c) would be redesignated as Item 27.

[1] Securities Exchange Act Release No. 11935, December 17, 1975; 40 FR 59706, December 30, 1976.

[2] Id., at 6.

[3] Securities Exchange Act Release No. 13100, December 22, 1976; 42 FR 782, January 4, 1977. (Hereinafter cited as "Release No. 13100.")

[4] Id., n. 8.

[5] The text of proposed amended Part I and accompanying instructions are attached hereto as Appendix A. Copies of such form and instructions are available for public inspection. Appendix filed as a part of original document.

(12) FILING PERIOD WITH RESPECT TO PART I OF FORM X-17A-5 (§ 249.617)

In Release No. 13100, the Commission stated its determination that all brokers and dealers, other than those specifically granted extensions of time pursuant to § 240.17a-5(1)(3), should file the report on Part I within 10 business days after the end of each month, commencing with the report filed for the month of April, 1977. The Commission also indicated that it would consider requests from individual brokers and dealers for extensions of this filing requirement. Brokers and dealers which have submitted such a request were granted an extension up to and including the report filed for the month of June, 1977.[6] These brokers and dealers will be required to file estimated data within 10 business days and final data as soon as possible but no later than 17 business days, for all reports on Part I of Form X-17A-5 (§ 249.617), commencing with the report filed for the month of July, 1977 up to and including December, 1977.

This optional procedure is intended to provide an interim period during which brokers and dealers may adjust their accounting systems and develop work plans which are designed to comply with the filing periods specified in § 240.17a-5(a). At the close of this interim period, all such brokers and dealers will be required to file Part I within 10 business days after the end of the month. Those brokers and dealers which have received an extension through June, 1977 and which do not wish to avail themselves of this optional procedure, will be required to file Part I within 10 business days commencing with the report filed for the month of July, 1977.

Those brokers and dealers which have not filed an extension request as specified in Release No. 13100 will be expected to comply with the 10 business day filing period commencing with the report filed for the month of April, 1977.

PROPOSED AMENDMENT OF PART II OF FORM X-17A-5 (§ 249.617)[7]

The proposed amendments discussed below are described in the order in which the particular statement or schedule appears in Part II. In addition to the proposed amendments of particular statements and schedules, the facing page would be revised to require an indication of the purpose for which the report is being filed.

(1) COMPUTATION OF NET CAPITAL (PAGE 5 AND 6 OF PART II)

A new subcategory G is proposed to be added under Item 6 to record option deductions and/or charges pursuant to § 240.15c3-1. A new subcategory H would be added under Item 6 to record the total amount of deductions and/or charges entered under that Item.

Several items would be added to the net capital section in order to provide readily accessible information in key categories. These items include a new Line 21 to record the percentage of aggregate indebtedness to net capital after anticipated capital withdrawal, and, under the alternative, a new Line 26 to record the percentage of net capital to aggregate debits and a new Line 27 to record the percentage of net capital after anticipated withdrawals to aggregate debits.

A new Part C, captioned "Other Ratios," would be added. This section would contain present Line 21 (which would be redesignated Line 29), the percentage of debt to debt-equity total computed in accordance with § 240.15c3-1(d), and a new Line 30 to record the ratio of options deductions to net capital.

(2) COMPUTATION FOR DETERMINATION OF RESERVE REQUIREMENTS FOR BROKER-DEALERS UNDER RULE 15C3-3 (PAGE 8 OF PART II)

An additional line would be placed under the caption "Credit Balances" to permit the entry and description of credits other than those specifically described. Line 22 (Amount held on deposit in "Reserve Bank Account(s)") and Line 24 (New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal) would be amended to include the dollar value of qualified securities.

(3) INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 15C3-3 (PAGE 9 OF PART II)

A new note D is proposed to be added to specify that Item 2, requiring the entry of the market value and number of items of customers' fully paid and excess margin securities for which instructions to reduce to possession or control had not been issued as of the report date, must be responded to only as part of the report which is prepared as of the date selected for the annual audit of financial statements. This information would be filed within 60 calendar days after the date of the report, rather than within the 17 business day filing period applicable to the remainder of the report.

A new Item 3 would be added to require the broker or dealer to make a representation, on a quarterly basis, that the system and procedures utilized in complying with the possession or control requirements of § 240.15c3-3 have been tested and are functioning in a manner adequate to fulfill such requirements.[8]

(4) OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS (PAGE 10 OF PART II)

Two additional lines would be provided to permit the reporting of more data. The instruction which appears on this schedule would be revised to require the reporting of payments of liabilities secured by fixed assets which could be required by the lender on demand or in less than six months.

(5) OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS/RECAP (PAGE 11 OF PART II)

The caption of Line 3 would be changed from "Accruals" to "Other Anticipated Withdrawals" and subcategories 3(B) ("Partners' Drawing Accounts"), 3(C) ("Taxes"), and 3(D) ("Interest on Capital") would be deleted.

(6) FINANCIAL AND OPERATIONAL DATA (PAGE 12 OF PART II)

Line 16 ("failed to deliver") and Line 17 ("failed to receive") would be amended from 15 business days to 11 business days and a 21 business day requirement would be added for municipal securities. These revisions would be made to reflect the provisions of amended § 240.15c3-1(c)(2)(ix).

PROPOSED AMENDMENT OF PART IIA OF FORM X-17A-5 (§ 249.617)[9]

The proposed amendments discussed below are discussed in the order in which the particular statement or schedule appears in Part IIA. In addition to the proposed amendments of particular statements and schedules, the facing page would be revised to require an indication of the purpose for which the report is being filed.

(1) COMPUTATION OF NET CAPITAL (PAGE 3 OF PART IIA)

A new subcategory E is proposed to be added under Item 6 to record option deductions and/or charges pursuant to § 240.15c3-1.

(2) OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS (PAGE 7 OF PART IIA)

The instruction which appears on this schedule would be revised to require the reporting of payments of liabilities secured by fixed assets which could be required by the lender on demand or in less than six months.

PROPOSED SUPPLEMENTAL SCHEDULES AND GUIDELINES

Paragraph (a)(2)(iv) of § 240.17a-5 provides that the Commission or the designated examining authority may require a broker or dealer to file financial or operational information, in addition to a report on Part II or Part IIA, upon receiving written notice from the Commission or the designated examining authority. The intent of this provision is to pro-

[6] This procedure applies only to those brokers and dealers which are subject to the New York Stock Exchange plan filed pursuant to paragraph (a)(4) of § 240.17a-5.

[7] The text of proposed amended Part II is attached hereto as Appendix B. Copies are available for public inspection. Appendix filed as a part of original document.

[8] This representation is only part of the structure for insuring compliance with the possession or control requirements of § 240.-15c3-3. For a description of the other components of this structure, *see* Release No. 13100, notes 10 and 11 and accompanying text.

[9] The text of proposed amended Part IIA is attached hereto as Appendix C. Copies are available for public inspection. Appendix filed as a part of original document.

vide a means by which the Commission and the self-regulators may obtain more detailed information than is normally required when it appears that a broker or dealer may be experiencing difficulty in a particular area.

The supplemental schedules which are proposed herein[10] are intended to indicate the type and format of information which would be required in many instances pursuant to the exception reporting provision of § 240.17a-5(a)(2)(iv), but are not intended to limit the authority of the Commission or the designated examining authority to require other information. The proposed schedules, which may also be utilized as guidelines in the preparation of quarterly reports on Part II or Part IIA of Form X-17A-5 (§ 249.617), are as follows:

1. Cash segregated in compliance with Federal and other regulations.
2. Aged securities failed to deliver.
3. Receivables from customers.
4. Receivables from non-customers.
5. Additional capital charges on customers' and non-customers' accounts.
6. Regulated commodity accounts liquidating to an equity.
7. Future commodities contracts and spot (cash) commodities—proprietary accounts.
8. Undue concentration based on § 240.15c3-1.
9. Securities owned and other investments—not readily marketable.
10. Other assets—miscellaneous.
11. Payable to customers.
12. Payable to non-customers.
13. Accounts payable and accrued liabilities and expenses.
14. Secured Demand Notes—capital deficiency charge.
15. Statement of changes in Stockholder's Equity or Partners' or Sole Proprietors' Capital (Unconsolidated).
16. Computation of Net Capital—other deductions and/or charges.
17. Compliance with requirements of § 240.15c3-3.
18. Contingencies.
19. Money difference accounts.
20. Security suspense accounts.
21. Security suspense accounts—details.
22. Security difference accounts—details.
23. Account differences with correspondents and similar items.
24. Bank account reconciliations—unidentified items.
25. Maximum haircuts on underwriting commitments during the period.
26. Insurance claims receivable—cash and securities.
27. Litigation.

WITHDRAWAL OF PROPOSED SCHEDULE OF GROSS REVENUE OF ALL SUBSIDIARIES AND PARTLY OWNED AFFILIATES AND PROPOSAL OF CONSOLIDATION AND DIVERSIFICATION SCHEDULE

In Release No. 13100, the Commission proposed for comment three schedules which are designed to integrate the data previously reported on Form X-17A-10 (§ 249.618) into the existing structure of Form X-17A-5 (§ 249.617). Schedule II ("Schedule of Gross Revenue of All Subsidiaries and Partly Owned Affiliates") as proposed would require a listing of annual gross revenues by major categories of all majority owned and partially owned subsidiaries and affiliates of the broker-dealer filing Form X-17a-5 (§ 249.617).

After further consideration, the Commission has determined that Schedule II as proposed would not provide all of the data necessary, and therefore is withdrawing proposed Schedule II. In place of the withdrawn schedule the Commission is proposing Schedule IIA of Form X-17A-5 (§ 249.617), designated a "Consolidation and Diversification Schedule."[11] Schedule IIA would require a listing of revenue and expense items, net income and certain balance sheet items on both a consolidated and unconsolidated basis.

PROPOSED FACING PAGE FOR THE ANNUAL AUDITED REPORT[12]

In adopting amended § 240.17a-5, the Commission eliminated the detailed format of the "Answers to Financial Questionnaire" in favor of general purpose financial statements prepared in accordance with generally accepted accounting principles and designed to meet the specific audit objectives. Experience has shown that the processing of the annual audited reports would be greatly facilitated if the identification information were submitted in a consistent format. The Commission therefore proposes a facing page to be utilized in conjunction with the annual audited report. This facing page would require basic identification information such as the name and address of the broker-dealer and of the accountant whose opinion is contained in the report.

STATUTORY BASIS

The proposed amendments to § 249.617 described herein would be adopted pursuant to sections 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o, 78w).

REQUEST FOR COMMENTS

The Commission encourages comments on the amendments proposed herein and welcomes suggestions as to further modifications which may increase the effectiveness of Form X-17A-5 and the FOCUS reporting system.

Interested persons should submit written comments in triplicate on or before May 30, 1977. All such communications should be directed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-690 and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 22, 1977.

[FR Doc.77-12629 Filed 5-6-77;8:45 am]

[10] The text of the proposed supplemental schedules, which are designated "FOCUS Forms 1-27," is attached hereto in Appendix D. Also attached in Appendix D are instructions indicating the conditions under which these schedules are likely to be requested. Copies are available for public inspection. Appendix filed as a part of original document.

[11] Because of the significant differences between Schedule II and Schedule IIA, the Commission has determined to publish the latter for comment, rather than adopting it immediately. The text of proposed Schedule IIA is attached hereto as Appendix F. Copies are available for public inspection. Appendix filed as a part of original document.

[12] The text of the proposed facing page is attached hereto as Appendix E. Copies are available for public inspection. Appendix filed as a part of original document.