DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[42 CFR Part 72]

LAND AND AIR CONVEYANCES, AND VESSELS: FOOD

Proposal To Supersede Subpart H of Part 72 With Proposed 21 CFR Part 940

The Commissioner has proposed elsewhere in this issue of the FEDERAL REGISTER a food service sanitation regulation under 21 CFR Part 940, and proposes here that Part 940 of Subchapter I—Federal-State Cooperative Programs supersede Subpart H of Part 72 of Title 42 (42 CFR 72.161 through 72.174). The history and objectives of the proposal are set forth in the preamble to the Part 940 proposal, and interstate conveyances are specifically dealt with in § 940.94 of that proposal.

Interested persons may, on or before December 30, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: September 24, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–22578 Filed 9–30–74;8:45 am]

[21 CFR Part 940]

FOOD SERVICE SANITATION

Proposed Uniform Requirements for State and Local Regulatory Agencies

Over the past 40 years, the Public Health Service has provided assistance to State and local health agencies in the establishment and maintenance of food sanitation programs for food service establishments within their jurisdictions, pursuant to the provisions of the Public Health Service Act. This assistance has included the distribution of a model ordinance for use by State and local governments in drafting legislation for the regulation of food service establishments.

The Federal Food, Drug, and Cosmetic Act also obligates the Food and Drug Administration (FDA) to regulate food held for sale after shipment in interstate commerce. The FDA has recognized the primary jurisdiction of State and local governments over food service establishments and has therefore concentrated its regulatory efforts on assuring the safety and sanitation of food up to the point when it reaches such establishments.

It is estimated that there are approximately 600,000 food service establishments in the United States serving about 150 million meals daily. It is apparent that the FDA could neither inspect nor regulate more than an insignificant portion of these establishments. The primary burden for regulation of food service establishments must therefore remain with State and local agencies.

The potential for foodborne illness results from many types of insanitary food handling operations in food service establishments. Research indicates that microbiological contamination of foods may occur from raw materials which contain salmonella or other organisms and which, if improperly handled, cause foodborne ilness. The presence of staphylococcal organisms in the throat and on the hands of food handlers and in nonpotable water supplies contributes to the contamination of the environment, and thus can cause illness. Since foodborne illness can be prevented by following good sanitation practices, it is important to enumerate such practices for the protection of the public health. Background materials supporting the need for this proposed food service sanitation regulation are on public display in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852.

The last revision of the model ordinance occurred in 1962, when it was published as Part V of the Public Health Service "Food Service Sanitation Manual." Following publication of the 1962 manual, 29 States and approximately 230 local governments utilized the model ordinance as the basis of their laws and regulations.

In June 1969, the responsibility to provide assistance to State and local regulatory agencies in the establishment and maintenance of food service sanitation programs was transferred to the Food and Drug Administration (21 CFR 2.120) from another unit of the Public Health Service.

The Commissioner of Food and Drugs concludes that there is a need to revise the model ordinance. An updated model ordinance and new Federal regulations provide State and local governments with an up-to-date reference tool which will enhance the goal of greater uniformity in Federal, State, and local regulation. In a number of cases, food service sanitation requirements established by the various State or local regulatory agencies remain varied. With the trend toward national chain and multi-unit franchise operators, who may have businesses in two or more regulatory jurisdictions, it has become evident that if State and local enforcement agencies would adopt uniform requirements known and understood by the regulated industry, and carry out these requirements through strict enforcement, both the consumer and food service industry would benefit. The food service operator would have a thorough knowledge of what is expected of him, regardless of the location of his business, and could more readily comply with requirements.

Section 301(k) of the Federal Food, Drug, and Cosmetic Act prohibits adulteration of food while held for sale after interstate shipment, and thus includes food service sanitation. In addition to implementing this provision of the law, these new Federal regulations will serve the special purpose of establishing criteria for approval of food service operations on interstate conveyances and also of food sources for interstate conveyances. At present, interstate conveyances may serve food only from sources determined to be in compliance with the requirements of §§ 72.161 through 72.174 of Title 42 of the Code of Federal Regulations. Part 940 of Title 21, as proposed herein, will supersede the requirements of those sections and serve as a basis for approving suppliers; a proposal to revoke 42 CFR 72.161 through 72.174 appears elsewhere in this issue of the FEDERAL REGISTER.

The model ordinance and Federal regulations must, of course, be identical. Late in 1972, a draft revision of the model ordinance was developed, and 450 copies were distributed to the States, the organized restaurant industry, and some local regulatory agencies and other interested persons, requesting review and comment. One hundred twenty-five comments were received, including over 1,000 suggestions relating to technical provisions, as well as other suggestions relating to semantics and format. Copies of these comments are on public display in the office of the Hearing Clerk. The Commissioner has given careful consideration to this expert advice and is now prepared to propose for public comment new regulations governing food service sanitation, which will also serve as a Food Service Sanitation Model Ordinance.

The purpose of the proposed regulations and model ordinance is to provide food service establishments with standards, and State and local governments with a comprehensive model law for the regulations of food service sanitation. Accordingly, comments are requested not only on the substance of the proposed requirements but also in regard to possible changes which might facilitate adoption by State and local governments.

The Commissioner recognizes that two aspects of the model ordinance are inappropriate for inclusion in the proposed new Federal regulations. The provisions dealing with captions, repealer, and separability (found in sections 1–103, 1–104, and 1–105 of the model ordinance), and large portions of the enforcement provisions dealing with permits, inspections, and review of plans (found in chapter 10 of the model ordinance) are properly included only in a model ordinance for State and local governments. The Commissioner has placed on display in the office of the Hearing Clerk a revised Model Food Service Sanitation Ordinance, which contains these provisions in addition to all of the provisions set out in the proposed Federal regulations except for § 940.94 which deals with interstate conveyances. Copies may be obtained upon request and comments are requested upon the provisions that appear only in the proposed model ordinance as well as on the provisions appearing in the proposed Federal regulations.

The final Federal regulations will be published in a new Subchapter I—Federal State Cooperative Programs, Part 940, of Title 21 of the Code of Federal Regulations. It will also be available as a model ordinance in a revised "Food Service Sanitation Manual" from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The manual will continue to provide additional material not appropriate for publication as a final order in the Code of Federal Regulations, e.g., history of the regulation of food service sanitation, discussion of changing patterns in American food consumption, discussion of scientific rationale for provisions, bibliographical material for research on food sanitation, etc.

Therefore, pursuant to the provisions of the Public Health Service Act (secs. 301, 311, 361, 58 Stat. 691, 693, 703, as amended; (42 U.S.C. 241, 243, 264) and the Federal Food, Drug, and Cosmetic Act (secs. 402, 701, 52 Stat. 1046–1047, 1055–1056, as amended; (21 U.S.C. 342, 371) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to add a new Part 940, Subchapter I—Federal-State Cooperative Programs, to Title 21, as follows:

PART 940—FOOD SERVICE SANITATION

Subpart A—General Provisions

Subpart B—Food Care

Subpart C—Personnel

Subpart D—Equipment and Utensils

Subpart E—Cleaning, Sanitization and Storage of Equipment and Utensils

Subpart F—Sanitary Facilities and Controls

Subpart G—Construction and Maintenance of Physical Facilities

Subpart H—Mobile Food Service

Subpart I—Temporary Food Service

Subpart J—Compliance Procedures

AUTHORITY: Secs. 301, 311, 361, 58 Stat. 691, 693, 703, as amended; (42 U.S.C. 241, 243, 264); secs. 402, 701, 52 Stat. 1046–1047, 1055–1056, as amended; 21 U.S.C. 342, 371.

Subpart A—General Provisions

§ 940.1 Purpose.

This part shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

§ 940.3 Definitions.

For the purposes of this part:

(a) "Closed" means without openings large enough for the entrance of insects. An opening of 1/32 inch or less is closed.

(b) "Corrosion-resistant materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions of the use environment.

(c) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(d) "Employee" means the permit holder, individuals having supervisory or management duties, and any other person working in a food service establishment.

(e) "Equipment" means stoves, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of a food service establishment.

(f) "Food" means articles used for food or drink, any components of those articles, and ice used for any purpose.

(g) "Food contact surfaces" are those surfaces with which food may come into contact and those surfaces that drain onto surfaces that may come into contact with food.

(h) "Food processing establishment" means a commercial establishment in which food is processed, prepared, packaged, or distributed for human consumption.

(i) "Food service establishment" means any place where food that is intended for individual service and consumption is routinely provided completely prepared. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term does not include a private home where food is prepared for individual family consumption, and it does not include the location of food vending machines.

(j) "Kitchenware" means all multi-use utensils other than tableware.

(k) "Law" includes Federal, State, and local statutes, ordinances, and regulations.

(l) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(m) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(n) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(o) "Person in charge" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time. If no individual is the apparent supervisor, then any employee present is the person in charge.

(p) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This term does not include clean, whole, uncracked, odor-free shell eggs.

(q) "Regulatory authority" means the State and/or local enforcement authority or authorities having jurisdiction over the food service establishment.

(r) "Safe" materials are manufactured from or composed of materials that are not food additives or color additives as defined in section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act as used, or are food additives or color additives as so defined and are used in conformity with regulations established pursuant to section 409 or section 706 of the act.

(s) "Sanitization" means effective bactericidal treatment by a process that destroys microorganisms, including pathogens. Effective bactericidal treatment is demonstrated by an average plate count per utensil surface examined of not more than 100 colonies, or not more than 12½ colonies per square inch of equipment surface examined in accordance with the procedure detailed in Public Health Service Publication No. 1631—"Procedure for the Bacteriological Examination of Food Utensils and/or Food Equipment Surfaces."[1]

(t) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(u) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles designed for one-time, one-person use and then discarded.

[1] Copies may be obtained from: Food and Drug Administration, Division of Food Service, 200 'C' St. SW., Washington, D.C. 20204.

(v) "Tableware" means multi-use eating and drinking utensils.

(w) "Temporary food service establishment" means a food service establishment that operates at a fixed location for a period of time not more than 14 consecutive days.

(x) "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

Subpart B—Food Care

§ 940.10 Food supplies.

(a) *General.* Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of hermetically sealed food that was not prepared in a food processing establishment is prohibited.

(b) *Special requirements.* (1) Fluid milk and fluid-milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law. Dry milk and dry milk products shall be pasteurized.

(2) Each container of unshucked shell stock (shellfish, oysters, clams, mussels) shall be identified by an attached tag that states the name of the original shell stock shipper, the kind and quantity of shell stock, and an official certificate number issued according to the law of the jurisdiction of its origin. Fresh and frozen shucked shellfish shall be packed in nonreturnable packages identified with the name and address of the original shell stock shipper, shucker, packer, or repacker, and the official certificate number issued according to the law of the jurisdiction of its origin of the shipper. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used.

(3) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry eggs or egg products shall be obtained.

§ 940.11 Food protection.

At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from contamination by all agents, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, draining, and overhead leakage or condensation. The temperature of potentially hazardous foods shall be 45° F or below or 140° F or above at all times, except as otherwise provided in this part.

§ 940.12 Food storage.

(a) *General.* (1) Stored food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be enclosed in a clean covered container except during necessary periods of preparation or service. Use of a cloth towel as a container cover is prohibited.

(2) Food shall be stored above the floor on clean surfaces in a way that permits cleaning the storage area and that protects the food from contamination by splash and other means.

(3) Food shall not be stored under exposed sewer or nonpotable water lines.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking.

(5) Packaged food shall not be stored in contact with water or undrained ice.

(6) Unless its identity is unmistakable, bulk food not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(b) *Refrigerated storage.* (1) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of food at required temperatures during storage. Each cold food storage facility shall be provided with a numerically scaled indicating thermometer, accurate to ±3° F, located to measure the air temperature in the warmest part of the facility and located to be easily readable.

(2) The temperature of potentially hazardous foods requiring refrigeration shall be 45° F or below except during necessary periods of preparation.

(3) Frozen foods shall be kept frozen and should be stored at a temperature of 0° F or below.

(4) Stored ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils.

(c) *Hot storage.* (1) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food storage facility shall be provided with a numerically scaled indicating thermometer accurate to ±3° F, located in the coolest part of the facility and located to be easily readable.

(2) The temperature of potentially hazardous foods requiring hot storage shall be 140° F or more except during necessary periods of preparation.

§ 940.13 Food preparation.

(a) *General.* Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned and sanitized.

(b) *Raw fruits and raw vegetables.* Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served.

(c) *Cooking potentially hazardous foods.* Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F, except that:

(1) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165° F with no interruption of the cooking process.

(2) Pork and pork products shall be cooked to heat all parts of the food to at least 150° F.

(d) *Dry milk and egg products.* If reconstituted, dry milk, dry-milk products, dry eggs, and dry-egg products shall be used only if they are heated to 140° F or above before being served.

(e) *Reheating.* Potentially hazardous foods that were cooked and then refrigerated shall be heated rapidly to 140° F or higher throughout before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid heating of potentially hazardous foods.

(f) *Reconstitution.* Nondairy creaming agents shall not be reconstituted for consumption on the premises in quantities exceeding 1 gallon.

(g) *Product thermometers.* Metal stem-type numerically scaled indicating thermometers accurate to ± 3° F shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(h) *Thawing potentially hazardous foods.* Potentially hazardous foods shall be thawed:

(1) In refrigerated units in a way that the temperature of the food does not exceed 45° F; or

(2) Under potable running water of a temperature of 70° F or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(3) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(4) As part of the conventional cooking process.

§ 940.14 Food display and service.

(a) *Potentially hazardous foods.* Potentially hazardous foods shall be kept at a temperature of 45° F or lower or at a temperature of 140° F or higher during display and service.

(b) *Display equipment.* Food on display shall be protected from consumer contamination by the use of easily cleanable counter-protector devices, display cases and similar equipment in addition to other means of protection.

(c) *Reuse of tableware.* Reuse of soiled tableware by self-service consumers is prohibited.

(d) *Dispensing utensils.* Suitable utensils shall be used by employees and provided to consumers who serve themselves to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(1) Stored in food containers with the food they are being used to serve; or

(2) Stored clean and dry; or

(3) Stored in running water; or

(4) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(e) *Ice dispensing.* Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing

utensils and ice receptacles shall be stored in a way that protects them from contamination.

(f) *Condiment dispensing.* Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers that protect their contents.

(g) *Milk dispensing.* Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding 1 pint in capacity, or served from a bulk milk dispenser.

(h) *Re-service.* Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

§ 940.15 Food transportation.

During transportation, food shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this part relating to stored food.

Subpart C—Personnel

§ 940.20 Employee health.

No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment.

§ 940.21 Personal cleanliness.

Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.

§ 940.22 Clothing.

(a) The outer clothing of all employees shall be clean.

(b) Clothing used once and discarded is permissible. All other clothing shall be washable.

(c) Employees shall use effective hair restraints where necessary to prevent the contamination of food or food-contact surfaces.

§ 940.23 Employee practices.

(a) Employees shall consume food only in designated dining areas. An area shall not be designated as a dining area if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(b) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment or utensil-washing or food-preparation areas. Employees shall use tobacco in any form only in designated areas. An area shall not be designated for that purpose if the use of tobacco there might result in contamination of food, equipment, utensils, or other items needing protection.

(c) Employees shall handle soiled tableware in a way that avoids contamination of their hands.

(d) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

Subpart D—Equipment and Utensils

§ 940.30 Materials.

Multi-use equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste, nor contribute to the contamination of food.

(a) *Solder.* If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(b) *Wood.* Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in the introductory text of this section may be used for cutting blocks, cutting boards, and bakers' tables. The use of wood as a food-contact surface under other circumstances is prohibited.

(c) *Plastics.* Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in the introductory text of this section are permitted for repeated use. The repeated use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(d) *Mollusk shells.* The repeated use of mollusk and crustacea shells as food containers is prohibited.

§ 940.31 Design and fabrication.

(a) *General.* (1) All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self draining.

(b) *Accessibility.* Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(1) Without being disassembled; or

(2) By disassembling without the use of tools; or

(3) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(c) *In-place cleaning.* Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(1) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(2) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(3) The system is self draining or capable of being completely evacuated.

(d) *Thermometers.* Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to ±3° F.

(e) *Non-food-contact surfaces.* Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(f) *Ventilation hoods.* Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters, where used, shall be readily removable for cleaning and replacement.

§ 940.32 Equipment installation and location.

Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells, or other sources of contamination.

(a) *Table-mounted equipment.* Equipment that is placed on tables, or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least 4 inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(b) *Portable equipment.* Equipment is not portable within the meaning of paragraph (a) of this section unless:

(1) It is small and light enough to be moved easily by one person; and

(2) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the

equipment to be moved for easy cleaning.

(c) *Floor-mounted equipment.* (1) Floor-mounted equipment, unless readily movable, shall be:

(i) Sealed to the floor; or

(ii) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(iii) Elevated on legs at least 6 inches off the floor, except that vertically mounted floor mixers may be elevated as little as 4 inches off the floor if no part of the floor under the mixer is more than 6 inches from cleaning access.

(2) Unless sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(d) *Aisles and working spaces.* Aisles and working spaces between units of equipment and between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

Subpart E—Cleaning, Sanitization and Storage of Equipment and Utensils

§ 940.40 Equipment and utensil cleaning and sanitization.

(a) *Cleaning frequency.* (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule approved by the regulatory authority. This schedule shall be based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities of microwave ovens shall be cleaned at least once a day and shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Non-food-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(b) *Wiping cloths.* (1) Cloths used during service for wiping food spills on food-contact surfaces shall be clean and used for no other purpose.

(2) Cloths used for wiping non-food-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently in one of the sanitizing solutions permitted by paragraph (c) (2) of this section.

(c) *Manual cleaning and sanitizing.* (1) Sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution that is kept clean and then shall be rinsed free of detergent and abrasives.

(2) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

(i) Immersion for at least one-half minute in clean, hot water of a temperature of at least 170° F; or

(ii) Immersion for at least 1 minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and having a temperature of at least 75° F; or

(iii) Immersion for at least 1 minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and having a temperature of at least 75° F; or

(iv) Immersion in a clean solution containing any other chemical sanitizing agent allowed under § 121.2547 of this chapter that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75° F for 1 minute; or

(v) Treatment with steam free from materials or additives other than those specified in § 121.1088 of this chapter in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(vi) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under paragraph (c) (2) (iv) of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(3) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under § 121.2547 of this chapter, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(4) A 3-compartment sink shall be used if cleaning and sanization of equipment or utensils is done manually. Sinks shall be large enough to permit the complete immersion of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water.

(5) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

(6) When hot water is used for sanitizing, the following facilities shall be provided and used:

(i) An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170° F; and

(ii) A numerically scaled indicating thermometer accurate to ±3° F convenient to the sink that can be used for frequent checks of water temperature; and

(iii) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(d) *Mechanical cleaning and sanitizing.* (1) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(2) The pressure of water supplied to spray-type dishwashing machines shall be not less than 15 or more than 25 pounds per square inch measured in the water line immediately adjacent to the machine. A ¼-inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

(3) Easily readable numerically scaled indicating thermometers accurate to ±3° F shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(4) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(5) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities.

(6) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a dishwashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All dishwashing machines shall be thoroughly cleaned following use.

(e) *Machines using chemical sanitizing.* (1) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Chemical sanitizers used shall meet the requirements of § 121.2547 of this chapter.

(2) Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120° F. The sanitizing rinse water shall be not less than 75° F nor less than the temperature specified by the machine manufacturer.

(f) *Machines using hot water sanitizing.* Wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (f) (1) through (f) (5) of this section. Wash and pumped rinse temperatures are measured in the respective tanks, and final rinse temperature is measured at the manifold.

(1) Single-tank, stationary-tank, dual-temperature machine:

Wash temperature	150° F
Final rinse temperature	180° F

(2) Single-tank, stationary-rack, single-temperature machine:

Wash temperature	165° F
Final rinse temperature	165° F

(3) Single-tank, conveyor machine:

Wash temperature	160° F
Final rinse temperature	180° F

(4) Multiple-tank, conveyor machine:

Wash temperature	150° F
Pumped rinse temperature	160° F
Final rinse temperature	180° F

(5) Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

Wash temperature	140° F
Final rinse temperature	180° F

(g) *Drying.* All equipment and utensils shall be air dried.

§ 940.41 Equipment and utensil storage.

(a) *Handling.* Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(b) *Storage.* (1) Cleaned and sanitized utensils and movable equipment shall be stored above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines.

(2) Utensils shall be air dried before being stored or shall be stored in a self-draining position on suitably located hooks or racks.

(3) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(c) *Pre-set tableware.* (1) Tableware should be set prior to serving a meal only if glasses and cups are inverted, and knives, forks, and spoons are wrapped or otherwise covered.

(2) All unused pre-set tableware should be collected for washing and sanitizing after the meal period.

(d) *Single-service articles.* (1) Single-service articles shall be stored above the floor on clean shelves and in closed containers that protect them from contamination.

(2) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination.

(3) Single-service articles shall be used only once.

Subpart F—Sanitary Facilities and Controls

§ 940.50 Water supply.

(a) *General.* Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to law.

(b) *Transportation.* All water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed and operated according to law.

(c) *Bottled water.* Bottled and packaged potable water shall be handled and stored in a way that protects it from contamination, and dispensed from the original container filled by the supplier.

(d) *Running water.* Cold running water under pressure shall be provided to all equipment that uses water. Hot and cold running water under pressure shall be provided to all lavatories and to all water-using equipment where utensils or equipment are washed or where food is prepared.

(e) *Steam.* Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in § 121.1088 of this chapter.

§ 940.51 Sewage.

All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated according to law. Non-water-carried sewage disposal facilities are prohibited, except as permitted by § 940.80 (a) and (g) (pertaining to temporary food service establishments).

§ 940.52 Plumbing.

(a) *General.* Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, nor any source of pollution through which the safe water supply might become contaminated.

(b) *Nonpotable system.* A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed according to law and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(c) *Backflow.* The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment where an air gap at least twice the diameter of the water inlet is not provided between the water outlet from the fixture and the fixture's flood-level rim and wherever else backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(d) *Grease traps.* If used, grease traps shall be located to be easily accessible for cleaning.

(e) *Drains.* There shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located adjacent to a floor drain, the waste outlet from the dishwashing machine may be connected directly on the sewer side of the floor drain trap, if permitted by law.

§ 940.53 Toilet facilities.

(a) Toilet facilities shall be installed according to law, shall be the number required by law, shall be conveniently located, and shall be accessible to employees at all times.

(b) Toilets and urinals shall be designed to be easily cleanable.

(c) Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance.

(d) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

(e) The storage of food, equipment, utensils, or single-service articles in vestibules is prohibited.

§ 940.54 Lavatory facilities.

(a) Lavatories shall be installed according to law, shall be the number required by law, and shall be located to permit convenient use by all employees in food preparation areas, utensil-washing areas and toilet rooms or vestibules. Sinks used for food preparation or washing equipment or utensils shall not be used for handwashing.

(b) Each lavatory shall be provided with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Any slow-closing or metering faucet used shall provide a flow of water for at least 30 seconds without the need to reactivate the faucet. Steam-mixing valves are prohibited.

(c) A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited. If disposable towels are used, waste receptacles shall be conveniently located near the handwashing facilities.

(d) Lavatories, soap dispensers, hand-drying devices and all related facilities shall be kept clean and in good repair.

§ 940.55 Garbage and refuse.

(a) *Containers.* (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. Suitable facilities, including hot water and detergent, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

(b) *Storage.* (1) Garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited.

(2) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(3) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of non-absorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(c) *Disposal.* (1) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(2) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter and in accordance with law. Areas around incineration facilities shall be kept clean and orderly.

§ 940.56 Insect and rodent control.

(a) *General.* Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(b) *Openings.* Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight fitting and free of breaks. Screening material shall not be less than 16 mesh to 1 inch.

Subpart G—Construction and Maintenance of Physical Facilities

§ 940.60 Floors.

(a) The floors of all food-preparation, food-storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(b) Carpeting, if used, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food-preparation and in equipment- and utensil-washing areas where it would be exposed to large amounts of grease and water.

(c) Sawdust, wood shavings, peanut hulls, or similar material on the floors is prohibited.

(d) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment. Such floors shall be graded to drain.

(e) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(f) Mats and duckboards shall be of size, materials, design, and construction as to facilitate their being cleaned.

(g) Junctures of walls with floors shall be coved.

(h) Utility service lines and pipes shall not be unnecessarily exposed on floors in food-preparation and utensil-washing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

§ 940.61 Walls and ceilings.

(a) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(b) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food-preparation and utensil-washing areas and of toilet rooms and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations.

(c) Studs, joists, and rafters shall not be exposed in food-preparation and utensil-washing areas, and in toilet rooms. If exposed in other rooms, they shall be finished to provide an easily cleanable surface.

(d) Utiilty service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food-preparation and utensil-washing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(e) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(f) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(g) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

§ 940.62 Cleaning physical facilities.

Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals.

§ 940.63 Lighting.

(a) *General.* At least 50 foot-candles of light shall be provided to all working surfaces and at least 30 foot-candles of light

shall be provided to all other surfaces and equipment in food-preparation, utensil-washing, and hand-washing areas, and in toilet rooms. At least 20 foot-candles of light at a distance of 30 inches from the floor shall be provided in all other areas, except that this requirement applies to dining areas only during cleaning operations.

(b) *Protective shielding.* Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities, and facilities where utensils and equipment are cleaned and stored.

§ 940.64 Ventilation.

(a) *General.* All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(b) *Special ventilation.* (1) Rooms, areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(2) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects, and other contaminating materials.

§ 940.65 Dressing areas and lockers.

(a) *Dressing areas.* If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for utensil washing or storage, except that a storage room containing only completely packaged food may be so designated.

(b) *Lockers.* Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

§ 940.66 Poisonous or toxic materials.

(a) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in food service establishments.

(b) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled for easy identification of contents.

(c) Poisonous or toxic materials shall be stored in cabinets that are used for no other purpose or in a place other than an area where food is stored, prepared, displayed, or served and other than an area where clean equipment or utensils are stored. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of a room as are insecticides, rodenticides, or other poisonous or toxic materials.

(d) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees.

(e) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with their labeling.

(f) Personal medications shall not be stored in food storage, preparation, or service areas.

(g) First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

§ 940.67 Premises.

(a) *General.* (1) Food service establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the food service establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food-preparation and utensil-washing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(b) *Living areas.* No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(c) *Laundry facilities.* (1) No laundry operation shall be conducted, except that linens, uniforms, and aprons used in the establishment may be laundered on the premises.

(2) A solid, tight-fitting, self-closing door shall separate food service operations from any laundry area, except that laundry operations may be conducted in a storage room containing only packaged foods.

(d) *Linens and soiled clothes storage.* (1) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used.

(2) Nonabsorbent containers or washable laundry bags shall be provided, and damp or soiled linens and clothes shall be kept in them until removed for laundering.

(e) *Cleaning equipment storage.* Maintenance and cleaning equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(f) *Animals.* Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. This exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Police patrol dogs or guide dogs accompanying blind persons shall be permitted in dining areas.

Subpart H—Mobile Food Service

§ 940.70 Mobile food units.

(a) *General.* Mobile food units shall comply with the requirements of this part, except as otherwise provided in this paragraph and in paragraph (b) of this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this part relating to physical facilities, except those requirements of paragraphs (d) and (e) of this section and §§ 940.71 and 940.72.

(b) *Restricted operation.* A mobile food unit that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this part or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment need not comply with requirements of this part pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary.

(c) *Single-service articles.* Mobile food units shall provide only single-service articles for use by the consumer.

(d) *Water systems.* A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning, and sanitization, and handwashing, in accordance with the requirements of this part. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the requirements of this part.

(e) *Waste retention.* If liquid waste results from operation of a mobile food unit, it shall be stored in permanently installed retention tanks that are at least 50 percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

§ 940.71 Commissary.

Mobile food units shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with the requirements of this part.

§ 940.72 Servicing area and operations.

(a) *Servicing area.* An enclosed service building separated from commissary operations shall be provided for supplying and maintaining mobile food units. The service area shall be constructed and operated in compliance with the requirements of this part.

(b) *Servicing operations.* (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewage disposal system in accordance with § 940.54. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies.

Subpart I—Temporary Food Service

§ 940.80 Temporary food service establishments.

(a) *General.* A temporary food service establishment shall comply with the requirements of this part, except as otherwise provided in this paragraph. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this part, except those requirements of paragraphs (b) through (j) of this section.

(b) *Restricted operations.* (1) This paragraph is applicable whenever a temporary food service establishment is permitted, under the provisions of paragraph (a) of this section, to operate without complying with all the requirements of this part.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this part, is obtained in individual servings, is stored at a temperature of 45° F or below, or at a temperature of 140° F or above, in facilities that meet the requirements of this part, and is served directly in the unopened container in which it was packaged.

(c) *Ice.* Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this part. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food-grade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(d) *Equipment.* (1) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination.

(2) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where helpful to prevent contamination, effective shields for such equipment shall be provided.

(e) *Water.* Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for handwashing. A heating facility located on the premises and capable of producing enough hot water for these purposes shall be provided.

(f) *Wet storage.* The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be so stored when the water contains at least 50 parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(g) *Waste.* Liquid waste shall be disposed of in accordance with law.

(h) *Handwashing.* A facility shall be provided for employee handwashing. Where water under pressure is unavailable, such facility shall consist of at least a pan, warm water, soap, and individual paper towels.

(i) *Floors.* Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(j) *Walls and ceilings of food preparation areas.* (1) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least 16 mesh to the inch.

(2) Counter-service openings shall not be larger than is necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Subpart J—Compliance Procedures

§ 940.90 Permits.

(a) *General.* No person shall operate a food service establishment who does not have a valid permit issued to him by the regulatory authority. A valid permit shall be posted in every food service establishment.

(b) *Suspension or revocation of permits.* When a permit is suspended or revoked, food service operations shall immediately cease.

§ 940.91 Inspections.

(a) *Access.* Agents of the Food and Drug Administration, after proper identification, shall be permitted to enter any food service establishment at any time, for the purpose of making inspections to determine compliance with this part.

(b) *Report of inspections.* Whenever in inspection of a food service establishment is made, the findings shall be recorded on the inspection report form set out in paragraph (d) of this section. One copy of the inspection report form shall be furnished to the person in charge of the establishment. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it. The inspection report form shall summarize the requirements of this part and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from 100.

(c) *Correction of violations.* (1) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(i) When the rating score of the establishment is 85 or more, all violations of 1- or 2-point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(ii) When the rating score of the establishment is at least 70 but not more than 84, all violations of 1- or 2-point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed 30 days.

(iii) Regardless of the rating score of the establishment, all violations of 4- or 5-point weighted items shall be corrected immediately.

(iv) When the rating score of the establishment is less than 70, the establishment shall immediately cease food service operations.

(v) In the case of temporary food service establishments, all violations shall be corrected within 24 hours. If violations are not so corrected, the establishment shall immediately cease food service operations.

(2) Within 15 days after an inspection in which 4- or 5-point weighted violations were noted, the permit holder shall submit a written report indicating that the 4- or 5-point weighted violations have been corrected. A followup inspection shall be conducted to confirm correction.

(3) The report of inspection shall state that failure to comply with any time limits for corrections will require that

the establishment immediately cease food service operations and that an opportunity for appeal from the inspection findings will be provided if a written request for a hearing is filed within 10 days. If a request for hearing is received, a hearing shall be held within 20 days of receipt of that request.

(4) Whenever a food service establishment is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

(d) *Inspection report form.*

FOOD SERVICE ESTABLISHMENT INSPECTION REPORT

NAME OF ESTABLISHMENT	ADDRESS	CITY	ZIP CODE	COUNTY OR DISTRICT

BASED ON AN INSPECTION THIS DAY, THE ITEMS MARKED (X) BELOW IDENTIFY THE VIOLATION IN OPERATION OF FACILITIES WHICH MUST BE CORRECTED BY THE NEXT ROUTINE INSPECTION OR SUCH SHORTER PERIOD OF TIME AS MAY BE SPECIFIED IN WRITING BY THE REGULATORY AUTHORITY. FAILURE TO COMPLY WITH THIS NOTICE MAY RESULT IN IMMEDIATE SUSPENSION OF YOUR PERMIT.

ESTABLISHMENT NUMBER ☐☐☐☐☐☐☐☐ (1. 2. 3. 4. 5. 6. 7. 8.) RATING SCORE ☐☐☐ (9.10.11.) SEATING CAPACITY ☐☐☐ (12.13.14.)

15. WATER SUPPLY ☐ 1. PUBLIC ☐ 2. PRIVATE

16. SEWAGE DISPOSAL ☐ 1. PUBLIC ☐ 2. PRIVATE

17. TYPE ☐ 1. COMMERCIAL ☐ 2. SCHOOL ☐ 3. TAVERN ☐ 4. DAY CARE ☐ 5. NURSING HOME ☐ 6. CLUB ☐ 7. INSTITUTION ☐ 8. OTHER

18. PURPOSE ☐ 1. ROUTINE ☐ 2. FOLLOW-UP ☐ 3. COMPLAINT ☐ 4. INVESTIGATION ☐ 5. OTHER

19. PERMIT/LICENSE POSTED ☐ 1. YES ☐ 2. NO 20. OWNER/OPERATOR CERTIFIED ☐ 1. YES ☐ 2. NO

ITEM	X	WT	DESCRIPTION
			FOOD
*1		5	SOURCE, WHOLESOME
2		1	ORIGINAL CONTAINER, PROPERLY LABELED
			FOOD PROTECTION
*3		5	POTENTIALLY HAZARDOUS FOOD MEETS TEMPERATURE REQUIREMENTS DURING STORAGE, PREPARATION, DISPLAY, SERVICE, TRANSPORTATION
*4		4	FACILITIES TO MAINTAIN PRODUCT TEMPERATURE
5		1	THERMOMETERS PROVIDED AND CONSPICUOUS
6		2	POTENTIALLY HAZARDOUS FOOD PROPERLY THAWED
*7		4	UNWRAPPED AND POTENTIALLY HAZARDOUS FOOD NOT RE-SERVED
8		2	FOOD PROTECTION DURING STORAGE, PREPARATION, DISPLAY, SERVICE, TRANSPORTATION
9		2	HANDLING OF FOOD (ICE) MINIMIZED
10		1	FOOD (ICE) DISPENSING UTENSILS PROPERLY STORED
			PERSONNEL
*11		5	PERSONNEL WITH INFECTIONS RESTRICTED
*12		5	HANDS WASHED AND CLEAN, GOOD HYGIENIC PRACTICES
13		1	CLEAN CLOTHES, HAIR RESTRAINTS
			FOOD EQUIPMENT & UTENSILS
14		2	FOOD (ICE) CONTACT SURFACES: DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED
15		1	NON-FOOD CONTACT SURFACES: DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED
16		2	DISHWASHING FACILITIES: DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED, OPERATED
17		1	ACCURATE THERMOMETERS, CHEMICAL TEST KITS PROVIDED, GAUGE COCK (1/4" IPS VALVE)
18		1	SINGLE-SERVICE ARTICLES, STORAGE, DISPENSING
19		2	NO RE-USE OF SINGLE-SERVICE ARTICLES
20		1	PRE-FLUSHED, SCRAPED, SOAKED
21		2	WASH, RINSE WATER: CLEAN, PROPER TEMPERATURE
*22		4	SANITIZATION RINSE: CLEAN, TEMPERATURE, CONCENTRATION
23		1	WIPING CLOTHS: CLEAN, USE RESTRICTED
24		2	FOOD-CONTACT SURFACES OF EQUIPMENT AND UTENSILS CLEAN, FREE OF ABRASIVES AND DETERGENTS
25		1	NON-FOOD CONTACT SURFACES OF EQUIPMENT AND UTENSILS CLEAN
26		1	STORAGE, HANDLING OF CLEAN EQUIPMENT-UTENSILS

ITEM	X	WT	DESCRIPTION
			WATER
*27		5	WATER SOURCE, SAFE: HOT & COLD UNDER PRESSURE
			SEWAGE
*28		4	SEWAGE AND WASTE WATER DISPOSAL
			PLUMBING
29		1	INSTALLED, MAINTAINED
*30		5	CROSS-CONNECTION, BACK SIPHONAGE, BACKFLOW
			TOILET & HANDWASHING FACILITIES
*31		4	NUMBER, CONVENIENT, ACCESSIBLE, DESIGNED, INSTALLED
32		2	TOILET ROOMS ENCLOSED, SELF-CLOSING DOORS, FIXTURES, GOOD REPAIR, CLEAN: HAND CLEANSER, SANITARY TOWELS/HAND-DRYING DEVICES PROVIDED, PROPER WASTE RECEPTACLES
			GARBAGE & REFUSE DISPOSAL
33		2	CONTAINERS OR RECEPTACLES, COVERED: ADEQUATE NUMBER INSECT/RODENT PROOF, FREQUENCY, CLEAN
34		1	OUTSIDE STORAGE AREA, ENCLOSURES PROPERLY CONSTRUCTED, CLEAN; INCINERATION CONTROLLED
			INSECT, RODENT, ANIMAL CONTROL
*35		4	PRESENCE OF INSECTS/RODENTS - OUTER OPENINGS PROTECTED, NO BIRDS, TURTLES, OTHER ANIMALS
			FLOORS, WALLS & CEILINGS
36		1	FLOORS: CONSTRUCTED, DRAINED, CLEAN, GOOD REPAIR, COVERING INSTALLATION, DUSTLESS CLEANING METHODS.
37		1	WALLS, CEILING, ATTACHED EQUIPMENT: CONSTRUCTED, GOOD REPAIR, CLEAN, SURFACES, DUSTLESS CLEANING METHODS
			LIGHTING
38		1	LIGHTING PROVIDED AS REQUIRED, FIXTURES SHIELDED
			VENTILATION
39		1	ROOMS AND EQUIPMENT---VENTED AS REQUIRED
			DRESSING ROOMS
40		1	ROOMS CLEAN, LOCKERS PROVIDED, FACILITIES CLEAN
			OTHER OPERATIONS
*41		5	TOXIC ITEMS PROPERLY STORED, LABELED, USED
42		1	PREMISES: MAINTAINED, FREE OF LITTER, UNNECESSARY ARTICLES, CLEANING/MAINTENANCE EQUIPMENT PROPERLY STORED, AUTHORIZED PERSONNEL
43		1	COMPLETE SEPARATION FROM LIVING/SLEEPING QUARTERS. LAUNDRY
44		1	CLEAN, SOILED LINEN PROPERLY STORED

*CRITICAL ITEMS REQUIRING IMMEDIATE CORRECTION

REMARKS

DATE OF INSPECTION_____ RECEIVED BY_____ INSPECTED BY_____

§ 940.92 Examination and condemnation of food.

Food may be examined or sampled by the Food and Drug Administration as often as necessary for enforcement of this part. The Food and Drug Administration may, upon written notice to the owner or person in charge specifying with particularity the reasons therefor, place a hold order on any food which it believes is in violation of § 940.10 or any other section of this part. The Food and Drug Administration shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The Food and Drug Administration shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within 10 days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this part.

§ 940.93 Procedure when infection is suspected.

When the Food and Drug Administration has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The Food and Drug Administration may require any or all of the following measures:

(a) The immediate exclusion of the employee from all food service establishments;

(b) The immediate closing of the food service establishment concerned until, in the opinion of the Food and Drug Administration, no further danger of disease outbreak exists;

(c) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(d) Adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

§ 940.94 Food service operations and food sources of interstate conveyances.

(a) No conveyance engaged in interstate traffic shall operate as a food service establishment nor shall it serve food obtained from a food service establishment unless the Food and Drug Administration has determined that:

(1) The establishment is in compliance with the requirements of this part; or

(2) The rating score of the establishment, determined in accordance with the provisions of this part, is greater than 70, and the establishment is making adequate efforts to achieve compliance with the requirements of this part.

(b) As used in this section, "interstate traffic" means the movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation which is entirely within a State or possession, (1) from a point of origin in any State or possession to a point of destination in any other State or possession, or (2) between a point of origin and a point of destination in the same State or possession but through any other State, possession, or foreign country.

(c) The operator of a conveyance which proposes to use a food service establishment as a source of its food shall request the Food and Drug Administration to determine whether food may be obtained from that establishment for use in interstate traffic. The Food and Drug Administration shall make that determination, and it may rely on an inspection by a State inspector in so doing.

(d) Upon request of the Food and Drug Administration, operators of conveyances engaged in interstate traffic shall identify the vendors, distributors, and dealers from whom they have acquired or are acquiring their food supplies.

Interested persons may, on or before December 30, 1974, file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: September 24, 1974.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.74–22577 Filed 9–30–74;8:45 am]

federal register

TUESDAY, OCTOBER 1, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 191

PART III

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

AIRCRAFT ENGINES

Airworthiness Standards for Installation and Type Certification

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 11010; Amdt. Nos. 1–23; 21–40; 23–15; 25–36; 27–9; 29–10; 33–6]

AIRCRAFT AND AIRCRAFT ENGINES—CERTIFICATION PROCEDURES AND TYPE CERTIFICATION STANDARDS

The purpose of these amendments is to change the procedural requirements relating to the type certification of aircraft and aircraft engines, to update and improve the airworthiness standards applicable to the type certification of aircraft engines, and to incorporate new standards applicable to engines used on supersonic airplanes. In addition, other new airworthiness standards are made applicable to aircraft on which engines type certificated to previous standards are to be installed.

These amendments are based on the notice of proposed rulemaking (Notice No. 71–12) published in the FEDERAL REGISTER on May 5, 1971 (36 FR 8383). Except for minor editorial changes, and except as specifically discussed hereinafter, these amendments and the reasons therefor are the same as those proposed in Notice 71–12. Numerous comments relating to these proposals were received in response to the notice and except for those indicating agreement or merely repeating issues discussed and disposed of in the notice, the FAA's disposition of the significant comments is discussed below. In general, comments received that were beyond the scope of the notice are not discussed but will be retained for consideration in connection with other rulemaking projects as appropriate. Based on the relevant comments and upon further review within the FAA, a number of changes have been made to the proposed rules. In addition, various non-substantive changes of a clarifying and editorial nature have been made. Since these changes impose no additional burden on any person, they may be adopted without further notice and public procedure.

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

Two of the proposals of the original notice concerning engine rotor system unbalance (§§ 25.1305 and 33.29) have been implemented by a separate rulemaking action, Amendments 25–35 and 33–5, effective March 1, 1974, that were published in the FEDERAL REGISTER on January 15, 1974 (39 FR 1831).

The following discussion is keyed to the like-numbered proposals contained in Notice No. 71–12:

PART 1—DEFINITIONS AND ABBREVIATIONS

Proposal 1—One commentator objected to the inclusion of a turbosupercharger as part of the engine in the proposed definition of aircraft engines in § 1.1, asserting that in some instances it should be classified as an accessory. However, the intent of the proposal was that turbosuperchargers be included as part of the engine whether or not they are additionally classified as accessories. The definition as adopted has been revised to clarify that a turbosupercharger is part of an engine whether or not it is also an appurtenance or an accessory.

Proposal 2—Several commentators suggested that the term "stop" be deleted from the definition of "idle thrust" as proposed in § 1.1 since a stop is normally associated with the power control lever or throttle, rather than with the engine fuel control device as suggested in the notice. The FAA agrees with the comment to the extent that the term "idle thrust" should be related to the power control lever and has changed the definition by replacing the term "fuel control device" with "power control lever." Since the term "stop" is appropriate with this revision, it need not be deleted.

One commentator pointed out that several of the proposed amendments used the term "type" in reference to engines and that the word "type" was defined in relation to aircraft in § 1.1 but not to engines. For internal consistency, the definition of "type" has been amended to include the meaning of the term with respect to the certification of aircraft engines.

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

Proposal 1—Several commentators suggested that the stress analysis called for in proposed § 21.15(c) for the engine rotor, spacer, and rotor shaft would not normally be available at the time of application for a type certificate, but would be available before actual certification. The FAA agrees and, upon further consideration, has determined that inclusion of the requirement under the type certification standards will allow an applicant to complete and submit a stress analysis after application for a type certificate and before certification. The requirement for a stress analysis has therefore been removed from § 21.15(c) and relocated in a new § 33.62 under the design and construction requirements for turbine aircraft engines.

Proposal 2—Several commentators recommended deletion of that portion of the proposed § 21.35(f) which requires 300 hours of flight test operations for aircraft incorporating engines of a type not previously used in a type certificated aircraft. They contended that the rule discriminated against new engine types, and that unnecessary economic hardships and delays in the aircraft certification program would be imposed. However, experience with newly certificated engine types has demonstrated to the FAA that there is a need for more thorough flight testing of newly certificated engine types, and the regulation with respect to hours of operation is adopted as proposed. Furthermore, the suggestion of one commentator that allowance be made for the use of experimental engines that differ only in minor ways from the type certificated engine has not been adopted because the FAA believes it could lead to uneven administration of the rule.

One commentator questioned whether the phrase "engines that conform to a type certificate" in subparagraph (f)(1) required just one or a full complement of the newly type certificated engines in a multi-engine aircraft. As indicated in the explanation in the Notice, the intent of the FAA is that "engines" means all the engines in the aircraft. To eliminate any ambiguity, the wording has been changed to specifically call for a full complement of engines.

Proposal 3—No public comment was received on the proposal to amend § 21.97 and the section is adopted as proposed.

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

Proposal 1—One commentator questioned whether proposed § 23.951(b) would prohibit several fuel tanks from gravity feeding through non-return valves to a single collector box from which the fuel pumps would draw fuel. Such an arrangement is not prohibited and the rule would allow any combination of tanks to be used so long as means are taken to prevent air from being introduced into the system.

In response to the suggestion contained in several comments, the icing requirement of paragraph (c) of proposed § 23.951 has been reworded to clarify that it is applicable solely to turbine engine aircraft, since fuel icing is peculiar to turbine fuels. Additionally, since the requirement is intended to preclude interrupted functioning of the fuel system rather than to require operation for an indefinite time, the rule has been revised to require "sustained" operation rather than "continuous" operation.

Proposal 2—Several commentators questioned whether an applicant would have to comply with amended § 23.997 as proposed, if the similar rule in § 33.67 had already been complied with by the engine manufacturer. The FAA proposed the new requirements to assure that newly certificated aircraft would meet the standards prescribed in § 33.67. Thus, if the aircraft manufacturer incorporated an engine which had been type certificated under new § 33.67 the fuel system would already conform to the rule and nothing further would be required. If, however, the aircraft manufacturer incorporated an engine which had not been certificated under the new § 33.67 he would have to take the necessary action to comply with new § 23.997.

Several commentators questioned whether the proposed rule would require that each and every filter in the fuel system, including small screens and so-called "last chance filters," meet the requirements of paragraph (a) through (d) of proposed § 23.997. The FAA intended that at least one filter upstream of the fuel metering device and the engine driven displacement pump meet

these requirements, and the section has been clarified accordingly.

In response to a question raised by one commentator concerned with the availability of heat for the required filter or strainer, the FAA wishes to point out that the requirement for icing protection in turbine engine fuel systems, set forth in § 23.951, applies to the entire fuel system.

As proposed, § 23.997(b) would require a drain. Upon further consideration it has been determined that an equivalent of the drain could be provided by having the strainer or filter easily removable for drain purposes and this alternative has been incorporated into the regulation.

Proposal 3—One commentator questioned whether the oil sump of a dry sump engine would be considered as expansion space under the proposal. If the sump is in fact part of the oil tank, then the sump provides the expansion space specified in § 23.1013(b)(1). Further amendment of the requirement is not considered necessary and § 23.1013 (b)(1) is adopted as proposed.

One commentator requested clarification of the phrase "that might reduce the flow of oil," used in proposed § 23.1013 (e). Several other commentators suggested that the phrase was inconsistent with, but should be identical to, proposed § 25.1013. The FAA agrees with these comments and has revised the section to make it consistent with § 25.1013 in this respect, by specifying that any oil tank outlet screen or guard may not reduce the flow of oil below a safe value at any operating temperature.

Proposal 4—One commentator suggested that the more technically correct term "differential pressure" be used in place of "pressure," in paragraph (c) of § 23.1015. The FAA believes, however, that the present term is adequately understood in the industry, and has not caused any misunderstanding in the past. The paragraph is therefore adopted as proposed.

Proposal 5—Several commentators expressed the belief that the proposed § 23.1019 might be interpreted to require each and every oil strainer or filter in the system including small so-called "last chance" filters to conform to all the requirements of paragraph (a). The intent of the FAA is to require at least one oil strainer or filter that will filter all the oil that passes through the lubricating system while conforming to the requirements of the section. The rule as adopted has been reworded to make this clear. Another commentators objected to the word "conveys" as inappropriate in the lead-in sentence of paragraph (a). The FAA agrees and has changed the wording to refer to a strainer or filter through which all of the engine oil flows.

Several commentators interpreted the requirement of subparagraph (a)(1) for normal oil flow through the bypass as possibly requiring identical flow and proposed the word "adequate" in place of "normal." The FAA does not agree that the word "normal" means identical and used the word normal to mean normal for the system within its operating range. Therefore, the wording as proposed has been retained.

One commentator stated that filters should be serviced on a routine and normal maintenance basis rather than relying upon an indicator as proposed in subparagraph (a)(3). In this connection it should be noted, however, that the rule does not call for relaxing of any maintenance procedures but adds an additional item which will contribute to safety by providing a quick means of inspecting for possible filter contamination.

It was assumed in one comment that the standard engine oil pressure gauge would qualify as an "indicator" as required in proposed subparagraph (a)(3). While it was considered that a separate indicator would be provided, nevertheless, if the applicant can demonstrate that the oil pressure gauge would adequately perform the function of the indicator, a separate indicator would not be required. Upon further consideration, the function of the indicator in terms of contamination of the screen has been reworded for clarity.

Several commentators questioned whether the wording of subparagraph (a)(4) was realistic in requiring that no contaminants be released through the filter bypass. As proposed, the requirement stated an absolute prohibition against release of contaminants. The FAA agrees that the intended purpose may be met by requiring the bypass to be designed to minimize release of contaminants, and the requirement is reworded accordingly.

Proposal 6—Several commentators objected to the requirement in proposed § 23.1093 for operation in falling and blowing snow on the basis that no standard is specified as to the intensity or the amount of falling snow or the degree of blowing involved. They further point out that no uniform means are provided for demonstrating compliance with the section and that a small or even minute amount of snow might satisfy the letter of the law of this section. One commentator offered detailed standards that could be adopted. However, it was not the intent that specifications for all possible conditions be included in the regulation but, rather, that an applicant select the limitations desired for his airplane and then demonstrate the ability to operate within those limitations.

Several commentators asserted that the specified liquid water content of 2 grams per cubic meter was not representative of actual conditions and would result in more stringent requirements for ground operation than for flight, while another suggested that the requirement for icing protection at idle should be applicable "on the ground" rather than at sea level. Upon further consideration, the FAA agrees that a reduction to 0.6 grams would provide an adequate and safe standard for icing protection at idle conditions on the ground and the requirement has been changed accordingly.

One commentator objected to the requirement for icing protection for 30 minutes at idle, stating that there was insufficient bleed air to adequately meet the requirement for this period of time. However, experience has demonstrated that it is practical and necessary for safety of flight, and that protection for the engine during prolonged idle prior to takeoff is essential to safety of operation. The proposal does not restrict the means for icing protection to engine bleed air, as suggested by the commentator, but allows any means or combination of means which the applicant chooses. With respect to bleed air, the intent of the requirement is that icing protection at idle be provided when the bleed air available for icing protection is at its critical condition. The section has been reworded to make this clear.

Proposal 7—Amendment 23–14, effective December 20, 1973, published in the FEDERAL REGISTER on November 19, 1973 (38 FR 31816), amended § 23.1183(a) to require that lines and fittings and components carrying gas, air, or flammable fluids in any area subject to engine fire conditions must be at least fire resistant. That amendment also amended the heading of the section, while retaining the requirement that flexible hose assemblies must be approved. Therefore, the section as amended by this Amendment, contains the provisions made effective by amendment 23–14 in addition to those proposed in Notice 71–12, including the revision of the latter discussed below. Inasmuch as the heading proposed in Notice 71–12 is inappropriate to the section as amended by Amendment 23–14, the heading adopted by the amendment is retained.

Stating that proposed § 23.1183, which concerns engine fire protection, is inappropriately included with aircraft airworthiness standards, one commentator suggested that it more correctly belongs in Part 33 relating to engine airworthiness requirements. However, while this and other sections do relate to engine airworthiness, they are included also in Part 23 and the other aircraft certification parts since it is the intent that aircraft certificated under applications made after the adoption of these amendments conform to the new updated sections of Part 33, whether or not they incorporate engines type certificated under the updated Part 33. Thus, to cover cases where such aircraft incorporate engines certificated under applications made before adoption of these amendments, the new engine standards that are appropriate are made effective as to the aircraft by being incorporated in the aircraft airworthiness sections.

One commentator questioned whether integral oil sumps on smaller reciprocating engines were considered to come within the meaning of flammable fluid tanks as that term was used in proposed § 23.1183. The FAA did not intend that they be included, and the rule as adopted specifically provides that integral oil sumps of less than 20 quart capacity need not be fireproof nor be enclosed by a fireproof shield.

Proposal 8—As a result of the issuance of Amendment 23–14 (38 FR 31816), which contains new paragraphs, § 23.1305 (q) and (r), the proposed paragraphs (q), (r), (s), and (t) are redesignated (s), (t), (u), and (v), respectively. The following discussion is keyed to the new designations.

One commentator questioned whether the fuel strainer or filter indicator referred to in § 23.1305(t) were required on all filters, even "last chance" filters. Consistent with the requirements applicable to the strainers or filters themselves, § 23.1305(t) has been revised to make clear that the indicator required is for a fuel strainer or filter required under § 23.997. Similarly, § 23.1305(t) and (u) have been reworded in order to be consistent with §§ 23.997 and 23.1019, respectively, in regard to the degree of contamination that must be indicated. In response to a further comment, § 23.1305 (t) has been reworded to clarify that the desired indication is of the occurrence of contamination rather than the more stringent requirements of the degree of contamination as suggested in the Notice. This change achieves consistency between paragraphs (t) and (u).

One commentator questioned whether other presently installed gauges for other functions could be used as "indicators" to indicate the functioning of a heater as required in paragraph (v). As discussed above, in connection with the indicators required for oil strainers or filters, the FAA anticipates that the requirement will be met by installation of gauges to indicate the functioning of heaters. However, if a clear and positive indication can be obtained from other gauges used to portray functions different than direct heater functioning, the requirements of the section are met.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

Proposed changes to §§ 25.951 (Proposal 1), 25.997 (Proposal 3), 25.1015 (Proposal 5), 25.1019 (Proposal 6), and 25.1093 (Proposal 7) were the subject of comments substantially the same as submitted for the proposed like-numbered sections of Part 23. As adopted, these Part 25 sections set forth the same requirements as proposed in Notice 71–12 except as they have been modified for the reasons given in the preamble discussion of the like-numbered Part 23 sections.

Proposal 2—No comments were received in response to the proposed deletion of § 25.977(b). That paragraph is accordingly revoked and marked reserved.

Proposal 4—The exemption contained in the last sentence of § 25.1013(a), concerning fireproofing of an integral oil sump of less than 20-quart capacity on a reciprocating engine, has been removed from this section and placed in § 25.1183 (a). This action involves no substantive change and achieves consistency with the parallel Part 23 section.

Proposal 8—Section 25.1183(a) has been further amended in connection with changes to § 25.1013(a) as noted under Proposal 4.

Proposal 9—Section 25.1305(c) has been amended so that it is substantively the same as the parallel provision of § 23.1305. The related Part 23 preamble discussion is applicable. The proposed new subparagraph 25.1305(d)(3), concerning an indicator to indicate rotor system unbalance, has already been adopted by a separate rulemaking action (Amdt. 25–35, 39 FR 1831).

One commentator stated that aircraft fuel systems have been designed without cockpit controlled fuel heat; therefore there is no need in proposed subparagraph (c)(8) for an indicator to indicate the proper functioning of any fuel heater. The section, however, only requires an indicator if a heater is used and the FAA believes it would supply necessary information to indicate heater functioning.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

Proposed changes affecting §§ 27.951 (Proposal 1), 27.997 (Proposal 2), 27.1013 (Proposal 3), 27.1015 (Proposal 4), 27.1019 (Proposal 5), 27.1093 (Proposal 6), 27.1183 (Proposal 7), and 27.1305 (Proposal 8) were the subject of comments substantially the same as submitted for the proposed like-numbered sections of Part 23. The proposed amendments set forth in Notice 71–12 have been adopted except as explained in the preamble discussion of the like-numbered Part 23 sections.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

Proposed changes affected §§ 29.951 (Proposal 1), 29.997 (Proposal 2), 29.1013 (Proposal 3), 29.1015 (Proposal 4), 29.1019 (Proposal 5), 29.1093 (Proposal 6), 29.1183 (Proposal 7), and 29.1305 (Proposal 8) were the subject of comments substantially the same as submitted for the proposed like-numbered sections of Part 23. The proposed amendments set forth in Notice 71–12 have been adopted except as explained in the preamble discussion of the like-numbered Part 23 sections.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

Proposal 1—The comments received in response to proposed § 33.5 focused principally on the overhaul instructions that would be required by paragraph (e). The comments revealed widespread misunderstanding of the effect of requiring the engine manufacturer to set out the frequency of overhauls. In this connection, the FAA wishes to point out that overhaul instructions are necessary upon type certification because an engine might require overhaul at any time thereafter, and the ability to perform an overhaul should not be limited by lack of instructions. Furthermore, the manufacturer's statement of overhaul frequency is not established as an operating limitation but operates merely as a recommendation; it does not preclude the establishment of different overhaul intervals, nor does it preclude the "piecemeal" overhaul practice followed by operators using continuous airworthiness maintenance programs. It should be noted, however, that the initial overhaul time established under § 33.90 and referred to in § 33.7(c)(17) is an operating limitation that must be complied with regardless of the adoption of any other practice; the initial overhaul, whether accomplished "piecemeal" or otherwise, must be completed within the time established.

With regard to a question raised by one commentator concerning the requirements in § 33.5(e)(2) that certain component life limits be specified in the required instructions, the FAA wishes to call attention to the fact that no separate requirement is thus established that would have any effect on operators of the engines. The life limits of all components requiring replacement are established under other sections of Part 33 as operating limitations that must be complied with, and their publication in the required instructions is a convenience to operators.

Upon further review, § 33.5(a)(1) is revised to include a requirement that the installation instructions contain the maximum allowable loads for engine mounting attachments and related structure, which are required to be determined in complying with § 33.23. Similarly, § 33.5(a)(2) is revised to include a requirement for description of the pipes, wires, cables, ducts, and cowling covered by that section. That information is considered essential for installation, and FAA practice has been to require it for compliance with prior § 33.5.

Proposal 2—The effect of proposed § 33.7 was misunderstood by a number of commentators who objected to various ratings and limitations listed therein. Contrary to the apparent belief of those commentators, no ratings or limitations would be established independently under § 33.7; the section merely contains a list of ratings and limitations established either under applicable requirements of Part 33 that predate the Notice, or under proposed new requirements contained in the Notice. Consideration was thus given to the substance of the comments as they related to substantive requirements proposed in the Notice. Discussion of comments directed to § 33.7 but relating to proposed new requirements is found with other comments under the appropriate section. However, as a result of such comments, one substantive change has been made that affects § 33.7; no rating or limitation need be established for turbine engine internal cooling air flow, and proposed § 33.7(c)(12) has therefore been deleted, with attendant necessary renumbering of the succeeding subparagraphs. Other changes of an editorial nature have been made for internal consistency between § 33.7 and other Federal Aviation regulations.

Proposal 3—No public comment was received on the proposed deletion of § 33.13, and the section has been revoked and marked "reserved."

Proposal 4—Several comments were received that contained objections to the

start-stop stress cycle described in proposed § 33.14 as not being representative of a typical operating cycle that would produce the stresses to be accounted for by the requirement. In particular, there was objection to the requirement that disc and spacer temperatures be stabilized after stopping the engine in order to complete a cycle. The FAA agrees that final temperature stabilization should not be necessary where an applicant can show that the components experience the complete stress range without such stabilization, and the definition of a start-stop stress cycle as adopted includes a provision to allow for such a showing.

Another commentator suggested that the operating limitation be defined as the number of cycles to a detectable crack rather than to failure. The FAA regards a crack as a failure and the rule as adopted applies not only to cracks but to other types of failures which may occur prior to the occurrence of a detectable crack.

A commentator recommended that spacers be deleted from the section because they would not normally be critical. The FAA disagrees; spacers are a critical item in low cycle fatigue, and the requirement, in this regard, is adopted as proposed.

One commentator stated the belief that the establishment of component life limits would result in a complicated and time-consuming process for extending component life. The FAA points out that the listing of this limit on the type certificate as required by this section provides only an initial limit and will not in any way complicate the procedure for extending the limit. In this connection, the section as adopted is revised to clarify that the required operating limitations and the provision for increasing them apply individually to each rotor disc and spacer.

Proposal 5—Several commentators objected to the new standard of protection proposed in § 33.17(b) for external lines, fittings, and components as unnecessary because the matter is adequately covered in paragraphs (a) and (c) of that section, while another commentator asserted that, due to considerations of airflow and venting, the requirement should be imposed only on the airframe. The FAA does not agree with these positions. The new requirement in (b) for protection against ignition of leaking flammable fluids is necessary to deal with possible impingement of such fluids on hot surfaces. Furthermore, since engine design necessarily includes considerations of airflow and venting, this requirement in Part 33 will assure that those considerations take account of possible ignition of leaking flammable fluid that could result from its impingement on engine components.

In response to comments questioning the applicability of proposed § 33.17(c) to integral oil sumps on the smaller reciprocating engines, the requirement as adopted is revised to exclude such sumps having less than a 20-quart capacity. The requirement is thus made consistent with the parallel requirements in the aircraft airworthiness parts.

One commentator believed that a clear definition of "fireproof" and "fire resistant" was lacking in the regulations and suggested that temperature, duration and flame intensity should be specified as part of any definition. The definitions in § 1.1 of the regulations include both "fireproof" and "fire resistant" and any further changes to these definitions would be outside the scope of the Notice.

One commentator questioned whether under paragraph (e), the accumulation of fluid is interpreted as occurring inside of the engine and suggested that the section should specify unwanted flammable fluid. The FAA agrees that the section is intended to refer to unwanted flammable fluid and is directed to areas internal to the engine. The requirement as adopted is reworded accordingly.

Proposal 6—The comments received in response to proposed § 33.25 expressed general agreement with the intent of the requirement as understood by the commentators. However, several of the comments indicated a need for clarification regarding the applicability of limit loads to accessory drives and mounting attachments. The FAA agrees that the intent of the proposal was that the limit load requirement apply to accessory drives and mounting attachments and the section as adopted is reworded to make this clear.

In addition, as suggested by one commentator, a provision has been added to make clear that the use of engine oil for lubrication of accessory drives and mounting attachments is permitted, with appropriate sealing provisions.

Proposal 7—It was pointed out that reference to "excessive speed, temperature, and vibration" in proposed § 33.27 (a) was vague in view of the very specific requirements in proposed paragraph (d). Since it was the intent of the proposal to relate the two requirements, § 33.27(a) as adopted is revised to clearly refer to the specific tests included in the section.

Several commentators objected to the speeds proposed in the overspeed tests required in § 33.27. They expressed the opinion that the rotor speed strength demonstrations which are currently accepted by the FAA and which are 5 percent lower in all cases than the proposed requirements demonstrate an adequate margin of strength. In this connection, one commentator pointed to 6 million hours of service experience with no disc bursts. The FAA finds compelling merit in these comments and upon further consideration the overspeed requirements as adopted are 5 percent less than those proposed.

Several commentators believed that the proposal to use a test article fabricated with minimum qualities allowed by the specification was an impractical requirement. They expressed the opinion that to conform to the proposal as written would require a component made with all the minimum properties of the specifications, a condition which could not be met. The FAA agrees with these comments and upon further consideration has deleted the proposal.

Several commentators objected to the proposed paragraph (c) of § 33.27 regarding cooling airflow as being too restrictive. They pointed out that in designs where there is more than one cooling passage, one passage could be blocked and still allow passage of an adequate flow of cooling air. While this might be less than normal cooling airflow it might still ensure adequate cooling. The FAA agrees that the proposed requirement would not accomplish the intended purpose and, in connection with the deletion of other proposed requirements relating to cooling airflow that were determined to be impracticable (see discussion relating to §§ 33.7 and 33.87), the section is adopted without the proposed paragraph (c).

Proposal 8—One commentator expressed the opinion that the instrument connection markings required in proposed § 33.29 would be unnecessary if it could be shown that there was no possibility of an instrument being connected to the wrong connection. The FAA agrees that this would satisfy the requirements of the rule and, accordingly, the section as adopted is revised to specifically allow this. In addition, the section has been revised by deletion of the word "new" which was inadvertently included in the proposal, to clarify that it applies to all engine limitations.

The proposed requirement relating to rotor system unbalance contained in proposed § 33.29(b), as noted previously in this preamble, has been adopted in a separate rulemaking action (Amdt. 33–5; 39 FR 1831).

Proposal 9—The only public comment received in response to the proposed new § 33.42 recommended deletion of the requirement but gave no reason for the recommendation. The section is adopted as proposed.

Proposal 10—A comment was received that questioned the speed range that would be applicable to the proposed requirement in § 33.43(a) for a vibration survey with a cylinder not firing. As proposed, the requirement implies the same speed range that is applicable to the engine with all cylinders firing. The FAA agrees that this would be impractical and the requirement is revised to specify that the applicable speed range is from idle to maximum desired takeoff speed rating.

Several commentators questioned whether the vibration test survey specified in paragraph (a) required the same propeller used for the endurance test or a propeller of the same configuration. The FAA intended that the same configuration of propeller could be used for the tests and the rule as adopted is revised to clarify the intent for both propellers and loading devices.

One commentator recommended that § 33.43(a) be revised to exclude the propeller shaft or other output shafts from the vibration survey. The FAA does not agree that they should be excluded since they are the most vital components requiring vibration measurements and

tests. However, this does not include any accessory drive shafts, which are required to be loaded under § 33.43(c) in order to assess the effects of such loads on the propeller or other output shaft.

One commentator regarded that the number of cycles to demonstrate compliance for fatigue testing of steel shafts specified in § 33.43(b) should be 10 million rather than 10½ million cycles: The FAA agrees that 10 million cycles represents an accepted standard and the requirement is revised accordingly.

A commentator recommended that § 33.43(c) which requires accessories to be loaded during the vibration tests be deleted as being unnecessary for torsional surveys. The FAA does not agree; the purpose of the test is to disclose possible adverse vibration effects, including any that might be contributed by accessories.

Proposal 11—Several commentators objected to the proposed § 33.45(b) requirement for a recalibration after the endurance test as being impracticable and unnecessarily adding to the endurance test. They suggested that the intent of the section, to ensure that any power loss during the endurance test be determined, could be met by modifying the rule to require a "power check" in place of a recalibration. The FAA agrees that a full recalibration is not required to determine power loss and the section is revised to require a power check in place of a recalibration. In addition, since the section permits use of measurements taken during the final portion of the endurance test, reference to the finish of that test has been deleted.

Proposal 12—Upon further consideration, the parenthetical statement in the first sentence of paragraph (a) of proposed § 33.49 is revised to clarify that the additional testing requirements that apply to a turbosupercharger are completely covered in § 33.49(e)(1)(iii) (proposed § 33.49(e)(1)(iv)). An applicant may elect to run the engine-turbosupercharger combination an additional 50 hours in complying with that requirement, but it is not necessary to do so.

One commentator felt that in § 33.49, the accessory loading provision referred to in paragraph (a) could be interpreted to require the limit load to be applied during all operations. The intent of this rule is to require limit loads only during operation at rated maximum continuous power and rated takeoff power, and the section is revised accordingly.

One commentator recommended that instead of requiring maximum cylinder temperatures during all of the endurance running at maximum and takeoff powers that a shorter time period would adequately demonstrate cylinder assembly integrity. The FAA agrees with the recommendation and the rule as adopted requires testing with cylinder and oil inlet temperatures specified, for 35 hours, the time currently used in certification practice. Furthermore, the FAA agrees with another commentator that as long as the cylinder temperatures are monitored the intent of the section will be met, and the requirement is revised to refer to cylinder temperature, deleting reference to the cylinder barrel and head.

A commentator recommended that the altitude testing requirements for turbosupercharged engines be deleted and the tests be run at sea level condition. The FAA does not agree. The altitude testing requirements are necessary. However, the section as adopted is revised by rewording the lead-in sentence of § 33.49(e) to allow as an alternative that altitude tests may be simulated, and by deleting proposed § 33.49(e)(1)(iii).

Proposal 13—Several commentators objected that the proposed requirement in § 33.55(b) that all adjustment settings and functioning characteristics that can be established independent of installation on the engine be unchanged at teardown is unnecessarily restrictive. The FAA agrees that the intent of the proposal would be satisfied if those functioning characteristics remain within limits established at the beginning of the endurance test, and the requirement is revised accordingly.

Several commentators believed that the requirement proposed in § 33.55(c) that components conform to the type design after the endurance test was too severe, especially since this would require parts to remain within drawing tolerances. The FAA does not agree. The type design includes dimensions within which a component may change in service. A component that sustains wear beyond those limits during a 150-hour endurance test has not met minimum airworthiness standards.

Proposal 14—The last sentence of § 33.57(b) as proposed is amended to require the engine "or" its parts to be subjected to additional tests if required instead of the engine "and" its parts.

As discussed in connection with Proposal 1 of Part 21, new § 33.62 is added to require stress analysis of certain engine parts.

Proposal 15—A commentator recommended revision of proposed § 33.65 to include reference to the allowable engine operating limitations in order to clarify that there could not be a finding of noncompliance if any of the undesired effects resulted from operations beyond those limitations. The section is intended to apply only to operations that are within allowable operating limitations as set forth in the manufacturer's operating instructions and the requirement is revised to make this clear.

In addition, the section is revised to delete the reference to inlet air distortion caused by cross-wind, which is adequately covered by the manufacturer's specification of limiting inlet air distortion, and to ice ingestion, which is adequately covered by other requirements.

Proposal 16—Several commentators recommended that § 33.66 be clarified to avoid the interpretation that a reduction in engine performance due to bleed air would be an "adverse effect on the engine." To preclude this possible misinterpretation, the section is revised accordingly.

Proposal 17—Several commentators suggested that paragraph (a) of § 33.67 be revised to allow for the use of seals and locking devices as alternatives to making the fuel control adjusting means inaccessible. The FAA agrees that these alternative means may be used to achieve the desired intent and the section is revised accordingly.

Several commentators expressed doubt that it should be necessary to add any water to saturated fuel since upon cooling the saturated water would precipitate out, thus representing the most critical condition. The FAA does not agree that the amount of water which may precipitate out properly represents the most critical amount of free water possible in the system. The added water is necessary to simulate critical conditions.

Several commentators expressed doubt that § 33.67(b)(6) could be literally complied with and suggested that the aim of the rule was that all means be taken to prevent the release of contaminants, and that an insignificant amount of contaminant release should not violate the rule. The FAA agrees with this comment and the rule as adopted requires design of the bypass to minimize release of contaminants.

Other revisions to the section have been made for the reasons set forth in the discussion relating to § 23.997, which contains like requirements.

Proposal 18—The comments received in response to proposed § 33.68 were similar to those received in connection with the substantively similar provisions contained in proposal 6 of Part 23, § 23.1093. The section is revised in accordance with the discussion pertaining to revisions of that section.

Proposal 19—Several commentators objected to the requirement in § 33.69 for two igniters; however, this is the requirement of the present rule and the only proposed change to the rule is the requirement for a single igniter for fuel augmentation systems. No objections were received to this provision.

Proposal 20—Several commentators objected to the requirement in § 33.71(b)(6) for cockpit indication of oil filter contamination, where no bypass is incorporated. However, the FAA considers the addition of a cockpit indicator to be necessary in the interest of safety in order to enable the flight crew to prevent engine failure due to oil starvation, that might occur if all required filters in the lubrication system do not incorporate the protection of a filter bypass.

As indicated by other commentators, the words "extreme temperature" as used in proposed § 33.71(c)(9) could be taken to require compliance at temperatures beyond the intended operating range. Such a result would be contrary to the intent of the requirement and the section as adopted is revised to refer to maximum operating temperature. In response to other comments the differential pressure requirement in subparagraph (c)(9) is reworded to clarify that

it may not be less than 5 p.s.i. above the maximum operating pressure of the tank.

One commentator considered that the lack of a requirement for a bypass was a serious deficiency in the proposal. The FAA has considered this question many times including extensive discussion at government-industry airworthiness meetings and has determined that due to the serious divergence of opinion the use of a bypass should at present be optional. If no bypass is used, however, the applicant must comply with other safeguards contained in the section to ensure safe operation of the lubrication system.

The remainder of the comments were similar to those made in response to proposals 3, 4, and 5 of Part 23 and have been responded to in discussion of those proposals. The section has been reworded in part to conform with the changes made to the sections involved in those proposals.

Proposal 21—One commentator recommended that § 33.72 should refer to a "main" filter only. The FAA does not agree; the requirements are meant to apply to each filter or screen incorporated in the system.

Proposal 22—Several commentators believed that § 33.75 as written was confusing and ambiguous. The printed notice was incorrectly worded and the section is rewritten to read correctly.

Several commentators suggested that the word "burst" in subparagraph (b) was ambiguous and needed further definition. The FAA agrees and, accordingly, a further descriptive phrase, "penetrate its case," is added.

One commentator suggested that the phrase "improper operations" be substituted for "bad operation". The FAA agrees with the suggestion and the section incorporates this change.

One commentator objected to consideration of multiple failures, to avoid consideration of an infinite number of possible failures. The analysis however does not require that all possible multiple failures be considered, but uses the accepted standard of consideration of only the probable single or multiple failures.

Proposal 23—One commentator suggested that § 33.77(a)(2) be clarified to ensure that a burst meant uncontained burst that penetrates the case. The FAA agrees that this is the intent of the section and it is revised accordingly.

Several commentators suggested that the footnote to the table be modified to permit the option of demonstrating containment on a component basis for all the test items. The FAA does not agree that this would adequately account for secondary effects except in the case of blade containment in fan engines as noted.

Several commentators expressed doubt that the proposed rate of ingestion of 1½ pound birds was supported by ornithological data or actual flight experience. They suggested that a lesser rate be used. The FAA, after further study and consideration, agrees. Accordingly, the ingestion rate for 1½ pound birds is established at one for the first 300 square inches of inlet area and at one for each 600 additional square inches or fraction thereof, of up to a maximum of 8 birds.

The practical reality of a 4-inch hailstone was questioned in some of the comments. The FAA, after further study, has determined that this size will probably not be encountered in actual flight conditions and the section is amended to delete the requirement.

Several commentators believed that the amount of sand and gravel specified was excessive and not representative of actual conditions. After further consideration, the FAA agrees that the amount proposed should be reduced and the section is revised accordingly.

The FAA agrees with the point raised by several commentators that, in § 33.77(c), some power or thrust loss should be permitted since the ingestion of these objects will certainly cause a temporary power loss. Accordingly, the requirement is revised to permit power or thrust loss that is not "sustained." In addition, § 33.77(f) is revised, upon further consideration, to require testing for water ingestion to take place under takeoff operating conditions rather than the proposed "maximum cruise." This reflects current practice in engine certification.

The ¼ by 1 inch bolt test is deleted since the test for the broken rotor blade is a more stringent test and will adequately account for the effects of the bolt.

A comment was received that objected to the provision in proposed § 33.77(d)(3) relating to obstruction of induction airflow by foreign objects that are stopped by a protective device. The FAA wishes to point out that the subject provision does not state a requirement that must be met by all applicants. Rather, it provides an alternative to testing for the effects of objects that can be stopped by a protective device and prevented, by deflection out of the airflow path or by some other means, from obstructing the induction airflow in any way.

In addition, a new paragraph (e) is included in § 33.77 to incorporate the suggestion offered by some commentators that the effects of ingestion of some foreign objects can be accounted for by the effects of others. Thus, in showing compliance with § 33.77(a) the applicant is required to test only for that object that is shown to have the most severe effect. Similarly, for compliance with (b), testing is required for sand and gravel and either the 3 ounce or 1½ pound birds, depending on the size of the engine inlet, as designated in § 33.77(f).

Proposed paragraph (e) is redesignated as paragraph (f).

Proposal 24—One commentator recommended that in § 33.79(a) an acceptable means of compliance to demonstrate cooling be provided for the guidance of the applicant. The FAA, upon further consideration agrees that the section does not adequately establish a definable objective and the proposal is withdrawn for further study. Proposed paragraphs (b) through (f) are redesignated (a) through (e), respectively.

One commentator believed that paragraph (e) of the proposed rule could be misinterpreted as allowing a loss of thrust to the unaugmented engine in an amount equal to that added by the augmentor. To avoid possible misinterpretation, the requirement, adopted in § 33.79(d), is reworded to clarify that the loss of thrust mentioned means only the thrust that is provided by augmentation. Furthermore, upon further consideration, the FAA has revised the requirement to refer only to failure or malfunction of augmentor combustion, since the effects of other possible augmentor failures on engine thrust cannot be reliably predicted.

One commentator recommended clarification of proposed paragraph (f) to ensure that the rotational speed mentioned be the minimum rotational speed at which the thrust augmentation functions. This is the original intent of the paragraph and it is modified accordingly.

Proposal 25 — One commentator pointed out an error in the explanation of proposed changes to § 33.81. Instead of referring to § 33.43, it should have referred to § 33.87. No change to the adopted rule itself is necessary, however.

Proposal 26—No comments were received on the proposed new § 33.82, and the section is adopted as proposed.

Proposal 27—Several commentators recommended that the requirement in § 33.83 for testing to 110 percent of the desired maximum continuous speed rating be deleted because certain high performance turbine engines may not be capable of achieving this overspeed condition. Upon further consideration, the FAA agrees with the commentators' position and the requirement is deleted.

Other revisions to the section have been made for the reasons set forth in the discussion relating to § 33.43, which contains like requirements.

Proposal 28—Revisions have been made to § 33.85 for the reasons set forth in the discussion relating to § 33.45, which contains like requirements.

Proposal 29—Several commentators requested that the surface temperature requirement be deleted from proposed § 33.87(a)(3) as being difficult to simulate on a test stand. The section is intended by the FAA to require that if an engine external temperature limit be specified by the applicant as being critical, then the applicant must demonstrate satisfactory operation at that temperature. It is pointed out that only those temperatures specified by the applicant need be held at their specified values and the requirement is reworded to clarify this. In addition, the section is revised to provide allowance for more than one test run if all parameters cannot be held at the required values simultaneously.

Several commentators objected to subparagraph (a)(4) of § 33.87 which had called for fuels, lubricants, and hydraulic fluids with the lowest thermal breakdown

temperatures allowed by their specifications to be used during the tests. They felt that this was practically an impossible requirement because of the unavailability of fluids and lubricants with all the minimum properties called for. The FAA agrees, and the requirement is revised to call for specified fluids and lubricants used during the endurance tests to conform to their respective specifications.

One commentator suggested that § 33.87(a)(6) be amended to require that only shear and overload loads be tested and that the requirement for other loading during the endurance tests be deleted. The FAA does not agree, but intended that the endurance test simulate actual operation and include testing of the accessories drives themselves as well as other portions of the engine. This requires loading of those drives, and the rule is adopted as proposed.

Several commentators questioned whether the limit load for accessories specified in subparagraph (a)(6) should apply only during maximum power operation. This is the intended construction of the section, and it is amended to reflect this intent.

One commentator expressed concern that compliance with § 33.87(a)(8) which calls for cooling air simulation could not be demonstrated since in a particular engine there may be many divisions of cooling air-flow which might make it virtually impossible to individually regulate each separate cooling airflow path. The FAA agrees with the commentator's position and the proposal is withdrawn for further study.

Several commentators suggested that the references to supersonic engines be deleted because of the lack of foreseeable need for such engines. The FAA does not agree. One of the purposes in formulating these new amendments is to establish standards for that new generation of engines, especially since the FAA is in the process of presently certificating such engines.

One commentator pointed out that the proposal did not include the false start tests of the present rule. This was an inadvertent omission and those false start tests are included in the adopted rule.

Proposal 30—The phrase "for installation in an engine" is deleted from § 33.88 as being surplusage.

Proposal 31—One commentator requested that a better definition be used in § 33.89(b) for the term "extreme ambient temperature and altitude." The FAA agrees that, taken literally, the requirement could be unnecessarily burdensome. Accordingly, the wording is modified to read "maximum and minimum operating ambient temperature" and "maximum operating altitude." In addition, upon further consideration, the last sentence of the proposed requirement is deleted as unnecessary.

Proposal 32—One commentator believed that for the overhaul test of § 33.90 two starts per hour was unnecessarily severe and suggested that a number representative of intended operation might be substituted for the stated requirement. The FAA agrees that if the applicant could show that a lesser number of starts would be more representative of intended operation for the particular engine that this would adequately comply with the intent of the section, and the section is revised accordingly. Furthermore, since this revision eliminates the distinction in the section between airplane and rotorcraft engines, the requirement is expressed in a single paragraph, rather than in (a) and (b) as proposed.

In response to several comments, § 33.90 as adopted is revised to clarify that the requirement applies only to engines being originally type certificated; it does not apply to engines being certificated through amendments to existing type certificates or through supplemental type certification procedures.

Several commentators recommended deleting the entire section as proposed. They expressed the opinion that it it was unreasonable to require the completion of an overhaul test in addition to the endurance test as a condition of type certification and believed that past practices were adequate to establish an initial overhaul period. One commentator stated that the 150 hour endurance test, because of its accelerated nature, should be equivalent to a 1000 hour overhaul period. The FAA does not agree. This additional overhaul test is necessary since experience on certain engines has shown that the endurance test has not been equivalent to longer service operations, especially for periods as long as 1000 hours.

Proposal 33—Several commentators pointed out that the oil tank requirement in paragraph (c) of proposed § 33.91 was redundant with a similar proposed requirement in proposed § 33.71(c)(9). The specified test requirements for oil tanks are covered under § 33.71(c)(9) and reference to oil tanks is, therefore, not included in § 33.91(c) as adopted. References to "extreme temperature" and "the sum of 5 p.s.i. and the maximum operating pressure" in the requirements specified in § 33.91(c) have been revised for reasons discussed in connection with Proposal 20, this Part (§ 33.71). In addition, and for the same reason, references to "extreme temperature" in § 33.91(d) have been replaced by "maximum and minimum operating temperature", and the requirement to test while cycling operating conditions from "one extreme to another" has been rewritten to require cycling between maximum and minimum operating conditions.

Proposal 34—Several commentators expressed the opinion that the tests required under § 33.92 are unnecessary for engines that are to be used in single engine aircraft. One commentator further suggested that the time period of 3 hours may not be appropriate to a practical situation but rather, the time period and r.p.m. should be based upon the conditions arising from a recommended flight technique following an engine failure at a critical point in the flight path. Another commentator expressed doubt that windmilling for 3 hours without oil was a normal expectancy. The FAA does not agree. It is not possible, at the time of certification, to know the end use or particular intended flight conditions for each engine. It is therefore necessary to establish a general criterion which will adequately demonstrate a degree of safety for conditions that a turbine engine would likely encounter on a typical and usual route structure. The 3 hour time period specified does represent a time period representative of an expected route structure and windmilling for 3 hours without oil is a reasonable possibility.

One commentator recommended that the proposed rule be clarified to specifically allow for the engine windmilling speed to either decrease or stop due to freezing of bearings. The proposal as written does not specifically mention this condition. However, the FAA agrees that this would be a satisfactory means of accomplishing the intent of the section and the rule is revised to allow for this condition.

One commentator recommended deletion of the entire section because he believed there was insufficient experience pointing out a need for these tests and because the proposal implies a flight test as a condition of engine certification. The FAA finds that experience establishes the need for these tests and points out that flight tests are not specifically required by the rule.

Proposal 35—The changes to § 33.93 are similar to those made for § 33.55, which was the subject of similar comments. The changes and comments are discussed in connection with Proposal 13, this Part.

Proposal 36—The changes to § 33.99 are similar to those made for § 33.57, which was the subject of similar comments. The changes and comments are discussed in connection with Proposal 14, this Part.

Finally, it should be noted that a number of the rule changes contained in this Amendment deal with subjects for which proposals were received for inclusion in the 1974–75 Airworthiness Review Program (Notice 74–5; 39 FR 5785). As indicated in that Notice and in Notice 74–5A (39 FR 18662), inviting comment on the proposals received, rule making procedures separate from the Airworthiness Review could result in removal of proposals from further consideration during the Airworthiness Review Program. The FAA was determined that the following FAA proposals presently being processed in the 1974–75 Airworthiness Review relate to issues that are covered by the rules adopted by these Amendments, and need not, and will not, be given further

consideration during the 1974–75 Airworthiness Review:

Proposal No.	FAR'S	Subject
677 (with respect to proposed paragraph (q) only).	§ 23.1305	Powerplant instruments.
782	§ 25.997	Fuel strainer or filter.
784	§ 25.1305	Powerplant instruments.
863	§ 27.1305	Do.
941	§ 29.1183	Lines and fittings.
947	§ 29.1305	Powerplant instruments.

These amendments are made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, Parts 1, 21, 23, 25, 27, 29, and 33 of the Federal Aviation regulations are amended as follows, effective October 31, 1974:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. Section 1.1 is amended to change the definition of "Aircraft engine" and by adding new definitions "idle thrust", "rated takeoff augmented thrust", and "rated maximum continuous augmented thrust"; by amending the definitions of "rated takeoff thrust", "rated maximum continuous thrust"; and by adding a new paragraph (3) to the definition of "type" to read as follows:

§ 1.1 General definitions.

* * * * *

"Aircraft engine" means an engine that is used or intended to be used for propelling aircraft. It includes turbosuperchargers, appurtenances, and accessories necessary for its functioning, but does not include propellers.

* * * * *

"Idle thrust" means the jet thrust obtained with the engine power control level set at the stop for the least thrust position at which it can be placed.

* * * * *

"Rated maximum continuous thrust", with respect to turbojet engine type certification, means the approved jet thrust that is developed statically or in flight, in standard atmosphere at a specified altitude, without fluid injection and without the burning of fuel in a separate combustion chamber, within the engine operating limitations established under Part 33 of this chapter, and approved for unrestricted periods of use.

* * * * *

"Rated maximum continuous augmented thrust", with respect to turbojet engine type certification, means the approved jet thrust that is developed statically or in flight, in standard atmosphere at a specified altitude, with fluid injection or with the burning of fuel in a separate combustion chamber, within the engine operating limitations established under Part 33 of this chapter, and approved for unrestricted periods of use.

* * * * *

"Rated takeoff thrust", with respect to turbojet engine type certification, means the approved jet thrust that is developed statically under standard sea level conditions, without fluid injection and without the burning of fuel in a separate combustion chamber, within the engine operating limitations established under Part 33 of this chapter, and limited in use to periods of not over 5 minutes for takeoff operation.

* * * * *

"Rated takeoff augmented thrust", with respect to turbojet engine type certification, means the approved jet thrust that is developed statically under standard sea level conditions, with fluid injection or with the burning of fuel in a separate combustion chamber, within the engine operating limitations established under Part 33 of this chapter, and limited in use to periods of not over 5 minutes for takeoff operation.

* * * * *

"Type", * * *

(3) As used with respect to the certification of aircraft engines means those engines which are similar in design. For example, JT8D and JT8D–7 are engines of the same type, and JT9D–3A and JT9D–7 are engines of the same type.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

2. Section 21.15 is amended by adding a new paragraph (c) to read as follows:

§ 21.15 Application for type certificate.

* * * * *

(c) An application for an aircraft engine type certificate must be accompanied by a description of the engine design features, the engine operating characteristics, and the proposed engine operating limitations.

3. Section 21.35 is amended by adding a new paragraph (f) to read as follows:

§ 21.35 Flight tests.

* * * * *

(f) The flight tests prescribed in paragraph (b)(2) of this section must include—

(1) For aircraft incorporating turbine engines of a type not previously used in a type certificated aircraft, at least 300 hours of operation with a full complement of engines that conform to a type certificate; and

(2) For all other aircraft, at least 150 hours of operation.

4. Section 21.97 is amended to read as follows:

§ 21.97 Approval of major changes in type design.

(a) In the case of a major change in type design, the applicant must submit substantiating data and necessary descriptive data for inclusion in the type design.

(b) Approval of a major change in the type design of an aircraft engine is limited to the specific engine configuration upon which the change is made unless the applicant identifies in the necessary descriptive data for inclusion in the type design the other configurations of the same engine type for which approval is requested and shows that the change is compatible with the other configurations.

PART 23—AIRWORTHINESS STANDARDS: NORMALITY, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

5. Section 23.951 is amended to read as follows:

§ 23.951 General.

(a) Each fuel system must be constructed and arranged to insure a flow of fuel at a rate and pressure established for proper engine functioning under each likely operating condition, including any maneuver for which certification is requested.

(b) Each fuel system must be arranged so that—

(1) No fuel pump can draw fuel from more than one tank at a time; or

(2) There are means to prevent introducing air into the system.

(c) Each fuel system for a turbine engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80° F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

6. Section 23.997 is amended to read as follows:

§ 23.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of either the fuel metering device or an engine driven positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

(a) Be accessible for draining and cleaning and must incorporate a screen or element which is easily removable;

(b) Have a sediment trap and drain except that it need not have a drain if the strainer or filter is easily removable for drain purposes;

(c) Be mounted so that its weight is not supported by the connecting lines or by the inlet or outlet connections of the strainer or filter itself; and

(d) Have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine fuel system functioning is not impaired, with the fuel contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine in Part 33 of this Chapter.

7. Section 23.1013 is amended by amending paragraph (b)(1), paragraph (c), paragraph (e) and by adding new paragraph (g), to read as follows:

§ 23.1013 Oil tanks.

* * * * *

(b) * * *

(1) Each oil tank used with a reciprocating engine has an expansion space of not less than the greater of 10 percent

of the tank capacity or 0.5 gallon, and each oil tank used with a turbine engine has an expansion space of not less than 10 percent of the tank capacity; and

* * * * *

(c) *Filler connection.* Each oil tank filler connection must be marked as specified in § 23.1557(c). Each recessed oil tank filler connection of an oil tank used with a turbine engine, that can retain any appreciable quantity of oil, must have provisions for fitting a drain.

* * * * *

(e) *Outlet.* No oil tank outlet may be enclosed by any screen or guard that would reduce the flow of oil below a safe value at any operating temperature. No oil tank outlet diameter may be less than the diameter of the engine oil pump inlet. Each oil tank used with a turbine engine must have means to prevent entrance into the tank itself, or into the tank outlet, of any object that might obstruct the flow of oil through the system. There must be a shutoff valve at the outlet of each oil tank used with a turbine engine, unless the external portion of the oil system (including oil tank supports) is fireproof.

* * * * *

(g) Each oil tank filler cap of an oil tank that is used with a turbine engine must provide an oiltight seal.

8. Section 23.1015 is amended by deleting the word "and" at the end of paragraph (a), deleting the period at the end of paragraph (b) and inserting "; and" in place thereof, and adding a new paragraph (c) to read as follows:

§ 23.1015 Oil tank tests.

* * * * *

(c) For pressurized tanks used with a turbine engine, the test pressure may not be less than 5 p.s.i. plus the maximum operating pressure of the tank.

9. Section 23.1019 is amended to read as follows:

§ 23.1019 Oil strainer or filter.

(a) Each turbine engine installation must incorporate an oil strainer or filter through which all of the engine oil flows and which meets the following requirements:

(1) Each oil strainer or filter that has a bypass, must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter completely blocked.

(2) The oil strainer or filter must have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine oil system functioning is not impaired when the oil is contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine under Part 33 of this Chapter.

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate an indicator that will indicate contamination of the screen before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

(4) The bypass of a strainer or filter must be constructed and installed so that the release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flow path.

(5) An oil strainer or filter that has no bypass, except one that is installed at an oil tank outlet, must have a means to connect it to the warning system required in § 23.1305(u).

(b) Each oil strainer or filter in a powerplant installation using reciprocating engines must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter element completely blocked.

10. Section 23.1093 is amended by amending paragraph (b) to read as follows:

§ 23.1093 Induction system icing protection.

* * * * *

(b) Each turbine engine must—

(1) Operate throughout its flight power range (including idling) without adverse effect on engine operation or serious loss of power or thrust, under the icing conditions specified in Appendix C of Part 25 of this Chapter, and in snow, both falling and blowing, within the limitations established for the airplane; and

(2) Idle for 30 minutes on the ground with the air bleed available for engine icing protection at its critical condition, without adverse effect, in an atmosphere that is at a temperature of 29° F and has a liquid water content of 0.6 grams per cubic meter in the form of drops having a mean effective diameter of 40 microns, followed by a momentary operation at takeoff power or thrust.

11. Section 23.1183 is amended by amending the heading and paragraph (a) to read as follows:

§ 23.1183 Lines and fittings and components.

(a) Except as provided in paragraph (b) of this section, each component, line, and fitting carrying flammable fluids, gas, or air in any area subject to engine fire conditions must be at least fire resistant, except that flammable fluid tanks and supports which are part of and attached to the engine must be fireproof or be enclosed by a fireproof shield unless damage by fire to any non-fireproof part will not cause leakage or spillage of flammable fluid. Components must be shielded or located so as to safeguard against the ignition of leaking flammable fluid. Flexible hose assemblies (hose and end fittings) must be approved. An integral oil sump of less than 20 quart capacity on a reciprocating engine need not be fireproof nor be enclosed by a fireproof shield.

* * * * *

2. Section 23.1305 is amended by adding new paragraphs (s), (t), (u), and (v) to read as follows:

§ 23.1305 Powerplant instruments.

* * * * *

(s) For each turbine engine, an indicator to indicate the functioning of the powerplant ice protection system.

(t) For each turbine engine, an indicator for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

(u) For each turbine engine, a warning means for the oil strainer or filter required by § 23.1019, if it has no bypass, to warn the pilot of the occurrence of contamination of the strainer or filter screen before it reaches the capacity established in accordance with § 23.1019(a)(2).

(v) An indicator to indicate the functioning of any heater used to prevent ice clogging of fuel system components.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

13. Section 25.951 is amended by adding new paragraph (c) to read as follows:

§ 25.951 General.

* * * * *

(c) Each fuel system for a turbine engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80° F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

14. Section 25.977 is amended by revoking paragraph (b). As amended, § 25.997 reads as follows:

§ 25.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of either the fuel metering device or an engine driven positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

(a) Be accessible for draining and cleaning and must incorporate a screen or element which is easily removable;

(b) Have a sediment trap and drain except that it need not have a drain if the strainer or filter is easily removable for drain purposes;

(c) Be mounted so that its weight is not supported by the connecting lines or by the inlet or outlet connections of the strainer or filter itself; and

(d) Have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine fuel system functioning is not impaired, with the fuel contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine in Part 33 of this chapter.

15. Section 25.1013 is amended by deleting the second sentence of paragraph (a) and amending paragraph (b)(1) and paragraph (e) to read as follows:

§ 25.1013 Oil tanks.

* * * * *

(b) * * *

(1) Each oil tank used with a reciprocating engine must have an expansion

space of not less than the greater of 10 percent of the tank capacity or 0.5 gallon, and each oil tank used with a turbine engine must have an expansion space of not less than 10 percent of the tank capacity.

* * * * *

(e) *Outlet.* There must be means to prevent entrance into the tank itself, or into the tank outlet, of any object that might obstruct the flow of oil through the system. No oil tank outlet may be enclosed by any screen or guard that would reduce the flow of oil below a safe value at any operating temperature. There must be a shutoff valve at the outlet of each oil tank used with a turbine engine, unless the external portion of the oil system (including the oil tank supports) is fireproof.

16. Section 25.1015 is amended by revising paragraph (b)(1) to read as follows:

§ 25.1015 Oil tank tests.

* * * * *

(b) * * *

(1) The test pressure—

(i) For pressurized tanks used with a turbine engine, may not be less than 5 p.s.i. plus the maximum operating pressure of the tank instead of the pressure specified in § 25.965(a); and

(ii) For all other tanks may not be less than 5 p.s.i. instead of the pressure specified in § 25.965(a); and

* * * * *

17. Section 25.1019 is amended to read as follows:

§ 25.1019 Oil strainer or filter.

(a) Each turbine engine installation must incorporate an oil strainer or filter through which all of the engine oil flows and which meets the following requirements:

(1) Each oil strainer or filter that has a bypass must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter completely blocked.

(2) The oil strainer or filter must have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine oil system functioning is not impaired when the oil is contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine under Part 33 of this chapter.

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate an indicator that will indicate contamination of the screen before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

(4) The bypass of a strainer or filter must be constructed and installed so that the release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flow path.

(5) An oil strainer or filter that has no bypass, except one that is installed at an oil tank outlet, must have a means to connect it to the warning system required in § 25.1305(c)(7).

(b) Each oil strainer or filter in a powerplant installation using reciprocating engines must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter element completely blocked.

18. Section 25.1093 is amended by amending paragraph (b) to read as follows:

§ 25.1093 Induction system deicing and anti-icing provisions.

* * * * *

(b) *Turbine engines.* Each turbine engine must—

(1) Operate throughout its flight power range (including idling) without adverse effect on engine operation or serious loss of power or thrust under the icing conditions specified in Appendix C of this part, and in snow, both falling and blowing, within the limitations established for the airplane; and

(2) Idle for 30 minutes on the ground with the air bleed available for engine icing protection at its critical condition, without adverse effect, in an atmosphere that is at a temperature of 29°F and has a liquid water content of 0.6 grams per cubic meter in the form of drops having a mean effective diameter of 40 microns, followed by a momentary operation at takeoff power or thrust.

19. Section 25.1183 is amended by amending the heading and paragraph (a) to read as follows:

§ 25.1183 Flammable fluid-carrying components.

(a) Except as provided in paragraph (b) of this section, each line, fitting, and other component carrying flammable fluid in any area subject to engine fire conditions, and each component which conveys or contains flammable fluid in a designated fire zone must be fire resistant, except that flammable fluid tanks and supports in a designated fire zone must be fireproof or be enclosed by a fireproof shield unless damage by fire to any non-fireproof part will not cause leakage or spillage of flammable fluid. Components must be shielded or located to safeguard against the ignition of leaking flammable fluid. An integral oil sump of less than 20 quart capacity on a reciprocating engine need not be fireproof nor be enclosed by a fireproof shield.

* * * * *

20. Section 25.1305 is amended by adding new paragraphs (c) (5) through (8) to read as follows:

§ 25.1305 Powerplant instruments.

* * * * *

(c) For turbine engine powered airplanes.

* * * * *

(5) An indicator to indicate the functioning of the powerplant ice protection system for each engine.

(6) An indicator for the fuel strainer or filter required by § 25.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 25.997(d).

(7) A warning means for the oil strainer or filter required by § 25.1019, if it has no bypass, to warn the pilot of the occurrence of contamination of the strainer or filter screen before it reaches the capacity established in accordance with § 25.1019(a)(2).

(8) An indicator to indicate the proper functioning of any heater used to prevent ice clogging of fuel system components.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

21. Section 27.951 is amended by adding a new paragraph (c) to read as follows:

§ 27.951 General.

* * * * *

(c) Each fuel system for a turbine engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80° F. and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

22. Section 27.997 is amended to read as follows:

§ 27.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of either the fuel metering device or an engine driven positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

(a) Be accessible for draining and cleaning and must incorporate a screen or element which is easily removable;

(b) Have a sediment trap and drain except that it need not have a drain if the strainer or filter is easily removable for drain purposes;

(c) Be mounted so that its weight is not supported by the connecting lines or by the inlet or outlet connections of the strainer or filter itself; and

(d) Have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine fuel system functioning is not impaired, with the fuel contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine in Part 33 of this Chapter.

23. Section 27.1013 is amended by revoking paragraph (b) and marking it "reserved," and by amending paragraph (c) to read as follows:

§ 27.1013 Oil tanks.

* * * * *

(b) [Reserved]

(c) Where used with a reciprocating engine, it has an expansion space of not less than the greater of 10 percent of the tank capacity or 0.5 gallon, and where used with a turbine engine, it has

an expansion space of not less than 10 percent of the tank capacity.

* * * * *

24. A new § 27.1015 is added to read as follows:

§ 27.1015 Oil tank tests.

Each oil tank must be designed and installed so that it can withstand, without leakage, an internal pressure of 5 p.s.i., except that each pressurized oil tank used with a turbine engine must be designed and installed so that it can withstand, without leakage, an internal pressure of 5 p.s.i., plus the maximum operating pressure of the tank.

25. Section 27.1019 is amended to read as follows:

§ 27.1019 Oil strainer or filter.

(a) Each turbine engine installation must incorporate an oil strainer or filter through which all of the engine oil flows and which meets the following requirements:

(1) Each oil strainer or filter that has a bypass must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter completely blocked.

(2) The oil strainer or filter must have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine oil system functioning is not impaired when the oil is contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine under Part 33 of this chapter.

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate an indicator that will indicate contamination of the screen before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

(4) The bypass of a strainer or filter must be constructed and installed so that the release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flow path.

(5) An oil strainer or filter that has no bypass, except one that is installed at an oil tank outlet, must have a means to connect it to the warning system required in § 27.1305(r).

(b) Each oil strainer or filter in a powerplant installation using reciprocating engines must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter element completely blocked.

26. Section 27.1093 is amended by amending paragraph (b) to read as follows:

§ 27.1093 Induction system icing protection.

* * * * *

(b) *Turbine engines.* Each turbine engine must—

(1) Operate throughout its flight power range (including idling) without adverse effect on engine operation or serious loss of power or thrust, under the icing conditions specified in Appendix C of Part 25 of this chapter, and in snow, both falling and blowing, within the limitations established for the rotorcraft; and

(2) Idle for 30 minutes on the ground with the air bleed available for engine icing protection at its critical condition, without adverse effect, in an atmosphere that is at a temperature of 29°F and has a liquid water content of 0.6 grams per cubic meter in the form of drops having a mean effective diameter of 40 microns, followed by a momentary operation at takeoff power or thrust.

27. Section 27.1183 is amended by amending the heading and paragraph (a) to read as follows:

§ 27.1183 Flammable fluid-carrying components.

(a) Except as provided in paragraph (b) of this section, each line, fitting, and other component carrying flammable fluid in any area subject to engine fire conditions must be fire resistant, except that flammable fluid tanks and supports which are part of and attached to the engine must be fireproof or be enclosed by a fireproof shield unless damage by fire to any non-fireproof part will not cause leakage or spillage of flammable fluid. Components must be shielded or located so as to safeguard against the ignition of leaking flammable fluid. An integral oil sump of less than 20 quart capacity on a reciprocating engine need not be fireproof nor be enclosed by a fireproof shield.

* * * * *

28. Section 27.1305 is amended by adding new paragraphs (p), (q), (r), and (s) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(p) For each turbine engine, an indicator to indicate the functioning of the powerplant ice protection system.

(q) For each turbine engine an indicator for the fuel strainer or filter required by § 27.997 to indicate the occurrence of contamination of the strainer of filter before it reaches the capacity established in accordance with § 27.997 (d).

(r) For each turbine engine, a warning means for the oil strainer or filter required by § 27.1019, if it has no bypass, to warn the pilot of the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 27.1019(a)(2).

(s) An indicator to indicate the proper functioning of any heater used to prevent ice clogging of fuel system components.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

29. Section 29.951 is amended by adding a new paragraph (c) to read as follows:

§ 29.951 General.

* * * * *

(c) Each fuel system for a turbine engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80° F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

30. Section 29.997 is amended to read as follows:

§ 29.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of either the fuel metering device or an engine driven positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

(a) Be accessible for draining and cleaning and must incorporate a screen or element which is easily removable;

(b) Have a sediment trap and drain, except that it need not have a drain if the strainer or filter is easily removable for drain purposes;

(c) Be mounted so that its weight is not supported by the connecting lines or by the inlet or outlet connections of the strainer or filter itself; and

(d) Have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine fuel system functioning is not impaired, with the fuel contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine in Part 33 of this Chapter.

31. Section 29.1013 is amended by deleting the second sentence in paragraph (a) and by amending paragraph (b)(1) and paragraph (e) to read as follows:

§ 29.1013 Oil tanks.

* * * * *

(b) * * *

(1) Each oil tank used with a reciprocating engine has an expansion space of not less than the greater of 10 percent of the tank capacity or 0.5 gallon, and each oil tank used with a turbine engine has an expansion space of not less than 10 percent of the tank capacity;

* * * * *

(e) *Outlet.* There must be means to prevent entrance into the tank itself, or into the tank outlet, of any object that might obstruct the flow of oil through the system. No oil tank outlet may be enclosed by a screen or guard that would reduce the flow of oil below a safe value at any operating temperature. There must be a shutoff valve at the outlet of each oil tank used with a turbine engine unless the external portion of the oil system (including oil tank supports) is fireproof.

* * * * *

32. Section 29.1015 is amended by amending paragraph (b) to read as follows:

§ 29.1015 Oil tank tests.

* * * * *

(b) It meets the requirements of § 29.965, except that instead of the pressure specified in § 29.965(b)—

(1) For pressurized tanks used with a turbine engine, the test pressure may not be less than 5 p.s.i. plus the maximum operating pressure of the tank; and

(2) For all other tanks, the test pressure may not be less than 5 p.s.i.

33. Section 29.1019 is amended to read as follows:

§ 29.1019 Oil strainer or filter.

(a) Each turbine engine installation must incorporate an oil strainer or filter through which all of the engine oil flows and which meets the following requirements:

(1) Each oil strainer or filter that has a bypass must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter completely blocked.

(2) The oil strainer or filter must have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine oil system functioning is not impaired when the oil is contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine under Part 33 of this chapter.

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate an indicator that will indicate contamination of the screen before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

(4) The bypass of a strainer or filter must be constructed and installed so that the release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flow path.

(5) An oil strainer or filter that has no bypass, except one that is installed at an oil tank outlet, must have a means to connect it to the warning system required in § 29.1305(a)(18).

(b) Each oil strainer or filter in a powerplant installation using reciprocating engines must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter element completely blocked.

34. Section 29.1093 is amended by amending paragraph (b) to read as follows:

§ 29.1093 Induction system icing protection.

* * * * *

(b) *Turbine engines.* Each turbine engine must—

(1) Operate throughout its flight power range (including idling), without adverse effect on engine operation or serious loss of power or thrust, under the icing conditions specified in Appendix C of Part 25 of this chapter, and in snow, both falling and blowing, within the limitations established for the rotorcraft; and

(2) Idle for 30 minutes on the ground, with the air bleed available for engine icing protection at its critical condition, without adverse effect in an atmosphere that is at a temperature of 29°F and has a liquid water content of 0.6 grams per cubic meter in the form of drops having a mean effective diameter of 40 microns, followed by a momentary operation at takeoff power or thrust.

35. Section 29.1183 is amended by amending the heading and paragraph (a) to read as follows:

§ 29.1183 Flammable fluid-carrying components.

(a) Except as provided in paragraph (b) of this section, each line, fitting, and other component carrying flammable fluid in any area subject to engine fire conditions and each component which conveys or contains flammable fluid in a designated fire zone must be fire resistant, except that flammable fluid tanks and supports in a designated fire zone must be fireproof or be enclosed by a fireproof shield unless damage by fire to any non-fireproof part will not cause leakage or spillage of flammable fluid. Components must be shielded or located so as to safeguard against the ignition of leaking flammable fluid. An integral oil sump of less than 20 quart capacity on a reciprocating engine need not be fireproof nor be enclosed by a fireproof shield.

* * * * *

36. Section 29.1305(a) is amended by deleting the word "and" at the end of paragraph (14), by changing the period to a semicolon at the end of paragraph (15), and by adding new paragraphs (16), (17), (18), and (19) to read as follows:

§ 29.1305 Powerplant instruments.

(a) For each rotorcraft—

* * * * *

(16) For each turbine engine, an indicator to indicate the functioning of the powerplant ice protection system;

(17) An indicator for the fuel strainer or filter required by § 29.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 29.997(d);

(18) For each turbine engine, a warning means for the oil strainer or filter required by § 29.1019, if it has no bypass, to warn the pilot of the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 29.1019(a)(2); and

(19) An indicator to indicate the proper functioning of any heater used to prevent ice clogging of fuel system components.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

37. Section 33.5 is amended to read as follows:

§ 33.5 Instructions.

Each applicant must prepare and make available to the Administrator prior to the issuance of the type certificate and to the owner at the time of delivery of the engine, instructions for installing, operating, servicing, and maintaining the engine. The instructions must include at least the following:

(a) *Installation instructions.* (1) The location of engine mounting attachments, the method of attaching the engine to the aircraft, and the maximum allowable load for the mounting attachments and related structure.

(2) The location and description of engine connections to be attached to accessories, pipes, wires, cables, ducts, and cowling.

(3) An outline drawing of the engine including overall dimensions.

(b) *Operation instructions.* (1) The operating limitations established by the Administrator.

(2) The power or thrust ratings and procedures for correcting for nonstandard atmosphere.

(3) The recommended procedures, under normal and extreme ambient conditions for—

(i) Starting;

(ii) Operating on the ground; and

(iii) Operating during flight.

(c) *Service instructions.* (1) The techniques and methods of service.

(2) The frequency of service.

(3) The fuel, lubricant, and hydraulic fluid that may be used in the engine.

(d) *Maintenance and inspection instructions.* (1) The techniques and methods for performing inspections.

(2) The frequency of checking, cleaning, lubricating, and adjusting.

(e) *Overhaul and replacement instructions.* (1) The frequency of the overhauls.

(2) The life limits of components requiring replacement.

(3) The techniques and methods of replacing components which have life limits.

(4) The techniques and methods of disassembly and reassembly.

(5) The fits and clearances of each component.

(6) The techniques for testing each component after overhaul or replacement of the component.

38. Section 33.7 is amended to read as follows:

§ 33.7 Engine ratings and operating limitations.

(a) Engine ratings and operating limitations are established by the Administrator and included in the engine certificate data sheet specified in § 21.41 of this chapter, including ratings and limitations based on the operating conditions and information specified in this section, as applicable, and any other information found necessary for safe operation of the engine.

(b) For reciprocating engines, ratings and operating limitations are established relating to the following:

(1) Horsepower or torque, r.p.m., manifold pressure, and time at critical pressure altitude and sea level pressure altitude for—

(i) Rated maximum continuous power (relating to unsupercharged operation or to operation in each supercharger mode as applicable); and

(ii) Rated takeoff power (relating to unsupercharged operation or to operation in each supercharger mode as applicable).

(2) Fuel grade or specification.

(3) Oil grade or specification.

(4) Temperature of the—

(i) Cylinder;

(ii) Oil at the oil inlet; and

(iii) Turbosupercharger turbine wheel inlet gas.

(5) Pressure of—

(i) Fuel at the fuel inlet; and

(ii) Oil at the main oil gallery.

(6) Accessory drive torque and overhang moment.

(7) Component life.

(8) Turbosupercharger turbine wheel r.p.m.

(c) For turbine engines, ratings and operating limitations are established relating to the following:

(1) Horsepower, torque, or thrust, r.p.m., gas temperature, and time for—

(i) Rated maximum continuous power or thrust (augmented);

(ii) Rated maximum continuous power or thrust (unaugmented);

(iii) Rated takeoff power or thrust (augmented);

(iv) Rated takeoff power or thrust (unaugmented);

(v) Rated 30 minute power; and

(vi) Rated 2½ minute power.

(2) Fuel designation or specification.

(3) Oil grade or specification.

(4) Hydraulic fluid specification.

(5) Temperature of—

(i) Oil at the oil inlet;

(ii) Induction air at the inlet face of a supersonic engine, including steady state operation and transient over-temperature and time allowed;

(iii) Hydraulic fluid of a supersonic engine;

(iv) Fuel at a location on a supersonic engine that is specified by the applicant; and

(v) External surfaces of the engine, if specified by the applicant.

(6) Pressure of—

(i) Fuel at the fuel inlet;

(ii) Oil at the main oil gallery;

(iii) Induction air at the inlet face of a supersonic engine, including steady state operation and transient overpressure and time allowed; and

(iv) Hydraulic fluid.

(7) Accessory drive torque and overhang moment.

(8) Component life.

(9) Fuel filtration.

(10) Oil filtration.

(11) Bleed air.

(12) The number of start-stop stress cycles approved for each rotor disc and spacer.

(13) Inlet air distortion at the engine inlet.

(14) Transient rotor shaft overspeed r.p.m., and number of overspeed occurrences.

(15) Transient gas overtemperature, and number of overtemperature occurrences.

(16) Engine rotor windmilling rotational r.p.m.

(17) Time for first overhaul.

§ 33.13 [Revoked]

39. Section 33.13 is revoked and marked "reserved."

40. A new § 33.14 is added to read as follows:

§ 33.14 Start-stop cyclic stress (low-cycle fatigue).

An operating limitation must be established that specifies as a service life the number of start-stop stress cycles for each rotor disc and each rotor spacer of the compressor and the turbine. A start-stop stress cycle consists of starting the engine, accelerating it to its maximum rated power or thrust and maintaining the power setting until the disc and spacer temperatures are stabilized, after which the engine is stopped and disc and spacer temperatures are again stabilized or reduced to a value which can be shown to produce the same stress range as stabilization. The number of start-stop stress cycles initially established as an operating limitation for any spacer or disc may not exceed one-third of the number of cycles determined to be the maximum number of cycles that can be sustained without failure for that disc or spacer. The initial limitation may be increased for any disc or spacer by testing at least three samples of that disc or spacer, that have been operated through the limiting number of cycles in actual service, through an additional number of cycles equal to at least twice the number of cycles comprising the increase in the limit.

41. Section 33.17 is amended to read as follows:

§ 33.17 Fire prevention.

(a) The design and construction of the engine and the materials used must minimize the probability of the occurrence and spread of fire.

(b) Except as provided in paragraphs (c), (d), and (e) of this section, each external line, fitting, and other component, which contains or conveys flammable fluid must be fire resistant. Components must be shielded or located to safeguard against the ignition of leaking flammable fluid.

(c) Flammable fluid tanks and supports which are part of and attached to the engine must be fireproof or be enclosed by a fireproof shield unless damage by fire to any non-fireproof part will not cause leakage or spillage of flammable fluid. For a reciprocating engine having an integral oil sump of less than 20-quart capacity, the oil sump need not be fireproof nor be enclosed by fireproof shield.

(d) For turbine engines type certificated for use in supersonic aircraft, each external component which conveys or contains flammable fluid must be fireproof.

(e) Unwanted accumulation of flammable fluid and vapor must be prevented by draining and venting.

42. Section 33.25 is amended to read as follows:

§ 33.25 Accessory attachments.

The engine must operate properly with the accessory drive and mounting attachments loaded. Each accessory drive and mounting attachment used only for an aircraft service must be loaded with the limit load specified by the applicant for the engine drive or attachment point during rated maximum continuous power and higher output. Each engine accessory drive and mounting attachment must be sealed to prevent contamination of or leakage from the engine interior. A drive and mounting attachment requiring lubrication of external drive splines or coupling by engine oil must be sealed to prevent loss of oil and to prevent contamination from sources outside the chamber enclosing the drive connection. The design of the engine must allow for the examination, adjustment, or removal of each accessory required for engine operation.

43. Section 33.27 is amended to read as follows:

§ 33.27 Turbine, compressor, and turbosupercharger rotors.

(a) Turbine, compressor, and turbosupercharger rotors must have sufficient strength to withstand the rotor speed, temperature, and vibration test conditions specified in paragraph (c) of this section.

(b) The design and functioning of engine control devices, systems, and instruments must give reasonable assurance that those engine operating limitations that affect turbine, compressor, and turbosupercharger rotor structural integrity will not be exceeded in service.

(c) The turbine rotor, the compressor rotor, and the turbosupercharger rotor sustaining the highest operating stress at the maximum limiting r.p.m., of all such rotors, respectively, in an engine or turborsupercharger, must each be tested—

(1) At its maximum operating temperature, except as provided in paragraph (c)(3)(v) of this section;

(2) For a period of 5 minutes; and

(3) At a speed of—

(i) 120 percent of its maximum limiting r.p.m. if on a rig and the rotor disc is equipped with either blades or blade weights;

(ii) 115 percent of its maximum limiting r.p.m. if on an engine;

(iii) Maximum limiting r.p.m. if on an engine and the rotor disc section is thinner than specified in the type design so that the operating stress induced at maximum limiting r.p.m. is the same as for a rotor conforming to type design at 115 percent of its maximum limiting r.p.m.;

(iv) 115 percent of its maximum limiting r.p.m. if on a turbosupercharger driven by a hot gas supply from a special burner rig; or

(v) 120 percent of the r.p.m. at which, while cold spinning, the disc is subject to the same operating stresses that are induced at the maximum limiting temperature and r.p.m.: *Provided, That* disc temperature survey data from operating engines and data on hot strength properties

of the disc material establish the effect of temperature on stress.

Following the test, each rotor must be within the dimensional limits allowed by the type design for installation in an engine and may not be cracked.

44. A new § 33.29(a) is added to read as follows:

§ 33.29 Instrument connection.

(a) Unless it is constructed to prevent its connection to an incorrect instrument, each connection provided for powerplant instruments required by aircraft airworthiness regulations or necessary to insure operation of the engine in compliance with any engine limitation must be marked to identify it with its corresponding instrument.

* * * * *

45. A new § 33.42 is added to read as follows:

§ 33.42 General.

Before each endurance test required by this subpart, the adjustment setting and functioning characteristic of each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must be established and recorded.

46. Section 33.43 is amended to read as follows:

§ 33.43 Vibration test.

(a) Each engine must undergo a vibration survey to establish the torsional and bending vibration characteristics of the crankshaft and the propeller shaft or other output shaft, over the range of crankshaft speed and engine power, under steady state and transient conditions, from idling speed to either 110 percent of the desired maximum continuous speed rating or 103 percent of the maximum desired takeoff speed rating, whichever is higher. The survey must be repeated with that cylinder not firing that has the most adverse vibration effect, except that the speed range need be only from idle to the maximum desired takeoff speed rating. The survey must be conducted using, for airplane engines, the same configuration of the propeller type which is used for the endurance test, and using, for other engines, the same configuration of the loading device type which is used for the endurance test.

(b) The torsional and bending vibration stresses of the crankshaft and the propeller shaft or other output shaft may not exceed the endurance limit stress of the material from which the shaft is made. If the maximum stress in the shaft cannot be shown to be below the endurance limit by measurement, the vibration frequency and amplitude must be measured. The peak amplitude must be shown to produce a stress below the endurance limit; if not, the engine must be run at the condition producing the peak amplitude until, for steel shafts, 10 million stress reversals have been sustained without fatigue failure and, for other shafts, until it is shown that fatigue will not occur within the endurance limit stress of the material.

(c) Each accessory drive and mounting attachment must be loaded, with the loads imposed by each accessory used only for an aircraft service being the limit load specified by the applicant for the drive or attachment point.

47. Section 33.45 is amended by deleting the final period and adding to the last sentence of the present rule the words "with only those accessories installed which are essential for engine functioning."; by designating the present rule as amended as paragraph (a); and by adding a new paragraph (b) to read as follows:

§ 33.45 Calibration tests.

* * * * *

(b) A power check at sea level conditions must be accomplished on the endurance test engine after the endurance test. Any change in power characteristics which occurs during the endurance test must be determined. Measurements taken during the final portion of the endurance test may be used in showing compliance with the requirements of this paragraph.

48. Section 33.49, paragraph (a) and the headings and lead-in sentences of paragraphs (b) and (c) are amended, and a new paragraph (e) is added, to read as follows:

§ 33.49 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of 150 hours of operation (except as provided in paragraph (e)(1)(iii) of this section) and, depending upon the type and contemplated use of the engine, consists of one of the series of runs specified in paragraphs (b) through (e) of this section, as applicable. The runs must be made in the order found appropriate by the Administrator for the particular engine being tested. During the endurance test the engine power and the crankshaft rotational speed must be kept within ±3 percent of the rated values. During the runs at rated takeoff power and for at least 35 hours at rated maximum continuous power, one cylinder must be operated at not less than the limiting temperature, the other cylinders must be operated at a temperature not lower than 50 degrees F below the limiting temperature, and the oil inlet temperature must be maintained within ±10 degrees F of the limiting temperature. An engine that is equipped with a propeller shaft must be fitted for the endurance test with a propeller that thrust-loads the engine to the maximum thrust which the engine is designed to resist at each applicable operating condition specified in this section. Each accessory drive and mounting attachment must be loaded. During operation at rated takeoff power and rated maximum continuous power, the load imposed by each accessory used only for an aircraft service must be the limit load specified by the applicant for the engine drive or attachment point.

(b) *Unsupercharged engines and engines incorporating a gear-driven single-speed supercharger.* For engines not incorporating a supercharger and for engines incorporating a gear-driven single-speed supercharger the applicant must conduct the following runs: * * *

(c) *Engines incorporating a gear-driven two-speed supercharger.* For engines incorporating a gear-driven two-speed supercharger the applicant must conduct the following runs: * * *

* * * * *

(e) *Turbosupercharged engines.* For engines incorporating a turbosupercharger the following apply except that altitude testing may be simulated provided the applicant shows that the engine and supercharger are being subjected to mechanical loads and operating temperatures no less severe than if run at actual altitude conditions:

(1) For engines used in airplanes the applicant must conduct the runs specified in paragraph (b) of this section, except—

(i) The entire run specified in paragraph (b)(1) of this section must be made at sea level altitude pressure;

(ii) The portions of the runs specified in paragraphs (b) (2) through (7) of this section at rated maximum continuous power must be made at critical altitude pressure and the portions of the runs at other power must be made at critical altitude pressure and the portions of the runs at other power must be made at 8,000 feet altitude pressure; and

(iii) The turbosupercharger used during the 150-hour endurance test must be run on the bench for an additional 50 hours at the limiting turbine wheel inlet gas temperature and rotational speed for rated maximum continuous power operation unless the limiting temperature and speed are maintained during 50 hours of the rated maximum continuous power operation.

(2) For engines used in helicopters the applicant must conduct the runs specified in paragraph (d) of this section, except—

(i) The entire run specified in paragraph (d)(1) of this section must be made at critical altitude pressure;

(ii) The portions of the runs specified in paragraphs (d) (2) and (3) of this section at rated maximum continuous power must be made at critical altitude pressure and the portions of the runs at other power must be made at 8,000 feet altitude pressure;

(iii) The entire run specified in paragraph (d)(4) of this section must be made at 8,000 feet altitude pressure;

(iv) The portion of the runs specified in paragraph (d)(5) of this section at 80 percent of rated maximum continuous power must be made at 8,000 feet altitude pressure and the portions of the runs at other power must be made at critical altitude pressure;

(v) The entire run specified in paragraph (d)(6) of this section must be made at critical altitude pressure; and

(vi) The turbosupercharger used during the endurance test must be run on

the bench for 50 hours at the limiting turbine wheel inlet gas temperature and rotational speed for rated maximum continuous power operation unless the limiting temperature and speed are maintained during 50 hours of the rated maximum continuous power operation.

49. Section 33.55 is amended to read as follows:

§ 33.55 Teardown inspection.

After completing the endurance test—

(a) Each engine must be completely disassembled;

(b) Each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must retain each setting and functioning characteristic within the limits that were established and recorded at the beginning of the test; and

(c) Each engine component must conform to the type design and be eligible for incorporation into an engine for continued operation, in accordance with information submitted in compliance with § 33.5(e).

50. Section 33.57 is amended by amending paragraph (b) to read as follows:

§ 33.57 General conduct of block tests.

* * * * *

(b) The applicant may service and make minor repairs to the engine during the block tests in accordance with the service and maintenance instructions submitted in compliance with § 33.5. If the frequency of the service is excessive, or the number of stops due to engine malfunction is excessive, or a major repair, or replacement of a part is found necessary during the block tests or as the result of findings from the teardown inspection, the engine or its parts may be subjected to any additional test the Administrator finds necessary.

51. A new § 33.62 is added to read as follows:

§ 33.62 Stress analysis.

A stress analysis must be performed on each turbine engine showing the design safety margin of each turbine engine rotor, spacer, and rotor shaft.

52. Section 33.65 is amended to read as follows:

§ 33.65 Surge and stall characteristics.

When the engine is operated in accordance with operating instructions required by § 33.5(b), starting, a change of power or thrust, power or thrust augmentation, limiting inlet air distortion, or inlet air temperature may not cause surge or stall to the extent that flameout, structural failure, overtemperature, or failure of the engine to recover power or thrust will occur at any point in the operating envelope.

53. A new § 33.66 is added to read as follows:

§ 33.66 Bleed air system.

The engine must supply bleed air without adverse effect on the engine, excluding reduced output, at the discharge flow condition established as a limitation. If bleed air used for engine anti-icing can be controlled, provision must be made for connecting the bleed air system to a means to indicate the functioning of the aircraft powerplant ice protection system.

54. Section 33.67 is amended to read as follows:

§ 33.67 Fuel system.

(a) With fuel supplied to the engine at the flow and pressure specified by the applicant, the engine must function properly under each operating condition required by this Part. Each fuel control adjusting means that may not be manipulated while the fuel control device is mounted on the engine must be secured by a locking device and sealed, or otherwise be inaccessible. All other fuel control adjusting means must be accessible and marked to indicate the function of the adjustment unless the function is obvious. Each fuel system must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80 degrees F and having 0.75cc. of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

(b) There must be a fuel strainer or filter between the engine fuel inlet opening and the inlet of either the fuel metering device or the engine-driven positive displacement pump whichever is nearer the engine fuel inlet. In addition, the following provisions apply to each strainer or filter required by this paragraph (b):

(1) It must be accessible for draining and cleaning and must incorporate a screen or element that is easily removable.

(2) It must have a sediment trap and drain except that it need not have a drain if the strainer or filter is easily removable for drain purposes.

(3) It must be mounted so that its weight is not supported by the connecting lines or by the inlet or outlet connections of the strainer or filter.

(4) It must have the type and degree of fuel filtering specified as necessary for protection of the engine fuel system against foreign particles in the fuel. The applicant must demonstrate that foreign particles passing through the specified filtering means do not impair engine fuel system functioning.

(5) It must have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine fuel system functioning is not impaired with fuel contaminated to a degree (with respect to particle size and density) that is greater than that established for the engine in paragraph (b)(4) of this section.

(6) Any strainer or filter bypass must be designed and constructed so that the release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flow path.

(7) The fuel system must incorporate means to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with paragraph (b)(5) of this section.

55. A new § 33.68 is added to read as follows:

§ 33.68 Induction system icing.

Each engine, with all icing protection systems operating, must—

(a) Operate throughout its flight power range (including idling) without the accumulation of ice on the engine components that adversely affects engine operation or that causes a serious loss of power or thrust in continuous maximum and intermittent maximum icing conditions as defined in Appendix C of Part 25 of this chapter; and

(b) Idle for 30 minutes on the ground, with the available air bleed for engine icing protection at its critical condition, without adverse effect, in an atmosphere that is at a temperature of 29 degrees F and has a liquid water content of 0.6 grams per cubic meter in the form of drops having a mean effective diameter of 40 microns, followed by a momentary operation at takeoff power or thrust.

57. Section 33.69 is amended to read as follows:

§ 33.69 Ignitions system.

Each engine must be equipped with an ignition system for starting the engine on the ground and in flight. An electric ignition system must have at least two igniters and two separate secondary electric circuits, except that only one igniter is required for fuel burning augmentation systems.

57. Section 33.71 is amended to read as follows:

§ 33.71 Lubrication system.

(a) *General.* Each lubrication system must function properly in the flight attitudes and atmospheric conditions in which an aircraft is expected to operate.

(b) *Oil strainer or filter.* There must be an oil strainer or filter through which all of the engine oil flows and there must be a separate strainer or filter ahead of each scavenge pump. In addition:

(1) Each strainer or filter required by this paragraph that has a bypass must be constructed and installed so that oil will flow at the normal rate through the rest of the system with the strainer or filter element completely blocked.

(2) The type and degree of filtering necessary for protection of the engine oil system against foreign particles in the oil must be specified. The applicant must demonstrate that foreign particles passing through the specified filtering means do not impair engine oil system functioning.

(3) Each strainer or filter required by this paragraph must have the capacity (with respect to operating limitations established for the engine) and the mesh to ensure that engine oil system functioning is not impaired with the oil contaminated to a degree (with respect to

particle size and density) that is greater than that established for the engine in paragraph (b)(2) of this section.

(4) The oil system must incorporate means, for each strainer or filter required by this paragraph except the strainer or filter at an oil tank outlet or for a scavenge pump, to indicate contamination of the screen before it reaches the capacity established in accordance with paragraph (b)(3) of this section.

(5) Any filter bypass must be designed and constructed so that the release of collected contaminants is minimized by appropriate location of the bypass to ensure that the collected contaminants are not in the bypass flow path.

(6) Each strainer or filter required by this paragraph that has no bypass, except the strainer or filter at an oil tank outlet or for a scavenge pump, must have provisions for connection with a warning means to warn the pilot of the occurrence of contamination of the screen before it reaches the capacity established in accordance with paragraph (b)(3) of this section.

(7) Each strainer or filter required by this paragraph must be accessible for draining and cleaning.

(c) *Oil tanks.* (1) Each oil tank must have an expansion space of not less than 10 percent of the tank capacity.

(2) It must be impossible to inadvertently fill the oil tank expansion space.

(3) Each recessed oil tank filler connection that can retain any appreciable quantity of oil must have provision for fitting a drain.

(4) Each oil tank cap must provide an oil-tight seal.

(5) Each oil tank filler must be marked with the word "oil" and the tank capacity.

(6) Each oil tank must be vented from the top part of the expansion space, with the vent so arranged that condensed water vapor that might freeze and obstruct the line cannot accumulate at any point.

(7) There must be means to prevent entrance into the oil tank or into any oil tank outlet, of any object that might obstruct the flow of oil through the system.

(8) There must be a shutoff valve at the outlet of each oil tank, unless the external portion of the oil system (including oil tank supports) is fireproof.

(9) Each unpressurized oil tank may not leak when subjected to maximum operating temperature and an internal pressure of 5 p.s.i., and each pressurized oil tank may not leak when subjected to maximum operating temperature and an internal pressure that is not less than 5 p.s.i. plus the maximum operating pressure of the tank.

(10) Leaked or spilled oil may not accumulate between the tank and the remainder of the engine.

(11) Each oil tank must have an oil quantity indicator.

(d) *Oil drains.* There must be an accessible oil drain that will drain the entire oil system. The drain must have a manual or automatic means for positive locking in the closed position.

(e) *Oil radiators.* Each oil radiator must withstand, without failure, any vibration, inertia, and oil pressure load to which it is subjected during the block tests.

58. A new § 33.72 is added to read as follows:

§ 33.72 Hydraulic actuating systems.

Each hydraulic actuating system must function properly under all conditions in which the engine is expected to operate. Each filter or screen must be accessible for servicing and each tank must meet the design criteria of § 33.71.

59. A new § 33.75 is added to read as follows:

§ 33.75 Safety analysis.

It must be shown by analysis that any probable malfunction or any probable single or multiple failure, or any probable improper operation of the engine will not cause the engine to—

(a) Catch fire;

(b) Burst (penetrate its case);

(c) Generate loads greater than those specified in § 33.23; or

(d) Lose the capability of being shut down.

60. A new § 33.77 is added to read as follows:

§ 33.77 Foreign object ingestion.

(a) Ingestion of a 4-pound bird, a piece of tire tread, or a broken rotor blade, under the conditions set forth in paragraph (f) of this section, may not cause the engine to—

(1) Catch fire;

(2) Burst (penetrate its case);

(3) Generate loads greater than those specified in § 33.23; or

(4) Lose the capability of being shut down.

(b) Ingestion of 3-ounce birds, 1½-pound birds, or mixed gravel and sand, under the conditions set forth in paragraph (f) of this section, may not cause more than a sustained 25 percent power or thrust loss or require the engine to be shut down.

(c) Ingestion of water, ice, or hail, under the conditions set forth in paragraph (f) of this section may not cause a sustained power or thrust loss or require the engine to be shut down.

(d) For an engine that incorporates a protective device, compliance with this section need not be demonstrated with respect to foreign objects sought to be ingested under the conditions set forth in paragraph (f) of this section, if it is shown that—

(1) Such foreign objects are of a size that will not pass through the protective device;

(2) The protective device will withstand the impact of the foreign objects; and

(3) The foreign object or objects stopped by the protective device will not obstruct the flow of induction air into the engine.

(e) In showing compliance with paragraphs (a) and (b) of this section, the engine need be tested by ingesting only that foreign object specified in paragraph (a) of this section which the applicant shows has the most severe effect on the engine and by ingesting the mixed gravel and sand specified in paragraph (b) of this section and either the 3-ounce birds or the 1½-pound birds, as specified in paragraph (f) of this section.

(f) The prescribed foreign object ingestion conditions are as follows:

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
Birds:				
3-oz size	One for each 50 in² of inlet area or fraction thereof up to a maximum of 16 birds. 3-oz bird ingestion not required if a 1½-lb bird will pass the inlet guide vanes into the rotor blades.	Liftoff speed of typical aircraft.	Takeoff	In rapid sequence to simulate a flock encounter.
1½-lb size	One for the first 300 in² of inlet area, if it can enter the inlet, plus one for each additional 600 in² of inlet area or fraction thereof up to maximum of 8 birds.	Initial climb speed of typical aircraft.	do	Do.
4-lb size	One if it can enter the inlet.	Maximum climb speed.	Maximum cruise	Aimed at critical area.
Ice	Maximum accumulation on inlet cowl and engine face resulting from a 30-second delay in actuating anti-icing system.	Sucked in	do	To simulate an intermittent maximum icing encounter at 25° F.

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
Hail (0.8 to 0.9 specific gravity).	For subsonic and supersonic engines: With inlet areas of not more than 100 in²: one 1-in hailstone. With inlet area of more than 100 in²: one 1-in and one 2-in. hailstones for each 150 in² of inlet area of fraction thereof.	Rough air flight speed of typical aircraft.	Maximum cruise at 15,000 ft altitude.	In a volley to simulate a hailstone encounter. One half the number of hailstones aimed at random areas over the face of the inlet area and the other half aimed at the critical face area.
	For supersonic engines (in addition): 3 hailstones each having a diameter equal to that in a straight line variation from 1 in at 35,000 ft to ¼ in at 60,000 ft using diameter corresponding to the lowest supersonic cruise altitude expected.	Supersonic cruise velocity. Alternatively use subsonic velocities with larger hailstones to give equivalent kinetic energy.	Maximum cruise	Aimed for critical engine face area.
Water	4 percent of engine airflow by weight.	Sucked in	Takeoff and flight idle.	For 3 minutes at each engine operation condition as spray to simulate rain.
Mixed gravel and sand (one part stones with diameter not less than 3/16—nor more than ¼ in and 7 parts sand.)	1 oz for each 100 in² of inlet area or fraction thereof.	do	Takeoff	Over a 15-minute period.
Broken rotor blade: (The heaviest compressor or turbine blade, broken at the outermost retention groove or member or at least 80 percent of an integral blade.)	1		do	Release from rotor followed by 15-second delay prior to initiating shutdown.[1]
Tire tread (having width and length equal to full width of tread).	do	do	do	

[1] Blade containment must be demonstrated with a complete engine to evaluate secondary effects of blade loss and to determine blade fragment trajectories, except that in fan engines, the fan assembly may be tested separately for blade containment if it is demonstrated that fan blade or vane debris would not enter the compressor after a fan blade failure.

61. A new § 33.79 is added to read as follows:

§ 33.79 Fuel burning thrust augmentor.

Each fuel burning thrust augmentor, including the nozzle, must—

(a) Provide cutoff of the fuel burning thrust augmentor;

(b) Permit on-off cycling;

(c) Be controllable within the intended range of operation;

(d) Upon a failure or malfunction of augmentor combustion, not cause the engine to lose thrust other than that provided by the augmentor; and

(e) Have controls that function compatibly with the other engine controls and automatically shut off augmentor fuel flow if the engine rotor speed drops below the minimum rotational speed at which the augmentor is intended to function.

§ 33.81 [Amended]

62. Section 33.81 is amended by deleting the second sentence of the text.

63. A new § 33.82 is added to read as follows:

§ 33.82 General.

Before each endurance test required by this subpart, the adjustment setting and functioning characteristic of each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must be established and recorded.

64. Section 33.83 is amended to read as follows:

§ 33.83 Vibration test.

(a) Each engine must undergo a vibration survey to establish the vibration characteristics of the rotors, rotor shafts, and rotor and stator blades at the maximum inlet air distortion limit, over the range of rotor shaft speeds and engine power or thrust, under steady state and transient conditions, from idling speed to 103 percent of the maximum desired takeoff speed rating. The survey must be conducted using, for turbopropeller engines, the same configuration of the propeller type which is used for the endurance test, and using, for other engines, the same configuration of the loading device type which is used for the endurance test.

(b) The vibration stresses of the rotors, rotor shafts, and rotor and stator blades may not exceed the endurance limit stress of the material from which these parts are made. If the maximum stress in the shaft cannot be shown to be below the endurance limit by measurement, the vibration frequency and amplitude must be measured. The peak amplitude must be shown to produce a stress below the endurance limit; if not, the engine must be run at the condition producing the peak amplitude until, for steel parts, 10 million stress reversals have been sustained without fatigue failure and, for other parts, until it is shown that fatigue failure will not occur within the endurance limit stress of the material.

(c) Each accessory drive and mounting attachment must be loaded, with the load imposed by each accessory used only for an aircraft service being the limit load specified by the applicant for the engine drive or attachment point.

65. Section 33.85 is amended by deleting the period and adding to the last sentence of paragraph (a) the words "with no airbleed for aircraft services and with only those accessories installed which are essential for engine functioning.", and by amending paragraph (b) to read as follows:

§ 33.85 Calibration tests.

* * * * *

(b) A power check at sea level conditions must be accomplished on the endurance test engine after the endurance test and any change in power characteristics which occurs during the endurance test must be determined. Measurements taken during the final portion of the endurance test may be used in showing compliance with the requirements of this paragraph.

66. Section 33.87 is amended by deleting paragraphs (b)(7), (c)(7), and (d)(3), and by amending paragraph (a) and adding a new paragraph (e) to read as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series of runs specified in paragraphs (b) through (e) of this section, as applicable. The following test requirements apply:

(1) The runs must be made in the order found appropriate by the Administrator for the particular engine being tested.

(2) Any automatic engine control that is part of the engine must control the engine during the endurance test except for operations where automatic control is normally overridden by manual control or where manual control is otherwise specified for a particular test run.

(3) Power or thrust, gas temperature, rotor shaft rotational speed, and, if limited, temperature of external surfaces of the engine must be at least 100 percent of the value associated with the particular engine operation being tested. More than one test may be run if all parameters cannot be held at the 100 percent level simultaneously.

(4) The runs must be made using fuel, lubricants and hydraulic fluid which conform to the specifications specified in complying with § 33.7(c).

(5) Maximum air bleed for engine and aircraft services must be used during at least one-fifth of the runs.

(6) Each accessory drive and mounting attachment must be loaded. The load imposed by each accessory used only for an aircraft service must be the limit load specified by the applicant for the engine drive or attachment point during rated maximum continuous power or thrust and higher output.

(7) During the runs at any rated power or thrust the gas temperature and the oil inlet temperature must be maintained at the limiting temperature except where the test periods are not longer than 5 minutes and do not allow stabilization. At least one run must be made with fuel, oil, and hydraulic fluid at the minimum pressure limit and at least one run must be made with fuel, oil, and hydraulic fluid at the maximum pressure limit with fluid temperature reduced as necessary to allow maximum pressure to be attained.

(8) If the number of occurrences of either transient rotor shaft overspeed or transient gas overtemperature is limited, that number of the accelerations required by paragraphs (b), (c), (d), and (e) of this section must be made at the limiting overspeed or overtemperature. If the number of occurrences is not limited, half the required accelerations must be made at the limiting overspeed or overtemperature.

(9) For each engine type certificated for use on supersonic aircraft the following additional test requirements apply:

(i) To change the thrust setting, the power control lever must be moved from the initial position to the final position in not more than one second except for movements into the fuel burning thrust augmentor augmentation position if additional time to confirm ignition is necessary.

(ii) During the runs at any rated augmented thrust the hydraulic fluid temperature must be maintained at the limiting temperature except where the test periods are not long enough to allow stabilization.

(iii) During the simulated supersonic runs the fuel temperature and induction air temperature may not be less than the limiting temperature.

(iv) The endurance test must be conducted with the fuel burning thrust augmentor installed, with the primary and secondary exhaust nozzles installed, and with the variable area exhaust nozzles operated during each run according to the methods specified in complying with § 33.5(b).

(v) During the runs at thrust settings for maximum continuous thrust and percentages thereof, the engine must be operated with the inlet air distortion at the limit for those thrust settings.

* * * * *

(e) *Supersonic aircraft engines.* For each engine type certificated for use on supersonic aircraft the applicant must conduct the following:

(1) *Subsonic test under sea level ambient atmospheric conditions.* Thirty runs of one hour each must be made, consisting of—

(i) Two periods of 5 minutes at rated takeoff augmented thrust each followed by 5 minutes at idle thrust;

(ii) One period of 5 minutes at rated takeoff thrust followed by 5 minutes at not more than 15 percent of rated takeoff thrust;

(iii) One period of 10 minutes at rated takeoff augmented thrust followed by 2 minutes at idle thrust, except that if rated maximum continuous augmented thrust is lower than rated takeoff augmented thrust, 5 of the 10-minute periods must be at rated maximum continuous augmented thrust; and

(iv) Six periods of 1 minute at rated takeoff augmented thrust each followed by 2 minutes, including acceleration and deceleration time, at idle thrust.

(2) *Simulated supersonic test.* Each run of the simulated supersonic test must be preceded by changing the inlet air temperature and pressure from that attained at subsonic conditions to the temperature and pressure attained at supersonic velocity, and must be followed by a return to the temperature attained at subsonic condition. Thirty runs of 4 hours each must be made, consisting of—

(i) One period of 30 minutes at the thrust obtained with the power control lever set at the position for rated maximum continuous augmented thrust followed by 10 minutes at the thrust obtained with the power control lever set at the position for 90 percent of rated maximum continuous augmented thrust. The end of this period in the first five runs must be made with the induction air temperature at the limiting condition of transient overtemperature, but need not be repeated during the periods specified in paragraphs (e)(2)(ii) through (iv) of this section;

(ii) One period repeating the run specified in subdivision (i) of this subparagraph, except that it must be followed by 10 minutes at the thrust obtained with the power control lever set at the position for 80 percent of rated maximum continuous augmented thrust;

(iii) One period repeating the run specified in subdivision (i) of this subparagraph, except that it must be followed by 10 minutes at the thrust obtained with the power control lever set at the position for 60 percent of rated maximum continuous augmented thrust and then 10 minutes at not more than 15 percent of rated takeoff thrust;

(iv) One period repeating the runs specified in paragraphs (e)(2)(i) and (ii) of this section; and

(v) One period of 30 minutes with 25 of the runs made at the thrust obtained with the power control lever set at the position for rated maximum continuous augmented thrust, each followed by idle thrust and with the remaining 5 runs at the thrust obtained with the power control lever set at the position for rated maximum continuous augmented thrust for 25 minutes each, followed by subsonic operation at not more than 15 percent or rated takeoff thrust and accelerated to rated takeoff thrust for 5 minutes using hot fuel.

(3) *Starts.* One hundred starts must be made, of which 25 starts must be preceded by an engine shutdown of at least 2 hours. There must be at least 10 false engine starts, pausing for the applicant's specified minimum fuel drainage time before attempting a normal start. At least 10 starts must be normal restarts, each made no later than 15 minutes after engine shutdown. The starts may be made at any time, including the period of endurance testing.

67. A new § 33.88 is added to read as follows:

§ 33.88 Rotor tests.

Each engine must be run for 30 minutes at maximum rated r.p.m. and with the gas temperature 75 degrees F. higher than the maximum operating limit. Following the run each rotor must remain within the dimensional limits allowed by the type design and may not be cracked.

68. The present text of § 33.89 is designated as paragraph (a), present paragraphs (a), (b), (c)(1), (c)(2), (c)(3), and (d) are redesignated (1), (2), (3)(i), (3)(ii), (3)(iii) and (4) of paragraph (a) respectively, the references in redesignated paragraph (a)(4) are amended to read "paragraphs (a)(3) (ii) and (iii) of this section," and a new paragraph (b) is added to read as follows:

§ 33.89 Operation test.

* * * * *

(b) The operation test must include all testing found necessary by the Administrator to demonstrate the effect of maximum and minimum operating ambient temperature and maximum operating altitude on the engine. The operation test must include several power changes and the operation of the fuel burning thrust augmentor through several complete cycles from ignition to shutoff.

69. A new § 33.90 is added to read as follows:

§ 33.90 Overhaul test.

Each engine, except engines being type certificated through amendment of an existing type certificate or through supplemental type certification procedures, must undergo a test run simulating the conditions in which the engine is expected to operate in service, including start-stop cycles typical of expected service for the period of time established as the limitation on operation prior to the first overhaul under § 33.7. The test run must be accomplished on an engine which substantially conforms to the final type design.

70. New paragraphs (c) and (d) are added to § 33.91 to read as follows:

§ 33.91 Engine component tests.

* * * * *

(c) Each unpressurized hydraulic fluid tank may not fail or leak when subjected to maximum operating temperature and an internal pressure of 5 p.s.i., and each pressurized hydraulic fluid tank may not fail or leak when subjected to maximum operating temperature and an internal

pressure not less than 5 p.s.i. plus the maximum operating pressure of the tank.

(d) For an engine type certificated for use in supersonic aircraft, the systems, safety devices, and external components that may fail because of operation at maximum and minimum operating temperatures must be identified and tested at maximum and minimum operating temperatures and while temperature and other operating conditions are cycled between maximum and minimum operating values.

71. A new § 33.92 is added to read as follows:

§ 33.92 Windmilling tests.

(a) Unless means are incorporated in the engine to stop rotation of the engine rotors when the engine is shut down in flight, each engine rotor must either seize or be capable of rotation for 3 hours at the limiting windmilling rotational r.p.m. with no oil in the engine system, without the engine—

(1) Catching fire;

(2) Bursting (penetrating the case); or

(3) Generating loads greater than those specified in § 33.23.

(b) A turbojet or turbofan engine incorporating means to stop rotation of the engine rotors when the engine is shut down in flight must be subjected to 25 operations under the following conditions:

(1) Each engine must be shut down while operating at rated maximum continuous thrust.

(2) For engines certificated for use on supersonic aircraft, the temperature of the induction air and the external surfaces of the engine must be held at the maximum limit during the tests required by this paragraph.

72. Section 33.93 is amended to read as follows:

§ 33.93 Teardown inspection.

After completing the endurance test each engine must be completely disassembled, and—

(a) Each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must retain each setting and functioning characteristic within the limits that were established and recorded at the beginning of the test; and

(b) Each engine component must conform to the type design and be eligible for incorporation into an engine for continued operation, in accordance with information submitted in compliance with § 33.5.

73. Section 33.99 is amended by amending paragraph (b) to read as follows:

§ 33.99 General conduct of block tests.

* * * * *

(b) Each applicant may service and make minor repairs to the engine during the block tests in accordance with the service and maintenance instructions submitted in compliance with § 33.5. If the frequency of the service is excessive, or the number of stops due to engine malfunction is excessive, or a major repair, or replacement of a part is found necessary during the block tests or as the result of findings from the teardown inspection, the engine or its parts must be subjected to any additional tests the Administrator finds necessary.

Issued in Washington, D.C., on September 20, 1974.

JAMES E. DOW,
Acting Administrator.

[FR Doc.74-22582 Filed 9-30-74;8:45 am]

federal register

TUESDAY, OCTOBER 1, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 191

PART IV

FEDERAL ENERGY ADMINISTRATION

■

REPUBLICATION OF CERTAIN REGULATIONS

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

Republication of Certain Regulations

Since the issuance of the Mandatory Petroleum Allocation and Price Regulations (Chapter II, Title 10 of the Code of Federal Regulations) on January 14, 1974, the Federal Energy Administration has issued several significant amendments and revisions to those regulations. In addition, Parts 202, 203, 204, and 215 have been added to FEA's regulations. From time to time, minor changes of a technical or clarifying nature have also been necessary.

In order to provide a compilation of its regulations reflecting these changes, FEA is hereby republishing its regulations other than the Mandatory Petroleum Price Regulations. This republication incorporates all changes made in FEA's regulations and published in the FEDERAL REGISTER through September 27, 1974. The Mandatory Petroleum Price Regulations (10 CFR Part 212), however, are not included in this republication. FEA anticipates that a compilation and republication of Part 212 will be issued in the near future.

Furthermore, this republication does not represent the conclusion of any proposed rulemaking outstanding on September 23, 1974. Such proposals are still under consideration by FEA and will be concluded by issuance of final regulations or other appropriate action.

FEA believes that this compilation will be useful in providing a single reference to FEA's regulations as they currently exist, other than Part 212. Of course, the conclusion of outstanding proposed rulemakings will mean revisions of this republication to a certain extent in the future. Thus, it will be necessary for users of this compilation to determine whether changes to these regulations have been made since the date of this republication. Until the compilation and any revision of the Mandatory Petroleum Price Regulations is issued, guidance with respect to FEA's price regulations must be sought with reference to the January 14, 1974 regulations as revised since that date.

This republication incorporates only minor changes to correct typographical errors and other minor errors which have appeared in the regulations as previously published in the FEDERAL REGISTER. Since this republication does not make any substantive change in the existing regulations, it is not necessary to provide notice of proposed rulemaking, opportunity for public participation, or any delay in effective date under either section 7(i) of the Federal Energy Administration Act of 1974 or (5 U.S.C. 553). And, in any event, because this is merely a republication of existing regulations, good cause exists for making this republication effective immediately.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations except for Part 212 is republished in its entirety as set forth below, effective immediately.

Issued in Washington, D.C., September 25, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel.

PART 202—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Production or Disclosure Under 5 U.S.C. 552

Sec.

Subpart B—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

AUTHORITY: Freedom of Information Act, 5 U.S.C. 552; Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275, E.O. 11790, 39 FR 23185.

Subpart A—Production or Disclosure Under 5 U.S.C. 552

§ 202.1 Purpose and scope.

This subpart contains the regulations of the Federal Energy Administration (FEA) implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all divisions within the FEA. Official records of the FEA made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this subpart. Officers and employees of the FEA may furnish to the public, informally and without compliance with the procedures prescribed herein, information and records of types which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties to the public by other agencies. Persons seeking information or records of the FEA may find it useful to consult with FEA's Office of Public Affairs before invoking the formal procedures set out below. To the extent permitted by other laws, the FEA will make available records which it is authorized to withhold under 5 U.S.C. 552 unless it determines that such disclosure is not in the public interest.

§ 202.2 Public reference facilities.

(a) The National Office, FEA and Regional Offices, FEO will maintain in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552(a)(2) and 552(a)(4) to be made available for public inspection and copying. These materials will also be available at some additional locations within specific regions; their addresses and telephone numbers may be obtained from the Regional Offices, FEA, listed in § 205.12 of this chapter.

(b) Each of these public reference facilities will maintain and make available for public inspection and copying a current index of the materials available at that facility which are required to be indexed by 5 U.S.C. 552(a)(2), and the National Office, FEA will maintain and make available for public inspection and copying copies of all such indexes.

§ 202.3 Requests for identifiable records and copies.

(a) *Addressed to the Director of Public Affairs.* A request for a record of the FEA which is not customarily made available and which is not available in a public reference facility as described in § 202.2 shall be addressed to the Director of Public Affairs, Federal Energy Administration, Washington, D.C. 20461, and should be clearly marked on the envelope "Attention: Information Access Officer".

(b) *Request should be in writing and for identifiable records.* A request for access to records should be submitted in writing and should sufficiently identify the records requested to enable FEA personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) *Form may be requested.* Where the information supplied by the requester is not sufficient to permit location of the records by FEA personnel with a reasonable amount of effort, the requester may be sent and asked to fill out and return a form which is designed to elicit the necessary information, pursuant to § 202.4(a).

(d) *Categorical requests*—(1) *Must meet identifiable records requirement.* A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be identifiable if it can reasonably be determined which particular records are sought in the requests, and the records can be searched for, collected, and produced without unduly burdening or interfering with FEA operations because of the staff time consumed or the resulting disruption of files.

(2) *Assistance in reformulating nonconforming requests.* If it is determined that a categorical request would unduly burden or interfere with the operations of the FEA under subparagraph (1) of this paragraph, the response denying the request on those grounds shall specify the reasons why and the extent to which compliance would burden or interfere with FEA operations, and shall extend to the requester an opportunity to confer with knowledgeable FEA personnel in an attempt to restate the request or reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

(e) *Requests for records of other agencies.* Some of the records in the files of the FEA have been obtained from other federal agencies. Where it is determined that the question of the availability of requested records is primarily the responsibility of another federal agency and and that such records may be exempt under 5 U.S.C. 552(b), the Information Access Officer will inquire of the originating agency as to whether it concurs in release of the records. If that agency does not concur, the Information Access Officer will refer the request to the originating agency, and inform the requester of the appropriate official with whom to pursue his request. The FEA will accompany such referral with a recommendation, based on the interest of FEA in such records, concerning the disclosure of the requested records.

§ 202.4 Time for response to request for records.

(a) *Response prepared by Information Access Officer.* An Information Access Officer, appointed by the Director of Public Affairs, shall be responsible for processing written requests for records submitted pursuant to this part. Upon receiving such a request, the Information Access Officer shall ascertain which division or divisions of the FEA have primary responsibility for, custody of, or concern with the records requested and forward the request to such division or divisions, who shall promptly identify and review the records encompassed by the request. After reviewing the material, the division or divisions concerned shall forward to the Information Access Officer either the requested material, a recommendation that the request be wholly or partially denied, or a recommendation that an interim response be made under the provisions of this subsection. A recommendation of an interim response shall specify the type of response suggested and the reasons for recommending an interim response. Any recommendation that a request be denied shall set forth the policy considerations supporting such denial and shall be forwarded, with the information sought or a representative sample thereof, by the Information Access Officer to the General Counsel for his review and recommendation. On the basis of the recommendations of the division or divisions, the Information Access Officer shall, within 48 hours (including Saturdays, Sundays, and Federal legal holidays) of receipt by the Director of Public Affairs of a request for FEA records, either (1) grant the request, (2) deny the request, (3) grant it in part and/or deny it in part, or (4) reply with an interim response stating (i) that the records requested cannot be collected and prepared within said 48 hour period; (ii) that further time is needed to evaluate whether the requested records are exempt under the Freedom of Information Act and should be withheld as a matter of sound public policy or disclosed only with appropriate deletions; (iii) that the request has been referred to another agency under § 202.3(e) of this part; or (iv) that additional information is needed from the requester to render the records identifiable. Such an interim response shall specify (A) the reason or reasons for delay in granting or denying the request; (B) any further information needed by the FEA from the requester; (C) the agency to whom the request has been referred, if any, and the name of the appropriate official of that agency with whom to pursue the matter; and (D) the expected time within which the request of records will be either granted or denied. All requests for which an interim response is made stating that further time is needed to collect and prepare the records, or to evaluate the status of the request under the Freedom of Information Act, shall be either granted or denied, or granted in part and denied in part, within 10 days of receipt of the request by the Director of Public Affairs, except that if circumstances require additional time before a decision on a request can be reached, and the person requesting records is promptly informed in writing of these circumstances and the Information Access Officer certifies to such person that such delay is unavoidable, the decision may be made within 20 days of receipt of the request by the Director of Public Affairs. A response granting a request or stating that the information will be available within 10 days or less of receipt of the request may be issued by officers or employees of FEA other than the Information Access Officer: *Provided,* That a copy of such response is forwarded to the Information Access Officer.

(b) *Petition if response not forthcoming.* If the Information Access Officer does not respond to or acknowledge a request for records within 48 hours, or does not act on a request within an extended deadline, as provided for in paragraph (a) of this section, or if the requester believes an extended deadline adopted pursuant to paragraph (a) of this section is unreasonable, the requester may petition the Deputy Administrator to take appropriate measures to assure prompt action on the request.

(c) For purposes of this section, the term "division" includes all administrative or operating units of the FEA.

§ 202.5 Responses by Information Access Officer: Form and content.

(a) *Form of grant.* When a requested record has been identified and is to be made available, the Information Access Officer or other appropriate official of FEA shall notify the requester as to when the record is available. The notification shall also advise the requester of any applicable fees under § 202.8.

(b) *Form of denial.* A reply denying a written request for a record shall be in writing signed by the Information Access Officer and shall include:

(1) *Exemption category.* A reference to the specific exemption under the Freedom of Information Act authorizing the withholdings of the record, and to the extent consistent with the purposes of the exemption, a brief explanation of how the exemption applies to the record withheld, and, if the Information Access Officer considers it appropriate, a statement of why the exempt record is being withheld; and,

(2) *Administrative appeal and judicial review.* A statement that the denial may be appealed within 30 days to the Deputy Administrator, and that judicial review will be thereafter available either in the district in which the requester resides or has a principal place of business or in which the agency records are situated.

(c) *Denial because record cannot be located or does not exist.* If a requested record is known to have been destroyed or otherwise disposed of, or if no such record was ever known to exist, the requester shall be so notified.

§ 202.6 Appeals to the Deputy Administrator from initial denials.

(a) *Appeal to Deputy Administrator.* When the Information Access Officer has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Deputy Administrator, FEA, Washington, D.C. The appeal shall be in writing.

(b) *Action within 10 days.* The Deputy Administrator will act upon the appeal within 10 days of its receipt, and more rapidly if practicable, except that if novel or difficult questions are involved, the Deputy Administrator may extend the time for final action by him for an additional 20 days upon notifying the requester of the reasons for the extended deadline and the date on which a final response may be expected.

(c) *Form of action on appeal.* The Deputy Administrator's action on an appeal shall be in writing. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it.

§ 202.7 Maintenance of files.

(a) *Maintenance of file open to public.* The Information Access Officer shall maintain a file, open to the public, which shall contain copies of all grants or denials of all requests for information or appeals made under this subpart. The material shall be indexed by the exemption asserted by the FEA, if any, and, to the extent feasible, according to the type of records requested.

(b) *Protection of privacy.* Where the identity of a requester, or other identifying details related to a request, would constitute an invasion of a personal

privacy if made generally available, the Information Access Officer shall delete identifying details from the copies of documents maintained in the public file established under paragraph (a) of this section.

§ 202.8 Fees for provision of records.

(a) *When charged.* User fees pursuant to 31 U.S.C. 483a (1970), shall be charged according to the schedule contained in paragraph (b) of this section for services rendered in responding to requests for FEA records under this subpart unless the Information Access Officer determines, in conformity with the provisions of 31 U.S.C. 483, that such charges or a portion thereof are not in the public interest. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than $3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) *Services charged for, and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 5 copies will be supplied) $.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, $1.25.

(3) *Monitoring inspection.* For each one quarter hour spent in monitoring the requester's inspection of records, $1.25.

(4) *Certification.* For certification of true copies, each, $1.

(5) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, $3.75.

(6) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall ordinarily be made for the time involved in examining records to determine whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy. However, where a broad request requires FEA personnel to devote a substantial amount of time to examining records for the purpose of screening out certain records or portions thereof in accordance with determinations that material of such a nature is exempt and should be withheld as a matter of sound policy, a fee may be assessed for the time consumed in such examination. Where such examination can be performed by clerical personnel, a fee may be assessed at the rate of $1.25 per quarter hour, and where higher level personnel are required, a fee may be assessed at the rate of $3.75 per quarter hour.

(7) *Computerized Records.* Fees for services in processing requests maintained in whole or part in computerized form shall be in accordance with this section so far as practicable. Services of personnel in the nature of a search will be charged for at rates prescribed in paragraph (b)(5) of this section unless the level of personnel involved permits rates in accordance with paragraph (b)(2) of this section. A charge may be made for the computer time involved, based upon the prevailing level of costs to governmental organizations and upon the particular types of computer and associated equipment and the amounts of time on such equipment that are utilized. A charge may also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon prevailing levels of costs to governmental organizations and upon the type and amount of such supplies or materials that is used. Nothing in this paragraph shall be construed to entitle any person, as of right, to any services in connection with computerized records, other than services to which such person may be entitled under 5 U.S.C. 552 and under the provisions, not including paragraph (b) of this subpart.

(c) *Notice of anticipated fees in excess of $25.* Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified by the Information Access Officer of the amount of the anticipated fee or such portion thereof as can readily be estimated. An advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable FEA personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch by certified mail of such a notice or request shall toll the running of the period for response by the FEA until a reply is received from the requester.

(d) *Form of payment.* Payment should be made by check or money order payable to the Treasury of the United States.

§ 202.9 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in subsection (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory files, internal procedures and communications; materials exempted from disclosure by other statutes, information given in confidence; and matters involving personal privacy. Specifically, the exemption in 5 U.S.C. 552(b) applies to matters that are—

(1) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The scope of the exemption is discussed generally in the Attorney General's Memorandum on the Public Information section of the Administrative Procedure Act, which was published in June 1967. The document is available from the Superintendent of Documents and may be consulted in considering questions arising under 5 U.S.C. 552.

§ 202.10 Computation of time.

Computation of a period of time, described as "days", prescribed or allowed by this subpart shall be pursuant to § 205.5(a) of this chapter.

Subpart B—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

§ 202.21 Purpose and scope.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production or disclosure of (1) any material contained in the files of the Federal Energy Administration (FEA), (2) any information relating to material contained in the files of the FEA, or (3) any

information or material acquired by any person while such person was an employee of the FEA as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the FEA" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Administrator of FEA.

§ 202.22 Production or disclosure prohibited unless approved by appropriate FEA official.

No employee or former employee of the FEA shall, in response to a demand of a court or other authority, produce any material contained in the file of the FEA or disclose any information relating to material contained in the files of the FEA, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the General Counsel of FEA.

§ 202.23 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the FEA for the production of material or the disclosure of information described in § 202.21(a), he shall immediately notify the Regional Counsel for the region where the issuing authority is located. The Regional Counsel shall immediately request instructions from the General Counsel of FEA.

(b) If oral testimony is sought by the demand, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or his attorney, setting forth a summary of the testimony desired, must be furnished for submission by the Regional Counsel to the General Counsel.

§ 202.24 Final action by the appropriate FEA official.

If the General Counsel approves a demand for the production of material or disclosure of information, he shall so notify the Regional Counsel and such other persons as circumstances may warrant.

§ 202.25 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to the demand is required before the instructions from the General Counsel are received, a U.S. attorney or FEA attorney designated for the purpose shall appear with the employee or former employee of the FEA upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate FEA official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 202.26 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 202.25 pending receipt of instructions, of if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. "United States ex rel Touhy v. Ragen," 340 U.S. 462.

PART 203—STANDARDS OF CONDUCT

Sec.

AUTHORITY: EO 11222, 30 FR 6469, 3 CFR, 1964–1965 Comp., 306; 5 CFR 735.104.

§ 203.1 Purpose and scope.

(a) In order to assure that the business of FEA is conducted effectively, objectively and without improper influence or appearance thereof, all employees must be persons of integrity and observe unquestionable standards of behavior. An employee shall not engage in criminal, infamous, dishonest, immoral, or disgraceful conduct or other conduct prejudicial to the Government. An employee must avoid conflicts of his private interests with his public duties and responsibilities. Also, he must not do indirectly that which is improper for him to do directly. For example, members of his family may not accomplish for him that which he, himself may not do. The propriety of any activity must be considered in relation to general ethical standards of the highest order.

(b) This part is intended to foster the foregoing concepts. It is issued in compliance with the requirements of Executive Order No. 11222 of May 8, 1965, and is based upon the provisions of that order, the regulations of the Civil Service Commission issued thereunder (Part 735 of 5 CFR, Chapter I), and the statutes cited elsewhere in this part.

(c) This part, among other things, reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes contained in this part are designed for information purposes only and in no way constitute an interpretation or construction thereof that is binding upon the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive Orders, regulations or otherwise upon Federal employees and former Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable to employees in accordance with its own terms. Furthermore, attorneys employed by FEA are subject to the Code of Professional Responsibility and, where applicable, the canons of Professional Ethics of the American Bar Association.

§ 203.2 Applicability.

(a) The regulations in this part apply to all officers and employees of FEA.

(b) Except where specifically provided otherwise, or where limited in terms or by the context to regular employees, all provisions of this part relating to employees are applicable also to special Government employees.

§ 203.3 Definitions.

In this part—

(a) "Employee" or "regular employee" means an officer or employee of FEA but does not include a special Government employee.

(b) "FEA" means the Federal Energy Administration.

(c) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) "Special Government employee" means an officer or employee of FEA who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties, either on a full-time or intermittent basis.

§ 203.4 General standards of conduct.

(a) All employees should conduct themselves on the job in such a manner that the work of FEA is efficiently accomplished and courtesy, consideration, and promptness are observed in dealings with the Congress, the public, and other governmental agencies.

(b) All employees should conduct themselves off the job in such a manner as not to reflect adversely upon FEA or the Federal service.

(c) In all circumstances employees should conduct themselves so as to exemplify the highest standards of integrity. An employee should avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;
(2) Giving preferential treatment to any person;
(3) Impeding Government efficiency or economy;
(4) Losing complete independence or impartiality;
(5) Making a Government decision outside official channels; or
(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 203.5 Responsibilities of supervisors and employees.

(a) Supervisors, because of their day-to-day relationships with employees, are responsible to a large degree for maintaining high standards of conduct. They must become familiar with the FEA Standards of Conduct regulations and apply the standards to work they do and supervise.

(b) The Director of Personnel shall distribute copies of these regulations to each employee and special Government employee in the national office within 30 days after the effective date thereof. In the case of a new employee or special Government employee entering on duty after the date of such distribution, a copy shall be furnished at the time of his processing for appointments. In each Regional Office the distribution will be made by the Director of Personnel. All employees and special Government employees shall familiarize themselves with the contents of this regulation.

(c) Copies of Executive Order No. 11222, regulations, and statutes referred to in § 203.1, together with various explanatory materials, are available for inspection in the Office of Personnel at any time during regular business hours. Employees are encouraged to consult these basic materials in any case of doubt as to the proper application or interpretation of the provisions of this part. Regional Counselors shall provide such materials to personnel of the regions.

(d) Attention of all employees is directed to House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service", which is attached to this part as Appendix A.

§ 203.6 Interpretation and advisory service: counseling.

(a) The General Counsel will serve as Standards of Conduct Counselor for FEA and shall serve also as the FEA's representative to the Civil Service Commission on matters covered by this part.

(b) The General Counsel shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflicts of interest and other matters covered by the regulations in this part are available as needed to Regional Counselors.

(2) Render authoritative advice and guidance on matters covered by the regulations in this part which are presented to him by employees, special Government employees, management or personnel offices in the Washington, D.C., metropolitan area; and

(3) Receive information on and resolve or forward to the Administrator of FEA for consideration conflicts or apparent conflicts which appear in the Statements of Employment and Financial Interests submitted under this part, which are not resolved at a lower level.

(c) The Regional Counsels are designated Regional Counselors for all employees of FEA at the Regional level within their respective regions. Regional Counselors shall:

(1) Give authoritative advice and guidance when requested to employees, special Government employees, management officials and personnel offices within their areas of jurisdiction.

(2) Receive information on and attempt to resolve, or refer to the Counselor for FEA, conflicts of interest or appearances of conflicts of interest in Statements of Employment and Financial Interests submitted by employees and special Government employees to whom they are required to give advice and guidance, which are not resolved at lower levels.

(d) Communications between the Counselor and Regional Counselors and an employee shall be confidential, except as deemed necessary by the Administrator or the Counselor to carry out the purposes of this part.

(e) Supervisors shall advise employees who come to them with questions on matters covered by the regulations in this part, or, as they consider appropriate, shall refer such questions to the Counselor or Regional Counselors who have been designated in accordance with paragraphs (b) and (c) of this section.

(f) The Counselor for FEA shall notify all employees and special Government employees of the availability of counseling services. Such notification shall be made within 30 days after the effective date of this part, and periodically thereafter.

(1) The names and addresses of the Counselor and Regional Counselors will be made available to employees by appropriate bulletins, circulars, or other releases of a current nature. Any employee may also obtain the name and address of his Counselor or Regional Counselor through the personnel office and may seek advice and guidance therefrom, either indirectly through his supervisor or the personnel office, or directly in person, by telephone, or by mail.

(2) In the case of a new employee or special Government employee appointed after the date of such notification, notification shall be given at the time of his entrance on duty.

§ 203.7 Disciplinary action.

(a) A violation of any provision of this part by an employee may be cause for appropriate disciplinary action which may be in addition to any penalties prescribed by law. (As to remedial action in cases where an employee's financial interests result in a conflict or apparent conflict of interest, see § 203.27.)

(b) Any disciplinary or remedial action taken pursuant to this part shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 203.8 Conflicts of interest.

(a) A conflict of interest may exist whenever an employee has a personal or private interest in a matter which involves his duties and responsibilities as an employee. The maintenance of public confidence in Government clearly demands that an employee take no action which would constitute the use of his official position to advance his personal or private interests.

(b) Neither the pertinent statutes nor the standards of conduct prescribed in this part are to be regarded as completely comprehensive. Each employee must, in each instance involving a personal or private interest in a matter which also involves his duties and responsibilities as an employee, make certain that his actions do not have the effect or the appearance of the use of his official position for the furtherance of his own interests or those of his family or his business associates.

(c) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in Chapter 11 of the Criminal Code, 18 U.S.C. 201–224. Severe penalties are provided for violations, including fine, imprisonment, dismissal from office, and disqualification from holding any office of honor, trust, or profit under the United States.

§ 203.9 Disqualification because of private financial interests.

(a) Unless authorized to do so as provided hereafter in this section, no employee shall participate personally and substantially as a Government employee in a particular matter in which, to his knowledge, he has a financial interest (18 U.S.C. 208).

(1) For purposes of this section—

(i) An employee participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

(ii) A particular matter is a judicial or other proceeding, application, request

for ruling or other determination, contract, claim, controversy, charge, accusation or arrest, and

(iii) A financial interest is the interest of the employee himself or his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment.

(b) An employee who has a financial interest (other than a financial interest exempted under this paragraph or paragraph (c) of this section) in a particular matter which is within the scope of his official duties shall make a full disclosure of that interest to both his supervisor and the Counselor or a Regional Counselor in writing. He shall not participate in such matter unless and until he receives a written determination by the Administrator of FEA pursuant to section 208 of Title 18, United States Code, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him. No such determination can be effective until the procedures of paragraph (d) of this section are met. An employee seeking such a determination must submit a written request to the General Counsel of FEA which describes: (1) the interest concerning which a conflict or potential conflict exists; (2) the duties of the employee; (3) the nature of the conflict, potential conflict, or appearance of a conflict of interest; and (4) the reason why the conflict is not likely to affect the employee's services to FEA. The General Counsel shall review all requests submitted pursuant to this paragraph and make such recommendations to the Administrator as he deems appropriate. If the Administrator does not make a determination that the financial interest should be exempted, he shall direct such remedial action as may be appropriate under the provisions of § 203.27.

(c) Pursuant to the provisions of section 208(b)(2) of Title 18, United States Code, the Administrator hereby exempts financial interests in widely diversified mutual funds from the restrictions of paragraph (a) of this section and of section 208(a) of Title 18 as being too remote or inconsequential to affect the integrity of an employee's services in a matter, provided that no exemption under this paragraph can be effective until the procedures of paragraph (d) of this section are met.

(d) In order to give effect to the exemptions provided for in paragraphs (b) and (c) of this section, the Administrator shall:

(1) Send to Congress, ten days prior to the effective date of any such exemption, a written report containing notice of his intention to invoke subsection 208 (b) of Title 18, United States Code, a detailed statement of the subject matter concerning which a conflict exists; and in the case of an exemption set forth in paragraph (b) of this section, the nature of an officer's or employee's financial interest; or in the case of an exemption set forth in paragraph (c) of this section, the name and statement of financial interest of each person who will come within such exemption; and

(2) Publish such written report in the FEDERAL REGISTER.

§ 203.10 Additional prohibitions—regular employees.

(a) In addition to the disqualification described in § 203.9, a regular employee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See paragraph (a)(2) of this section.)

(4) He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209). (See § 203.13.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances in accordance with the provisions of § 203.12.

§ 203.11 Conduct and responsibilities of special Government employees.

(a) In addition to the disqualification described in § 203.9, a special Government employee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties—

(i) Represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205), or

(ii) Represent anyone else in a matter pending before FEA unless he served there no more than 60 days during the previous 365 days (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See paragraph (a)(2) of this section).

(b) Exemptions or exceptions from the prohibitions described in pragraph (a) of this section are permitted under certain circumstances, in accordance with the provisions of paragraph (d) of § 203.12.

(c) A special Government employee must conduct himself according to ethical behavior of the highest order. In particular,

(1) He must refrain from any use of his office which is, or appears to be motivated by a private gain for himself or other persons, particularly those with whom he has family, business, or financial ties. The fact that the desired gain, if it materializes, will not take place at the expense of the Government makes his actions no less improper.

(2) He must conduct himself in a manner devoid of any suggestion that he is exploiting his Government employment for private advantage. He must not, on the basis of any inside information, enter into any speculation or recommend speculation to members of his family or business associates, in commodities, land, or the securities of any private company. He must obey this injunction even though his duties have no connection whatever with the Government programs or activities which may affect the value of such commodities, land, or securities. He should be careful in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his Government work.

(3) He must not use information not generally available to those outside the Government for the special benefit of a business or other entity by which he is employed or retained or in which he has a financial interest. Information not available to private industry should remain confidential in his hands and not divulged to his private employer or client. In cases of doubt whether information is generally available to the public, the special Government employee should confer with the person who assigns work to him, with the office having functional responsibility for a specific type of information, or, as appropriate, with the Director of Public Affairs or the officials designated in § 203.6 to give interpretative and advisory service.

(4) He must, where requested by a private enterprise to act for it in a consultant or advisory capacity and the request appears motivated by the desire for inside information, make a choice be-

tween acceptance of the tendered private employment and continuation of his Government consultancy. He may not engage in both.

(5) He must not use his position in any way to coerce, or give the appearance of coercing, anyone to provide a financial benefit to him or another person, particularly one with whom he has family, business, or financial ties.

(6) Special government employees are subject to the provisions of paragraphs (a) and (b) of § 203.14, regarding solicitation and receipt of gifts, gratuities, loans, entertainment, favors and other things of value by regular employees.

(7) He may teach, lecture, publish, or write in a manner not inconsistent with the provisions of § 203.16 governing such activities for regular employees.

(d) A special Government employee who has questions about conflicts of interest or the application of the regulations in this part to him or his assigned work should make inquiry of the person who assigns his work. That person will direct him to the Counselor or a Regional Counselor for interpretative and advisory services.

(e) Attention of special Government employees is directed to the provisions of § 203.2 making the provisions of this part generally applicable to their activities.

§ 203.12 Exemptions and exceptions from prohibitions of conflict of interest statutes.

(a) Nothing in this part shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(b) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of Title 18 of the United States Code, provided that the employee obtains prior approval in accordance with the provisions of § 203.16 regarding outside employment.

(c) Nothing in this part shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(d) In addition to the exemptions and exceptions described in this section and in § 203.9 the conflict of interest statutes permit certain exemptions and exceptions in specific circumstances. Such exemptions may be sought by the following procedure:

(1) Any regular employee or special Government employee who desires approval or certification of his activities as provided for by section 205 of Title 18, United States Code, shall make application therefor in writing to the Counselor for FEA.

(2) A former employee, including a former special Government employee, who desires certification with regard to his activities under section 207 of Title 18, United States Code, shall make application therefor in writing to the Counselor for FEA.

(3) The Counselor for FEA shall report promptly to the Administrator of FEA all matters reported to him under this part which require consideration of approvals, certifications, or determinations provided for in sections 205, 207, or 208 of Title 18, United States Code.

§ 203.13 Salary of employee payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplementation of salary, as compensation for his services as an employee, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality (18 U.S.C. 209).

(b) Nothing in this part shall be deemed to prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer, which does not cause a conflict of interest, appearance of conflict or potential conflict, nor from accepting contributions, awards, or other expenses under Chapter 41 of Title 5, United States Code (the Government Employees Training Act).

§ 203.14 Gratuities.

(a) Except as provided in paragraph (b) of this section, FEA personnel will not solicit or accept any gift, gratuity, favor, (including complimentary meals and beverages) entertainment, loan, or any other thing of monetary value either directly or indirectly from any interested party. For the purpose of this section, a gift, gratuity, favor, entertainment, etc., includes any tangible item, intangible benefits, discounts, tickets, passes, transportation, and accommodations or hospitality given or extended to or on behalf of the recipient. An "interested party" is any person, firm, corporation, or other entity which:

(1) Is engaged or is endeavoring to engage in procurement activities or business or financial transactions of any sort with FEA;

(2) Conducts operations or activities that are regulated by FEA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the official duty of the FEA personnel concerned.

Gifts, gratuities, favors, entertainment, etc., bestowed upon members of the immediate families of FEA personnel are viewed in the same light as those bestowed upon FEA personnel. Acceptance of gifts, gratuities, favors, entertainment, etc., no matter how innocently tendered and received, from those who have or seek business with FEA may be a source of embarrassment to FEA and the personnel involved, may affect the objective judgment of the recipient and impair public confidence in the integrity of the business relations between FEA and industry.

(b) The restrictions in paragraph (a) of this section do not apply to the following:

(1) Instances in which the interests of the Government are served by participation of FEA personnel in widely attended luncheons, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to Government and industry. Participation by FEA personnel is appropriate when the host is an assocciation and not an interested party. Acceptance of gratuities or hospitality from private companies in connection with such association's activities is prohibited.

(2) Speciality advertising items of nominal intrinsic value.

(3) Customary exchange of social amenities between personal friends and relatives when motivated by such relationship and extended on a personal basis.

(4) Things available impersonally to the general public or classes of the general public, such as a free exhibition by an interested party at a world's fair.

(5) Trophies, entertainment, rewards, prizes, given to competitors in contests which are open to the public generally.

(6) Transactions between and among relatives which are personal and consistent with the relationship.

(7) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(8) Local transportation provided by an interested party while on official business and when alternative arrangements are clearly impracticable.

(9) Participation in civic and community activities by FEA personnel when the relationship with the interested party can reasonably be characterized as remote, for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by an interested party.

(10) The acceptance of accommodations, subsistence, or services furnished in kind in connection with official travel, when authorized by the Administrator or his designee as in the overall Governmental interest. When accommodations, subsistence, or services in kind are furnished to FEA personnel by private sources, appropriate deductions shall be made in the travel, per diem, and other allowances otherwise payable to the personnel. FEA personnel may not accept personal reimbursement from a private source for expenses incident to official travel, unless authorized pursuant to 5

U.S.C. 4111 or other express statutory authority. Rather, any reimbursement must be made to the Government by check payable to the Treasurer of the United States; personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement. In no case shall FEA personnel accept—either in kind or on a reimbursable basis—benefits which are under prudent standards extravagant or excessive in nature.

(11) Situations not specifically covered by paragraph (b)(1)—(10) of this section but in which, in the judgment of the individual concerned, the Government's interest will be served by participation by FEA personnel in activities at the expense of an interested party and in which the Counselor has granted prior approval. When prior consultation with the Counselor is impractical, in those situations in which FEA personnel are offered any gratuity, favor, entertainment, etc., either directly or indirectly from any interested party, and in their judgment the Government's interest is served by acceptance, FEA personnel may accept such offer but must report the circumstances within 48 hours to the Counselor or in the case of regional employees, the Regional Counselor.

(c) Personnel on official business may not accept contractor-provided transportation, meals or overnight accommodations in connection with such official business so long as Government or commercial transportation or quarters are reasonably available. Where, however, the overall Governmental interest would be served by acceptance by FEA personnel of such transportation or accommodations in specific cases, the Administrator or his delegate may authorize it.

(d) The Constitution (article I, section 9, clause 8) prohibits acceptance from foreign governments, except with the consent of Congress, of any emolument, office, or title. The Congress has provided for the receipt and disposition of foreign gifts and decorations in 5 U.S.C. 7342. (See also Executive Order No. 11320, 31 FR 15789, and the regulations pursuant thereto in 22 CFR Part 3 (as added, 32 FR 6569)). Any such gift or thing which cannot appropriately be refused shall be submitted to the Counselor for transmittal to the State Department.

§ 203.15 Prohibition of contributions or presents to superiors.

FEA personnel shall not solicit a contribution from other officers or employees for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an officer or employee receiving less pay than themselves (5 U.S.C. 7351). However, this section does not prohibit a voluntary gift of nominal value or donation in nominal amount made on a special occasion such as marriage, illness or resignation.

§ 203.16 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(3) Work which identifies FEA or any employee in his official capacity with any organization commercializing products relating to work conducted by FEA or with any commercial advertising matter, or work performed under such circumstances as to give the impression that it is an official act of FEA or represents an official point of view.

(4) Outside work or activity that takes the employee's time and attention during his official work hours.

(b) Within the limitations imposed by this section, employees are encouraged to engage in teaching, lecturing, and writing. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Administrator of FEA gives written authorization for the use of non-public information on the basis that the use is in the public interest. In addition, FEA personnel shall not receive compensation or anything of monetary value (such as an honorarium) for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of FEA, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) An employee shall not engage in outside employment with a State or local government, except in accordance with applicable regulations of the Civil Service Commission (Part 734 of 5 CFR, Chapter I).

(d) Neither this section nor § 203.14 precludes an employee from:

(1) Receipt of bona fide reimbursement unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part and for which no Government payment or reimbursement is made.

(2) Participation in the activities of national or State political parties not proscribed by law. (See § 203.24 regarding political activities.)

(3) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational or recreational, public service, or civic organization.

(e) An employee who intends to engage in outside employment shall obtain the advance approval of his immediate supervisor. In addition, empolyees required by § 203.25(d) to file a Confidential Statement of Employment and Financial Interest will also obtain approval of the Counselor or, in the case of regional employees, the Regional Counselor. A record of each approval under this paragraph shall be filed in the employee's official personnel folder. In addition, a record of each approval shall be forwarded to the relevant Assistant Administrator or Office Director.

(f) This section does not apply to special Government employees, who are subject to the provisions of § 203.11.

§ 203.17 Financial interests.

(a) An employee may not have a financial interest which—

(1) Is a personal or private industry in a matter which involves his duties and responsibilities as an employee (except as permitted by § 203.9 or authorized pursuant to § 203.12(d); or

(2) Is entered into in reliance upon, or as a result of, information obtained through his employment; or

(3) Results from active and continuous trading (as distinguished from the making of bona fide investments) which is conducted on such a scale as to interfere with the proper performance of his duties.

(b) Aside from the restrictions prescribed or cited in this part, employees are free to engage in lawful financial transactions to the same extent as any citizen. Employees should be aware that the financial interests of their spouses or minor children may be regarded, for the purposes of this section, as financial interests of the employees themselves. In addition, the financial interests of blood relatives who are full time residents of their households may be regarded as financial interests of the employees themselves.

(c) This section does not apply to special Government employees, who are subject to the provisions of § 203.11.

§ 203.18 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property or any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 203.19 Nondiscrimination.

An employee shall not be discriminated against because of race, color, religion, national origin, sex, age, politics, marital status, or on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with a physical handicap. This prohibition applies to both employment and utilization of Federal employees.

§ 203.20 Misuse of information.

(a) For the purpose of furthering a private interest, an employee shall not, except as provided in paragraph (b) of § 203.16, directly or indirectly use, or

allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

(b) An officer or employee of FEA shall not divulge or disclose any trade secrets, processes, financial data or other business information which is submitted to or filed with FEA on a confidential basis and which falls within the purview of 18 U.S.C. 1905.

§ 203.21 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which FEA determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require FEA to determine the validity or amount of the disputed debt.

§ 203.22 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 203.23 Political activity.

(a) All employees in the Executive Branch of the Federal Government are subject to basic political activity restrictions in subchapter III of Chapter 73 of title 5, U.S.C. (commonly known as the Hatch Act) and Civil Service Rule IV. Employees are individually responsible for refraining from prohibited political activity. Ignorance of a prohibition does not excuse a violation. This section summarizes provisions of law and regulation concerning political activity of employees.

(b) Intermittent employees are subject to the restrictions when in active duty status only and for the entire 24 hours of any day of actual employment.

(c) Employees on leave, on leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted are subject to the restrictions. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restriction during the period covered by the lump-sum payment or thereafter, provided he does not return to Federal employment during that period. An employee is not permitted to take leave of absence to work with a political candidate, committee, or organization or become a candidate for office with the understanding that he will resign his position if nominated or elected.

(d) An employee is accountable for political activity by another person acting as his agent or under the employee's direction or control if he is thus accomplishing indirectly what he may not lawfully do directly and openly.

(e) Section 7324 of title 5, U.S.C. (derived from 9(a) of the Hatch Act) provides that employees have the right to vote as they please and the right to express their opinions on political subjects and candidates. Generally, however, they are prohibited from taking an active part in political management or political campaigns or using official authority or influence to interfere with an election or affect its results. The following are exemptions from the restrictions of the statute:

(1) Employees may engage in political activity in connection with any question not specifically identified with any National or State political party. They also may engage in political activity in connection with an election if none of the candidates represents a party any of whose candidates for presidential elector received votes at the last preceding election at which presidential electors were selected.

(2) An exception relates to political campaigns in communities adjacent to the District of Columbia or in communities the majority of whose voters are employees of the Federal Government. Communities in which the exception applies are specifically designated by the Civil Service Commission. Information regarding the localities and the conditions under which the exceptions are granted may be obtained from the personnel office or the FEA Counselor or Regional Counselor.

(3) Intermittent employees are exempt during such time as they are not in active duty status.

(4) The Administrator and Assistant Administrators of FEA, as well as other officials appointed by the President by and with the advice and consent of the Senate, who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws are exempt from the prohibitions concerning active participation in political management and political campaigns.

(f) There are restrictions other than those imposed by subchapter III of Chapter 73 of title 5, U.S.C. (the Hatch Act) and Rule IV which relate to:

(1) Political contributions and assessments.
(2) Circulars of solicitation.
(3) Solicitation in Federal buildings.
(4) Solicitation by letter.
(5) Payment by one employee to another.
(6) Discrimination because of political contributions.
(7) Purchase and sale of public office.
(8) Political recommendations and discrimination.
(9) Other criminal offenses discussed in 18 United States Code, Chapter 29.

Further information concerning these restrictions may be obtained from the Standards of Conduct Counselor.

§ 203.24 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of his agency and of the Government. In particular, attention of employees is directed to the following statutory provisions:

(a) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (See §§ 203.9, 203.10, and 203.11).

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(e) The prohibition against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and (2) the disclosure of confidential business information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under Foreign Agents Registration Act (18 U.S.C. 219).

§ 203.25 Reporting of employment and financial interests—regular employees.

(a) Not later than 30 days after the effective date of this part, an employee designated in paragraph (d) of this

section shall submit through his supervisor to the Counselor or his designee a statement (Appendix B to this part) and a supplemental questionnaire (Appendix D to this part), made available in the Office of Personnel, setting forth the following information:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which he, his spouse, minor child or other member of his immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant including an offer for future employment or a temporary absence from employment, such as a leave of absence; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

(2) A list of the names of his creditors and the creditors of his spouse, minor child or other member of his immediate household, other than those creditors to whom they may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom they may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, vacations, or the like.

(3) A list of his interests and those of his spouse, minor child or other member of his immediate household in real property or rights in lands, other than property which he occupies as a personal residence.

(b) For the purpose of this section "member of his immediate household" means a full-time resident of the employee's household who is related to him by blood.

(c) Before a final offer of employment may be made to an applicant for employment with FEA,

(1) The FEA supervisor to whom the applicant would report shall obtain and review a Confidential Statement of Employment and Financial Interest from the applicant;

(2) The supervisor to whom the applicant would report shall certify that there is no conflict, appearance of conflict or potential conflict of interest between the interests disclosed on the statement and the proposed duties of the applicant; and

(3) The Counselor or his designee shall make a determination that there is no conflict, appearance of conflict or potential conflict of interest between the interests disclosed on the statement and the proposed duties of the applicant.

(d) Statements of employment and financial interests are required of the following:

(1) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code, except a Presidential appointee required to file a statement of financial interests under section 401 of Executive Order No. 11222 of May 8, 1965.

(2) Employees in classified positions of grade GS–13 or above, or the equivalent thereof.

(3) Employees occupying positions as auditors, investigators and case resolution officers in classified positions of grade GS–11 or above.

(e) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result in a violation of the conflicts-of-interest provisions of 18 U.S.C. 208.

(f) If any information required to be included on a statement of employment or financial interests or supplemental questionnaire, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

(g) Paragraph (a) of this section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(h) FEA shall hold each statement of employment and financial interests and each supplemental questionnaire in confidence. Each person designated to review statements of employment and financial interests and supplemental questionnaires under § 203.27 is responsible for maintaining the statement in confidence and shall not allow access to, or allow information to be disclosed from, a statement or a questionnaire except to carry out the purpose of this part. FEA may not disclose information from a statement or a questionnaire except as the Civil Service Commission or the Administrator of FEA may determine for good cause shown.

(i) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(j) An employee who believes that his position has been improperly included as one requiring the submission of a statement of employment and financial interests is entitled to obtain a review of his complaint under FEA's grievance procedure.

(k) This section does not apply to special Government employees, who are subject to the provisions of § 203.11.

(l) A regional employee shall submit through his supervisor to the Regional Counselor for his region the statement of employment and financial interest referred to in §§ 203.26 and 203.27.

(m) The Counselor or his designee shall retain the Confidential Statements of employees of the national office. Regional Counselors shall retain the Confidential Statements of regional employees.

§ 203.26 Reporting of employment and financial interest—special Government employees.

(a) A special Government employee shall submit through his supervisor to the Counselor or his designee a statement of employment and financial interests (Appendix C to this part) and a supplemental questionnaire (Appendix D to this part), which reports (1) all current Federal Government employment, (2) the names of all corporations, companies, firms, State or local governmental organizations, research organizations, and educational or other institutions in or for which he is an employee, officer, member, owner, trustee, director, advisor, or consultant, with or without compensation, (3) any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts, and (4) the names of all partnerships in which he is engaged.

(b) The statement and supplemental questionnaire required under this section shall be submitted at the time of employment and shall be kept current throughout the term of a special Government employee's service with FEA. A supplementary statement shall be submitted at the time of any reappointment; a negative report will suffice if no changes have occurred since the submission of the last statement.

§ 203.27 Reviewing statements of financial interests.

(a) The Counselor or his designee in cooperation with the employee's supervisor shall review the statements required by §§ 203.25 and 203.26 to determine whether there exists a conflict, appearance of conflict or potential conflict, between the interests of the employee or special Government employee concerned and the performance of his service for the Government. In addition, the Counselor or designee shall review the Confidential Statements of regional employees when there exists an appearance of conflict or a potential conflict of interest, when a suspected violation by a

regional employee is reported or when a Confidential Statement or recommendation for remedial action is referred to him by a Regional Counselor for review. If the Counselor or designee determines that such a conflict or appearance of conflict exists, he shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statement to the Administrator of FEA with his recommendation for such action. The Administrator, after consideration of the employee's explanation and such investigation as he deems appropriate, shall direct appropriate remedial action if he deems it necessary.

(b) The Regional Counselors shall review the statements of regional employees to determine whether there exists a conflict, appearance of conflict or potential conflict between the interests of the employee or special government employee concerned and the performance of his service for the Government. If the Regional Counselor determines that such a conflict or appearance of conflict exists, he shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statement to the Counselor with his recommendation for such action.

(c) Remedial action pursuant to paragraph (a) of this section may include, but is not limited to:

(1) Changes in assigned duties.

(2) Divestment by the employee of his conflicting interest.

(3) Disqualification for a particular action.

(4) Exemption pursuant to paragraph (b) of § 203.9 or paragraph (d) of § 203.12.

(5) Disciplinary action.

§ 203.28 Membership in associations.

All FEA personnel who are members of nongovernmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official government positions.

§ 203.29 Reporting suspected violations.

Personnel who have information which causes them to believe that there has been a violation of a statute or policy set forth in this part will promptly report such incidents to their immediate superiors. If the superior believes there has been a violation, he will report the matter to the Standards of Conduct Counselor or, in the case of regional employees, to the Regional Counselor. Any question or doubt on the part of the immediate superior will be resolved in favor of reporting the matter.

APPENDIX A

Code of Ethics For Government Service

Resolved by the House of Representatives (the Sentate concurring) That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

Code of Ethics For Government Service

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

Passed July 11, 1958.

(72 STAT. B12)

APPENDIX B

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS
(FOR USE BY GOVERNMENT EMPLOYEES)

1. NAME *(last, first, initial)*	2. TITLE OF POSITION

3. DATE OF APPOINTMENT IN PRESENT POSITION	4. AGENCY AND MAJOR ORGANIZATIONAL SEGMENT

PART I. EMPLOYMENT AND FINANCIAL INTERESTS. List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write NONE.

NAME & KIND OF ORGANIZATION (USE PART I DESIGNATIONS WHERE APPLICABLE)	ADDRESS	POSITION IN ORGANIZATION. (USE PART I(a) DESIGNATIONS, IF APPLICABLE.)	NATURE OF FINANCIAL INTEREST, e.g., STOCK, PRIOR BUSINESS INCOME. (USE PART I(b) & (c) DESIGNATIONS IF APPLICABLE.)

PART II. CREDITORS. List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

NAME AND ADDRESS OF CREDITOR	CHARACTER OF INDEBTEDNESS, e.g., PERSONAL LOAN, NOTE, SECURITY

PART III. INTERESTS IN REAL PROPERTY. List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write NONE.

NATURE OF INTEREST, e.g., OWNERSHIP, MORTGAGE, LIEN, INVESTMENT TRUST	TYPE OF PROPERTY, e.g., RESIDENCE, HOTEL, APARTMENT, FARM, UNDEVELOPED LAND	ADDRESS. (IF RURAL, GIVE RFD. OR COUNTY AND STATE.)

PART IV. INFORMATION REQUESTED OF OTHER PERSONS. If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write NONE.

NAME AND ADDRESS	DATE OF REQUEST	NATURE OF SUBJECT MATTER

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

(Date) _____ *(Signature)* _____

PART V. TO BE COMPLETED BY SUPERVISOR

I certify that I have reviewed the confidential Statement of Employment and Financial Interests of _____ in light of his responsibilities as an employee of the Federal Energy Administration under my supervision. It is my opinion that the financial interests disclosed to me present no conflict with the duties now assigned this employee.

Date _____

Name and Title of Immediate Supervisor (typed or printed) _____

Signature of Immediate Supervisor _____

FEA-F-82 GPO 879-278

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

For use by an officer or employee as required by section 402 of Executive Order 11222, dated May 8, 1965, Prescribing Standards of Ethical Conduct for Government Officers and Employees.

GENERAL REQUIREMENTS.

The information to be furnished in this statement is required by Executive Order 11222 and the regulations of the Civil Service Commission issued thereunder and may not be disclosed except as the Commission or the agency head may determine for good cause shown.

The Order does not require the submission of any information relating to an employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises" for purposes of this report and should be included.

The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

In the event any of the required information, including holdings placed in trust, is not known to you but is known to another person, you should request that other person to submit the information on your behalf and should report such request in Part IV of your statement.

The interest, if any, of a spouse, minor child, or other member of your immediate household shall be reported in this statement as your interest. If that information is to be supplied by others, it should be so indicated in Part IV. "Member of your immediate household" includes only those blood relations who are full-time residents of your household.

APPENDIX C

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS
(FOR USE BY SPECIAL GOVERNMENT EMPLOYEES)

PART I.–TO BE COMPLETED BY AGENCY

1. NAME *(last, first, initial)*	2. AGENCY AND MAJOR ORGANIZATIONAL SEGMENT
3. BIRTH DATE *(month, day, year)*	4. PERIOD OF APPOINTMENT, THIS AGENCY– FROM: TO:

5a. Estimated number of days on which services are expected to be performed–(1) with this agency _____ ; (2) with other Federal Agencies _____ ; Sum of (1) and (2) _____

b. Number of days already worked for this and other Federal agencies during applicable 365-day period _____

c. Total number of days (sum of a and b) ..... _____

PART II.–TO BE COMPLETED BY APPOINTEE

1. **FEDERAL GOVERNMENT EMPLOYMENT.**–List all other Federal agencies and other organizational segments of this Agency in which you are presently employed. If none, write NONE.

AGENCY AND LOCATION	TITLE OR KIND OF POSITION	APPOINTMENT PERIOD		ESTIMATED NO. OF DAYS
		FROM	TO	

2. **NON-FEDERAL EMPLOYMENT.**–Name all corporations, companies, firms, State or local Governmental organizations, research organizations, and educational or other institutions in which you are serving as employee, officer, member, owner, trustee, director, expert, adviser, or consultant, with or without compensation. If none, write NONE.

NAME AND KIND OF ORGANIZATION *(e.g., manufacturing, research, insurance)*	LOCATION *(City, State)*	TITLE OR KIND OF POSITION

3. **FINANCIAL INTERESTS.**

NAME OF ORGANIZATION	KIND OF ORGANIZATION *(manufacturing, storage, public utilities, etc.)*	NATURE OF INTEREST AND IN WHOSE NAME HELD

I CERTIFY that the statements I have made are true, complete, and correct to the best of my knowledge and belief. UNDERSTAND that if, during the period of my appointment, I undertake a new employment, I must promptly file an amended statement

_____ *(Date)* _____ *(Signature)*

PART III.–TO BE COMPLETED BY SUPERVISOR

I certify that I have reviewed the Confidential Statement of Employment and Financial Interests of _____ in light of his responsibilities as an employee of the Federal Energy administration under my supervision. It is my opinion that the financial interests disclosed to me present no conflict with the duties now assigned this employee.

_____ Date

_____ Name and Title of Immediate Supervisor (typed or printed)

_____ Signature of Immediate Supervisor

FEA-F-83

GPO 879-277

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

For use by a special Government employee as required by section 30b of Executive Order 11222, dated May 8, 1965, Prescribing Standards of Ethical Conduct for Government Officers and Employees.

GENERAL REQUIREMENTS

The information to be furnished in this statement is required by Executive Order 11222 and the regulations of the Civil Service Commission issued thereunder and may not be disclosed except as the Commission or the agency head may determine for good cause shown.

The Order does not require the submission of any information relating to an employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises" for purposes of this report and should be included.

APPENDIX D

Supplemental Questions to Confidential Statement of Employment and Financial Interests

1. Name: _____

2. Employment status with FEA ( ) applicant, or ( ) present employee.

3. Date of entrance onto duty (or projected date if applicant): _____

4. Job title: _____

5. Type of employment (e.g., emergency indefinite, transfer) and whether full-time or intermittent (if intermittent, estimate number of days expected to serve with Government during one year period): _____

6. Grade: _____

7. Office and division: _____

8. Room number and telephone extension (if applicant, give telephone number where you can be reached): _____

9. Place of previous employment: _____

10. Kind of previous employment: _____

11. Do you now have or do you expect to have continuing financial interest through a pension retirement, group life, health or accident insurance, profit-sharing, stock bonus or other welfare or benefit plan maintained by a former employer? If so, describe the interest.

12. Do you now receive or do you expect to receive during or after your employment with the Federal Energy Administration any compensation from a former employer? If so, describe the arrangement under which the compensation is being or will be paid including a statement of the purpose for which it is being or will be paid.

13. Are you now or do you expect to be a party to any kind of arrangement with a former employer under which you are entitled to return to their employment, such as being on a leave of absence? If so, describe the arrangement.

14. Have you received or do you expect to receive any payment or reimbursement for travel costs (e.g., transportation, moving) to or from the duty station by a former employer or client? If so, describe the arrangement and the purpose for which such payment or reimbursement was or will be paid.

15. To your knowledge, does any employer or organization (e.g., business firm, association, union) with which you (a) were formerly associated (i.e., your most recent previous employment or association), (b) are presently associated, or (c) are negotiating concerning future association, have a particular matter pending before the Federal Energy Administration? Do you expect it to have a matter before FEA in the future? If the answer is yes to any of the above, describe the particulars.

PART 204—RECORDS OF ORAL COMMUNICATION WITH PERSONS OUTSIDE FEA

Sec.
204.1 Purpose and scope.
204.2 Definitions.
204.3 Preparation of record of outside contact forms.
204.4 Preparation of meeting logs.
204.5 Public record of meetings.

AUTHORITY: Federal Energy Administration Act of 1974, Pub. L. 93-275; E. O. 11790, 39 FR 23185.

§ 204.1 Purpose and Scope.

This part establishes regulations for the preparation and maintenance, by specified FEA employees, of written reports and meeting logs regarding certain types of oral communications received from and meetings held with persons from outside the agency. Procedures are also established for the preparation and distribution to the public of a list of all meetings that have occurred between the Administrator, the Deputy Administrator, Assistant Administrators, or the General Counsel and persons from outside the agency during the preceeding two-week period. These regulations and procedures are designed to maintain the integrity of FEA's decision making process, to insure that FEA programs and policies are developed and implemented in an open atmosphere, and to promote public confidence in FEA.

§ 204.2 Definitions.

As used in this part—

(a) "Appeal" means a request for further view of an order or interpretation, or of any action taken in response to an application.

(b) "Application" means a request for an exception, exemption, assignment or adjustment, modification or recision, or stay.

(c) "Enforcement proceeding" means a proceeding relating to the preparation and issuance by FEA of notices of probable violation or remedial orders.

(d) "FEA" means the Federal Energy Administration.

(e) "Noninvolved person" means a person with whom contact would normally not be made in the routine processing by FEA personnel of an application, interpretation request, petition for special redress, appeal, investigation or enforcement proceeding and includes, but is not limited to, a Member of Congress or his staff, an employee or official of another government agency or of the Executive Branch, and any other person in public or private life not directly involved in the matter. It does not include an official or employee of FEA, or a person from outside the agency with whom an employee would be expected routinely to communicate in the normal course of processing the matter, including but not limited to, the applicant, the person requesting an interpretation, an appellant, a petitioner for special redress, a person under investigation, an informant in an investigation, a person charged with a violation, a party or witness to a proceeding or the attorney representing such persons.

(f) "Person from outside the agency" means a person not employed by FEA or detailed to FEA by another Federal agency.

(g) "Petition for special redress" means a "Petition for Special Redress and Other Relief" filed with the FEA Office of Private Grievances and Redress pursuant to section 21 of the Federal Energy Administration Act and Part 205 of this chapter.

§ 204.3 Preparation of record of outside contact forms.

(a) All FEA employees in grades GS-15 and above shall prepare a "Record of Outside Contact Form" ("Record Form") on each oral communication received (in person, by telephone or otherwise) from a non-involved person expressing an opinion or viewpoint on a specific application, interpretation request, appeal, petition for redress, investigation, or enforcement proceeding pending before FEA: *Provided*, That no Record Form shall be prepared for routine requests for information concerning the status of a matter, including, but not limited to, inquiries regarding when FEA actions were or may be taken, the identity of parties or staff personnel responsible for a matter, or the availability and location of public information concerning a matter.

(b) The form set forth below, entitled "Record of Outside Contact Form", shall be used in complying with the provisions of paragraph (a) of this section.

RECORD OF OUTSIDE CONTACT

(Identity of Application, Petition for Redress, Appeal, Interpretation Request, Investigation or Enforcement Proceeding Involved)

Name of Communicant_____
Organizations or Entities Represented_____

Date and time of Communication_____
Place or Method of Communication_____
Brief Summary of Subject Matter(s) Discussed:

Completed by:
Name _____
Office _____

(c) Completed Record Forms shall be placed in the appropriate subject matter or case file and shall thereafter become part of the public record, if and when a public record of that particular matter is established. If the communication concerns an appeal before the Office of Exceptions and Appeals, the completed Record Form shall be immediately transmitted to that Office where it shall be placed in the appropriate application or enforcement proceeding file: *Provided, however*, That such Record Forms shall be maintained separately from the materials upon which the Review Committee may rely in reaching a final decision.

§ 204.4 Preparation of meeting logs.

(a) The Administrator, the Deputy Administrator, the General Counsel, and all Assistant Administrators and Directors of FEA Offices shall maintain logs of their meetings with persons from outside the agency concerning FEA policy questions.

(b) The meeting logs prepared pursuant to paragraph (a) of this section shall reflect, at a minimum, the date and place of each meeting, the name of each participant in the meeting, the organizations or entities represented by each participant, and a brief summary of the subject matter or matters discussed.

§ 204.5 Public record of meetings.

(a) Within one week after the 15th and the end of each month, the Administrator, the Deputy Administrator, each Assistant Administrator, and the General Counsel shall submit to the Office of Public Affairs a list of all meetings that they have held with persons from outside FEA during the preceeding half-month period. The list shall contain the date of each meeting, the names of all participants, the entities represented, and the general subject discussed.

(b) The Office of Public Affairs shall make the lists prepared pursuant to paragraph (a) of this section available to the public, upon request, in its Public Reference Room. In addition, the Office of Public Affairs shall distribute copies of the lists to interested parties on a regular basis.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

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AUTHORITY: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185.

Subpart A—General Provisions

§ 205.1 Purpose and scope.

(a) This part establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Federal Energy Administration and State Offices, in accordance with Parts 210, 211, 212, and 215 of this chapter.

(b) This subpart defines certain terms and establishes procedures that are applicable to each proceeding described in this part.

§ 205.2 Definitions.

The definitions set forth in other parts of this chapter shall apply to this part, unless otherwise provided. In addition, as used in this part, the term:

"Action" means an order, interpretation, notice of probable violation or ruling issued, or a rulemaking undertaken by the FEA or, as appropriate, by a State Office.

"Adjustment" means a modification of the base period volume or other measure of allocation entitlement in accordance with Part 211 of this chapter.

"Aggrieved", for purposes of administrative proceedings, describes and means a person with an interest sought to be protected under the FEAA or EPAA who is adversely affected by an order or interpretation issued by the FEA or a State Office.

"Appropriate Regional Office or appropriate State Office" means the office located in the State or FEA region in which the product will be physically delivered.

"Assignment" means an action designating that an authorized purchaser be supplied at a specified entitlement level by a specified supplier.

"Conference" means an informal meeting, incident to any proceeding, between FEA or State officials and any person aggrieved by that proceeding.

"Duly authorized representative" means a person who has been designated to appear before the FEA or a State Office in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. Such appearance may consist of the submission of applications, petitions, requests, statements, memoranda of law, other documents, or of a personal appearance, verbal communication, or any other participation in the proceeding.

"EPAA" means the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159).

"Exception" means the waiver or modification of the requirements of a regulation, ruling or generally applicable requirement under a specific set of facts.

"Exemption" means the release from the obligation to comply with any part or parts, or any subpart thereof, of this chapter.

"FEA" means the Federal Energy Administration, created by the FEAA and includes the FEA National Office and Regional Offices.

"FEAA" means the Federal Energy Administration Act of 1974 (Pub. L. 93-275).

"Federal legal holiday" means New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a national holiday by the President or the Congress of the United States.

"Interpretation" means a written statement issued by the FEA General Counsel or a Regional Counsel, in response to a written request, that applies the regulations, rulings, and other precedents previously issued by the FEA to the particular facts of a prospective or completed act or transaction.

"Notice of probable violation" means a written statement issued to a person by the FEA that states one or more alleged violations of the provisions of this chapter or any order issued pursuant thereto.

"Order" means a written directive or verbal communication of a written directive, if promptly confirmed in writing, issued by the FEA or a State Office. It may be issued in response to an application, petition or request for FEA action or in response to an appeal from an order, or it may be a remedial order or other directive issued by the FEA or a State Office on its own initiative. A notice of probable violation is not an order. For purposes of this definition a "written directive" shall include telegrams, telecopies and similar transcriptions.

"Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

"Proceeding" means the process and activity, and any part thereof, instituted by the FEA or a State Office, either on its own initiative or in response to an application, complaint, petition or request submitted by a person, that may lead to an action by the FEA or a State Office.

"Remedial order" means a directive issued by the FEA requiring a person to cease a violation or to eliminate or to compensate for the effects of a violation, or both.

"Ruling" means an official interpretative statement of general applicability issued by the FEA General Counsel and published in the FEDERAL REGISTER that applies the FEA regulations to a specific set of circumstances.

"State Office" means a State Office of Petroleum Allocation certified by the FEA upon application pursuant to Part 211 of this chapter.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 205.3 Appearance before the FEA or a State Office.

(a) A person may make an appearance, including personal appearances in the discretion of the FEA, and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Any application, appeal, petition, request or complaint filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an FEA form requires otherwise. Falsification of such certification will subject such person to the sanctions stated in 18 U.S.C. 1001 (1970).

(b) Suspension and disqualification: The FEA or a State Office may deny, temporarily or permanently, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the FEA—

(1) To have made false or misleading statements, either verbally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the person seeking an FEA or State Office action; or

(4) To have engaged in or to be engaged in contumacious conduct that substantially disrupts a proceeding.

§ 205.4 Filing of documents.

(a) Any document, including, but not limited to, an application, request, complaint, petition and other documents submitted in connection therewith, filed with the FEA or a State Office under this chapter is considered to be filed when it has been received by the FEA National Office, a Regional Office or a State Office. Documents transmitted to the FEA must be addressed as required by § 205.12. All documents and exhibits submitted become part of an FEA or a State Office file and will not be returned.

(b) Notwithstanding the provisions of paragraph (a) of this section, an appeal, a response to a denial of an appeal or application for modification or recision in accordance with §§ 205.106(a)(3) and 205.135(a)(3), respectively, a reply to a notice of probable violation, the appeal of a remedial order or remedial order for immediate compliance, a response to denial of a claim of confidentiality, or a comment submitted in connection with any proceeding transmitted by registered or certified mail and addressed to the appropriate office is considered to be filed upon mailing.

(c) Hand-delivered documents to be filed with the Office of Exceptions and Appeals shall be submitted to Room 8002 at 2000 M Street, NW., Washington, D.C. All other hand-delivered documents to be filed with the FEA National Office shall be submitted to the Executive Secretariat at 12th and Pennsylvania Avenue, NW., Washington, D.C. Hand-delivered documents to be filed with a Regional Office shall be submitted to the Office of the Regional Administrator. Hand-delivered documents to be filed with a State Office shall be submitted to the office of the chief executive officer of such office.

(d) Documents received after regular business hours are deemed filed on the next regular business day. Regular business hours for the FEA National Office are 8 a.m. to 4:30 p.m. Regular business hours for a Regional Office or a State Office shall be established independently by each.

§ 205.5 Computation of time.

(a) *Days.* (1) Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the FEA or a State Office, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a Federal legal holiday.

(2) Saturdays, Sundays or intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(b) *Hours.* If the period of time prescribed in an order issued by the FEA or a State Office is stated in hours rather than days, the period of time shall begin to run upon actual notice of such order, whether by verbal or written communication, to the person directly affected, and shall run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended or rescinded. When a written order is transmitted by verbal communication, the written order shall be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice, interpretation or other document and the order, notice, interpretation or other document is served by mail, 3 days shall be added to the prescribed period.

§ 205.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the office with which the document is required to be filed upon good cause shown.

§ 205.7 Service.

(a) All orders, notices, interpretations or other documents required to be served under this part shall be served personally or by registered or certified mail or by regular United States mail (only when service is effected by the FEA or a State Office), except as otherwise provided.

(b) Service upon a person's duly authorized representative shall constitute service upon that person.

(c) Service by registered or certified mail is complete upon mailing. Official United States Postal Service receipts from such registered or certified mailing shall constitute *prima facie* evidence of service.

§ 205.8 Subpoenas; witness fees.

(a) The Administrator of the FEA, his duly authorized agent, the FEA General Counsel, or the agency official designated to conduct a hearing or public hearing convened in accordance with Subpart M of this part may sign and issue subpoenas either on his own initiative or, upon an adequate showing that the information sought will materially advance the proceeding, upon the request of any person participating in that proceeding.

(b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.

(c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified or registered mail.

(d) Service of a subpoena under the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one day's attendance and mileage as specified by paragraph (f) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at his office with the person in charge thereof, leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, by mailing them by registered or certified mail to him at his last known address, or by any method whereby actual notice is given to him and

the fees are made available prior to the return date. When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be effected by handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing them by registered or certified mail to such representative at his last known address or by any method whereby actual notice is given to such representative and the fees are made available prior to the return date. If any person is an entity with offices and operations in more than one jurisdiction, such person may designate one address to which any subpoena may be served by filing such designation with the General Counsel at the address specified in § 205.12.

(e) The original subpoena bearing a certificate of service shall be filed with the FEA office with the responsibility for the proceeding in connection with which the subpoena was issued.

(f) A witness subpoenaed by the FEA shall be paid the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. The witness fees and mileage shall be paid by the person at whose instance the subpoena was issued.

(g) Notwithstanding the provisions of paragraph (f) of this section, and upon request, the witness fees and mileage shall be paid by the FEA when it is shown that:

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person at whose instance the subpoena was issued would suffer a serious hardship if required to pay the witness fees and mileage.

The designated FEA official issuing the subpoena shall make the determination required by this paragraph.

(h) (1) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the designated FEA official who issued the subpoena, or if he is unavailable, to the Administrator, to quash or modify such subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein.

(2) The Administrator or such other designated FEA official specified in paragraph (h) (1) of this section may (i) deny the application, (ii) quash or modify the subpoena, or (iii) condition denial of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. Such denial may be summary.

(i) If there is a refusal to obey a subpoena served upon any person under the provisions of this section, the FEA may request the Attorney General to seek the aid of the District Court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the agency, or both.

§ 205.9 General filing requirements.

(a) *Purpose and scope.* The provisions of this section shall apply to all documents required or permitted to be filed with the FEA or with a State Office.

(b) *Signing.* All applications, petitions, requests, appeals, comments or any other documents that are required to be signed, shall be signed by the person filing the document or a duly authorized representative. Any application, appeal, petition, request, complaint or other document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an FEA form otherwise requires. (A false certification is unlawful under the provisions of 18 U.S.C. 1001 (1970)).

(c) *Labeling.* An application, petition, or other request for action by the FEA or a State Office should be clearly labeled according to the nature of the action involved (*e.g.*, "Application for Assignment") both on the document and on the outside of the envelope in which the document is transmitted.

(d) *Obligation to supply information.* A person who files an application, petition, complaint, appeal or other request for action is under a continuing obligation during the proceeding to provide the FEA or a State Office with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, complaint, appeal or request for action that is subsequently filed by that person with any FEA office or State Office.

(e) *The same or related matters.* A person who files an application, petition, complaint, appeal or other request for action by the FEA or a State Office shall state whether, to the best knowledge of that person, the same or related issue, act or transaction has been or presently is being considered or investigated by any FEA office, other Federal agency, department or instrumentality; or by a State Office, a state or municipal agency or court; or by any law enforcement agency; including, but not limited to, a consideration or investigation in connection with any proceeding described in this part. In addition, the person shall state whether contact has been made by the person or one acting on his behalf with any person who is employed by the FEA or any State Office with regard to the same issue, act or transaction or a related issue, act or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the FEA or a State Office claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 (1970)), is information referred to in 18 U.S.C. 1905 (1970), or is otherwise exempt by law from public disclosure, and if such person requests the FEA or a State Office not to disclose such information, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b) (4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the FEA or a State Office may assume that there is no objection to public disclosure of the document in its entirety.

(2) The FEA or a State Office retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by the FEA or a State Office to deny such claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

(g) *Separate applications, petitions or requests.* Each application, petition or request for FEA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding.

§ 205.10 Effective date of orders.

Any order issued by the FEA or a State Office under this chapter is effective as against all persons having actual notice thereof upon issuance, in accordance with its terms, unless and until it is stayed, modified, suspended, or rescinded. An order is deemed to be issued on the date, as specified in the order, on which it is signed by an authorized representative of the FEA or a State Office, unless the order provides otherwise.

§ 205.11 Order of precedence.

(a) If there is any conflict or inconsistency between the provisions of this part and any other provision of this chapter, the provisions of this part shall control with respect to procedure.

(b) Notwithstanding paragraph (a) of this section, Subpart I of Part 212 of this chapter shall control with respect to prenotification and reporting and Subpart J of Part 212 of this chapter shall control with respect to accounting and financial reporting requirements.

§ 205.12 Addresses for filing documents with the FEA.

(a) All applications, requests, petitions, appeals, reports, FEA or FEO forms, written communications and other documents to be submitted to or filed with the FEA National Office in accordance with this chapter shall be addressed as provided in this section. The FEA National Office has facilities for the receipt of transmissions via TWX and FAX. The FAX is a 3M full duplex 4 or 6 minute (automatic) machine.

FAX Numbers	*TWX Numbers*
(202) 254-6175	(701) 822-9454
(202) 254-6461	(701) 822-9459

(1) Documents for which a specific address and/or code number is not provided in accordance with paragraphs (2)-(7) below shall be addressed as follows: Federal Energy Administration, Attn: (name of person to receive document, if known, or subject), Washington, D.C. 20461.

(2) Documents to be filed with the Office of Exceptions and Appeals, as provided in this part or otherwise, shall be addressed as follows. Office of Exceptions and Appeals, Federal Energy Administration, Attn: (name of person to receive document, if known, and/or labeling as specified in § 205.9(c)), Washington, D.C. 20461.

(3) Documents to be filed with the Office of General Counsel, as provided in this part or otherwise, shall be addressed as follows: Office of the General Counsel, Federal Energy Administration, Attn: (name of person to receive document, if known, and/or labeling as specified in § 205.9(c)), Washington, D.C. 20461.

(4) Documents to be filed with the Office of Private Grievances and Redress, as provided in this part or otherwise, shall be addressed as follows: Office of Private Grievances and Redress, Federal Energy Administration, Attn: (name of person to receive document, if known and/or labeling as specified in § 205.9 (c)), Washington, D.C. 20461.

(5) All other documents filed, except those concerning price (see paragraph (a)(6) of this section), those designated as FEA or FEO forms (see paragraph (a)(7) of this section), and "Surplus Product Reports" (see paragraph (a)(8) of this section), but including those pertaining to compliance and allocation (adjustment and assignment) of allocated products, are to be identified by one of the code numbers stated below and addressed as follows: Federal Energy Administration, Code ——, labeling as specified in § 205.9(c), Washington, D.C. 20461.

CODE NUMBERS

Product:	*Code*
Crude oil	10
Naphtha and gas oil	15
Propane, butane and natural gasoline	25
Other products	30
Bunker fuel	40
Residual fuel (nonutility)	50
Motor gasoline	60
Middle distillates	70
Aviation fuels	80
Submissions by specific entities:	
Electric utilities	45
Department of Defense	55

(6) Documents pertaining to the price of covered products, except those to be submitted to other offices as provided in this part, shall be addressed to the Federal Energy Administration, Code 1000, Attn: (name of person to receive document, if known, and/or labeling as specified in § 205.9(c)), Washington, D.C. 20461.

(7) Documents designated as FEA or FEO forms shall be submitted in accordance with the instructions stated in the form.

(8) "Surplus Product Reports" shall be submitted to the Federal Energy Administration, Post Office Box 19407, Washington, D.C. 20036.

(b) All reports, applications, requests, notices, complaints, written communications and other documents to be submitted to or filed with an FEA Regional Office in accordance with this chapter shall be directed to one of the following addresses, as appropriate:

REGION 1

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Regional Office, Federal Energy Administration, 150 Causeway Street, Boston, Massachusetts 02114.

REGION 2

New Jersey, New York, Puerto Rico, Virgin Islands; Regional Office, Federal Energy Administration, 26 Federal Plaza, New York, New York 10007.

REGION 3

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia; Regional Office, Federal Energy Administration, Federal Office Building, 1421 Cherry Street, Philadelphia, Pennsylvania 19102.

REGION 4

Alabama, Canal Zone, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina; Regional Office, Federal Energy Administration, 1655 Peachtree Street NW., Atlanta, Georgia 30309.

REGION 5

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin; Regional Office, Federal Energy Administration, 175 West Jackson Street, Chicago, Illinois 60604.

REGION 6

Arkansas, Louisiana, New Mexico, Oklahoma, Texas; Regional Office, Federal Energy Administration, 212 North Saint Paul Street, Dallas, Texas 75201.

REGION 7

Iowa, Kansas, Missouri, Nebraska; Regional Office, Federal Energy Administration, Federal Office Building, P.O. Box 15000, 112 East 12th Street, Kansas City, Missouri 64106.

REGION 8

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Regional Office, Federal Energy Administration, Post Office Box 26247, Belmar Branch, Denver, Colorado 80226.

REGION 9

American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territory of the Pacific Islands; Regional Office, Federal Energy Administration, 111 Pine Street, San Francisco, California 94111.

REGION 10

Alaska, Idaho, Oregon, Washington; Regional Office, Federal Energy Administration, Federal Office Building, 909 First Avenue, Room 3098, Seattle, Washington 98104.

§ 205.13 Where to file.

(a) Except as otherwise specifically provided in other subparts of this part, all documents to be filed with the FEA pursuant to this part shall be filed with the appropriate FEA Regional Office, except that all documents shall be filed with the FEA National Office that relate to:

(1) The allocation and pricing of crude oil pursuant to Subpart C of Part 211 and Part 212 of this chapter;

(2) Refinery yield controls pursuant to Subpart C of Part 211 of this chapter;

(3) The allocation and pricing of butane and natural gasoline pursuant to Subpart E of Part 211 and Part 212 of this chapter;

(4) The allocation and pricing of aviation fuel pursuant to Subpart H of Part 211 and Part 212 of this chapter, filed by civil air carriers and public air carriers;

(5) The allocation and pricing of residual fuel oil pursuant to Subpart I of Part 211 and Part 212 of this chapter, filed by electric utilities;

(6) The allocation and pricing of naphtha and gas oil pursuant to Subpart J of Part 211 and Part 212 of this chapter;

(7) The allocation and pricing of other products pursuant to Subpart K of Part 211 and Part 212 of this chapter;

(8) An application for an exemption under Subpart E of this part; requests for a rulemaking proceeding under Subpart L of this part or for the issuance of a ruling under Subpart K of this part; and petitions to the Office of Private Grievances and Redress under Subpart R of this part;

(9) The pricing of products pursuant to Part 212 of this chapter, filed by a refiner; and

(10) The allocation of crude oil and other allocated products to meet Department of Defense needs pursuant to Part 211 of this chapter.

(b) Applications by end-users and wholesale purchasers for an allocation under the state set-aside system in accordance with § 211.17 shall be filed with the appropriate State Office.

(c) Applications to a State Office or an FEA Regional Office shall be directed to the office located in the state or region in which the allocated product will be physically delivered. An applicant doing business in more than one state or region must apply separately to each State or region in which a product will be physically delivered, unless the State Offices or Regional Offices involved agree otherwise.

§ 205.14 Ratification of prior directives, orders and actions.

All interpretations, orders, notices of probable violation or other directives issued, all proceedings initiated, and all other actions taken in accordance with Part 205 as it existed prior to the effec-

tive date of this amendment, are hereby confirmed and ratified, and shall remain in full force and effect as if issued under this amended Part 205, unless or until they are altered, amended, modified or rescinded in accordance with the provisions of this part.

§ 205.15 Public docket room.

There shall be established at the FEA National Office, 12th and Pennsylvania Avenue, NW., Washington, D.C., a public docket room in which shall be made available for public inspection and copying:

(a) A list of all persons who have applied for an exception, an exemption, or an appeal, and a digest of each application;

(b) Each decision and statement setting forth the relevant facts and legal basis of an order, with confidential information deleted, issued in response to an application for an exception or exemption or at the conclusion of an appeal;

(c) The comments received during each rulemaking proceeding, with a verbatim transcript of the public hearing if such a public hearing was held; and

(d) Any other information required by statute to be made available for public inspection and copying, and any information that the FEA determines should be made available to the public.

Subpart B—Adjustment

§ 205.20 Purpose and scope.

This subpart establishes the procedures for filing an application for an adjustment or a request for FEA validation of an adjustment as provided in Part 211, and the procedures for the consideration of such applications and requests by the FEA or a State Office, as appropriate.

§ 205.21 What to file.

(a) A person filing under this subpart shall file an "Application for Adjustment," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) An application shall be the appropriate FEA form. If such form is not current or available, the application shall consist of the information required in § 205.24(b).

(c) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 205.9 (f) shall apply.

§ 205.22 Where to file.

(a) A wholesale purchaser shall submit an application for adjustment to his supplier prior to its submission to the FEA. The supplier shall certify that to the best of the supplier's knowledge the information contained in the application is correct and accurate and, within 10 days of receipt of the application, shall file the certification and the application with the FEA office specified in § 205.13, at the address provided in § 205.12.

(b) If the supplier cannot make such certification, the supplier shall file the application and provide an explanation for the absence of the certification.

(c) A request for FEA validation of an application for adjustment for unusual growth in accordance with § 211.13(b) or increased current requirements in accordance with § 211.13(d) shall be filed with the appropriate Regional Office at the address provided in § 205.12. Such request for validation shall be made not sooner than ten days after the certification has been presented to the supplier.

§ 205.23 Notice.

(a) The FEA shall serve notice on any person readily identifiable by the FEA as one who will be aggrieved by the FEA action and may serve notice on any other person that written comments regarding the application for adjustment will be accepted if filed within 10 days of service of the notice; or may determine that notice should be published in the FEDERAL REGISTER.

(b) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 205.9 (f), to the applicant. The person shall certify to the FEA that he has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 205.24 Contents.

(a) The application shall be the appropriate FEA form, which shall be completed in accordance with instructions that accompany the form. If there is not a current FEA form appropriate or available, the applicant shall file an application that contains the information required by paragraph (b) of this section.

(b) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted. The application shall also include the following information:

(1) Description of applicant's business or end use of the product;

(2) The anticipated use of the product in applicant's operation, including the present and anticipated needs of priority customers, if applicable;

(3) An estimate of the anticipated effect that denial of the requested adjustment would have on the applicant's operations;

(4) A description of the extent to which the applicant has investigated the possibilities of converting to an alternative fuel or product, and the applicant's conclusion as to the feasibility of making that conversion;

(5) The identification of any previous order relevant to the present application that has been issued to the applicant or to any person who controls or is controlled by the applicant;

(6) A certification of the accuracy of the application by the chief executive officer of the applicant or his duly authorized representative; and

(7) A statement that the increased allocations shall be used only for the purpose stated in the application, shall not be diverted to other uses, and that if needs decline the applicant shall file an amended application for a downward adjustment to its base period use.

§ 205.25 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(b) *Criteria.* An application for adjustment will only be granted or validated in the circumstances permitted or required by Part 211 of this chapter. In considering such an application, the FEA will apply the criteria stated in § 4(b) of the EPAA.

§ 205.26 Decision and order.

(a) Upon consideration of the application or request and other relevant information received or obtained during the proceeding, the FEA shall issue an appropriate order.

(b) The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals or the appro-

priate Regional Office in accordance with Subpart H of this part.

(c) The FEA shall serve a copy of the order upon the applicant and any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order.

§ 205.27 Timeliness.

If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 205.28 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals or with the appropriate Regional Office in accordance with Subpart H of this part. The appeal shall be filed within 30 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart C—Assignment

§ 205.30 Purpose and scope.

This subpart establishes the procedures for the filing of an application for an assignment, other than an application for assignment under the state set-aside system as provided in Subpart Q of this part.

§ 205.31 What to file.

(a) A person filing under this subpart shall file an "Application for Assignment" or an "Application for Temporary Assignment" as provided in § 205.39, which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) An application shall be the appropriate FEA form. If such form is not available, the application shall consist of the information required in § 205.34(b).

(c) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.32 Where to file.

(a) Except as provided in paragraph (b), all applications for assignment shall be filed with the office specified in § 205.13, at the address provided in § 205.12.

(b) All applications for assignment by a new end-user who cannot agree on an allocation requirement with his supplier or who cannot locate a supplier shall be filed with the appropriate State Office.

§ 205.33 Notice.

(a) The FEA shall serve notice on any person readily identifiable by the FEA as one who will be aggrieved by the FEA action and may serve notice on any other person that written comments regarding the application for assignment will be accepted if filed within 10 days of service of the notice; or may determine that notice should be published in the FEDERAL REGISTER.

(b) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 205.9(f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 205.34 Contents.

(a) The application shall be the appropriate FEA form, which shall be completed in accordance with the instructions that accompany the form. If there is not a current FEA form appropriate or available, the applicant shall file an application that contains the information required by paragraph (b) of this section.

(b) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted. In addition to such information, the applicant shall include the following information:

(1) Description of applicant's business;

(2) The anticipated use of the allocated product in applicant's operation, including present and anticipated needs of priority customers, if applicable;

(3) An estimate of the anticipated effect that denial of the requested assignment would have on the applicant's operation;

(4) A description of the extent to which the applicant has investigated the possibilities of converting to an alternative fuel or product, and the applicant's conclusion as to the feasibility of making such conversion;

(5) A description of applicant's efforts to find other suppliers;

(6) The identification of any previous assignment order relevant to the present application that has been issued to the applicant or to any person that controls or is controlled by the applicant.

(7) A statement as to whether the applicant had no supplier during the requisite base period, or as to whether the applicant's base period supplier or new supplier is unable to supply his requirements;

(8) The identification of any persons who will be aggrieved by the FEA action sought, including potential suppliers; and

(9) Wholesale purchasers shall provide documentary evidence justifying its proposed base period volume as normal and reasonable for its intended use.

§ 205.35 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(b) *Criteria.* (1) An application for assignment may be granted in the situations specified in Part 211 of this chapter when such assignment will assure an allocation that to the maximum extent possible provides for—

(i) The protection of public health, safety, and welfare, (including maintenance of residential heating, such as individual homes, apartments, and similar occupied dwelling units) and the national defense;

(ii) Maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(iii) Maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(iv) Preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, non-branded independent mar-

keters, and branded independent marketers;

(v) The allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(vi) Equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, non-branded independent marketers, branded independent marketers, and among all users;

(vii) Allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of, fuels, and for required transportation related thereto;

(viii) Economic efficiency; and

(ix) Minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

(2) In the assignment of a base period volume to a wholesale purchaser, as defined in § 211.51, the FEA also shall consider the criteria provided in Part 211 of this chapter and FEA guidelines, rulings and decisions on appeal.

(3) In connection with the assignment of a supplier or a base period volume to a person planning to construct a synthetic natural gas plant after May 1, 1974, or to expand an existing one, the FEA also shall consider the criteria provided in § 211.29 of this chapter and FEA guidelines, rulings and decisions on appeal.

(4) In selecting a supplier for an assignment, the FEA shall consider the goal of equalizing allocation fractions among suppliers and the capability of the supplier to provide the product to an applicant on short notice.

(c) If an assignment is sought in connection with circumstances not referred to in Part 211 of this chapter, application for an exception should be filed with the FEA Office of Exceptions and Appeals at the address provided in § 205.12.

§ 205.36 Decision and order.

(a) Upon consideration of the application and other relevent information received or obtained during the proceeding, the FEA shall issue an appropriate order. The order shall state the duration of the assignment, which may be for the duration of the allocation program or for any lesser period specified therein.

(b) The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals or the appropriate Regional Office in accordance with Subpart H of this part.

(c) Prior to issuance of an assignment order, the FEA shall contact the proposed supplier for the purpose of determining the accuracy of the facts upon which it intends to base the proposed assignment order and the impact such order may have upon the proposed supplier's operations, and to give the supplier a reasonable opportunity to comment on the proposed order. To the extent a proposed supplier's comments present facts or other information that materially differs from those in the application, the applicant shall be advised and given an opportunity to respond verbally. The notice and comment provided herein may be in writing if time permits.

(d) The FEA shall serve a copy of the order upon the person who thereby will be directed to supply the product or to establish a base period volume, the applicant and upon any other person readily identifiable by the FEA as one who is aggrieved by said order.

§ 205.37 Timeliness.

(a) If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respect and may appeal therefrom as provided in this subpart.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on any application recommended for approval by a State Office pursuant to Subpart Q of this part within 30 days of receipt of such application by the FEA, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 205.38 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals or with the appropriate Regional Office in accordance with Subpart H of this part. The appeal shall be filed within 30 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(b) If an appeal is filed in connection with the issuance of an temporary assignment order in accordance with § 205.39, and subsequent to such appeal an assignment order from which said person also appeals is issued to the recipient of the temporary assignment order, the appeal from both the temporary assignment order and the subsequent assignment order shall be consolidated and considered in the same appellate proceeding.

§ 205.39 Temporary assignment.

(a) In certain circumstances and upon receipt of an application from a wholesale purchaser-reseller, other than one who requires an assignment to supply wholesale purchaser-consumers or end-users experiencing hardship or emergency, the FEA may issue a temporary assignment order to certain wholesale purchaser-resellers. End-users, wholesale purchaser-consumers and wholesale purchaser-resellers supplying end-users and wholesale purchaser-consumers experiencing hardship or emergency requirements shall apply to the appropriate State Office for an assignment from the state set-aside system, in accordance with Subpart Q of this part for emergency or hardship requirements. The ordering of a temporary assignment shall occur only in dire circumstances and when it is not feasible to issue an assignment order that conforms to the FEA guidelines, including, but not limited to, the requirement that assignment orders for a month be issued, to the maximum extent possible, by the 15th of the preceding month. Temporary assignments are intended to be issued when circumstance do not permit the issuance of an assignment order in the normal time period, *i.e.*, prior to the 15th day of the month preceeding the month for which there is the requirement for the assignment. Thus, a temporary assignment is an "off-phase" order. The "Application for Temporary Assignment" is to conform to the requirements of § 205.34, except that such requirements may be waived in whole or in part by the FEA for good cause shown. The application shall fully describe why the assignment must be made out of phase with the normal issuance of assignment orders. A temporary assignment order shall have a duration of not longer than 60 days. It is intended that a temporary assignment order shall be a one-time order that pertains to a specific situation, and it may not be extended by issuance of another temporary assignment order. If the applicant anticipates the requirement for an assignment of longer than 60 days duration, he shall file contemporaneously with the application for a temporary assignment, or as soon thereafter as feasible, an "Application for Assignment."

(b) A temporary assignment order shall conform to the requirements of § 205.35 and shall be issued only upon a finding that circumstances do not permit issuance of an assignment on-phase with the processing of assignment orders in accordance with FEA guidelines, which finding shall be stated in the order.

(c) The supplier selected shall be given notice of the temporary assignment order at least 24 hours in advance of its issuance.

(d) A temporary assignment order shall be appealable in accordance with § 205.38.

Subpart D—Exception

§ 205.50 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception from a regulation, ruling or generally applicable requirement based on an assertion of serious hardship or gross inequity and for the consideration of such application by the FEA.

(b) A request for an interpretation or other specific action which includes, or could be construed to include, an application for an exception may be treated solely as a request for an interpretation or other action, and processed as such by FEA.

(c) The filing of an appliction for an exception shall not constitute grounds for non-compliance with the requirements of the regulation, ruling or generally applicable requirement from which

an exception is sought, unless a stay has been issued in accordance with Subpart I of this part.

§ 205.51 What to file.

(a) A person filing under this subpart shall file an "Application for Exception," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.52 Where to file.

(a) Except as provided in paragraph (b) of this section, all applications for exception shall be filed with the Office of Exceptions and Appeals at the address provided in § 205.12.

(b) All applications for exception to Part 212 that relate to the retail sale of motor gasoline, heating oil, diesel fuel, or propane shall be filed with the appropriate Regional Office at the address provided in § 205.12.

§ 205.53 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with § 205.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the FEA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the FEA office with which the application was filed within 10 days. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of such notice.

(d) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 205.9(f), to the applicant. The person shall certify to the FEA that he has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

(e) At regular intervals, the FEA shall publish a list of all persons who have applied for an exception under this subpart, with a brief description of the factual situation and the relief requested.

§ 205.54 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted.

(b) The applicant shall state whether he requests or intends to request that there be a conference or hearing regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart M of this part.

(c) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular action sought therein.

(d) The application shall specify the exact nature and extent of the relief requested.

§ 205.55 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the FEA may consider any other source of information. The FEA on its own initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 205.53, the FEA may dismiss the application without prejudice.

(b) *Criteria.* (1) The FEA shall only consider an application for an exception when it determines that a more appropriate proceeding is not provided by this part.

(2) An application for an exception may be granted to alleviate or prevent serious hardship or gross inequity.

(3) An application for an exception shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous applications for exception.

(4) With regard to an exception from the provisions of Part 215 of this chapter, the criteria shall be those provided in such part.

§ 205.56 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals or the appropriate Regional Office in accordance with Subpart H of this part.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order. A copy of each order, with such modification as is necessary to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will be on file in the public docket room described in § 205.15. If such copy contains information that has been claimed by an applicant or other person to be confidential, notice of the FEA's intention to place a copy in the docket room and an opportunity to respond shall be given to such person no less than five days prior to its placement in such room. The Office of Exceptions and Appeals

shall publish periodically a digest of all orders issued.

§ 205.57 Timeliness.

(a) When the FEA has received all substantive information deemed necessary to process any application filed under this subpart, the FEA shall serve notice of that fact upon the applicant and all other persons who received notice of the proceeding pursuant to the provisions of § 205.53; and if the FEA fails to take action on the application within 90 days of serving such notice, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on the application within 150 days from the filing of the application, the applicant may treat it as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 205.58 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals or with the appropriate Regional Office in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart E—Exemption

§ 205.70 Purpose and scope.

This subpart establishes the procedures for filing an application for exemption and the consideration of such by the FEA. The applicant must be seeking an exemption from no less than an entire part, or subpart thereof, of this chapter. This subpart does not include the procedures for exemption of a product as provided in section 4(g) of the EPAA.

§ 205.71 Procedures.

(a) An exemption may be effected only by amendment to the regulations. Although an application for an exemption is a request for a rulemaking, the application is not subject to the procedures of Subpart L. If a rulemaking proceeding is convened, however, it shall be held in accordance with Subpart L.

(b) An application for an exemption shall be submitted separate and apart from any other application, appeal, petition or other request submitted in accordance with this part. If an application for exemption is included with any other application, appeal, petition, or other request, the application for exemption will not be processed, nor will it be severed for separate consideration.

§ 205.72 What to file.

A person filing under this subpart shall file an "Application for Exemption," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

§ 205.73 Where to file.

An application for exemption shall be filed with the Office of Private Grievances and Redress at the address provided in § 205.12.

§ 205.74 Contents.

The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. The application shall identify the part or parts, or subparts thereof, of this chapter from which the exemption is sought; describe the business or other reason that would justify such exemption; identify the persons or classes of persons and acts or transactions that would be affected by such exemption and describe any adverse impact; describe the benefit to the person making the application, or others, that would result if the exemption were effected; and explain the reasons why the action sought by the application cannot be accomplished by any other proceeding provided in this part. Upon request, the applicant shall submit copies of relevant contracts, agreements, leases, instruments, and other documents that are representative of those that would be affected by the granting of the requested exemption.

§ 205.75 FEA evaluation.

(a) *Processing.* All applications for exemption shall be evaluated by FEA to determine if the institution of rulemaking is warranted and if the FEA action sought by the application could more appropriately be considered in any other proceeding provided by this part.

(b) *Criteria.* (1) Rulemaking proceedings for the purpose of considering an application for exemption will be instituted only if the FEA in its discretion determines that such a proceeding would be appropriate. Among the factors that the FEA will evaluate in making a determination with respect to a rulemaking are—

(i) The impact that granting the exemption would have on the regulatory scheme and objectives;

(ii) The number of persons who would be exempted; and

(iii) The economic justification for such exemption.

(2) The FEA may summarily deny an application for exemption if—

(i) The exemption sought is not from a part or parts, or a subpart thereof, of this chapter;

(ii) The granting of an exemption to the person making the application would not have sufficient national impact, economic or otherwise, to warrant rulemaking proceedings for the purpose of considering an amendment to the regulation;

(iii) It is determined that the statutory criteria cannot be met; or

(iv) It is determined that another proceeding provided by this part is more appropriate.

§ 205.76 Decision and order.

(a) Upon consideration of the application and other relevant information obtained during the proceeding, the FEA shall issue an appropriate order. If the application is not denied, the order shall provide for publication of a notice of proposed rulemaking regarding the application in the FEDERAL REGISTER.

(b) The order shall include a written statement setting forth the relevant facts and legal basis for the decision. The order denying the application shall state that any person aggrieved thereby may file an appeal with Office of Exceptions and Appeals in accordance with Subpart H of this part.

§ 205.77 Timeliness.

(a) If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 205.78 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart that denies an application for exemption may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart F—Interpretation

§ 205.80 Purpose and scope.

(a) This subpart establishes the procedures for the filing of a formal request for an interpretation and for the consideration of such request by the FEA. Interpretations shall be in writing and shall only be issued by the FEA General Counsel or by a Regional Counsel. Responses, which may include verbal or written responses to general inquiries or to other than formal written requests for interpretation filed with the General Counsel or a Regional Counsel are not interpretations and merely provide general information.

(b) A request for interpretation that includes, or could be construed to include an application for an exception or an exemption may be treated solely as a request for interpretation and processed as such.

§ 205.81 What to file.

(a) A person filing under this subpart shall file a "Request for Interpretation," which should be clearly labeled as such both on the request and on the outside of the envelope in which the request is transmitted, and shall be in writing and signed by the person filing

the request. The person filing the request shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) If the person filing the request wishes to claim confidential treatment for any information contained in the request or other documents submitted under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.82 Where to file.

A request for interpretation shall be filed with the General Counsel or with the appropriate Regional Counsel at the address provided in § 205.12.

§ 205.83 Contents.

(a) The request shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the request and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the request. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the request. When the request pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction must be submitted.

(b) The request for interpretation shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular interpretation sought therein.

§ 205.84 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in a request and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may accept submissions from third persons relevant to any request for interpretation provided that the person making the request is afforded an opportunity to respond to all third person submissions. In evaluating a request for interpretation, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the request.

(2) The FEA shall issue its interpretation on the basis of the information provided in the request, unless that information is supplemented by other information brought to the attention of the General Counsel or a Regional Counsel during the proceeding. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement 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.

(3) If the FEA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the person requesting the interpretation, the FEA may refuse to issue an interpretation.

(b) *Criteria.* (1) The FEA shall base an interpretation on the FEAA and EPAA and the regulations and published rulings of the FEA as applied to the specific factual situation.

(2) The FEA shall take into consideration previously issued interpretations dealing with the same or a related issue.

§ 205.85 Decision and effect.

(a) Upon consideration of the request for interpretation and other relevant information received or obtained during the proceeding, the General Counsel or a Regional Counsel shall issue a written interpretation.

(b) The interpretation shall contain a statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) Only those persons to whom an intrepretation is specifically addressed and other persons upon whom the FEA serves the interpretation and who are directly involved in the same transaction or act may rely upon it. No person entitled to rely upon an interpretation shall be subject to civil or criminal penalties stated in Suppart P of this part for any act taken in reliance upon the interpretation, notwithstanding that the interpretation shall thereafter be declared by judicial or other competent authority to be invalid.

(d) An interpretation may be rescinded or modified at any time. Rescission or modification may be effected by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This notification shall include a statement of the reasons for the recission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

§ 205.86 Appeal.

Any person aggrieved by an interpretation issued by the FEA, whether by the General Counsel or a Regional Counsel, under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the interpretation from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart G—Other Proceedings

§ 205.90 Purpose and scope.

This subpart establishes the procedures for the filing of such other applications, petitions, or requests as may be required or permitted from time to time under the provisions of this chapter, but does not supplant any procedures presently provided for in this part, including petitions to the Office of Private Grievances and Redress filed in accordance with Subpart R of this part. This subpart specifically provides for applications by motor gasoline retail sales outlets in accordance with the provisions of § 211.106 and petitions to use multiple allocation fractions in accordance with the provisions of § 211.10(b) of this chapter.

§ 205.91 What to file.

(a) A person filing under this subpart shall file an "Application (petition or request, if applicable) for (identify action requested)," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) If the person wishes to claim confidential treatment for any information contained in the application, petition, request, or other documents submitted under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.92 Where to file.

(a) All applications, petitions or requests not described in other subparts of this part shall be filed in accordance with any FEA forms and instructions that relate thereto. If no such forms and instructions have been issued by the FEA, all such applications, petitions or requests shall be filed with the FEA office specified in § 205.13, at the address provided in § 205.12.

(b) An application by a motor gasoline retail sales outlet in accordance with the provisions § 211.106 shall be filed with the Regional Office for the region in which the retail sales outlets are located. Applications which involve retail sales outlets located in more than one region shall be filed with the appropriate Regional Office in each affected region.

(c) An application to use multiple allocation fractions in accordance with the provisions of § 211.10(b) shall be filed with the FEA National Office at the address provided in § 205.12.

§ 205.93 Contents.

(a) Any application, petition or request filed under this subpart shall contain all the information that the FEA by regulation, ruling, form or other instruction may require.

(b) An application by a motor gasoline retail sales outlet in accordance with § 211.106 of this chapter shall conform to the requirements of FEA Ruling 1974–13 and any future amendments to or modifications of that ruling.

§ 205.94 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application, petition or request and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any application, petition or request provided that the person who filed is afforded an opportunity to respond to all third person submissions. In evaluating an application, petition or request, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the application, petition or request.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application, petition or request without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application, petition or request with prejudice.

(b) *Criteria.* In considering an application, petition or request, the FEA will apply the criteria stated in any FEA regulation, ruling, form or instruction that relates to such application, petition or request.

§ 205.95 Decision and order.

(a) Upon consideration of the application, petition or request and other relevant information received or obtained during the proceeding, if FEA action is required, the FEA shall issue an appropriate order.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals or the appropriate Regional Office in accordance with Subpart H of this part.

(c) The FEA shall serve a copy of the order upon the person who filed and any other person who participated in the proceeding and may serve a copy of the order upon any person who is readily identifiable as one who is aggrieved by said order.

§ 205.96 Timeliness.

If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 205.97 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals or with the appropriate Regional Office in accordance with Subpart H of this part. The appeal shall be filed within 30 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart H—Appeal

§ 205.100 Purpose and scope.

(a) This subpart establishes the procedures for the filing of an administrative appeal of FEA actions taken under Supparts B, C, D, E, F, G, or O of this part or Subpart I of Part 212 and the consideration of such appeal by the FEA. Appeals of orders issued by State Offices shall be in accordance with Subpart R.

(b) A person who has appeared before the FEA in connection with a matter arising under Subparts B, C, D, E, F, G or O of this part or Subpart I of Part 212 has not exhausted his administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued.

§ 205.101 Who may file.

Any person aggrieved by an order or interpretation issued by the FEA under Subpart B, C, D, E, F, G or O of this part or Subpart I of Part 212 may file an appeal under this subpart.

§ 205.102 What to file.

(a) A person filing under this subpart shall file an "Appeal of Order" or an "Appeal of Interpretation," which should be clearly labeled as such both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing and signed by the person filing the appeal. The appellant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) If the appellant wishes to claim confidential treatment for any information contained in the appeal or other documents submitted under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.103 Where to file.

(a) When the order upon which the appeal is based was issued by the FEA National Office, the appeal shall be filed with the Office of Exceptions and Appeals at the address provided in § 205.12.

(b) When the order upon which the appeal is based was issued by a Regional Office, the appeal shall be filed with that Regional Office at the address provided in § 205.12.

(c) When the appeal is based upon an interpretation, whether issued by the General Counsel or a Regional Counsel, the appeal shall be filed with the Office of Exceptions and Appeals of the address provided in § 205.12.

§ 205.104 Notice.

(a) The appellant shall send by United States mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted in accordance with § 205.9 (f), to each person who is reasonably ascertainable by the appellant as a person who will be aggrieved by the FEA action sought, including those who participated in the prior proceeding. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the FEA office with which the appeal was filed within 10 days. The appeal filed with the FEA shall include certification to the FEA that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if an appellant determines that compliance with paragraph (a) of this section would be impracticable, the appellant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the appellant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the FEA with respect to an appeal filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 205.9(f), to the appellant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 205.105 Contents.

(a) The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the appeal. If the appeal includes a request for relief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding. For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(1) The discovery of material facts that were not known or could not have been known at the time of the prior proceeding;

(2) The discovery of a law, regulation, interpretation, ruling, order or decision on an appeal or an exception that was in effect at the time of the proceeding upon which the order or interpretation is based and which, if such had been made known to FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(3) A substantial change in the facts or circumstances upon which an outstanding and continuing order or interpretation affecting the appellant was issued, which change has occurred during the interval between issuance of the order or interpretation and the date of the appeal and was caused by forces or circumstances beyond the control of the appellant.

(b) A copy of the order or interpretation that is the subject of the appeal shall be submitted with the appeal.

(c) The appellant shall state whether to the best of his knowledge the same or a related issue, act or transaction that is the subject of the appeal has been or presently is being considered or investigated by any FEA office, other Federal agency, department or instrumentality; or by a State Office, a state or municipal agency or court, or by any law enforcement agency; including, but not limited to, a consideration or investigation in connection with an FEA proceeding described in this part, other than the proceeding from which the appeal is taken. In addition, the appellant shall state whether contact has been made by the appellant or one acting on his behalf with any person who is employed by the FEA or any State Office subsequent to service of the order or interpretation that is being appealed with regard to the issue, act or transaction that is the subject of the appeal; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact. An appellant shall comply with this paragraph in lieu of § 205.9(e)).

(d) The appellant shall state whether he requests or intends to request that there be a conference or hearing regarding the appeal. Any request not made at the time the appeal is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart M of this part.

§ 205.106 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an appeal and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any appeal provided that the appellant is afforded an opportunity to respond to all third person submissions. In evaluating an appeal, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the FEA may dismiss the appeal with leave to amend within a specified time. If the failure to supply additional information is repeated or willful, the FEA may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by § 205.104, the FEA may dismiss the appeal without prejudice.

(3) *Failure to satisfy requirements.* (i) If the appellant fails to satisfy the requirements of paragraph (b)(1) of this section, the FEA may issue an order denying the appeal. The order shall state the grounds for the denial and a copy of the order shall be served upon the appellant and any other person who participated in the proceeding.

(ii) The order denying the appeal shall become a final order of the FEA within 10 days of its service upon the appellant, unless within such 10-day period an amendment to the appeal that corrects the deficiencies identified in the order is filed with the Office of Exceptions and Appeals or the appropriate Regional Office.

(iii) Within 10 days of the filing of such amendment, as provided in paragraph (b)(1) of this section, the FEA shall notify the appellant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies, that notice shall be an order dismissing the appeal as amended. Such order shall be a final order of the FEA of which appellant may seek judicial review.

(b) *Criteria.* (1) An appeal may be summarily denied if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the FEA action was erroneous in fact or in law, or that it was arbitrary or capricious.

(2) The FEA may deny any appeal if the appellant does not establish that—

(i) The appeal was filed by a person aggrieved by an FEA action;

(ii) The FEA's action was erroneous in fact or in law; or

(iii) The FEA's action was arbitrary or capricious.

The denial of an appeal shall be a final order of FEA of which the appellant may seek judicial review.

§ 205.107 Decision and order.

(a) Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the FEA shall enter an appropriate order, which may include the modification of the order or interpretation that is the subject of the appeal.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of the FEA of which the appellant may seek judicial review.

(c) The FEA shall serve a copy of the order upon the appellant, any other person who participated in the proceeding and upon any other person readily identifable by the FEA as one who is aggrieved by such order.

(d) A copy of each order, with such modification as is necessary to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will be filed in the public docket room described in § 205.15. If such copy contains information that has been claimed by an appellant or other person, to be confidential, notice of the FEA's intention to place a copy in the docket room and an opportunity to respond shall be given to such person no less than five days prior to its placement in such room.

§ 205.108 Appeal of a remedial order.

The appeal of a remedial order shall be in accordance with the procedures stated in this subpart, *except:*

(a) The appeal must be filed within 10 days of the service of the remedial order; and

(b) If the appeal is of a remedial order that was issued subsequent to a notice of probable violation that relates to an order or interpretation previously issued by the FEA, with respect to which there was an exhaustion of administrative remedies, no issues will be considered on the current appeal that were raised in that prior proceeding.

(c) If an issue raised on an appeal of a remedial order is also being considered in connection with any other FEA proceeding, the FEA may consolidate such issues and consider them in the appellate proceeding for the remedial order.

§ 205.109 Timeliness.

(a) When the FEA has received all substantive information deemed necessary to process any appeal filed under this subpart, the FEA shall serve notice of that fact upon the appellant and all other persons who received notice of the proceeding pursuant to the provisions of § 205.104; and if the FEA fails to take action on the appeal within 90 days of serving such notice, the appellant may treat the appeal as having been denied in all respects and may seek judicial review thereof.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on the appeal within 120 days of the filing of the appeal, the appellant may treat it as having been denied in all respects and may seek judicial review thereof.

Subpart I—Stay

§ 205.120 Purpose and scope.

This subpart establishes the procedures for the application for and granting of a stay by the FEA. An application for a stay will only be considered—

(a) Incident to or pending an appeal from an order of the FEA;

(b) Incident to an application for an exception from the application of any FEA regulations, rulings, or generally applicable requirements when the stay

sought is of the same regulation, ruling or generally applicable requirement from which the exception is sought; or

(c) Pending judicial review.

All FEA orders, regulations, rulings, and generally applicable requirements shall be complied with unless and until an application for a stay is granted.

§ 205.121 What to file.

(a) A person filing under this subpart shall file an "Application for Stay," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.122 Where to file.

(a) An application for stay of an FEA order incident to an appeal from such order shall be filed with the Office of Exceptions and Appeals or with the appropriate Regional Office at the address provided in § 205.12.

(b) An application for stay of the application of any or all FEA regulations, rulings, or generally applicable requirements incident to an application for an exception therefrom shall be filed with the Office of Exceptions and Appeals or with the appropriate Regional Office as specified in § 205.52 at the address provided in § 205.12.

(c) An application for stay of an FEA order or of the application of any FEA regulations, rulings or generally applicable requirements pending judicial review shall be filed with the office that issued the order of which judicial review is sought.

§ 205.123 Notice.

(a) When administratively feasible, the FEA shall notify each person readily identifiable by the FEA as one who would be aggrieved by the FEA action sought that the applicant has filed for a stay and that the FEA will accept written comment on the application.

(b) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 205.9 (f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 205.124 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include, but not be limited to, all information that relates to the satisfaction of the criteria in § 205.125(b).

(b) The application shall include a description of the proceeding incident to which the stay is being sought. This description shall contain a discussion of all FEA actions relevant to the proceeding.

(c) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart M of this part.

§ 205.125 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(3) The FEA shall process applications for stay as expeditiously as possible. When administratively feasible, the FEA shall grant or deny the application for stay within 10 business days after receipt of the application.

(4) Notwithstanding the provision for notice to third parties in § 205.123(a), the FEA may make a decision on an application for stay prior to the receipt of written comments.

(b) *Criteria.* The grounds for granting a stay are: (1) A showing that irreparable injury will result in the event that the stay is denied;

(2) A showing that denial of the stay will result in a more immediate serious hardship or gross inequity to the applicant than to the other persons affected by the proceeding;

(3) A showing that it would be desirable for public policy or other reasons to preserve the *status quo ante* pending a decision on the merits of the appeal or exception;

(4) A showing that it is impossible for the applicant to fulfill the requirements of the original order; and

(5) A showing that there is a likelihood of success on the merits.

§ 205.126 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the decision, and the terms and conditions of the stay.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by FEA as one who is aggrieved by such decision.

(d) The grant or denial of a stay is not an order of the FEA subject to administrative review.

(e) In its discretion and upon a determination that such is in accordance with the objectives of the regulations and the FEAA, or EPAA, the FEA may order a stay on its own initiative.

Subpart J—Modification or Rescission

§ 205.130 Purpose and scope.

This subpart establishes the procedures for the filing of an application for modification or rescission of an FEA order or interpretation. An application for modification or rescission is a summary proceeding that will be initiated only if the criteria described in § 205.135(b) are satisfied.

§ 205.131 What to file.

(a) A person filing under this subpart shall file an "Application for Modification (or Rescission)", which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 205.9 (f) shall apply.

§ 205.132 Where to file.

(a) When the order or interpretation sought to be modified or rescinded was issued by the FEA National Office, the application shall be filed with the Office of Exceptions and Appeals at the address provided in § 205.12.

(b) When the order or interpretation sought to be modified or rescinded was issued by a Regional Office, the application shall be filed with that Regional Office at the address provided in § 205.12.

§ 205.133 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, from which confidential information has been deleted in accordance with § 205.9 (f), to each person who is reasonably ascertainable by the applicant as a person

who will be aggrieved by the FEA action sought, including persons who participated in the prior proceeding. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the FEA office with which the application was filed within 10 days. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 205.9 (f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 205.134 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. A copy of the order or interpretation of which modification or rescission is sought shall be included with the application. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with subpart M of this part.

(c) The applicant shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in § 205.135(b)(2), upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeal and exception relied upon to support the action sought therein.

§ 205.135 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any application for modification or rescission provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application for modification or rescission, the FEA may convene a conference, on its own initiative, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 205.133, the FEA may dismiss the application without prejudice.

(3) *Failure to satisfy requirements.* (i) If the applicant fails to satisfy the requirements of paragraph (b)(1) of this section, the FEA shall issue an order denying the application. The order shall state the grounds for the denial.

(ii) The order denying the application shall become final within 10 days of its service upon the applicant, unless within such 10 day period an amendment to correct the deficiencies identified in the order is filed with the Office of Exceptions and Appeals or the appropriate Regional Office.

(iii) Within 10 days of the filing of such amendment, the FEA shall notify the applicant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies, the notice shall be an order dismissing the application as amended. Such order shall be a final order of the FEA of which the applicant may seek judicial review.

(b) *Criteria.* (1) An application for modification or rescission of an order or interpretation shall be processed only if—

(i) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The 30-day period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based;

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order or interpretation of the FEA affecting the applicant was issued, which change has occurred during the interval between issuance of such order or interpretation and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 205.136 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of which the applicant may seek judicial review.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order.

§ 205.137 Timeliness.

(a) If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may seek judicial review thereof.

Subpart K—Rulings

§ 205.150 Purpose and scope.

This subpart establishes the criteria for the issuance of interpretative rulings by the General Counsel. All rulings shall be published in the FEDERAL REGISTER. Any person is entitled to rely upon such ruling, to the extent provided in this subpart.

§ 205.151 Criteria for issuance.

(a) A ruling may be issued, in the discretion of the General Counsel, whenever there have been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations.

(b) The General Counsel may issue a ruling whenever it is determined that it will be of assistance to the public in applying the regulations to a specific situation.

§ 205.152 Modification or rescission.

(a) A ruling may be modified or rescinded by:

(1) Publication of the modification or rescission in the FEDERAL REGISTER; or

(2) A rulemaking proceeding in accordance with Subpart L of this part.

(b) Unless and until a ruling is modified or rescinded as provided in paragraph (a) of this section, no person shall be subject to the sanctions or penalties stated in Subpart P of this part for actions taken in reliance upon the ruling, notwithstanding that the ruling shall thereafter be declared by judicial or other competent authority to be invalid. Upon such declaration, no person shall be entitled to rely upon the ruling.

§ 205.153 Comments.

A written comment on or objection to a published ruling may be filed at any time with the General Counsel at the address specified in § 205.12.

§ 205.154 Appeal.

There is no administrative appeal of a ruling.

Subpart L—Rulemaking

§ 205.160 Purpose and scope.

(a) This subpart establishes the procedures that govern a rulemaking proceeding. The initiation of a rulemaking proceeding is within the sole discretion of the FEA.

(b) Rulemaking by the FEA shall be in accordance with the Administrative Procedure Act (5 U.S.C. 551, *et seq.* (1970)) and the FEAA.

§ 205.161 What to file.

(a) *Comments in connection with a rulemaking.* Any comments filed in connection with a rulemaking shall be filed in accordance with the instructions in the Notice of Proposed Rulemaking published in the FEDERAL REGISTER. Such comments shall be in writing and signed by the person filing them.

(b) *Petition for rulemaking.* (1) Any person may at any time file a petition regarding any FEA regulation or amendment thereto or, by letter, request that a rulemaking proceeding be instituted. Such petition or request shall be signed by the person filing it.

(2) Upon due consideration of a petition for rulemaking, expressly designated as such, the FEA shall either: (i) institute a rulemaking as proposed or as modified in its discretion; (ii) notify the petitioner in writing that it does not intend to institute a rulemaking as proposed or as modified and stating the reasons therefore; or (iii) notify the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth therein.

§ 205.162 Where to file.

All comments filed in connection with a rulemaking shall be submitted in accordance with the instructions in the Notice of Proposed Rulemaking. Any other petition or request shall be filed with the FEA General Counsel at the address provided in § 205.12.

Subpart M—Conferences, Hearings, and Public Hearings

§ 205.170 Purpose and scope.

This subpart establishes the procedures for requesting and conducting an FEA conference, hearing, or public hearing. Such proceedings shall be convened in the discretion of the FEA, consistent with the requirements of the FEAA.

§ 205.171 Conferences.

(a) The FEA in its discretion may direct that a conference be convened, on its own initiative or upon request by a person, when it appears that such conference will materially advance the proceeding. The determination as to who may attend a conference convened under this subpart shall be in the discretion of the FEA, but a conference will usually not be open to the public.

(b) A conference may be requested in connection with any proceeding of the FEA by any person who might be aggrieved by that proceeding. The request may be made in writing or verbally, but must include a specific showing as to why such conference will materially advance the proceeding. The request shall be addressed to the FEA office that is conducting the proceeding.

(c) A conference may only be convened after actual notice of the time, place, and nature of the conference is provided to the person who requested the conference.

(d) When a conference is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the conference, but will be treated as if submitted in the regular course of the proceedings. A transcript of the conference will not usually be prepared. However, the FEA in its discretion may have a verbatim transcript prepared.

(e) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the FEA in its discretion determines that such would be advisable.

§ 205.172 Hearings.

(a) The FEA in its discretion may direct that a hearing be convened, on its own initiative or upon request by a person, when it appears that such hearing will materially advance the proceeding. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of the FEA, but a hearing will usually not be open to the public.

(b) A hearing may only be requested in connection with an application for an exception or an appeal. Such request may be by the applicant, appellant, or any other person who might be aggrieved by the FEA action sought. The request shall be in writing and shall include a specific showing as to why such hearing will materially advance the proceeding. The request shall be addressed to the FEA office that is considering the application for an exception or the appeal.

(c) The FEA will designate an agency official to conduct the hearing, and will specify the time and place for the hearing.

(d) A hearing may only be convened after actual notice of the time, place, and nature of the hearing is provided both to the applicant or appellant and to any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action involved. The notice shall include, as appropriate:

(1) A statement that such person may participate in the hearing; or

(2) A statement that such person may request a separate conference or hearing regarding the application or appeal.

(e) When a hearing is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the hearing, but will be treated as if submitted in the regular course of the proceedings. A transcript of the hearing will not usually be prepared. However, the FEA in its discretion may have a verbatim transcript prepared.

(f) The official conducting the hearing may administer oaths and affirmations, rule on the presentation of information, receive relevant information, dispose of procedural requests, determine the format of the hearing, and otherwise regulate the course of the hearing.

(g) Because a hearing is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the FEA in its discretion determines that such would be advisable.

§ 205.173 Public hearings.

(a) A public hearing shall be convened incident to a rulemaking:

(1) When the proposed rule or regulation is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses; or

(2) When the FEA determines that a public hearing would materially advance the consideration of the issue. A

public hearing may be requested by any interested person in connection with a rulemaking proceeding, but shall only be convened on the initiative of the FEA unless otherwise required by statute.

(b) A public hearing may be convened incident to any proceeding when the FEA in its discretion determines that such public hearing would materially advance the consideration of the issue.

(c) A public hearing may only be convened after publication of a notice in the FEDERAL REGISTER, which shall include a statement of the time, place, and nature of the public hearing.

(d) Interested persons may file a request to participate in the public hearing in accordance with the instructions in the notice published in the FEDERAL REGISTER. The request shall be in writing and signed by the person making the request. It shall include a description of the person's interest in the issue or issues involved and of the anticipated content of the presentation. It shall also contain a statement explaining why the person would be an appropriate spokesperson for the particular view expressed.

(e) The FEA shall appoint a presiding officer to conduct the public hearing. An agenda shall be prepared that shall provide, to the extent practicable, for the presentation of all relevant views by competent spokespersons.

(f) A verbatim transcript shall be made of the hearing. The transcript, together with any written comments submitted in the course of the proceeding, shall be made available for public inspection and copying in the public docket room, as provided in § 205.15.

(g) The information presented at the public hearing, together with the written comments submitted and other relevant information developed during the course of the proceeding, shall provide the basis for the FEA decision.

Subpart N—Complaints

§ 205.180 Purpose and scope.

This subpart establishes the procedures for the filing and consideration of complaints relating to alleged violations of the general regulations of Part 210, the allocation regulations of Part 211, the price regulations of Part 212 of this chapter and/or the low sulphur regulations of Part 215 of this chapter, or any ruling or order issued thereunder.

§ 205.181 What to file.

(a) A person filing under this subpart shall file a "Complaint," which should be clearly labeled as such both on the complaint and on the outside of the envelope in which the complaint is transmitted, and shall be in writing and signed by the person filing the complaint. The complainant shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart. Verbal complaints that otherwise satisfy the requirements of this subpart will be accepted, but written verification may be requested by the FEA.

(b) The requirements of this section and § 205.183 may be satisfied by filing a form FEA–1.

§ 205.182 Where to file.

A complaint shall be filed with the FEA office specified in § 205.13 at the address provided in § 205.12.

§ 205.183 Contents.

The complaint shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the complaint and to the FEA action sought. Such facts shall include the names and addresses of all persons involved (if reasonably ascertainable) and a description of the events that led to the complaint. It shall include a statement describing the regulation, ruling, order or interpretation that allegedly has been violated.

§ 205.184 FEA evaluation.

(a) *Processing.* The FEA may initiate an investigation of any statement in a complaint and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions relevant to a complaint from third persons to the proceeding. In evaluating a complaint, the FEA may consider any other source of information. The FEA on its own initiative may order a conference if, in its discretion, it considers such conference will advance its evaluation of the complaint.

(b) *Confidentiality of information.* Information received in the investigation of a complaint, including the identity of the complainant and any other person who provides information during the proceeding, shall remain confidential under the investigatory file exception to public disclosure unless, upon proper notice to the complainant and an opportunity to respond, the FEA determines that disclosure would be in the public interest.

§ 205.185 Decision.

After consideration of a written complaint and other relevant information received or obtained during the proceeding, the FEA may:

(a) Issue a notice of probable violation or remedial order for immediate compliance in accordance with the provisions of Subpart O of this part;

(b) Determine that no violation has occurred or that a notice of probable violation or a remedial order for immediate compliance would not be appropriate; or

(c) Take such other action as it deems appropriate.

Subpart O—Notice of Probable Violation and Remedial Order

§ 205.190 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations of the FEA regulations and the procedures for issuance of a notice of probable violation, a remedial order or a remedial order for immediate compliance.

(b) When any report required by the FEA or any audit or investigation discloses, or the FEA otherwise discovers, that there is reason to believe a violation of any provision of this chapter, or any order issued thereunder, has occurred, is continuing or is about to occur, the FEA may conduct proceedings to determine the nature and extent of the violation and may issue a remedial order thereafter. The FEA may commence such proceeding by serving a notice of probable violation or by issuing a remedial order for immediate compliance.

§ 205.191 Notice of probable violation.

(a) The FEA may begin a proceeding under this subpart by issuing a notice of probable violation if the FEA has reason to believe that a violation has occurred, is continuing, or is about to occur.

(b) Within 10 days of the service of a notice of probable violation, the person upon whom the notice is served may file a reply with the FEA office that issued the notice of probable violation at the address provided in § 205.12. The FEA may extend the 10-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the notice of probable violation. Such facts shall include a complete statement of the business or other reasons that justify the act or transaction, if appropriate; a detailed description of the act or transaction; and a full discussion of the pertinent provisions and relevant facts reflected in any documents submitted with the reply. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the reply. When the notice of probable violation pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information regarding the entire transaction shall be submitted.

(d) The reply shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations, and decisions on appeals and exceptions relied upon to support the particular position taken.

(e) The reply should indicate whether the person requests or intends to request a conference regarding the notice. Any request not made at the time of the reply shall be made as soon thereafter as possible to insure that the conference is held when it will be most beneficial. A request for a confernce must conform to the requirements of Subpart M of this part.

(f) If a person has not filed a reply with the FEA within the 10-day period provided, and the FEA has not extended the 10-day period, the person shall be deemed to have conceded the accuracy of the factual allegations and legal conclusions stated in the notice of probable violation.

(g) If the FEA finds, after the 10-day period provided in § 205.191(b), that no violation has occurred, is continuing, or is about to occur, or that for any reason

the issuance of a remedial order would not be appropriate, it shall notify, in writing, the person to whom a notice of probable violation has been issued that the notice is rescinded.

§ 205.192 Remedial order.

(a) If the FEA finds, after the 10-day period provided in § 205.191(b), that a violation has occurred, is continuing, or is about to occur, the FEA may issue a remedial order. The order shall include a written opinion setting forth the relevant facts and the legal basis of the remedial order.

(b) A remedial order issued under this section shall be effective upon issuance, in accordance with its terms, until stayed, suspended, modified, or rescinded. A remedial order shall remain in effect notwithstanding the filing of an application to modify or rescind it under Subpart J of this part.

(c) A remedial order may be referred at any time to the Department of Justice for appropriate action in accordance with Subpart P of this part.

§ 205.193 Remedial order for immediate compliance.

(a) Notwithstanding the provisions of §§ 205.191 and 205.192, the FEA may issue a remedial order for immediate compliance, which shall be effective upon issuance, and until rescinded or suspended, if it finds:

(1) There is a strong probability that a violation has occurred, is continuing or is about to occur;

(2) Irreparable harm will occur unless the violation is remedied immediately; and

(3) The public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under §§ 205.191 and 205.192.

(b) A remedial order for immediate compliance shall be served promptly upon the person against whom such order is issued by telex or telegram, with a copy served by registered or certified mail. The copy shall contain a written statement of the relevant facts and the legal basis fo rthe remedial order for immediate compliance, including the findings required by paragraph (a) of this section.

(c) The FEA may rescind or suspend a remedial order for immediate compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a notice of probable violation issued under § 205.191.

(d) If at any time in the course of a proceeding commenced by a notice of probable violation the criteria set forth in paragraph (a) of this section are satisfied, the FEA may issue a remedial order for immediate compliance, even if the 10-day period for reply specified in § 205.191(b) has not expired.

(e) At any time after a remedial order for immediate compliance has become effective, the FEA may refer such order to the Department of Justice for appropriate action in accordance with Subpart P of this part.

§ 205.194 Remedies.

A remedial order or a remedial order for immediate compliance may require the person to whom it is directed to roll back prices, to refund amounts paid to such person that are in excess of the amount permitted under Part 212 of this chapter, or to take such other action as the FEA determines is necessary to eliminate or to compensate for the effects of a violation.

§ 205.195 Appeal.

(a) No notice of probable violation issued pursuant to this subpart shall be deemed to be an action of which there may be an administrative appeal pursuant to Subpart H.

(b) Any person to whom a remedial order or a remedial order for immediate compliance is issued under this subpart may file an appeal with the FEA Office of Exceptions and Appeals or with the appropriate Regional Office in accordance with Subpart H of this part. The appeal must be filed within 10 days of service of the order from which the appeal is taken.

Subpart P—Investigations, Violations, Sanctions, and Judicial Actions

§ 205.200 Investigations.

(a) *General.* The FEA may, in its discretion, initiate investigations relating to compliance by any person with any rule, regulation, or order promulgated by the FEA, any decree of court relating thereto, or any other agency action. The FEA encourages voluntary cooperation with its investigations. When the circumstances warrant, however, the FEA may issue subpoenas in accordance with and subject to § 205.8. The FEA may conduct investigative conferences and hearings in the course of any investigation in accordance with Subpart M of this part.

(b) *Investigators.* Investigations will be conducted by representatives of the FEA who are duly designated and authorized for such purposes. Such representatives have the authority to administer oaths and receive affirmations in any matter under investigation by the FEA.

(c) *Notification.* Any person who is under investigation by the FEA in accordance with this section and who is requested to furnish information or documentary evidence shall be notified as to the general purpose for which such information or evidence is sought.

(d) *Termination.* When the facts disclosed by an investigation indicate that further action is unnecessary or unwarranted at that time, the investigative file will be closed without prejudice to further investigation by the FEA at any time that circumstances so warrant.

(e) *Confidentiality.* Information received in an investigation under this section, including the identity of the person investigated and any other person who provides information during the investigation, shall, unless otherwise determined by the FEA, remain confidential under the investigatory file exception to public disclosure.

§ 205.201 Violations.

Any practice that circumvents or contravenes or results in a circumvention or contravention of the requirements of any provision of this chapter or any order issued pursuant thereto is a violation of the FEA regulations stated in this chapter.

§ 205.202 Sanctions.

(a) *General.* Any person who violates any provision of this chapter or any order issued pursuant thereto shall be subject to penalties and sanctions as provided herein.

(1) The provisions herein for penalties and sanctions shall be deemed cumulative and not mutually exclusive.

(2) Each day that a violation of the provisions of this chapter or any order issued pursuant thereto continues shall be deemed to constitute a separate violation within the meaning of the provisions of this chapter relating to criminal fines and civil penalties.

(b) *Criminal penalties.* Any person who willfully violates any provision of this chapter or any order issued pursuant thereto shall be subject to a fine of not more than $5,000 for each violation. Criminal violations are prosecuted by the Department of Justice upon referral by the FEA.

(c) *Civil penalties.* (1) Any person who violates any provision of this chapter or any order issued pursuant thereto shall be subject to a civil penalty of not more than $2,500 for each violation. Actions for civil penalties are prosecuted by the Department of Justice upon referral by the FEA.

(2) When the FEA considers it to be appropriate or advisable, the FEA may compromise and settle and collect civil penalties.

(d) *Other penalties.* Willful concealment of material facts, or false or fictitious or fraudulent statements or representations, or willful use of any false writing or document containing false, fictitious or fraudulent statements pertaining to matters within the scope of the EPAA or FEAA by any person shall subject such person to the criminal penalties provided in 18 U.S.C. 1001 (1970).

§ 205.203 Injunctions.

Whenever it appears to the Administrator of the FEA, or his delegates, that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any regulation or order issued under this chapter, the Administrator, or his delegate, may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices and, upon a proper showing, a temporary restraining order or a preliminary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include a mandatory injunc-

tion commanding any person to comply with any such order or regulation, or the return of money received in violation of any such order or regulation.

Subpart Q—State Offices

§ 205.210 Purpose and scope.

This subpart establishes the procedures that govern applications for assignment under the state set-aside system, and applications for assignment by new end-users.

§ 205.211 Who may apply.

(a) *Set-aside.* A wholesale purchaser-consumer or an end-user, as defined in § 211.51, seeking an assignment from the state set-aside system as provided by § 211.17 to meet a hardship or emergency requirement, and a wholesale purchaser-reseller, as defined in § 211.51, seeking an assignment to enable him to supply such wholesale purchaser-consumers and end-users, may apply for an assignment under the state set-aside system.

(b) *Assignment.* A new end-user may apply for an assignment of an allocated product or a supplier.

§ 205.212 What to file.

(a) *Set-aside.* Application for assignment from a state set-aside system may be by the appropriate FEA form, by other written communication or by verbal, including telephonic request.

(b) *Assignment.* Applications for assignment by new end-users shall satisfy the requirements of Subpart C of this part.

(c) If any applicant wishes to claim confidential treatment for any information contained in an application or other documents filed under this subpart, the procedures set out in § 205.9(f) shall apply.

§ 205.213 Where to file.

(a) *Set-aside.* All applications shall be filed with, or verbal requests made to, the State Office located in the State in which the product will be physically delivered and in which the applicant is located.

(b) *Assignment.* All applications for assignment shall be filed with the State Office located in the State in which the product will be physically delivered.

§ 205.214 Notice.

(a) *Set-aside.* The State Office may notify any person that it determines will be aggrieved by the assignment that comments regarding the application will be accepted.

(b) *Assignment.* The notice requirements of Subpart C of this part shall apply.

§ 205.215 Contents.

(a) *Set-aside.* (1) The State Office shall insure that an applicant provide sufficient information in an application for an assignment from the state set-aside system, whether such application is in writing or by verbal request, to enable the State Office to determine that the proposed allocation satisfies the objectives of the EPAA and part 211 of this chapter. With respect to verbal applications, the State Offices shall establish internal procedures for the recording and verification of any information provided by an applicant. At a minimum, the information received by the State Office should be that required by form FEA-20. Such information shall include, but not be limited to:

(i) The identification of any previous assignment order from the state set-aside system that was issued to the applicant or to any person that controls or is controlled by the applicant; and

(ii) A statement that the applicant's base period supplier or new supplier is unable to supply his requirements or, if the applicant does not have a supplier, a statement that he has contacted two suppliers that could supply the allocated product and the identification of those suppliers.

(2) If the applicant is a wholesale purchaser-reseller, the application shall contain a description of the wholesale purchaser-consumers and end-users that will be supplied and their hardship and emergency requirements.

(b) *Assignment.* Applications for an assignment by new end-users shall conform to the requirements of Subpart C of this part.

§ 205.216 State office evaluation.

(a) *Set-aside*—(1) *Processing.* (i) The State Office may initiate an investigation of any statement in an application, whether written or verbal, and utilize in its evaluation any relevant facts obtained by such investigation. The State Office may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the State Office may consider any other source of information. The State Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(ii) If the State Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the State Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the State Office may dismiss the application with prejudice.

(2) *Criteria.* (i) There shall be assignments only to wholesale purchaser-consumers and end-users located within the State who demonstrate hardship or emergency requirements (or to wholesale purchaser-resellers to enable them to supply such persons) with respect to propane, middle distillate, motor gasoline and residual fuel oil (except that used by utilities or as bunker fuel for maritime shipping).

(ii) Any assignment ordered by a State Office shall conform to the requirements of section 4(b)(1) of the EPAA and 10 CFR 211.17.

(b) *Assignment*—(1) *Processing.* (i) The State Office may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The State Office may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the State Office my consider any other source of information. The State Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(ii) If the State Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the State Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the State Office may dismiss the application with prejudice.

(2) *Criteria.* (i) The State Office shall consider, among other relevant criteria, the quantity of allocated product previously sold or purchased at the end-user's site, the projected volume as calculated prior to construction of the end-user's site, the volume sold or purchsed by other similar end-users operating in circumstances similar to applicant's and the criteria in § 211.13(c)(1).

(ii) To be recommended for approval by a State Office, an application must conform to the requirements of the EPAA and 10 CFR Part 211.

(3) *Recommendations to the FEA.* (i) The State Office shall recommend in writing to the FEA those applications for assignment, other than applications for assignment from the state set-aside system, that it has determined warrant the issuance of an assignment order in accordance with Subpart C of this part, stating therein the reasons for the recommendation. The State Office may recommend that the application be approved as filed or with modification. Included with such recommendation shall be copies of all documents relevant to the proceeding, including the application.

(ii) Upon consideration of the recommendation and other relevant information received or obtained during the proceeding, the FEA will enter an appropriate order.

§ 205.217 Decision and order.

(a) *Set-aside.* (1) Upon consideration of the application, whether written or verbal, and other relevant information received or obtained during the proceeding, the State Office shall issue an order (for purposes of this section, an order may be the "authorizing document" referred to in § 211.17(e) of this chapter) denying or granting the application.

(2) The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued. The order shall provide that any person aggrieved thereby may file an appeal with the State Office in accordance with the procedures of such office.

(3) The order shall state that it is effective upon issuance and shall expire within 10 days of its issuance unless the applicant presents his copy of the order to the prime supplier or a designated local representative of such prime supplier within those 10 days.

(4) The State Office shall serve a copy of the order upon the applicant, the designated state representative of the prime supplier assigned to the applicant and any other person readily identifiable as one who will be aggrieved by said order.

(b) *Assignment.* (1) Upon consideration of an application and other relevant information received or obtained during the proceeding, the State Office may recommend to the FEA that such application be approved either as filed or with modification, or, as provided in Part 211 of this chapter, may deny the application in whole or in part.

(2) The order denying an application for assignment shall include a brief written statement summarizing the factual and legal basis upon which it was issued. The order shall provide that any person aggrieved thereby may file an appeal with the State Office in accordance with its appeals procedures.

(3) The State Office shall serve a copy of the order upon the applicant and any other person who participated in the proceeding or who is readily identifiable by the State Office as a person who is aggrieved by the order.

§ 205.218 Timeliness.

(a) *Set-aside.* (1) If the State Office fails to take action on an application, whether verbal or written, within 10 days of filing (if the application is verbal, it shall be considered to be filed on the date that it is verbally communicated to the State Office), the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(2) Notwithstanding paragraph (a) of this section, the State Office may temporarily suspend the running of the 10-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the State Office serves upon the person notice that the additional information has been received and accepted or that the application has been properly filed, as appropriate. Unless otherwise provided in writing by the State Office, the 10-day period shall resume running on the first day that is not a Saturday, Sunday, or Federal legal holiday and that follows the day on which the State Office serves upon the person the notice described in this paragraph.

(b) *Assignment.* If the State Office fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 205.219 Appeal.

(a) *Set-aside.* Any person aggrieved by a state set-aside assignment order issued by the State Office may file an appeal with the State Office in accordance with the procedures established by such office. The appeal shall be filed within 15 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(b) *Assignment.* (1) Any person aggrieved by an order that denies an application for assignment may file an appeal with the State Office in accordance with the procedures established by such office. The appeal shall be filed within 30 days of service of the order from which the appeal taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(2) The appeal of the denial by the FEA of a State Office's recommendation that an application for assignment be granted shall be in accordance with the procedures stated in Subpart H of this part.

§ 205.220 Establishment of procedures.

(a) The establishment of procedures for the appeal of orders of assignment under the state set-aside system, the stay of such orders, the appeal of an order denying an application for assignment, or any other procedures shall be conducted in a manner designed to give as much notice of the procedures and as much opportunity for participation in the establishment thereof as is feasible. The notice of a proposal to establish procedures shall be published in a sufficient number of newspapers of statewide circulation calculated to receive the widest possible attention, shall be posted in a prominent location in the State Office and shall be widely circulated within the State by other appropriate methods. The State shall provide an opportunity for interested persons to present their views, including oral presentations, at least ten days before the proposed procedures become effective.

(b) Any appellate procedures established shall provide, at a minimum, for notice to persons aggrieved by the order that is the subject of the appeal, a final order that signals the exhaustion of administrative remedies and fully states the facts and legal basis for the order, and mandatory service of the order upon persons who participated in the appellate proceeding and upon any other persons readily identifiable by the State Office as one who is aggrieved by such order.

Subpart R—Office of Private Grievances and Redress

§ 205.230 Purpose and scope.

(a) This subpart establishes the procedures for the FEA Office of Private Grievances and Redress.

(b) The Office shall receive and consider petitions that seek special redress, relief or other extraordinary assistance apart from or in addition to the other proceedings described in this part. Such petitions shall include those seeking special assistance based on an assertion that the FEA or a State Office is not complying with the FEAA, EPAA, FEA regulations, orders or rulings, or otherwise.

(c) The Office also shall receive applications for exemption filed in accordance with Subpart E of this part. Such applications shall be processed by the Office in accordance with that subpart. Therefore the procedures provided in this subpart shall only be applicable to "Petitions for Special Redress or Other Relief."

§ 205.231 Who may file.

Any person aggrieved by the regulations contained in 10 CFR Ch. II may file a petition under this subpart.

§ 205.232 What to file.

The person aggrieved shall file a "Petition for Special Redress or Other Relief," which shall be clearly labeled as such both on the petition and on the outside of the envelope in which it is transmitted, and shall be in writing and signed by the person filing it. The petition shall comply with the general filing requirements stated in § 205.9 in addition to the requirements stated in this subpart.

§ 205.233 Where to file.

A petition shall be filed with the FEA Office of Private Grievances and Redress at the address provided in § 205.12.

§ 205.234 Notice.

(a) The person filing the petition, except a petition that asserts that the FEA or a State Office is not complying with the FEAA, EPAA, FEA regulations, orders or rulings or otherwise, shall send by United States mail a copy of the petition and any subsequent amendments or other documents relating to the petition, or a copy from which confidential information has been deleted in accordance with § 205.9(f), to each person who is reasonably ascertainable by the petitioner as a person who will be aggrieved by the FEA action sought. The copy of the petition shall be accompanied by a statement that the person may submit comments regarding the petition to the Office of Private Grievances and Redress within 10 days. The copy filed with the Office shall include certification to the FEA that the requirements of this paragraph have been complied with and shall include the names and addresses of each person to whom a copy of the petition was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the petitioner determines that compliance with paragraph (a) of this section would be impracticable, the petitioner shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the petition a description of the persons or class or classes of persons to whom notice was not sent.

(3) The FEA may require the petitioner to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought that written comments regarding the petition will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the FEA regarding a petition filed under this subpart shall send a copy of the comments, or a copy from from which confidential information has been deleted in accordance with § 205.9 (f), to the petitioner. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 205.235 Contents.

The petition small contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the petition and to the FEA action sought. Such facts shall include, but not be limited to, the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction, if applicable; a description of the acts or transactions that would be affected by the requested action; a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the petition, and an explanation of how the petitioner is aggrieved by the regulation. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the petition shall be submitted to the FEA upon its request. When the petition pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction must be submitted.

§ 205.236 FEA evaluation of request.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in a petition and utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit and accept submissions from third persons relevant to any petition provided that the petitioner is afforded an opportunity to respond to all third person submissions. In evaluating a petition, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such will advance its evaluation of the petition.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the FEA may dismiss the petition without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the petition with prejudice. If the petitioner fails to provide the notice required by § 205.234, the FEA may dismiss the petition without prejudice.

(b) *Criteria.* (1) The FEA will dismiss without prejudice a "Petition for Special Redress or Other Relief" if it determines that another more appropriate proceeding is provided by this part. Upon that determination, the Office will transmit the petition to the FEA Office responsible for such other proceeding and the petition thereafter will be processed as an application or request for such other FEA action. The petitioner shall be given a reasonable period of time to conform the petition to the procedural requirements of the other proceeding, if necessary.

(2) The FEA will dismiss with prejudice a "Petition for Special Redress or Other Relief" filed by a person who has exhausted his administrative remedies with respect to any proceeding provided by this part, as provided in Subpart H, and received a final order therefrom that deals with the same issue or transaction; and, similarly, will dismiss with prejudice such petition if filed by a person who has not exhausted his administrative remedies as provided in this part.

§ 205.237 Decision and response.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the FEA will issue an order granting or denying the petition, except a petition regarding the FEA or a State Office. The latter petition will be considered to be advice only and no order shall be issued in response thereto.

(b) The order denying or granting the petition shall include a written statement setting forth the relevant facts and legal basis for the order. Such order shall state that it is a final order of the FEA of which the petitioner may seek judicial review.

PART 210—GENERAL ALLOCATION AND PRICE RULES

AUTHORITY: Emergency Petroleum Allocation Act of 1973, P.L. 93-159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 39 FR 24.

Subpart A—Scope

§ 210.1 Purpose.

The purpose of this part is to set forth the provisions applicable to both Parts 211—Mandatory Petroleum Allocation Regulations and Part 212—Mandatory Petroleum Price Regulations, appearing in this chapter.

§ 210.2 Applicability.

Effective 11:59 p.m. d.s.t. January 14, 1974, the provisions of this part apply to all covered products produced, refined or imported into the United States. This part does not apply to sales of natural gas.

§ 210.3 Exceptions and exemptions.

When necessary to accomplish the purposes of the Act, the Federal Energy Administration may permit an exception or an exemption to the regulation of this part. Requests for exception and exemption shall be submitted in accordance with the provisions of Part 205 of this chapter.

§ 210.4 Ratification of prior directives, orders and actions.

Unless modified by any provisions of this chapter, any directive, order or action in effect pursuant to the Act shall remain in effect:

(a) Until its expiration by its own terms; or

(b) Until its revocation or amendment by any directive or order or superseding regulation issued under the provisions of this chapter.

Subpart B—Definitions

§ 210.21 Definitions.

"Act" means the Emergency Petroleum Allocation Act of 1973, or the Economic Stabilization Act of 1970, as amended, or both.

"Covered products" means crude oil, residual fuel oil, and refined petroleum products.

"FEA" means the Federal Energy Administration or its delegate.

"Natural gas" means natural gas as defined by the Federal Power Commission.

"United States" means the several States, the District of Columbia, Puerto Rico, and the territories and possessions

of the United States other than the Panama Canal Zone.

Subpart C—Exemptions

§ 210.31 Scope.

(a) Except as provided in paragraph (b) of the section, price adjustments and allocation provisions with respect to items and transactions set forth in this Subpart are exempt from and not included within the coverage of this chapter.

(b) Revenues received from the sales of exempt items or from exempt sales are included in a firm's annual sales or revenues, as defined in Part 212 of this chapter, for purposes of computing profit margin in Part 212 of this chapter. Covered products exempt from the allocation provisions are to the extent specified and in Part 211 of this chapter, included in inventory calculations.

§ 210.32 Stripper well leases.

(a) The first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids produced from any stripper well lease is exempt from the provisions of Parts 211 and 212 of this chapter.

(b) Definitions: "Average daily production" means the qualified maximum total production of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from a property during the preceding calendar 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. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

"Domestic crude petroleum" means crude petroleum produced in the United States or from the "outer continental shelf" as defined in 43 U.S.C. 1331.

"First sale" means the first transfer for value by the producer or royalty owner.

"Property" is the right which arises from a lease in existence in 1972 or from a fee interest to produce domestic crude petroleum in existence in 1972 and is coextensive with that property used in Section 212 for purposes of determining "base production control level."

"Stripper well lease" means a "property" whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids, per well did not exceed 10 barrels per day during the preceding calendar year.

§ 210.33 Exports and imports.

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.

§ 210.34 Petroleum refinery products.

(a) Petroleum refinery products such as petroleum wax, petroleum coke, asphalt, road oil, and refinery gases which are not crude oil, refined petroleum products, or residual fuel oils are exempt from the provisions of Parts 211 and 212 of this chapter.

(b) *Definitions.* "Asphalt" means asphalt as defined in ASTM standard D–288.

"ASTM" means American Society for Testing Materials.

"Petroleum coke" means a solid residue, the final product of the condensation process in cracking, consisting mainly of highly polycyclic aromatic hydrocarbons very poor in hydrogen, including petroleum coke which when calcinated yields almost pure carbon or artificial graphite suitable for production of carbon or graphite electrodes, structural graphite, motor brushes, dry cells, etc. It includes both forms listed below:

(1) *Marketable.* Those grades of coke produced in delayed or fluid cokers which may be recovered as relatively pure carbon. This "green" coke may be further purified by calcining or may be sold in the "green" state.

(2) *Catalyst.* In many catalytic operations (i.e., catalytic cracking) carbon is deposited on the catalyst, deactivating the catalyst. The catalyst is reactivated by burning off the carbon, using it as a fuel in the refinery process. This carbon or coke is not recoverable in a concentrated form. For statistical purposes, the amount of catalyst coke may be estimated by using an average weight percent (1.5%–8.5%) of charging stock.

"Petroleum wax" means petroleum wax as defined in ASTM standard D–288.

"Refinery gas" means a form of gas normally produced in the refining of crude oil which is predominately used for refinery fuel.

"Road oil" means any heavy petroleum oil, including residual asphaltic oils, used as a dust palliative and surface treatment of roads and highways. It is generally produced in six grades from 0, the most liquid, to 5, the most viscous.

Subpart D—General Rules

§ 210.61 Retaliatory actions.

No firm (including an individual) may take retaliatory action against any other firm (including an individual) that files or manifests an intent to file a complaint of alleged violation of, or that otherwise exercises any rights conferred by the Act, any provision of this part, or any order issued under this Chapter. For the purposes of this paragraph, "retaliatory action" means any action contrary to the purpose or intent of the Economic Stabilization Program or the Federal Energy Administration and may include a refusal to continue or sell or lease, any reduction in quality, any reduction in quantity of services or products customarily available for sale or lease, any violation of privacy, any form of harassment, or any inducement of others to retaliate.

§ 210.62 Normal business practices.

(a) Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product, and no supplier may modify any normal business practice so as to result in the circumvention of any provision of this chapter. "Summer fill" programs and other "dating" or seasonal credit programs are among the normal business practices which must be maintained by a supplier under this paragraph, if that supplier had such programs in effect during the base period. Credit terms other than those associated with seasonal credit programs are included as a part of the May 15, 1973 price charged to a class of purchaser under Part 212 of this Chapter. Nothing in this paragraph shall be construed to require suppliers to sell to purchasers who do not arrange proper credit or payments for allocated products, as customarily associated with that class of purchaser during the base period (for seasonal credit), or on May 15, 1973 (for other credit terms). However, no supplier may require or impose more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser during the base period (for seasonal credit), or on May 15, 1973 (for other credit terms).

(b) 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 or sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this chapter or of the Act, and includes, but is not limited to, refusal by a retail marketer of motor gasoline or diesel fuel to furnish or sell any allocated product due to the absence of a prior selling relationship with the purchaser, or establishment of new volume purchase arrangements where customers of retailers agree in advance to purchase in excess of normal amounts of motor gasoline or diesel fuel and thereby receive preferential treatment.

(c) Any practice which constitutes a means to obtain a price higher than is permitted by the regulations in this chapter or to impose terms or conditions not customarily imposed upon the sale of an allocated product is a violation of these regulations. Such practices include, but are not limited to devices making use of inducements, commissions, kickbacks, retroactive increases, transportation arrangments, premiums, discounts, special privileges, tie-in agreements, trade understandings, falsification of records, substitution of inferior commodities or failure to provide the same services and equipment previously sold.

§ 210.63 Sales of allocated product.

Quantities of an allocated product required by an allocation order to be sold shall be sold at the price for that substance on the date the order was issued or such other date specified in the order for this purpose.

Subpart E—Antitrust Applicability

§ 210.71 Scope.

The purpose of this subpart is to set forth the relationship between the re-

quirements of the Mandatory Petroleum Products Allocation Program and the antitrust laws of the United States.

§ 210.72 General rule.

Notwithstanding any provision to the contrary elsewhere in this part, except as specifically provided in this subpart, the provisions of this subpart neither provide immunity from civil or criminal liability under the antitrust laws to any person subject to the provisions of this chapter, nor create a defense to any action under the antitrust laws.

§ 210.73 Definitions.

For the purposes of this subpart, "antitrust laws" includes:

(1) The Sherman Antitrust Act (15 U.S.C. 1 et seq., July 2, 1890, as amended);

(2) The Clayton Act (15 U.S.C. 12 et seq., October 13, 1914, as amended);

(3) The Federal Trade Commission Act (15 U.S.C. 41 et seq.);

§ 210.74 Meetings.

By order of the FEA, whenever it becomes necessary in order to comply with the provisions of these regulations, that owners, directors, officers, agents, employees, or representatives of two or more persons engaged in the business of producing, refining, marketing, or distributing of any product subject to the requirements of these regulations must meet, confer, or communicate in such fashion and to such ends that might otherwise be construed to constitute a violation of the antitrust laws, such activities may be permitted; provided, the criteria of § 210.75 are met.

§ 210.75 Criteria for meetings.

Persons permitted by order to so meet, confer, or otherwise communicate shall:

(a) Obtain from the FEA an order which specifies and limits the subject matter to be discussed, and the objectives of such meeting, conference or other communication;

(b) Meet only in the presence of a representative of the Antitrust Division of the Department of Justice;

(c) Take a verbatim transcript of such meeting, conference, or other communication; and

(d) Submit such verbatim transcript and any agreement resulting from such meeting, conference, or other communication to the Attorney General and to the Federal Trade Commission.

§ 210.76 Defense antitrust.

Compliance with the provisions of § 210.75 shall make available to the affected parties a defense to any action brought under the antitrust laws arising from any meeting, conference, or communication, or agreement arising therefrom; provided, that such meeting, conference, or other communication was held and any resulting agreement was made solely for the purpose of complying with the provisions of this chapter.

§ 210.77 Defenses; antitrust and breach of contract.

Compliance with the provisions of the regulations of this chapter shall make available a defense to any action brought under the antitrust laws or for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange any product subject to these regulations; provided, that such defense shall be available only if such delay or failure was caused solely by compliance with the provisions of this chapter.

Subpart G—Reports and Recordkeeping

§ 210.91 Reports.

Whenever the FEA considers it necessary for the effective administration of the FEA, it may order any firm to file special or separate reports, setting forth information relating to the FEA regulations in addition to any other reports required in Part 211 or Part 212 of this chapter.

§ 210.92 Records.

(a) *General.* Each firm subject to this part shall keep such records as are sufficient to demonstrate that the prices charged or the amounts sold by the firm are in compliance with the requirements of this part.

(b) *Inspection.* Records required to be kept under paragraph (a) shall be made available for inspection at any time upon the request of a representative of the FEA.

(c) *Justification.* Upon the request of a representative of the FEA any firm which has filed a notice of a proposed price increase, increases a price pursuant to this subpart, or takes any action pursuant to the allocation provisions of this Chapter, shall:

(1) Specify the records that it is maintaining to comply with this paragraph; and

(2) Justify that proposed price increase, increased price, or action pursuant to the allocation provision of this Chapter.

(d) *Period for keeping records.* Each firm required to keep a record under this paragraph shall maintain and preserve that record for at least 4 years after the last day of the calendar year in which the transactions or other events recorded in that record occurred or the property was acquired by that firm whichever is later.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Subpart A—General Provisions

Subpart B—Definitions

Subpart C—Crude Oil and Refinery Yield Control

Subpart D—Propane

Subpart E—Butane and Natural Gasoline

Subpart F—Motor Gasoline

Subpart G—Middle Distillate

Subpart H—Aviation Fuels

Subpart I—Residual Fuel Oil

Subpart J—Naphthas and Gas Oils

Subpart K—Other Products

AUTHORITY: Emergency Petroleum Allocation Act of 1973, P.L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275, E.O. 11790, 39 FR 23185.

Subpart A—General Provisions

§ 211.1 Scope.

(a) *General.* This part applies to the mandatory allocation of crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States.

(b) *Exclusions.* (1) Exports of crude petroleum and petroleum products subject to Subchapter B of Chapter III of Title 15 of the Code of Federal Regulations are excluded from this part.

(2) The first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from any stripper well lease as defined in § 210.32 of this chapter is excluded from this part.

(3) Petroleum refinery products such as petroleum wax, petroleum coke, asphalt, road oil, and refinery gases which are not crude oil, refined petroleum products, or residual fuel oils are excluded from this part.

(4) Natural gas and ethane are also excluded from this part.

(c) *State set-asides.* State set-asides are provided for middle distillates, residual fuel oil, motor gasoline and propane.

§ 211.2 Relationship of subparts.

Unless otherwise specified in Subparts D through K of this part, the general provisions set forth in this subpart apply to the mandatory allocation of all allocated products.

§ 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 K 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.

(ii) Unless otherwise provided in this part or directed by FEA, the supplier/wholesale purchaser-consumer 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 revised or otherwise terminated except that any such relationship may be terminated by the mutual consent of both parties.

(b) *Supplier/end-user relationship.* Each supplier of an allocated product shall, to the maximum extent practicable, supply all end-users which purchased that allocated product from that supplier as of January 15, 1974, and which are entitled to an allocation level under the provisions of Subparts D through K of this part.

(c) *Changes in ownership or brand.* The supplier/purchaser relationships required by this part shall not be altered by (1) changes in the ownership or right of possession of the real property on which a wholesale purchaser or end-user maintains its on-going business or end use; or (2) changes in the brand or franchise under which a wholesale purchaser-reseller maintains its on-going business.

(d) *New relationships.* (1) Suppliers shall not supply new wholesale purchasers except in accordance with § 211.12(e).

(2) Suppliers shall not supply new end-users except in accordance with § 211.12(f).

(3) New suppliers shall not supply wholesale purchasers or end-users except in accordance with § 211.10(e).

(e) *Dual capacities.* A supplier may act in the capacity of a wholesale purchaser and an end-user. A wholesale purchaser-consumer may also be a wholesale purchaser-reseller. A firm which is acting in one or more different capacities shall comply with the appropriate regulations governing each capacity in which it acts.

§ 211.10 Supplier's method of allocation.

(a) *General.* (1) Suppliers of allocated products shall allocate all of their allocable supply in accordance with the provisions of this section unless otherwise specified in Subparts D through K of this part. Each supplier shall determine its allocation fraction pursuant to the provisions of paragraph (b) of this section. Suppliers shall then allocate to wholesale purchasers and end-users in accordance with the provisions of paragraph (c) of this section. Suppliers of end-users without allocation levels shall allocate their allocable supply in accordance with the provisions of paragraph (d) of this section. The method of allocation for new suppliers is specified in paragraph (e) of this section. Suppliers with allocation fractions less than one (1.0) must act in accordance with the provisions of paragraph (f) of this section, while suppliers with allocation fractions in excess of one (1.0) must act in accordance with the provisions of paragraph (g) of this section. Suppliers which sell products with different uses which are subject to allocation under more than one subpart shall determine the applicable subpart by reference to paragraph (h) of this section.

(2) For purposes of defining a supplier in this part, a firm shall mean the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(b) *Allocation fraction.* Each supplier shall determine an allocation fraction prior to making any allocation. A supplier's allocation fraction for any period which corresponds to a base period for an allocated product shall be equal to its allocable supply of that product, which is defined in paragraph (b)(1) of this section, for that period, divided by its supply obligation for all levels of distribution, which is defined in paragraph (b)(2) of this section. Suppliers shall adjust their allocation fractions for each such period to reflect adjustments in their supply obligation and in their allocable supply. Each supplier shall only have a single allocation fraction for all purchasers except to the extent permitted in § 211.14 or unless permitted or required by order of the FEA. Suppliers with two or more distribution subsystems or regions independent of one another may apply to the FEA National Office, in accordance with Subpart G of Part 205 of this chapter, for permission to use multiple allocation fractions whenever use of a single allocation fraction would be impracticable or inconsistent with the objectives of the program.

(1) *Allocable supply.* Each supplier's allocable supply of an allocated product for a period which corresponds to a base period shall be equal to its total supply for that period, which is the sum of its estimated production, including amounts received under processing and exchange agreements, imports, purchases and any reduction in inventory of that allocated product made pursuant to § 211.22 except as otherwise ordered by FEA; less (i) any amounts designated as a state set-aside for a prime supplier pursuant to § 211.17, (ii) any amounts of allocation requirements supplied directly to end-users or wholesale purchaser-consumers under an allocation level not subject to an allocation fraction, (iii) any amounts supplied to wholesale purchaser-resellers which have certified these amounts to be for ultimate use under an allocation level not subject to an allocation fraction, and (iv) any amounts supplied to customers through exchange agreements. Any existing inventory, or production, importation or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 shall not be included in the allocable supply of that product.

(2) *Supply obligation*—(i) *General.* A supplier's supply obligation of a particular allocated product is the sum of (A) the amounts of its wholesale purchaser-resellers' base period volumes as adjusted pursuant to § 211.13 for unusual growth and other allowable factors, which were supplied by the supplier during the ap-

propriate base period provided that the wholesale purchaser is still in business; (B) the amounts of base period uses of new wholesale purchasers and end-users which are assigned to or accepted by the supplier in accordance with the provisions of § 211.12; and (C) the amounts of allocation requirements of end-users and wholesale purchaser-consumers supplied by the supplier; minus (D) any amounts of allocation requirements supplied directly to end-users or wholesale purchaser-consumers under an allocation level not subject to an allocation fraction; and (E) any amounts supplied to wholesale purchaser-resellers which have certified those amounts to be for ultimate use under an allocation level not subject to an allocation fraction. The supply obligation of a retail sales outlet for motor gasoline shall also include an amount equal to its total sales of motor gasoline during the base period to end-users not entitled to an allocation level. A wholesale purchaser's base period volume, allocation requirements and allocation levels are defined below.

(ii) *Base period use.* Base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser's base period volume of a particular allocated product is the volume of that allocated product purchased or obtained during the appropriate base period as determined in accordance with § 211.12(c), in the case of a new wholesale purchaser, base period volume means the volume assigned pursuant to § 211.12(c). Base period volume, however, does not include any amounts of an allocated product obtained pursuant to in kind exchange agreements involving a single product which are normal business operating procedures except the difference between the total amounts received under exchange agreements and the total amounts supplied to customers through exchange agreements. Suppliers do not have a base period volume except when acting in the capacity of wholesale purchasers. Depending on the applicable allocation level, end-users may have a base period volume or may be treated on the basis of current requirements. Adjustments to base period volumes shall be made in accordance with the provisions of § 211.13.

(iii) *Allocation requirements.* The allocation requirement of an end-user or wholesale purchaser-consumer is the product of that purchaser's current requirements or base period use multiplied by the applicable allocation level.

(iv) *Allocation levels.* An allocation level is the percentage of the current requirements or base period use of an end-user or wholesale purchaser-consumer that its supplier shall supply if sufficient volumes of the allocated product are available. Allocation levels are assigned on the basis of the use to be made of the product and the type of purchaser receiving the product.

(c) *Allocation by suppliers to wholesale purchasers and end-users.* There shall be two levels of priority in the allocation by suppliers to wholesale purchasers and end-users:

(1) *First priority.* The first priority shall be for each supplier at every distribution level (i) to allocate from its total supply to wholesale purchaser-resellers any amounts which those purchasers have certified pursuant to § 211.12(d)(2) to be for ultimate use under an allocation level not subject to an allocation fraction and (ii) to allocate from its total supply to end-users and wholesale purchaser-consumers supplied directly under an allocation level not subject to an allocation fraction sufficient volumes of the allocated product to supply one hundred percent of those purchasers' allocation requirements which suppliers of those purchasers have certified pursuant to § 211.12(d)(1). The amounts allocated under this first priority shall not be subject to the supplier's allocation fraction.

(2) *Second priority.* The second priority for each supplier shall be (i) to allocate to each wholesale purchaser-reseller a volume of allocated product equal to the product of that supplier's allocation fraction multiplied by the amount equal to that wholesale purchaser-reseller's base period use minus any amounts which that purchaser has certified to be for ultimate use under an allocation level not subject to an allocation fraction and (ii) to allocate from its allocable supply to all end-users and wholesale purchaser-consumers supplied directly under an allocation level subject to an allocation fraction a volume of allocated product equal to the product of that supplier's allocation fraction multiplied by the allocation requirements of those purchasers.

(3) *Allocation level priority.* Allocation levels listed in Subparts D through K are not arranged in sequence of priority except that the allocation levels not subject to an allocation fraction must be supplied as the first order of priority. Suppliers shall distribute their allocable supply to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels other than levels not subject to an allocation fraction without regard to the order of listing.

(d) *Purchasers without allocation levels.* Notwithstanding the provisions of paragraphs (c) and (g) of this section, suppliers such as retail gasoline dealers, which supply both end-users or wholesale purchaser-consumers which are not entitled to an allocation level and end-users or wholesale purchaser-consumers which are entitled to an allocation level shall allocate their allocable supply in the following manner:

(1) The first priority for each supplier shall be to allocate to all end-users and wholesale purchasers which are entitled to an allocation in accordance with the provisions of paragraph (c) of this section.

(2) The second priority for each supplier shall be to distribute equitably the remainder of the supplier's allocable supply among all end-users or wholesale purchaser-consumers which are not entitled to an allocation level. A state may require or authorize priorities to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. Except to the extent that FEA regulations or a State office otherwise may require or authorize, local governments and the supplier may also give priority to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. Priority treatment, per se, when granted in accordance with the provisions of this subparagraph, shall not be considered a form of discrimination among purchasers or any other prohibited conduct under § 210.62 of this chapter.

(e) *New supplier.* (1) A supplier which was not a base period supplier but was a supplier prior to January 15, 1974 shall supply, in accordance with the provisions of this section, (i) wholesale purchasers which it supplied as of January 15, 1974 and which have no base period supplier; (ii) any assigned purchasers; (iii) new wholesale purchasers acquired after January 15, 1974 in accordance with the provisions of § 211.12; and (iv) to the maximum extent possible, end-users.

(2) A supplier which was not a supplier prior to January 15, 1974 shall be considered to have no supply obligation and shall not allocate supplies to any purchaser without FEA approval.

(f) *Allocation fractions less than one.* (1) When a supplier's allocation fraction is less than one (1.0), a supplier shall reduce, on a pro-rata basis, the amounts supplied to end-users and wholesale purchasers for uses subject to the allocation fraction. End-users and wholesale purchaser-consumers supplied under an allocation level not subject to an allocation fraction, shall, however, be supplied at a constant one hundred percent of allocation requirements. Wholesale purchaser-resellers which certify amounts of an allocated product to be for ultimate use under an allocation level not subject to an allocation fraction shall also be supplied at one hundred percent of these certified amounts. These purchasers shall not receive a pro-rata reduction unless the supplier's total supply is not sufficient to supply all such end-users and wholesale purchasers at one hundred percent of allocation requirements or certified amounts, as appropriate.

(2) Any supplier whose allocation fraction is equal to or less than one (1.0) and whose wholesale purchasers and end-users entitled to receive an allocation from that supplier either have not purchased or have notified the supplier of their intent not to purchase their complete allocation entitlement by the end of the period corresponding to a base period may report and dispose of such volumes in accordance with the provisions of paragraph (g) of this section.

(g) *Allocation fractions greater than one.* (1) *General.* In allocating allocable supplies of any allocated product among wholesale purchasers and end-users, no supplier may use an allocation fraction

greater than one (1.0) except as provided herein.

(2) *Non-reporting suppliers.* Any wholesale purchaser-reseller which is a retail sales outlet or any other supplier not subject to subparagraph (3) below and which has an allocation fraction in excess of one (1.0) for a period corresponding to a base period shall make allocations based on an allocation fraction of one (1.0) and may distribute its surplus product at its discretion. There is no requirement that such a wholesale purchaser-reseller report its surplus product to FEA.

(3) *Surplus product reports.* A supplier of an allocated product which is either a refiner, a prime supplier in any state, or a supplier of a prime supplier (such as a broker) and which is not a retail sales outlet and which has an allocable supply of sufficient magnitude that its allocation fraction computed pursuant to paragraph (b) of this section will exceed one (1.0) for a period corresponding to a base period, shall make allocations based on an allocation fraction of one (1.0) and shall report the volume, location, price, availability of transportation and significant specifications of surplus product available. The surplus product report shall be submitted in writing to the National FEA office, with a copy to the appropriate regional FEA offices, within five (5) days of the supplier's determination that its allocation fraction will exceed one (1.0). The report must be clearly labeled "Surplus Product Report" both on the document and on the outside of the envelope in which the document is transmitted and shall be addressed to: Federal Energy Administration, Surplus Product Report, Post Office Box 19407, Washington, D.C. 20036. The FEA shall provide written notification to each supplier submitting a surplus product report of the exact time of receipt of the surplus product report.

(4) *Redirection.* The National or Regional FEA (whenever authorized by the National FEA) may within ten (10) days after actual receipt of notification made pursuant to subparagraph (3) above direct that the product so reported be distributed among other suppliers, sold to designated wholesale purchasers or end-users, be distributed to the reporting supplier's purchasers on a pro-rata basis, such as using an allocation fraction greater than one (1.0), or be accumulated in inventory.

(5) *Reporting suppliers.* Any supplier which reports pursuant to subparagraph (3) above may distribute its surplus product at its discretion if it is not notified to the contrary within ten (10) days of receipt of FEA of the supplier's notification under subparagraph (3) above except that (i) the supplier shall supply, in the aggregate, to the category of wholesale purchaser-resellers which are branded independent marketers and, separately, to the category of wholesale purchaser-resellers which are nonbranded independent marketers, to the extent that such categories of purchasers are willing to accept it, at least the same proportion of the supplier's surplus product as the total allocation entitlements of such branded or nonbranded independent marketers bear to the total allocation entitlement of all purchasers which are entitled to receive an allocation from that supplier and (ii) retail sales outlets owned and operated by the supplier may not purchase or be supplied, in the aggregate, a greater proportion of the supplier's surplus product than the total allocation entitlements of all such retail sales outlets bear to the total allocation entitlements of all purchasers which are entitled to receive an allocation from that supplier unless the supplier first meets all requests for products from independent marketers to the extent required in subparagraph (1) above.

(6) *Records of disposition of surplus product.* Any supplier which reported surplus product for a period corresponding to a base period as required by subparagraph (3) above shall maintain adequate records to allow FEA, upon request, to ascertain the disposition of the surplus product.

(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 this paragraph.

(8) *Limitation on purchaser's rights.* No supplier shall supply and no end-user or wholesale purchaser-consumer shall accept quantities of an allocated product which exceed one hundred (100) percent of the end-user's or wholesale purchaser-consumer's current requirements, except pursuant to subparagraph (9) or as directed by FEA.

(9) *Special restriction on propane and butane.* No supplier shall supply and no end-user or wholesale purchaser-consumer shall accept quantities of propane or butane in excess of one hundred (100) percent of base period use for synthetic natural gas feedstock use, gas utility use, or any industrial use except for the purpose of increasing inventories to the levels allowed under § 211.86 (g) or § 211.96(e).

(h) *Products with different uses.* When an allocated product may be subject to allocation under more than one subpart of this part, a wholesale purchaser shall certify the type of use of the product to the supplier which supplied that product during the base period prescribed in the subpart applicable to that type of use of that product. The supplier shall then supply that wholesale purchaser in accordance with the provisions of the subpart which applies to the certified use of that product unless the supplier and wholesale purchaser mutually agree that the product shall be supplied for a use other than the use during the base period. Suppliers shall supply end-users in accordance with the provisions of the subpart that applies to the end-user's present use of the product.

§ 211.11 Basis for purchaser's entitlement to allocation.

(a) *Basis of entitlement.* A wholesale purchaser or an end-user entitled to an allocation level shall receive an allocation based on its conduct of an on-going business or maintenance of an established end use.

(b) *End-users and wholesale purchasers as a firm.* (1) For purposes of defining an end-user or wholesale purchaser-consumer in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls which act as ultimate consumers including all sites, storage tanks and other facilities or entities of the end-user or wholesale purchaser-consumer that utilize or store an allocated product.

(2) Except as provided in Subpart F of this part, for purposes of defining a wholesale purchaser-reseller in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(c) *Loss of allocation entitlement for going out of business.* Wholesale purchasers and end-users which have gone out of business shall not be eligible for allocations based on volumes received or purchases made prior to going out of business.

(d) *Transfer of entitlement.* The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going 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.

§ 211.12 Purchaser's allocation entitlement.

(a) *Scope.* This section describes a purchaser's allocation entitlements. Paragraph (b) of this section specifies the volumes of an allocated product which wholesale purchasers and end-users are entitled to receive from suppliers. The method by which purchasers determine base period volumes is provided in paragraph (c) of this section and the method by which purchasers determine the amounts not subject to an allocation fraction is provided in paragraph (d) of this section. Paragraphs (e), (f), and (g) of this section set forth procedures by which new wholesale purchasers, new end-users and new importer-consumers, respectively, determine their entitlement and suppliers. Paragraph (h) of this section provides special relief for purchasers which are denied access to a fuel source by Federal or State order.

(b) *Entitlements*—(1) *Wholesale purchaser-reseller.* A wholesale purchaser-reseller shall be entitled to receive a volume of an allocated product equal to the sum of the volumes allocable to it from each of its suppliers. The volume supplied to a wholesale purchaser-reseller by each of its suppliers shall equal the

sum of (i) any amounts which that purchaser has certified to a supplier to be for ultimate use under an allocation level not subject to an allocation fraction plus (ii) the product of that supplier's allocation fraction multiplied by an amount equal to that part of that wholesale purchaser's base period use purchased or obtained from that supplier minus any amounts which that purchaser has certified to be for ultimate use under an allocation level not subject to an allocation fraction.

(2) *Wholesale purchaser-consumers and end-users.* A wholesale purchaser-consumer or end-user shall be entitled to receive a volume of an allocated product equal to the sum of the volumes allocable to it from each of its suppliers. The volumes supplied to a wholesale purchaser-consumer or end-user by each of its suppliers shall equal the sum of (i) that part of the wholesale-purchaser's or end-user's allocation requirements supplied directly by that supplier under an allocation level not subject to an allocation fraction plus (ii) that part of the wholesale purchaser's or end-user's allocation requirements supplied by that supplier under an allocation level subject to an allocation fraction.

(c) *Base period volume determination.* (1) By July 1, 1974, each supplier which was not previously subject to this paragraph prior to May 1, 1974 and which sells an allocated product to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers with respect to each allocated product, the volume of product which it sold to or transferred to that purchaser in each base period.

(2) If, after receipt of a supplier's report, a purchaser questions the accuracy of a supplier's report, it shall notify that supplier and attempt to resolve the disagreement as to base period purchases of the purchaser.

(3) If the supplier and purchaser are unable to resolve their differences, the supplier shall commence allocations based on the supplier's records, in accordance with the allocation provisions in this part, and the purchaser should make application to the appropriate FEA regional office for a corrected base period volume in accordance with FEA forms and instructions. Copies of the purchaser's records for base period purchases should be included with the application.

(4) If the FEA determines that the purchaser's application for a corrected base period volume is valid, it may order the supplier to adjust the purchaser's base period volume and to supply the purchaser with additional volumes of the allocated product equal to the adjusted amount the purchaser should have received if allocation had initially been based on the corrected base period volume.

(d) *Determination of amounts not subject to an allocation fraction.* (1) Any wholesale purchaser-reseller which directly supplies end-users or wholesale purchaser-consumers entitled to an allocation level which is not subject to an allocation fraction other than a utility shall certify its requirements for such end-users or wholesale purchaser-consumers on an annual basis to its supplier (consistent with any energy conservation program such as the temperature reduction restrictions found in that end-user's allocation level). Any increase above the initial level of allocation requirements certified shall also be certified to the supplier. In the event that the wholesale purchaser-reseller and its supplier cannot agree on the volume which the wholesale purchaser-reseller is entitled to receive to meet the requirements of the end-user and the wholesale purchaser-consumer customers of the wholesale purchaser-reseller, an application for validation may be referred by the wholesale purchaser-reseller to FEA. During the period that a request for validation is pending, the supplier shall supply the wholesale purchaser-reseller at the level of requirements which is not disputed by the supplier. If the FEA determines that the wholesale purchaser-reseller is entitled to increased requirements in excess of those supplied by the supplier during the period that the request for validation is pending, FEA may order the supplier to supply such increased requirements and to supply the wholesale purchaser-reseller with additional volumes of the allocated product equal to the amount the wholesale purchaser-reseller would have received if the increased requirements had been supplied during such period.

(2) All suppliers which receive a certification of allocation requirements not subject to an allocation fraction pursuant to paragraph (d)(1) of this section or which receive a certification from any other supplier of allocation requirements not subject to an allocation fraction which have been certified to that other supplier shall in turn certify to their suppliers such allocation requirements not subject to an allocation fraction.

(3) Suppliers which certify their requirements for wholesale purchaser-consumers and end-users entitled to an allocation level of 100 percent of current requirements not subject to an allocation fraction or which receive a certification from any other supplier of such requirements shall be entitled to an adjustment of their base period use as provided by § 211.13(d)(4).

(4) Any end-user or wholesale purchaser-consumer engaged in agricultural production and entitled to an allocation level of 100 percent of current requirements not subject to an allocation fraction which disputes the certification of such requirements by its supplier, or any supplier which disputes the entitlement claimed by any wholesale purchaser-consumer or end-user engaged in agricultural production may apply to the Agricultural Stabilization and Conservation Service Office for assistance in mediating the dispute. Whenever a wholesale purchaser-consumer or end-user entitled to an allocation level not subject to an allocation fraction contends that it is not being supplied with 100 percent of its current requirements, such wholesale purchaser-consumer or end-user may apply to the regional FEA for validation of the amounts of its current requirements.

(5) Within five (5) days of the end of each period which corresponds to a base period, wholesale purchaser-resellers certifying pursuant to this paragraph shall certify to their suppliers the quantity of product delivered by the wholesale purchaser-reseller to end-users and wholesale purchaser-consumers for uses under an allocation level not subject to an allocation fraction during the period and shall certify that none of the quantity of product delivered to the wholesale purchaser-reseller by the supplier for delivery to end-users and wholesale purchaser-consumers for uses under an allocation level not subject to an allocation fraction was diverted to other uses during the period. Any quantities of product delivered for a period which corresponds to a base period to a wholesale purchaser-reseller for delivery to end-users and wholesale purchaser-consumers for uses under an allocation level not subject to an allocation fraction which is not delivered by the wholesale purchaser-reseller to such users during the period shall be used to adjust the quantity of product to be received by the wholesale purchaser-reseller for such uses in a subsequent period which corresponds to a base period. Suppliers shall in turn make adjustments to reflect adjustments made by suppliers of a wholesale purchaser-reseller under this subparagraph.

(e) *New wholesale purchasers.* Wholesale purchasers which do not have base period suppliers and wholesale purchasers whose base period suppliers are unable to supply them with sufficient amounts of an allocated product shall be supplied as provided in this paragraph.

(1) *Mutual arrangements for wholesale purchaser-consumers.* Wholesale purchaser-consumers without a base period supplier or a new supplier as provided in § 211.10(e)(1) are encouraged to make mutually acceptable arrangements with suppliers. Suppliers are encouraged to continue any existing supplier/purchaser relationships with such wholesale purchaser-consumers and to accept wholesale purchaser-consumers as new purchasers.

(i) Wholesale purchaser-consumers without a base period supplier or a new supplier as provided in § 211.10(e)(1) and existing or prospective suppliers may agree upon a proposed base period volume for the wholesale purchaser-consumer.

(ii) The supplier shall within 10 days of making the mutual arrangement notify FEA by certified mail in accordance with FEA forms and instructions of the proposed base period volume and the basis upon which the proposed base period volume was determined. In no event may the supplier commence delivery of any quantity of an allocated product pursuant to the proposed base period volume prior to the required notification

to the FEA. The proposed base period volume is subject to adjustment by FEA. FEA may also assign the wholesale purchaser-consumer to another supplier.

(iii) After FEA has been notified by the supplier and during the period that FEA has the proposed supplier/purchaser relationship (including the proposed base period volume) under consideration, the supplier may provide the wholesale purchaser-consumer with interim supplies in accordance with the proposed base period volume.

(2) *New wholesale purchaser-resellers.* (i) Suppliers which have accepted as new purchasers wholesale purchaser-resellers prior to June 1, 1974, shall notify the FEA by August 1, 1974 of the names of all such new purchasers, the proposed base period volume for each purchaser and the basis upon which the proposed base period volume was determined. The proposed base period volume is subject to adjustment by FEA. FEA may also assign the wholesale purchaser-reseller to another supplier. Suppliers may provide interim supplies to such wholesale purchaser-resellers pending FEA assignment of a supplier and a base period volume.

(ii) Wholesale purchaser-resellers without a base period supplier or a new supplier as provided in § 211.10(e)(1) must apply to FEA for assignment to a supplier and for assignment of a base period volume in accordance with Subpart C of Part 205 of this chapter.

(iii) Firms which intend to operate new retail sales outlets should advise FEA as soon as practicable (preferably before construction begins) of their intention and the anticipated base period volume requirements for such new retail sales outlets.

(iv) Suppliers shall not make interim deliveries to wholesale purchaser-resellers or retail sales outlets covered by paragraphs (e)(2)(ii) and (e)(2)(iii) of this section until FEA has assigned a supplier and a base period volume to the wholesale purchaser-reseller or the retail sales outlet.

(3) *Assignments.* Any wholesale purchaser which does not have a base period supplier or a new supplier as provided in § 211.10(e)(1) (including all wholesale purchaser-consumers which cannot locate a supplier under paragraph (e)(1) of this section) or whose base period supplier(s) or new supplier as provided in § 211.10(e)(1) is unable to supply it with sufficient amounts of allocated product may apply to FEA as provided in Subpart C of Part 205 of this chapter to be assigned a supplier and a base period volume on a temporary or permanent basis.

(4) Any assigned base period volume under the provisions of this paragraph will be deemed to have been adjusted for growth under § 211.13(b) through the date of the assignment and may be adjusted thereafter under the provisions of § 211.13 (c) or (d). Base period volumes will not be assigned on any basis which gives a wholesale purchaser which is a new purchaser an unfair advantage over wholesale purchasers which have base period suppliers or new suppliers as provided in § 211.10(e).

(5) Any purchaser which is assigned to or accepted by a supplier under the provisions of this paragraph shall be accepted by the supplier for the duration of the program or until otherwise directed by the FEA.

(f) *New end-users.* (1) Suppliers to the maximum extent possible shall accept new end-users where such purchaser, under normal business practices, could logically have been served by the supplier in accordance with its base period business practices. Suppliers shall allocate to new end-users in a manner consistent with the allocation methods set forth in this chapter.

(2) If the supplier and new end-user cannot agree on an allocation requirement for the end-user or if the end-user cannot locate a supplier, the end-user may apply to the appropriate State Office in accordance with the procedures specified in Subpart Q of Part 205 of this chapter. In this event, the new end-user shall certify to the State Office documented evidence justifying the proposed allocation requirement as normal and reasonable for the intended use.

(g) *End-user and wholesale purchaser-consumer importers.* End-users and wholesale purchaser-consumers which import an allocated product in excess of the volumes which they imported in the base period, and end-users and wholesale purchaser-consumers which have not previously imported an allocated product may import that product for their own use subject to § 211.10(g)(8). Such imports will not otherwise affect their allocation entitlement except to the extent that FEA determines that such imports, without a reduction in domestic allocation entitlements, are inconsistent with the objectives of the Act. Should the circumstances warrant, FEA may require that such imports be allocated to other end-users or suppliers. End-user and wholesale purchaser-consumer importers are required to report to both national and regional FEA as provided in § 211.225.

(h) *Curtailment of certain energy sources by Federal or State rule or order.* any end-user or wholesale purchaser-consumer which has been denied access to a source of energy other than an allocated product as a consequent of curtailment by, or pursuant to, a plan filed in compliance with a rule or order of a Federal or State agency, or where the end-user's or wholesale purchaser-consumer's supply of such fuel is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency may apply to the FEA, under the provisions of this section, as a new purchaser for an allocated product, provided, however, that a wholesale purchaser which is an interruptible customer for a source of energy other than an allocated product shall continue its base period supplier/purchaser relationships for an allocated product. Such application shall be in accordance with Subpart C of Part 205 of this chapter.

§ 211.13 Adjustments to base period volume.

(a) *Scope.* (1) The adjustment procedures under this section are applicable to the allocation of propane, butane, motor gasoline, middle distillate, aviation fuels (except allocations to civil air carriers), and residual fuel oil (except allocations to utilities) and other products subject to Subpart K of this part. This section describes the means by which wholesale purchasers and end-users may receive adjustments to their base period volumes. All adjustments made pursuant to this section are subject to verification by FEA audit.

(2) Paragraph (b) of this section provides for supplier-initiated and wholesale purchaser-initiated adjustments of a wholesale purchaser's base period volumes for each month of the appropriate base period year for unusual growth based upon actual sales volumes in 1972 and 1973. Paragraph (c) of this section provides for an adjustment of wholesale purchasers' and certain end-users' base period uses to account for changed circumstances. Paragraph (d) of this section provides an adjustment to base period uses when increased requirements are certified by end-users and wholesale purchaser-consumers entitled to receive an allocation level of 100 percent of current requirements subject to an allocation fraction.

(3) Paragraph (e) of this section requires non-discrimination between wholesale purchasers in granting adjustments. Paragraph (f) of this section requires purchasers to certify applications for adjustments.

(b) *Adjustments for unusual growth—* (1) *Supplier-initiated wholesale purchaser unusual growth adjustment.* Wholesale purchasers which purchased an allocated product (other than residual fuel oil which is assigned 1973 base periods) shall receive a supplier-initiated adjustment to their base period volumes by their suppliers to compensate for unusual growth between the 1972 base periods and the corresponding months in 1973.

(i) For purposes of this paragraph, that part of any growth which exceeds 10 percent for the periods compared for motor gasoline or 5 percent for the periods compared for any other allocated product is defined as "unusual growth." Wholesale purchasers will be granted an adjustment only for that part of growth which was in excess of 10 percent for motor gasoline and 5 percent for other allocated products.

(ii) A supplier shall adjust the base period volume for unusual growth in each month of the base period year for each wholesale purchaser which purchased the allocated product from the supplier in 1972. There is no requirement that a wholesale purchaser apply to the supplier for this adjustment. A supplier shall make the adjustment without a request by the wholesale purchaser to the extent that the supplier's records indicate that any wholesale purchaser is eligible for the adjustment.

(iii) The adjustment made pursuant to this paragraph shall be based upon a comparison of the volume of the allocated product purchased from the supplier in 1972 and the volume purchased in 1973. If the supplier did not supply the wholesale purchaser for all of 1972 the adjustment shall be made by a comparison of the volume for the period in 1972 that the supplier did supply the wholesale purchaser and the volume purchased by the wholesale purchaser during the corresponding period of 1973. A wholesale purchaser's 1973 volume in excess of its 1972 volume shall be expressed as a percentage of the 1972 volume to determine growth rate. Unusual growth shall then be determined by subtracting from the growth rate the appropriate percentage figure set forth in subparagraph (i) above. The resulting percentage shall be multiplied by the wholesale purchase's base period volume for each base period for which the supplier is obligated to supply the wholesale purchaser to provide the amount by which each base period volume shall be increased for unusual growth.

EXAMPLE: Firm A, a wholesale purchaser, purchased 100,000 gallons of motor gasoline from Firm B in 1972 and 150,000 gallons in 1973. Firm A's 1973 growth rate is 50 percent (1973 volume minus 1972 volume divided by 1972 volume). Firm A's unusual growth is 40 percent (that growth in excess of first 10 percent). Firm B therefore will increase by 40 percent each of Firm A's base period volumes (the volumes sold in each month of 1972) to be supplied by Firm B.

(iv) Unusual growth adjustments under this paragraph shall be certified by the supplier in accordance with FEA forms and instructions and filed with FEA by August 1, 1974.

(v) The adjustments under this paragraph shall be made by the supplier, and the certified form required by paragraph (b)(1)(iv) of this section, shall be filed with FEA on or before July 1, 1974. There is no requirement that FEA validate any adjustment made under this paragraph. Suppliers shall commence deliveries on the basis of adjustments to base period volumes which reflect unusual growth no later than July 1, 1974. A supplier may commence deliveries of an allocated product reflecting adjustments to base period volumes for unusual growth prior to July 1, 1974, provided that adjustments for all of its eligible wholesale purchasers of that allocated product have been made and such deliveries are commenced at the same time for all such wholesale purchasers.

(vi) Suppliers shall notify all wholesale purchasers for each base period of the base period year for any adjustment for unusual growth made under this subparagraph. The notice shall be given on or before August 1, 1974.

(vii) Each supplier shall notify all of its wholesale purchasers which do not receive an adjustment under this subparagraph. The notice shall be given on or before the date the required certified form is filed with FEA. The notice shall advise each such wholesale purchaser that it may apply to the supplier for an adjustment to base period volume(s) for unusual growth under paragraph (b)(3) of this section.

(viii) No wholesale purchaser which has received an adjustment for unusual growth in 1973 shall receive an additional adjustment under this paragraph except to the extent that such initial adjustment did not fully compensate the wholesale purchaser for unusual growth as allowed by this subparagraph. A supplier shall not decrease the base period volume (or adjusted base period volume) of a wholesale purchaser under this subparagraph if that purchaser's 1973 volume is less than that purchaser's 1972 volume.

(ix) No wholesale purchaser shall accept an adjusted base period volume initiated by a supplier under this paragraph which, when combined with the adjusted base period volumes supplied to the wholesale purchaser by its other base period suppliers, would exceed the wholesale purchaser's actual unusual growth for a base period. A wholesale purchaser offered such an adjusted base period volume shall immediately notify FEA in accordance with forms and instructions issued by FEA. The FEA may require suppliers of the wholesale purchaser to adjust the wholesale purchaser's base period volume as adjusted by its suppliers under this paragraph and to adjust the wholesale purchaser's future allocations to compensate for any excess product received by the wholesale purchaser.

(x) Although wholesale purchasers of propane have a base period that includes part of 1973, for the purpose of this paragraph, suppliers shall determine such wholesale purchasers' unusual growth by comparing the volume of propane purchased from the supplier in 1972 and the volume purchased in 1973. If the supplier did not supply the wholesale purchaser for all of 1972, the adjustment shall be made by a comparison of the volume for the period in 1972 that the supplier did supply the wholesale purchaser and the volume purchased by the wholesale purchaser during the corresponding period of 1973.

(2) *Additional unusual growth adjustment for wholesale purchaser-resellers.* This subparagraph provides an additional adjustment for wholesale purchaser-resellers following an adjustment of their base period volume under paragraph (b)(1) above. If the base period volume of a wholesale purchaser-reseller as adjusted for unusual growth pursuant to paragraph (b)(1) of this section minus the 1973 allocation requirements of its purchasers for use under an allocation level which is not now subject to an allocation fraction is less than the wholesale purchaser-reseller's adjusted base period volume minus such allocation requirements as calculated under this paragraph, the wholesale purchaser-reseller may apply to its supplier for an adjustment to be calculated as follows:

(i) The wholesale purchaser-reseller will determine its 1972 volume less those volumes delivered to purchasers for use under an allocation level which is not now subject to an allocation fraction. A wholesale purchaser-reseller may calculate such volume by subtracting from its 1972 volume either:

(A) those actual volumes delivered in 1972 to purchasers for use under an allocation level which is not now subject to an allocation fraction and certified as accurate by the wholesale purchaser-reseller, or

(B) that volume which as a percentage of its 1972 volume corresponds to the percentage of the total volume delivered in 1973 to purchasers for use under an allocation level which is not now subject to an allocation fraction.

(ii) The wholesale purchaser-reseller will determine its 1973 volume less those volumes delivered in 1973 to purchasers for use under an allocation level which is not now subject to an allocation fraction.

(iii) The wholesale purchaser-reseller may then calculate its unusual growth adjustment using its 1972 and 1973 volumes less the volume in both years delivered to purchasers for use under an allocation level which is not now subject to an allocation fraction as otherwise provided in subparagraph (1) of this paragraph.

(iv) If the aggregate adjusted base period volumes calculated under this subparagraph are greater than the aggregate adjusted base period volumes calculated under paragraph (b)(1) of this section minus the 1973 allocation requirements of the wholesale purchaser-reseller's purchasers which are not subject to an allocation fraction, then the wholesale purchaser-reseller's aggregate adjusted base period volumes may be further adjusted to reflect the difference between those two amounts.

EXAMPLE: Firm A, a wholesale purchaser, purchased 100,000 gallons of motor gasoline from Firm B in 1972 and 150,000 gallons in 1973. Firm B under paragraph (b)(1) notified Firm A that the base period volumes supplied by Firm B to Firm A would be increased by 40 percent. See example following b(1)(iii). Since the aggregate of Firm A's base period volumes is 100,000 gallons, the aggregate of Firm A's base period volumes (as adjusted under paragraph (b)(1)) will be 140,000 gallons (100,000+40 percent of 100,000).

The 1973 requirements of Firm A's purchasers for use under an allocation level not now subject to an allocation fraction was 90,000 gallons. Firm A does not know the actual sales to such purchasers for such uses in 1972. To determine whether Firm A is entitled to an adjustment under § 211.13(b)(2). Firm A makes the following calculations:

(1) Under § 211.13(b)(2)(i)(B) Firm A assumes that 60 percent of its 1972 sales were to purchasers for use under an allocation level not now subject to an allocation fraction because 60 percent of its 1973 sales were in this category (90,000 divided by 150,000). Firm A then determines that it sold 40,000 gallons to purchasers for use under an allocation level not now subject to the allocation fraction in 1972 by multiplying 60 percent times 100,000 and subtracting that product (60,000) from 100,000.

(2) Firm A's 1973 volume less those volumes delivered to purchasers for use under an allocation level not now subject to an allocation fraction is 60,000 (150,000 −90,000).

(3) Firm A next calculates its unusual growth adjustment using its 1972 and 1973

volumes less the volume in both years delivered to purchasers for use under an allocation level not now subject to an allocation fraction. Firm A's 1973 growth rate using this method of calculation is 50 percent (60,000—40,000 divided by 40,000). Firm A's unusual growth rate is 40 percent (that growth in excess of 10 percent). If Firm A increases its 1972 volume less the volume delivered to purchasers for use under an allocation level but not now subject to an allocation fraction, by 40 percent, the volume will be 56,000 (40,000 plus 40 percent of 40,000).

(4) Firm A then calculates its aggregate base period volumes adjusted for unusual growth pursuant to § 211.13(b)(1) which is 140,000 gallons. That volume minus the 1973 volume sold to purchasers for use under an allocation level not subject to an allocation fraction equals 50,000 gallons (140,000 —90,000).

(5) Since the aggregate adjusted base period volumes calculated under paragraph (3) of this example are greater than the aggregate adjusted base period volumes as calculated under paragraph (4) of this example, Firm A may apply to Firm B for an additional adjustment to its aggregate base period volumes of 6,000 gallons (56,000 minus 50,000). Firm A's newly aggregated adjusted base period volumes will then equal 146,000 gallons (140,000+6,000). If Firm B supplied Firm A in each month of 1972, Firm B will increase each base period volume as adjusted under b(1) by 500 gallons (6,000 divided by 12).

(3) *Wholesale purchaser initiated unusual growth application.* (i) Any wholesale purchaser which does not receive an adjustment under paragraph (b)(1) of this section or which disputes the adjustment made thereunder by one of its suppliers may apply to that supplier for an adjustment of its base period volume to compensate for unusual growth in 1973 in accordance with Subpart B of Part 205 of this chapter.

(ii) Any adjustment made under this subparagraph shall be based solely on actual volumes supplied or purchased in 1972 and 1973 as indicated by the records of the supplier and the wholesale purchaser. Unusual growth has the same meaning under this subparagraph as under paragraph (b)(1) of this section. Adjustments to base period volumes for unusual growth under this subparagraph shall be calculated in the same manner as such adjustments under paragraph (b)(1) of this section.

(iii) Base period suppliers of wholesale purchasers shall include in an adjustment for unusual growth their proportionate share of that part of a wholesale purchaser's 1973 volume which was not supplied to that wholesale purchaser by a base period supplier of the wholesale purchaser. Wholesale purchasers shall certify to their base period suppliers the 1973 volumes purchased by the wholesale purchaser from suppliers which were not base period suppliers of the wholesale purchaser. A base period supplier's share of such 1973 volumes shall be equal to that supplier's proportionate share of the 1972 volumes supplied to the wholesale purchaser by all suppliers which supplied that purchaser during the base period.

(iv) Upon receipt of an application for unusual growth under this subparagraph, the supplier shall adjust the wholesale purchaser's base period volume within ten (10) days. If the supplier disagrees with the application, it may request validation from the appropriate regional FEA; *Provided, however,* That the supplier shall immediately make an interim adjustment to the applicant's base period volume commencing with the first period which corresponds to a base period and which commences later than twenty (20) days after receipt of the application in the proposed adjusted amount during the pendency of any FEA validation proceeding. If the FEA validation proceeding results in an adjusted amount less than that supplied during the pendency of such proceeding, FEA may require the supplier to adjust the wholesale purchaser's future allocations to compensate for any excess product supplied during the interim period.

(v) No wholesale purchaser which has received an adjustment for unusual growth in 1973 shall receive an additional adjustment under this subparagraph except to the extent that such initial adjustment did not fully compensate the wholesale purchaser for unusual growth as allowed by this subparagraph.

(c) *Adjustments for changed circumstances*—(1) *Wholesale purchasers.* Wholesale purchasers may apply to the FEA pursuant to Subpart B of Part 205 of this chapter for adjustments to their base period use for changed circumstances since January 1, 1973, which have not been reflected in an adjustment under paragraph (b) of this section. In processing such applications, the FEA may consider situations that indicate a need for increased amounts over base period use including but not limited to plant expansions, changed traffic patterns, closed retail sales outlets which have caused increased demand upon remaining retail sales outlets, changes in the local economy, unusual seasonal fluctuations, new population, industrial growth, acceptance of new end-users or unusual growth problems such as could occur at truck stops on new highways. A wholesale purchaser-reseller which operated in a marketing area that experienced unusual growth or other changed circumstances during 1973 but which was unable to increase its sales to meet the increased demand because its supplier imposed an allocation fraction under the Voluntary Petroleum Allocation Program may apply for an adjustment under this paragraph.

(2) *End-users.* End-users whose allocation level is a percentage of base period use may apply to the appropriate State Office to receive an adjustment to their base period volume for changed circumstances after January 1, 1974. The State Office shall process the application for adjustment and make recommnedations to the FEA in accordance with the procedures specified in Subpart Q of Part 205 of this chapter.

(3) Wholesale purchasers and end-users shall submit their applications for adjustments to their base period use under this paragraph to their suppliers prior to submission to FEA or the appropriate State office. The supplier shall certify information with respect to the application in accordance with forms and instructions issued by FEA and submit the application together with its certification to FEA or the appropriate State office not later than ten (10) days following receipt of the application from the wholesale purchaser or end-user.

(4) *FEA action.* FEA shall only make adjustments for changed circumstances when there are compelling situations requiring relief. Such adjustments shall be based upon applications which are fully supported by detailed facts, figures and other relevant documentation.

(d) *Adjustments for increased current requirements.* (1) Any end-user or wholesale purchaser-consumer entitled to an allocation level of 100 percent of current requirements which is subject to an allocation fraction shall certify to its supplier any increased requirements (consistent with any energy conservation program such as the temperature reduction restrictions found in that end-user's allocation level) above the level of requirements on January 1, 1974. In the event that the end-user or wholesale purchaser-consumer and supplier cannot agree on a volume to be supplied, an application for validation may be referred by the end-user or wholesale purchaser-consumer to the office specified in § 205.13 of this chapter. The request for validation shall be made in accordance with forms and instructions issued by FEA and may be made not sooner than ten (10) days after the certification has been presented to the supplier. During the period that a request for validation is pending, the supplier shall supply the wholesale purchaser-consumer or end-user at the level of requirements which is not disputed by the supplier. If the FEA determines that the purchaser is entitled to increased requirements in excess of those supplied by the supplier during the period that the request for validation is pending, FEA may order the supplier to supply such increased requirements and to supply the purchaser with additional volumes of the allocated product equal to the amount the purchaser would have received if the increased requirements had been supplied during such period. The FEA may subsequently require the supplier to adjust such end-user's or wholesale purchaser-consumer's allocation requirements to compensate for any excess product supplied during the validation period.

(2) All suppliers which, in their capacity as wholesale purchaser-resellers, receive a certification of increased requirements pursuant to paragraph (d)(1) of this section or which receive a certification from any other supplier of increased requirements which have been certified to that other supplier, shall in turn certify to their suppliers these increased requirements and be assigned a proportionate adjustment to that part of their base period volume received from each supplier to cover the certified increases in volume granted under this paragraph.

(3) End-users and wholesale purchaser-consumers which claim increases under this paragraph must be prepared to establish their historic requirements and justify their increased requirements.

(4) All suppliers which, in their capacity as wholesale purchaser-resellers, certify their requirements for wholesale purchaser-consumers and end-users entitled to an allocation level of 100 percent of current requirements not subject to an allocation fraction pursuant to § 211.12(d) or which receive a certification from any other supplier of such requirements, shall in turn certify to their suppliers such increased requirements and be assigned a proportionate adjustment to that part of their base period use received from each supplier.

(e) *Non-discrimination among wholesale purchasers.* In granting adjustments to base period use under this section, the supplier shall not discriminate among branded independent marketers, nonbranded independent marketers and wholesale purchaser-resellers operated by the supplier.

(f) *Certifications and downward adjustments of base period uses.* The chief executive officer (or his authorized agent) of a purchaser applying to a supplier for an adjustment under this section shall certify such application for accuracy. Such applications shall contain a statement that increased allocations shall be used only for the purpose stated in the application, shall not be diverted for other uses; and that if its needs decline, the purchaser shall file an amended application for a downward adjustment to its base period use.

§ 211.14 Redirection of products.

(a) To meet imbalances that may occur in the supplies of any allocated product, the regional or National FEA may order the transfer of specified amounts of any such product from one area to another or may order that different allocation fractions be used in different areas. An area, as used in this section, means a State, a group of States within a region, or any geographical part of a State or States within a region. The National FEA may also order the transfer of specified amounts of any allocated product from one region to another region or may order that different allocation fractions be used in different regions to meet such imbalances. Further, the FEA may transfer supplies of allocated products among suppliers in order to remedy supply imbalances. The regional or National FEA will not order the transfer of an allocated product under this section from one area within a State to another within the State without the receipt of a recommendation by the State Office.

(b) Refiners and importers are authorized to reduce the monthly allocable supply to purchasers of those allocated products covered under Subparts D, E, F, G, H (except Civil Air Carriers) and I (except utilities) for any region or area by up to five (5) percent and to increase the total quantity of any of these allocated products available in another region or area experiencing shortages significantly greater than are being experienced elsewhere in the nation to meet regional imbalances due to weather variation, seasonal demand, or other circumstances beyond their control. Such action may be accomplished without prior approval from the Administrator, FEA, but must be reported immediately after the adjustment occurs to the National FEA, the appropriate regional FEA, and the State Office of any State within a region or area directly affected by the reduction or increase. Redistribution involving reduction of product volumes greater than five (5) percent from any State shall require approval from the Administrator, FEA, prior to any action by any refiner or importer. The adjustment provided for in this section shall not be cumulative. Allocation fractions for a region or area which are reduced by such a reduction of an allocated product shall be returned to prereduction levels as soon as practicable.

(c) Shifts made pursuant to paragraph (b) of this section shall be employed solely to effect a better regional distribution of allocated products and shall not discriminate against branded or nonbranded independent marketers, independent refiners, or small refiners.

(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 purchasers. 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.

§ 211.15 State offices of petroleum allocation.

(a) Any state may apply to the National Office of the FEA, to create a State Office of Petroleum Allocation within the State.

(b) Upon certification by the FEA such State Office of Petroleum Allocation will be delegated authority to administer the state set-aside program, to provide assistance in obtaining adjustments specified in § 211.13 and such other authorities specified in this part, or in orders issued by the FEA.

§ 211.17 State set-aside.

(a) *Scope and purpose.* A state set-aside system shall be established for propane, middle distillate, motor gasoline and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). Authority may be delegated to a State office to administer the state set-aside for that State. The state set-aside shall be utilized by a State office to meet hardship and emergency requirements of all wholesale purchaser-consumers and end-users within that state from the state set-aside volumes, including wholesale purchaser-consumers and end-users which are part of any governmental organization. To facilitate relief of the hardship and emergency requirements of wholesale purchaser-consumers and end-users, the State office may direct that a wholesale purchaser-reseller be supplied from the state set-aside in order that the wholesale purchaser-reseller can supply the wholesale purchaser-consumers and end-users experiencing the hardship or emergency.

(b) *State set-aside volume.* (1) A prime supplier shall inform each appropriate State office and each appropriate regional FEA office monthly in accordance with § 211.222(b) by each product subject to State set-aside, of the estimated volume of each product to be sold into that State for consumption within that State.

(2) The FEA shall determine the state set-aside percentage level for each product. The initial percentage levels for the state set-aside system are specified in appropriate subparts of this part. The FEA will publish any changes in these percentages.

(3) The set-aside volume available to a State office for a particular month shall be the sum of the amounts calculated by multiplying the state set-aside percentage level by each prime supplier's estimated portion of its total supply for that month which will be sold into that State's distribution system for consumption within the State.

(4) The state set-aside for a particular month cannot be accumulated or deferred; it shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.

(c) *State representative.* Each supplier shall designate a representative within each State in which the supplier is a prime supplier to act for and in behalf of the prime supplier with respect to state set-aside petitions and assignments from the state set-aside to be supplied by that prime supplier. Each prime supplier for a State shall designate its representative for that State and shall notify in writing the appropriate State office of such designation by June 15, 1974. The designated representative for a State shall be a firm which maintains a place of business within the State. The State office shall to the maximum extent possible consult with a prime supplier's representative prior to issuing any authorizing document affecting state set-aside volumes to be provided by the prime supplier.

(d) *State action.* (1) All hardship and emergency applications for assignment from the State set-aside system and appeals thereof shall be filed with and resolved by the appropriate State Office in accordance with Subpart Q of Part 205 of this chapter. Applicants shall identify their existing supplier, or if they do not have a supplier, at least two suppliers which the applicant has contacted and which could provide the allocated product. The final decision of a State Office as embodied in the order issued at the completion of any appellate proceeding regarding an application for assignment due to hardship or emergency requirements shall be subject to judicial

review as prescribed by Section 211 of the Economic Stabilization Act of 1970.

(2) If a State Office approves a hardship or emergency application, it shall assign a prime supplier and amount from the state set-aside to the applicant. To determine an appropriate prime supplier, the State Office may coordinate with the State representatives of the prime suppliers.

(e) *Authorizing document.* The State Office shall issue to an applicant granted an assignment a document authorizing such assignment. A copy of the authorizing document (or a summary) shall also be provided by the State Office to the designated State representative of the prime supplier assigned to the applicant. An authorizing document issued by the State Office pursuant to this section is effective upon issuance and represents a call on the prime supplier's set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month. An authorizing document not presented to either the prime supplier or a designated local distributor of the prime supplier within ten (10) days of issuance shall expire after that time.

(f) *Supplier's responsibilities.* Suppliers shall provide the assigned amount of an allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the state set-aside assignment has been made. Wholesale purchaser-resellers of prime suppliers shall, as non-prime suppliers, honor such authorizing documents upon presentation, and shall not delay deliveries required by the authorizing document while confirming such deliveries with the prime supplier. Any non-prime supplier which provides an allocated product pursuant to an authorizing document shall in turn receive from its supplier an equivalent volume of the allocated product which shall not be considered part of its allocation entitlement otherwise authorized by this part.

(g) *Prime suppliers.* All prime suppliers shall supply products from their state set-aside volume each month, as directed by the State office, not to exceed the total state set-aside volume for each product for that month. That portion of a prime supplier's state set-aside volume for a particular month which is not allocated by the State office during that month or which is not subject to an authorizing document issued no later than the last day of that month shall become a part of the prime supplier's total supply for the subsequent month and shall be distributed according to the allocation procedures set forth in this part.

(h) *Release of State set-aside.* (1) At any time during the month, the State office may order the release of part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(2) From time to time, the State office may designate certain geographical areas within the State as suffering from an intra-State supply imbalance. At any time during the month, the State office may order some or all of the prime suppliers with purchasers within such geographical areas to release part or all of their set-aside volume through their normal distribution systems to increase the allocations of all of the supplier's purchasers located within such areas.

(3) Orders issued pursuant to this paragraph shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Such orders shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

§ 211.21 Energy conservation.

To promote the goal of increased energy conservation, every wholesale purchaser or end-user receiving an allocation pursuant to the operation of this part shall certify that it has an energy conservation program in effect. Every end-user or wholesale purchaser-consumer whose allocation level is one hundred (100) percent of current requirements for any allocated product shall make a similar certification to its supplier.

§ 211.22 Administrative actions.

(a) *Inventories of crude oil and allocated products.* No refiner, importer, wholesale purchaser or end-user shall accumulate inventories of any crude oil or allocated product which exceed customary inventories maintained by that refiner, importer, wholesale purchaser or end-user in the conduct of its normal business practices unless otherwise directed by the FEA. Normal inventory practices shall be observed in determining allocable supplies of crude oil or allocated products in each period which corresponds to a base period. The FEA may review inventory practices and direct an increase or decrease in inventories if:

(1) The inventory practices employed are inconsistent with the provisions of this part;

(2) The inventory practices circumvent or otherwise violate other provisions of this part; or

(3) The FEA determines that an adjustment is necessary in order to allocate crude oil or allocated product supplies consistent with the objectives of the Mandatory Petroleum Allocation Program.

(b) *Adjustment to calculations.* Upon a finding that incorrect or otherwise inaccurate data have been used in calculating the allocation of any crude oil or allocated product subject to this part, the FEA may take appropriate action to adjust any such figures or data and any allocations based thereon to account for the error.

(c) *Quality characteristics.* The FEA may specify quality characteristics, such as sulphur content, of crude oil or any other allocated product.

§ 211.23 Normal business practices.

Nothing in this part is intended to exclude or supersede exchange or borrow/payback operations which are normal operating procedures provided these procedures are not used to circumvent the intent of this part.

§ 211.25 Supplier substitution.

(a) 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.

(b) In order to alleviate imbalances, suppliers may make normal business exchanges among themselves.

(c) To accommodate seasonal and other fluctuations in both supply and demand, such as requirements for agricultural production, suppliers and wholesale purchasers may agree between and among themselves either to borrow on future allocations or to defer current allocations or both 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.

§ 211.26 Department of Defense allocations.

(a) Allocations of crude oil or any allocated product to the Department of Defense (except for housekeeping requirements) shall be supplied at an allocation level of one hundred (100) percent of current requirements without being subject to an allocation fraction.

(b) The Department of Defense shall report to the President on a semi-annual basis a bulk product purchase program, and, on an annual basis, the purchase program needed in support of the "Posts, Camps, and Stations", "Into-Plane Refueling" (at commercial/civil airports), "Marine Bunkers", and "Lubes, Greases and Specialty Products" programs. These programs shall take effect only following the approval of the President. Whenever necessary to assure that the Department of Defense is fully supplied with its current requirements, the Administrator, FEA, shall assign to suppliers the volumes of crude oil and allocated products to be allocated to the Department of Defense.

(c) The Defense Fuel Supply Center, which serves as the sole authorized procurement agency for the Department of Defense, shall be deemed a wholesale purchaser for purposes of this part.

(d) All Department of Defense requirements shall be consistent with ambient indoor temperature adjustments and other fuel saving measures taken in promoting the goal of increased energy conservation.

§ 211.27 Construction industry.

Any firm (which may be a wholesale purchaser-consumer or end-user) plan-

ning to award a construction contract to contractors may apply as a new purchaser to a supplier or FEA as provided in § 211.12(e) and (f) to be assigned a base period use or supplier as appropriate. The base period use shall be estimated as the minimum amount sufficient to complete the proposed contract. Notwithstanding the provisions of § 211.12 (f), if an end-user planning to award a construction contract cannot locate a supplier or if the supplier and the end-user are unable to agree upon the base period use needed to complete the construction project, the end-user may apply to the appropriate FEA Regional Office, at the address provided in § 205.12, for assignment of a supplier and/or for a base period use in accordance with Subpart C of Part 205 of this chapter. Upon awarding the contract to a contractor, the assigned base period use shall be transferred to the contractor by the FEA, unless the contractor or its subcontractors have a base period use with suppliers in the area of the construction sufficient to perform the contract. If the contractor or its subcontractors have a base period use with suppliers in the area of the construction sufficient to perform the contract, or if construction plans are terminated, FEA shall be notified by the firm and the contractor and any base period use assigned for the construction shall terminate. To the extent that the base period use established for the construction is found to exceed construction requirements or the contractor or its subcontractor has a base period use with suppliers in the area of the construction partially sufficient to perform the contract, the firm and the contractor shall not accept any duplicating quantities and shall notify FEA immediately. Upon such notification, the FEA will adjust the base period use accordingly. Contractors and suppliers are encouraged to arrange for exchange agreements between suppliers.

§ 211.28 Price.

The pricing provisions applicable to this part are provided in Part 212 of this chapter including provisions which allow any importer which imports an allocated product solely for his own end-use, and not for resale, to charge a margin for any volumes of that imported product it is required to sell under the provisions of this part.

§ 211.29 Synthetic natural gas production.

Notwithstanding any inconsistent provision of §§ 211.12 and 211.13, a firm which purchases crude oil and allocated products for use as feedstock in a synthetic natural gas plant which has requirements that 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 in accordance with Subparts B or C, respectively, of Part 205 of this chapter. Firms which plan to construct new synthetic natural gas plants after May 1, 1974 or enter into a plant expansion program should apply to the FEA for assignment of a supplier and a base period volume prior to commencing construction of such facilities. The FEA shall, in granting or denying such adjustment or assignment, consider along with the criteria listed in §§ 205.25(b) and 205.35(b), the following factors:

(a) The degree to which the wholesale purchaser has curtailed supplies of natural gas and synthetic natural gas;

(b) Projected synthetic natural gas consumption and projected market growth over the period of allocation;

(c) The source and volume of anticipated feedstocks; and

(d) Attempts by the firm to obtain alternative supplies of gas and/or feedstock sources.

Appendix—Special Rule No. 1

1. *Scope.* This special rule applies to all synthetic natural gas plants petitioning the FEA for assignment of a supplier and a base period volume pursuant to § 211.29.

2. *Purpose.* This special rule amplifies the consideration which shall be given the criteria listed in § 211.29 in granting or denying a petition for assignment or adjustment under that provision.

3. *Definitions.* "Interruptible service" means a service from schedules or contracts under which the seller is not expressly obligated to deliver specific volumes within a given time period, and which anticipates and permits interuption on short notice, or service under schedules or contracts which expressly or impliedly require installation of alternate fuel capability.

"Groundbreaking" means the on site expenditure of at least five million dollars on the actual physical construction of an SNG facility prior to May 1, 1974.

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 or adjustment of 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. To the extent that such petition calls for an assignment or adjustment of volumes greater than those represented by existing contracts, the FEA shall consider such petition in the manner set forth in paragraph 5 of this rule.

5. *Allocation of feedstocks other than naphtha to synthetic natural gas plants where groundbreaking has occurred.* The FEA shall, in granting or denying a petition for assignment or adjustment under § 211.29, consider, in addition to the criteria listed in § 211.29, the following factors:

(a) The availability, including source, volume, and interchangeability, of SNG feedstocks;

(b) The degree to which an SNG manufacturer and/or its customers have curtailed supplies of natural gas to their interruptible customers which have alternate fuel capability on a continuing basis;

(c) The existence, character, and effect of any natural gas curtailment plan affecting the market area served by an SNG manufacturer and/or its customers;

(d) The availability of alternative sources of gas including imports of liquefied natural gas (LNG), imported methanol, and coal gasification, and the extent to which a manufacturer has attempted to use such sources;

(e) The thermal efficiency, taking both distribution and the reforming process into account, of SNG manufacture as compared to other likely energy production alternatives in the same market area;

(f) The economic impact upon the prospective SNG manufacturer of the FEA's decision in granting or denying the petition, including the amount of capital expenditures to date and the effect of a given decision on the manufacturer's capital rate base;

(g) The impact on the cost of energy to consumers in a particular market area, including the feasibility or existence of a rate schedule providing for incremental pricing of synthetic natural gas;

(h) The projected feedstock capacity of the facility and the projected growth of the energy market served by the facility over the period of allocation;

(i) The effect of allocation on demand for scarce petroleum products in a particular market area with due regard for the relative priority, as set forth in the relevant allocation subpart, of competing uses;

(j) The impact of an allocation decision on market area employment opportunities; and

(k) The environmental impact of allocation options within a market area.

6. *Allocation of feedstocks to synthetic natural gas plants where groundbreaking did not occur prior to May 1, 1974.* The FEA shall, in granting or denying a petition for assignment or adjustment under § 211.29, consider, in addition to the criteria listed in § 211.29, the following factors:

(a) The availability, including source, volume, and interchangeability, of SNG feedstocks;

(b) The degree to which an SNG manufacturer and/or its customers have curtailed supplies of natural gas to their interruptible customers which have alternate fuel capability on a continuing basis;

(c) The existence, character, and effect of any natural gas curtailment plan affecting the market area served by an SNG manufacturer and/or its customers;

(d) The availability of alternative sources of gas including imports of liquified natural gas (LNG), imported methanol, and coal gasification, and the extent to which a manufacturer has attempted to use such sources;

(e) The thermal efficiency, taking both distribution and the reforming process into account, of SNG manufacture as compared to other likely energy production alternatives in the same market area;

(f) The impact on the cost of energy to consumers in a particular market area, including the feasibility or existence of a rate schedule providing for incremental pricing of synthetic natural gas;

(g) The projected feedstock capacity of the facility and the projected growth of the energy market served by the facility over the period of allocation;

(h) The effect of allocation on demand for scarce petroleum products in a particular market area with due regard for the relative priority, as set forth in the relevant allocation subpart, of competing uses;

(i) The impact of an allocation decision on market area employment opportunities; and

(j) The environmental impact of allocation options within a market area.

Subpart B—Definitions

§ 211.51 General definitions.

"Adjusted base period volume" means base period volume as adjusted pursuant to § 211.13 or as provided otherwise in Subparts D through K.

"Agricultural production" means all the activities classified under the industry code numbers specified in paragraph (a) below as set forth in the Standard

Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph (b) which are excluded:

(a) *Activities included.* (1) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph (b) of this section.

(2) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph (b) below; and

(3) All the following other industry code numbers:

1474 Potash, Soda and Borate Minerals (Potash mining only);
1475 Phosphate Rock;
2141 Tobacco Stemming and Redrying;
2411 Logging Camps and Logging Contractors;
2421 Sawmills and Planing Mills;
2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);
2873 Nitrogenous Fertilizers;
2874 Phosphatic Fertilizers;
2875 Fertilizers, Mixing Only;
2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;
4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);
4971 Irrigation Systems (for farm use); and
5462 Retail Bakeries, Baking and Selling.

(b) *Activities excluded.* (1) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);
0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);
0742 Veterinary Services for Animal Specialties;
0752 Animal Specialty Services;
0781 Landscape Counseling and Planning;
0782 Lawn and Garden Services; and
0849 Gathering of Forest Products, Not Elsewhere Classified.

(2) All the following industry code numbers, otherwise listed under Major Group 20, Food and Kindred Products, of Divisiion D, Manufacturing, are excluded from the definition:

2047 Dog, Cat and Other Pet Food;
2067 Chewing Gum; and
2085 Distilled, Rectified and Blended Liquors.

"Allocable supply" means allocable supply as defined in § 211.10(b)(1).

"Allocated products" means residual fuel oil and refined petroleum products.

"Allocation fraction" means allocation fraction as defined in § 211.10(b).

"Allocation level" means allocation level as defined in § 211.10(b)(2)(iv).

"Allocation requirement" means allocation requirement as defined in § 211.10(b)(2)(iii).

"API" means American Petroleum Institute.

"Asphalt" means asphalt as defined in ASTM standard D-288.

"ASTM" means American Society for Testing Materials.

"Assignment" means an action taken by the FEA, or an authorized State official, designating that an authorized purchaser be supplied at an allocation entitlement level determined by the FEA or authorized State official, by a specified supplier.

"Base period" means the historical period designated in Subparts C through K of this part.

"Base period volume" means base period volume as defined in § 211.10(b)(2)(ii).

"Bonded fuels" means those fuels produced outside the customs limits of the United States, held in bond under continuous United States customs custody in accordance with Treasury Department Regulations, and destined for use outside of the United States, its territories or possessions.

"Branded independent marketer" means a firm which is engaged in the marketing or distributing of refined petroleum products pursuant to—

(a) An agreement or contract with a refiner (or a firm which controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such firm), or

(b) An agreement or contract under which any such firm engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or firm which controls, is controlled by, or is under common control with such refiner), but which is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in paragraph (a) or (b) of this definition), and which does not control such refiner.

"Coker feedstock" means any crude oil or unfinished oil, as defined by Oil Import Regulation 1, Revision 5 (32A CFR OI Reg. 1.22(f)-(h)) which is used as a feedstock to any of the various types of process units in a refinery known as "cokers."

"Commercial use" means usage by those purchasers engaged primarily in the sale of goods or services and for uses other than those involving industrial activities and electrical generation.

"Complaint" means an allegation, supported by relevant facts, of a violation of the regulations or an order issued thereunder.

"Crude oil" means a mixture of liquid hydrocarbons including lease condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

"Current requirements" means the supply of an allocated product needed by an end-user or wholesale purchaser-consumer to meet its present supply requirements for a particular use of that product, but does not include any amounts which the end-user or wholesale purchaser-consumer (a) purchases or obtains for resale, (b) accumulates as an inventory in excess of that purchaser's customary inventory maintained in the conduct of its normal business practices, or (c) uses in excess of the supply necessary to meet present supply requirements as constrained by the implementation of the energy conservation program required in § 211.21.

"Degree-day formula" means any one of the various systems in use by retailers to provide wholesale purchaser-consumers or end-users with automatic delivery service of an allocated product for space-heating.

"Degrees API" or "°API" is the hydrometer scale established by the American Petroleum Institute and used to measure the specific gravity of liquids.

"Emergency Services" means law enforcement, fire fighting, and emergency medical services.

"End-user" means any firm which is an ultimate consumer of an allocated product other than a wholesale purchaser-consumer.

"Energy production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels, and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods. Excluded from this definition are synthetic natural gas manufacturing, electrical generation whose power source is petroleum based and gasoline blending and manufacturing.

"Ethane" means a hydrocarbon whose chemical composition is C_2H_6.

"FEA" means the Federal Energy Administration (the successor to the Federal Energy Office), the National or Regional Office thereof, or the delegate of either.

"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:

(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.

"Gas processing plant" means a facility which recovers ethane, propane, butane, and/or other natural gas products by a process of absorption, adsorption, compression, refrigeration cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a reservoir.

"Gasoline blending and manufacturing" means the use of an allocated prod-

uct in a process in which the product is either physically mixed or chemically converted to produce aviation or motor gasoline, or components thereof.

"Importer" means any firm (excluding the Department of Defense) that owns at the first place of storage any allocated product or crude oil brought into the United States.

"Independent marketer" means either a branded independent marketer or a non-branded independent marketer.

"Independent refiner" means a refiner which (a) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973, more than 70 percent of its refinery input of domestic crude oil or 70 percent of its refinery input of domestic and imported crude oil from producers which do not control, are not controlled by, and are not under common control with such refiner, and (b) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by it through branded independent marketers or non-branded independent marketers.

"Industrial use" means usage by those firms primarily engaged in a process which creates or changes raw or unfinished materials into another form or product.

"Interruptible customers" means those purchasers receiving an allocated product pursuant to a contract which can be abrogated unilaterally by the supplier.

"LPG" means liquefied petroleum gas, and includes propane and butane, and propane/butane mixes, but not ethane.

"Local governmental unit" means any county, city, or other governmental subdivision of a State, and any special purpose district.

"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, and lubricating greases which are solid semi-fluid products comprising a dispersion of a thickening agent in a liquid lubricant, wherein said lubricating oils and lubricating greases are comprised of greater than 10 percent of refined petroleum products by weight.

"Medical and nursing buildings" means buildings that house medical, dental or nursing activities including, but not limited to those listed in Appendix I of 6 CFR 300.18–300.19, the use of clinics, hospitals, nursing homes and other facilities.

"Middle distillate" means any derivatives of petroleum including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371° and 700° F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV–F–815C or ASTM D–396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes and process oil.

"Modified allocation level" means an allocation level used in accordance with the provisions of § 211.10(g) when a supplier's allocation fraction exceeds one (1.0).

"Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° to 390° F and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties.

"Natural gas" means natural gas as defined by the Federal Power Commission.

"Nonbranded independent marketer" means a firm which is engaged in the marketing or distribution of refined petroleum products, but which (a) is not a refiner, (b) is not a firm which controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and (c) is not a branded independent marketer.

"PAD District" or "District" means any of the Petroleum Administration for Defense (PAD) Districts.

"Passenger transportation services" means (a) surface, including water and rail facilities and services for carrying passengers whether publicly or privately owned, including tour and charter buses and taxicabs which serve the general public; and (b) bus transportation of pupils to and from school and school sponsored activities.

"Peak shaving" means the use of propane or butane mixtures to supplement supplies of pipeline gas for distribution by gas utilities during periods of high demand.

"Petrochemical feedstock use" means usage of crude oil, residual fuel oil, and refined petroleum products for processing in a petrochemical plant.

"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 thirty (30) percent of the initial petrochemical feedstock fed to the plant under consideration.

"Petrochemicals" are the organic chemicals defined as petrochemicals in section 25A of Oil Import Regulation 1 (Revision 5), 32A CFR 0I Reg. 1.25A), plus any other analogous organic chemicals similarly derived.

"Petroleum coke" means a solid residue, the final product of the condensation process in cracking, consisting mainly of highly polycyclic aromatic hydrocarbons very poor in hydrogen, including petroleum coke which when calcinated yields almost pure carbon or artificial graphite suitable for production of carbon or graphite electrodes, structural graphite, motor brushes, dry cells, etc. It includes both forms listed below:

(a) *Marketable.* Those grades of coke produced in delayed or fluid cokers which may be recovered as relatively pure carbon. This "green" coke may be further purified by calcinating or may be sold in the "green" state.

(b) *Catalyst.* In many catalytic operations (i.e., catalytic cracking) carbon is deposited on the catalyst, deactivating the catalyst. The catalyst is reactivated by burning off the carbon, using it as a fuel in the refinery process. This carbon or coke is not recoverable in a concentrated form. For statistical purposes, the amount of catalyst coke may be estimated by using an average weight percent (1.5 percent—8.5 percent) of charging stock.

"Petroleum wax" means petroleum wax as defined in ASTM standard D–288.

"Prime supplier" means the supplier, or producer as defined in Subpart D, which makes the first sale of any allocated product subject to the state set-aside into the state distribution system for consumption within the state.

"Purchaser" means a wholesale purchaser, an end-user, or both.

"Refined petroleum product" means gasoline, kerosene, middle distillate (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

"Refineries" means those industrial plants, regardless of capacity, processing crude oil feedstock and manufacturing refined petroleum products, except when such plant is a petrochemical plant.

"Refiners" means those firms that own, operate or control the operations of one or more refineries.

"Refinery gas" means a form of gas normally produced in the refining of crude oil which is predominantly used for refinery fuel.

"Region" means one of the ten regions served by FEA's regional offices.

"Regional office" means a regional office of the FEA. The regional offices are located in Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Kansas City, Missouri; Denver, Colorado; San Francisco, California; and Seattle, Washington.

"Residential use" means direct usage in a residential dwelling or church or other place of worship for space heating, refrigeration, cooking, water heating, and other residential uses.

"Residual fuel oil" means the fuel oil commonly known as: (a) No. 4, No. 5 and No. 6 fuel oils; (b) Bunker C; (c) Navy Special Fuel Oil; (d) crude oil when burned directly as a fuel; and all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D–86 standard distillation test.

"Retail sales outlet" means a site on which a supplier maintains an on-going business of selling any allocated product to end-users or wholesale purchaser-consumers.

"Road oil" means any heavy petroleum oil, including residual asphaltic oils, used as a dust palliative and surface treat-

ment of roads and highways. It is generally produced in six grades from 0, the most liquid, to 5, the most viscous.

"Sanction" means the penalties as described in Subpart F of Part 210 of this chapter.

"Sanitation services" means the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities during emergency conditions. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

"School" means an educational institution up through the secondary level that maintains a regular facility and curriculum and has a regularly organized body of students, in attendance at the place where its educational activities are regularly carried on. It does not include post-secondary education facilities.

"Shortfall" means the difference between supply and demand for crude oil or an allocated product during any period.

"Small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any firm which controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

"Social service agency use" means usage by private, non-profit social service agencies which operate programs for provision of essential health and welfare services.

"State" means each of the 50 States, the District of Columbia, Puerto Rico, possessions and territories of the United States, other than the Panama Canal Zone.

"State set-aside" means, with respect to a particular prime supplier, the amount of an allocated product which is made available from the total supply of a prime supplier pursuant to § 211.17 for utilization by a State to resolve emergencies and hardships due to fuel shortages. The state set-aside amount for a particular month and state is calculated by multiplying the state set-aside percentage level by the prime supplier's estimated portion of its total supply for that month which will be sold into that state's distribution system for consumption within the state. The initial state set-aside percentage level for an allocated product is specified in the appropriate subpart for that product but is subject to change by notice of the FEA.

"State office" means the State Petroleum Allocation Office certified by FEA pursuant to § 211.15.

"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, natural gas processing plants or fractionating plants, importers, resellers, jobbers, and retailers.

"Supply obligation" means supply obligation as defined in § 211.10(b)(2).

"Synthetic natural gas plant" means a facility producing synthetic natural gas which results from the manufacture, conversion or reforming of petroleum hydrocarbons, and which may be easily substituted for or interchanged with pipeline quality natural gas.

"Telecommunications services" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, during periods of substantial disruption of normal service.

"Total supply" means the sum of a supplier's estimated production, including amounts received under processing agreements, imports, purchases and any reduction in inventory of an allocated product made pursuant to § 211.22 except as otherwise ordered by FEA. Any existing inventory, or production, importation or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 shall not be included in the total supply of that product.

"Utility" means a facility that generates electricity, by any means, and sells it to the public.

"Wholesale purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer, or both.

"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 at 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 completed 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.

"Wholesale purchaser-reseller" means 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.

Subpart C—Crude Oil and Refinery Yield Control

§ 211.61 Scope.

(a) This subpart is applicable to all producers, refiners and others who purchase or obtain crude oil for resale, transfer or use.

(b) This subpart provides for the mandatory allocation of crude oil produced in or imported into the United States other than the first sale of crude oil exempted pursuant to the provisions of § 210.32 of this chapter.

(c) This subpart also provides a program for refinery yield control.

§ 211.62 Definitions.

For purposes of this subpart—

"Allocation quarter" means a consecutive three month calendar period which commences one month prior to the start of each calendar quarter. The first allocation quarter shall be the three-month period from June 1, 1974 through August 31, 1974.

"Crude oil runs to stills" means, in the case of a refiner other than a petrochemical producer, the total number of barrels of crude oil input to distillation units processed by a refiner and measured in accordance with Bureau of Mines Form 6–1300–M and, in the case of a petrochemical producer, the total number of barrels of crude oil input to processing units for conversion into petrochemicals.

"Future refining capacity" means, for each refiner, the sum of the capacity of its refineries not included within the definitions of refining capacity and new refining capacity and operated continuously in the normal course of such refiner's business. Future refining capacity shall be certified by the FEA.

"Independent refiner" means a refiner which (a) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973, more than 70 percent of its refinery input of domestic crude oil (or 70 percent of its refinery input of domestic and imported crude oil) from producers which do not control, are not controlled by, and are not under common control with, such refiner, and (b) marketed or distributed in such quarter and continues to market and distribute a substantial volume of gasoline refined by it through independent marketers.

"New refining capacity" means, for each refiner, the sum of the capacity of its refineries not included within the definition of refining capacity and operated continuously in the normal course of such refiner's business, a significant portion of the construction of which has been completed prior to May 1, 1974. New refining capacity shall either be certified by the FEA or be the subject of a starter allocation under Section 25 of the Oil Import Regulations (32A CFR OI Reg. 1–25).

"Petrochemical producer" means a person who manufactures petrochemicals in a petrochemical plant by processing petrochemical feedstock.

"Processing agreement" means any agreement pursuant to which an owner of crude oil agrees to have that crude oil processed or refined by another person and retains ownership in some or all of the petroleum products so processed or refined from the crude oil.

"Refinery" means an industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing refined petroleum products, residual fuel oil or petrochemicals, and shall include a petrochemical plant.

"Refiner" means a firm which owns, operates or controls the operations of one or more refineries.

"Refiner-buyer" means any small refiner or independent refiner.

"Refiner-seller" means a refiner which is not a small refiner or an independent refiner as defined in this section, except that a refiner which is not a small refiner or an independent refiner, and the refinery capacity of which consists solely of new refining capacity or future refining capacity, shall not be classified as a refiner-seller.

"Refinery capacity" means, for each refiner, the sum of the refining capacity, new refining capacity and future refining capacity of its refineries.

"Refining capacity" means, for each refinery, the capacity reported to the Bureau of Mines as of January 1, 1973, as certified by the FEA. Any capacity of a refinery which has ceased to be operated continuously in the normal course of business since the January 1973 report to the Bureau of Mines shall be deducted from refining capacity.

"Small refiner" means a refiner, the sum of the capacity of the refineries of which (including the capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day. A refiner which is a small refiner as of January 1, 1974 shall not cease to be classified as such by virtue of new refining capacity operational after January 1, 1974 or future refining capacity which results in a refinery capacity for such refiner in excess of 175,000 barrels per day.

§ 211.63 Supplier/purchaser relationships.

(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; (2) the provisions of this paragraph do not apply to the first sale of crude oil pursuant to § 210.32 of this chapter; and (3) the provisions of this paragraph shall not apply to the seller of any new crude petroleum or released crude petroleum, as defined in Part 212, if the present purchaser of such crude petroleum refuses, after notice by the seller, to meet any bona fide offer made by another purchaser to buy such crude petroleum at a lawful price above the price paid by the present purchaser.

(b) New crude petroleum and released crude petroleum produced and sold from a property from which new crude petroleum and released crude petroleum were not produced and sold in December, 1973, may be sold in a first sale to any person. Once a first sale of new crude petroleum from a property is made, the seller of such new crude petroleum and released crude petroleum and released crude petroleum shall continue to sell to that purchaser as though a December 1, 1973 supplier/purchaser relationship were established under the provisions of paragraph (a) of this section, subject to the provisions of paragraph (a) (1) and (3) of this section.

§ 211.64 Transactions under prior program.

(a) Any agreement for the sale or purchase of crude oil entered into as a result of the provisions of this subpart as in effect immediately prior to May 10, 1974, shall be fully performed notwithstanding any provision of this subpart as in effect on May 10, 1974.

(b) Special Rule No. 1 issued under the provisions of this subpart as in effect immediately prior to May 10, 1974, shall remain in full force and effect.

§ 211.65 Method of allocation.

(a) *Purchase opportunities of refiner-buyers.* (1) In each allocation quarter, each refiner-buyer shall be entitled to purchase an amount of crude oil equal to one quarter of the volume of crude oil runs to stills of such refiner-buyer for the year 1972 less the volume of crude oil runs to stills of such refiner-buyer for the period February through April, 1974, as adjusted under the provisions of this section. If the estimated aggregate amount of crude oil to be produced in and imported into the United States in any allocation quarter is less than the aggregate amount of crude oil produced in and imported into the United States in the corresponding period of 1972, refiner-buyers for that allocation quarter shall have the amount of crude oil that they would otherwise be entitled to purchase reduced on a pro rata basis.

(2) A refiner-buyer's refinery capacity for the purposes of paragraphs (a) (6) and (c) (2) of this section and volume of crude oil runs to stills for the year 1972 and for the period February through April, 1974 shall (i) include (A) the volume of crude oil processed by another refiner for that refiner-buyer pursuant to a processing agreement and (B) the volume of crude oil processed by that refiner-buyer for a person other than a refiner pursuant to a processing agreement, and (ii) exclude the volume of crude oil processed by that refiner-buyer for another refiner pursuant to a processing agreement.

(3) A refiner-buyer's volume of crude oil runs to stills for the period February through April, 1974 shall exclude (i) the volume of crude oil runs to stills in such period attributable to crude oil purchased by that refiner-buyer in such period pursuant to the provisions of this subpart and (ii) the volume of crude oil runs to stills in such period attributable to imports of crude oil in such period in excess of the reported estimate of crude oil imports of that refiner-buyer for such period.

(4) Upon application by a refiner-buyer prior to May 20, 1974, for purposes of the calculations in paragraph (a) (1) of this section, the FEA may adjust such refiner-buyer's reported volume of crude oil runs to stills for the year 1972 to compensate for reductions in volume due to unusual or nonrecurring operating conditions. The FEA may at any time, for purposes of such calculations and without application by the refiner-buyer concerned, adjust the volume of crude oil runs to stills of a refiner-buyer for the year 1972 or for the period February through April, 1974, if it determines that such refiner-buyer's reported volume of crude oil runs to stills for such year or period is inaccurate or not representative of normal operating conditions.

(5) For purposes of the calculations in paragraph (a) (1) of this section, the volume of crude oil runs to stills of a refiner-buyer in 1972 shall be (i) increased by the volume of crude oil necessary to operate any new refining capacity of that refiner-buyer at the supply to capacity ratio at which all refineries of that refiner-buyer operated in the year 1972, taking into consideration crude oil supplies (in excess of supplies included in its February through April, 1974 crude oil runs to stills) available to that refiner-buyer for such new capacity, and (ii) decreased by the volume of crude oil runs to stills of such refiner-buyer attributable to any refining capacity which has ceased to be operated continuously in the normal course of business since December 31, 1972.

(6) No allocation shall be made under this subpart which will result in crude oil supplies in excess of 100 percent of refinery capacity to any refiner-buyer.

(7) Each refiner-buyer shall process in its refineries, or have processed for its account by another refiner, any crude oil purchased under this subpart in, or within a reasonable time following, the allocation quarter in which such crude oil was so purchased.

(b) *Future refining capacity.* (1) Notwithstanding any provisions of paragraph (a) of this section to the contrary, future refining capacity of a refiner-buyer shall be eligible to receive allocations of crude oil, as hereinafter provided. Each refiner-buyer that wishes to receive an allocation under this paragraph (b) shall apply to FEA in accordance with the procedures established in Subpart G of Part 205 of this chapter. No such application shall be made until such future capacity will become operational in the allocation quarter for which the allocation is sought. In no event shall any such application be made less than 60 or more than 90 days prior to the commencement of such allocation quarter. The FEA may specify a fixed or varying allocation amount or amounts of crude oil for such future refining capacity, and in so doing shall consider the following factors:

(i) The source and volume of anticipated crude oil supplies for such future refining capacity;

(ii) the efforts made by that refiner-buyer to obtain or locate crude oil supplies for such future refining capacity;

(iii) the projected ability of all refiner-sellers to obtain supplies of crude oil for their refinery capacity;

(iv) the economic feasibility of operating such future refining capacity absent any allocations;

(v) the extent to which such future refining capacity is designed to implement the national policies relating to protection of the environment; and

(vi) the extent to which such future refining capacity incorporates high conversion facilities and the patterns of product yield conform to the anticipated national requirements for refinery products.

(2) The FEA will endeavor to assure supplies to future refining capacity to enable such capacity to operate at the national supply to capacity ratio.

(c) *Computation of total allocation obligation.* (1) Prior to May 20, 1974, each refiner-buyer shall report to the FEA, as provided in § 211.66, its volume of crude oil runs to stills for the year 1972 and for the period February through April, 1974, which reported volume shall reflect the adjustments specified in paragraph (a) (2), (3), (4) and (5) of this section. The FEA will then compute the quantity of crude oil which each refiner-buyer will be eligible to purchase during an allocation quarter. The sum of the quantities of crude oil that all refiner-buyers are eligible to purchase for delivery during an allocation quarter shall be the total allocation obligation for refiner-sellers for such allocation quarter.

(2) The quantity of crude oil that a refiner-buyer shall be eligible to purchase under this subpart in an allocation quarter shall be reduced by the amount of crude oil available to that refiner-buyer in a prior allocation quarter that resulted in crude oil supplies in excess of 100 percent of that refiner-buyer's refinery capacity, except that such reduction based on crude oil supplies in any prior allocation quarter shall not be for an amount in excess of the volume of crude oil actually purchased by that refiner-buyer under this subpart in such prior allocation quarter.

(3) The purchase opportunity of each refiner-buyer which was classified as a refiner-seller in the period February through April, 1974 and did not sell its total required quantity of crude oil in such period pursuant to the buy/sell list published by the FEA shall be reduced by such unsold amount in the allocation quarter commencing June 1, 1974.

(4) The quantity of crude oil that a refiner-buyer shall be eligible to purchase under this subpart in the allocation quarter commencing June 1, 1974, shall be (i) reduced by the excess of the volume of domestic crude oil runs to stills of that refiner-buyer for the period February through April, 1974 over the reported estimated domestic crude oil runs to stills of that refiner-buyer for such period and (ii) increased by (A) the excess of such estimated domestic crude oil runs to stills for such period over the volume of its domestic crude oil runs to stills for such period, and (B) the excess of the reported estimates of imported crude oil runs to stills of that refiner-buyer for such period over the volume of its imported crude oil runs to stills for such period.

(d) *Refiner-sellers' sales obligations.* (1) Each refiner-seller shall offer for sale crude oil, directly or through exchange, to refiner-buyers. The quantity of crude oil that each refiner-seller shall be required to offer for sale to refiner-buyers during an allocation quarter shall be equal to that refiner-seller's fixed percentage share multiplied by the total allocation obligation for the particular allocation quarter, as adjusted in this paragraph (d). A refiner-seller's fixed percentage share is its proportionate share of the total refining capacity of all refiner-sellers as reported to the Bureau of Mines on January 1, 1973, as certified by the FEA. New refining capacity or future refining capacity shall not subject a refiner-seller to any increase in its fixed percentage share.

(2) The quantity of crude oil that a refiner-seller shall be required to offer for sale in the allocation quarter commencing June 1, 1974, shall be (i) increased by the excess of the volume of domestic crude oil runs to stills of that refiner-seller for the period February through April, 1974 over the reported estimated domestic crude oil runs to stills of that refiner-seller for such period and (ii) reduced by (A) the excess of such estimated domestic crude oil runs to stills for such period over the volume of its domestic crude oil runs to stills for such period, and (B) the excess of the reported estimates of imported crude oil runs to stills of that refiner-seller over the volume of its imported crude oil runs to stills for such period. For purposes of this paragraph (d) (2) a refiner-seller's crude oil runs to stills shall reflect the adjustments in paragraph (a) (2) of this section and include amounts sold and exclude amounts purchased under this subpart in the period February through April, 1974.

(3) In each allocation quarter, each refiner-seller that did not sell its total quantity of crude oil required to be offered for sale under this subpart in the prior allocation quarter or, in the case of the allocation quarter commencing June 1, 1974, the period February through April, 1974, shall first be required to offer for sale such unsold amount to refiner-buyers; *provided, however,* that such unsold amount in such prior allocation quarter or period shall constitute a sales obligation of a refiner-seller only for the allocation quarter immediately following such prior allocation quarter or period.

(4) In calculating the quantity of crude oil that each refiner-seller is required to offer for sale in an allocation quarter, the aggregate of the quantities of crude oil required to be sold under paragraph (d) (3) of this section shall be deducted from the total allocation obligation for such allocation quarter, and the balance shall be offered for sale by all refiner-sellers in accordance with their respective fixed percentage shares. Sales by a refiner-seller in an allocation quarter shall be deemed to be first in satisfaction of that refiner-seller's obligation under paragraph (d) (3) of this section, to the extent of such obligation, and next in satisfaction of that refiner-seller's fixed percentage share of such balance.

(5) For the allocation quarter commencing June 1, 1974, after calculation of the amount of each refiner-seller's fixed percentage share of the total allocation obligation less the quantities of crude oil required to be sold under paragraph (d) (3) of this section, the adjustments specified in paragraph (d) (2) of this section shall be made to such amount. To the extent that the aggregate of such adjusted obligations of all refiner-sellers either exceeds or is less than the total allocation obligation less such quantities under paragraph (d) (3) of this section, the adjusted obligation of each refiner-seller (exclusive of amounts required to be sold under paragraph (d) (3) of this section) shall be either reduced or increased, as the case may be, by its fixed percentage share of such excess or shortfall.

(e) *Buy-sell list.* On the first day of the allocation quarter commencing June 1, 1974, and 15 days prior to each subsequent allocation quarter, the FEA shall publish a notice for that allocation quarter listing the quantity of crude oil each refiner-buyer is eligible to purchase, the total allocation obligation for all refiner-sellers, the fixed percentage share for each refiner-seller and the quantity that each refiner-seller will be obligated to offer for sale to refiner-buyers. The commencement date for starting deliveries under sales agreements in an allocation quarter shall be 15 days after publication of the related notice. Any agreements for the sale or purchase of crude oil after such commencement date shall be retroactive to the starting delivery date. All deliveries must be completed or arranged for before the end of the allocation quarter.

(f) *Sale/purchase transaction report.* Within fifteen days of the publication of the notice under paragraph (e) of this section, each transaction made to comply with this program shall be reported by the buyer and seller to the FEA. This report shall identify the selling refiner and purchasing refiner-buyer and indicate the volumes of the crude oil sold or purchased.

(g) *Conditions of sale.* (1) The terms and conditions of each sale of crude oil, other than the prices, shall be consistent with normal business practices. The crude oil offered must be suitable for processing in and practical for delivery to the refiner-buyer.

(2) All crude oil transferred pursuant to this section shall be priced in accordance with the provisions of Part 212 of this chapter.

(3) Exchanges of crude oil may be utilized to comply with the purchase and sale provisions of this section.

(h) *Failure to negotiate transactions.* (1) Each refiner-buyer shall use its best effort to consummate the purchases of crude oil under this subpart from refiner-sellers prior to requesting assistance from the FEA. A refiner-buyer that is unable to negotiate a contract to purchase crude oil within 15 days of the publication of the notice specified in paragraph (e) of this section may request after the expiration of such 15 day period that the FEA direct one or more refiner-sellers to sell an acceptable type of crude oil to such refiner-buyer. A refiner-buyer that is unable to negotiate a contract to purchase

crude oil within 15 days of the publication of the notice specified in paragraph (e) of this section may request after the expiration of such 15 day period in accordance with the procedures established under Subpart G of Part 205 of this chapter, that the FEA direct one or more refiner-sellers to sell an acceptable type of crude oil to such refiner-buyer. Upon such request, the FEA may direct one or more refiner-sellers which have not sold their required allocation quarter quantity to sell crude oil to the refiner-buyer. If the refiner-buyer declines to purchase the crude oil specified by the FEA, the rights of that refiner-buyer to purchase that volume of crude oil are forfeited during that allocation quarter, provided that the refiner-seller or refiner-sellers have fully complied with all of the provisions of this section.

(2) Refiner-sellers which have not negotiated sales with refiner-buyers of the required volume of crude oil within fifteen days of the publication of the notice specified in paragraph (e) of this section shall notify the FEA. The FEA may then direct that refiner-seller to sell that volume to a refiner-buyer which has not obtained its total amount permitted under paragraph (a) of this section.

§ 211.66 Reporting requirements.

(a) All matters pertaining to the allocation of crude oil and the refinery yield control program shall be addressed to the FEA in accordance with § 205.12, unless otherwise provided.

(b) A monthly report shall be required from refiners on forms and instructions issued by the FEA as to crude oil runs and products produced.

(c) Initial report. By May 20, 1974 each refiner shall provide the FEA with a report showing the following:

(1) Its refining capacity (as defined in § 211.62).

(2) Any new refining capacity (as defined in § 211.62) of such refiner.

(3) The volume of the crude oil runs to stills of such refiner for the period February through April 1974, taking into account, and separately specifying the amount of, the adjustments provided for in § 211.65.

(4) The volume of the crude oil runs to stills of such refiner for the year 1972, taking into account, and separately specifying the amount of, the adjustments provided for in § 211.65.

(5) Estimated runs of all domestic and imported crude oil for the forthcoming allocation quarter including (i) the volume of crude oil processed by another refiner for that refiner pursuant to a processing agreement and crude oil processed by that refiner for a person other than a refiner pursuant to a processing agreement, and excluding (ii) the volume of crude oil which that refiner processes for another refiner pursuant to a processing agreement.

(6) Such other information as the FEA may request.

(d) *Quarterly report.* Thirty days (or such other period as may be specified by the FEA) prior to each allocation quarter commencing after August 31, 1974, each refiner shall file with the FEA a report showing the following:

(1) The volume of crude oil runs to stills of such refiner for the allocation quarter or period preceding the current allocation quarter, taking into account, and specifying the amount of, the adjustments provided for in § 211.65(a)(2).

(2) The estimated volume of crude oil runs to stills for the forthcoming allocation quarter, taking into account, and specifying the amount of, the adjustments provided for in § 211.65(a)(2).

(3) Any change in refinery capacity since the previous report.

(4) Such other information as the FEA may request.

(e) All information required by paragraphs (c) and (d) of this section shall separately identify domestic and imported crude oil.

(f) Each refiner who claims to be a small refiner or an independent refiner shall submit to the FEA ten days prior to the allocation quarter commencing June 1, 1974, an affidavit setting forth the factual basis for its claim.

(g) Any refiner whose refinery capacity exceeds 175,000 barrels per day and who does not report as provided in paragraph (f) of this section will be deemed a refiner-seller.

§ 211.71 Mandatory refinery yield control program.

(a) *Purpose.* The refinery yield control program is designed to require each refiner to utilize available supplies of crude oil in a manner best suited to ensure adequate production levels of refined petroleum products and residual fuel oil which are or may be in short supply, consistent with the objectives of this chapter.

(b) *Scope.* This section applies as specified to the production of refined petroleum products and residual fuel oil from crude oil by each refiner in the United States.

(c) *Product yield controls*—(1) *Definitions.* As used in this section—

"Adjustment factor" means the percentage established by the FEA by which the base percentage yield of a particular refined petroleum product or residual fuel oil is multiplied to obtain the adjusted percentage yield of that particular product or residual fuel oil.

"Adjusted percentage yield" means the product of the base percentage yield of a particular refined petroleum product or residual fuel oil multiplied by the adjustment factor for that product or residual fuel oil.

"Base percentage yield" means the ratio expressed as a percentage, which the total number of barrels of a particular refined petroleum product or residual fuel oil produced by a refiner during a specified base period bears to the refiner's total crude runs to stills in that base period.

(2) *Adjustment of base percentage yield.* Whenever a refined petroleum product or residual fuel oil is or will be in short supply, the FEA may require refiners to adjust their base percentage yield of that product or residual fuel oil in order to increase the relative output of that product or residual fuel oil in short supply. If the FEA determines that an adjustment to the base percentage yield of a particular refined petroleum product or residual fuel oil is necessary, the FEA shall publish an adjustment factor by which each refiner must multiply its base percentage yield of that product or residual fuel oil to obtain the adjusted percentage yield of that product or residual fuel oil.

(3) *Joint compliance.* Upon approval by the FEA, two or more refiners may adjust their base percentage yield of a particular refined petroleum product or residual fuel oil on a pooled basis, such that the combined production of that product or residual fuel oil by the two or more refiners would equal the combined production of those refiners if each refiner had separately equalled or exceeded its adjusted percentage yield of that product or residual fuel oil.

(d) *Allocation of crude oil.* The FEA may adjust the quantities of crude oil allocated among refiners under § 211.65 in a manner designed to ensure desired production levels of refined petroleum products or residual fuel oil in short supply for which an adjustment factor has been established. Such adjustments shall be designed to meet the objectives of this chapter and of the Act, such that refiners which increase production in excess of their adjusted percentage yield of that product or residual fuel oil, or less than the adjusted percentage yield of that product or residual fuel oil may be allocated greater or lesser quantities of crude oil during the next allocation quarter, respectively.

APPENDIX—SPECIAL RULE NO. 1

1. *Scope.* This special rule applies to all refiner-buyers and refiner-sellers during the crude oil sales period commencing February 1, 1974. It does not alter the supplier/purchaser relationship established pursuant to § 211.64 or the refinery yield control program under § 211.71.

2. *Purpose.* Notwithstanding the provisions of § 211.65–66 this special rule suspends until further notice the crude oil sales period which would otherwise commence May 1, 1974, and establishes a new rule for allocation of crude oil at the refinery level during the month of May, 1974.

3. *Special allocation of rule for May 1974.* For the month of May, 1974 allocation of crude oil among refiners shall be made as follows:

(a) Each refiner-seller and refiner-buyer as determined for the crude oil sales period commencing February 1, 1974 shall continue in such capacity.

(b) Each refiner-seller shall sell to each refiner-buyer to which sales of crude oil were made by the refiner-seller (under contracts entered into prior to April 1, 1974) pursuant to the crude oil sales period commencing February 1, 1974), a volume of crude oil equal to 31/89 of the total volume of crude oil sold to that refiner-buyer by that refiner-seller.

(c) Each refiner-seller shall, if and to the extent directed by the FEO pursuant to paragraph (h), sell to refiner-buyers specified by the FEO a volume of crude oil equal to 31/89 of the difference between (1) the total volume of crude oil which such refiner-seller was obligated to sell in the crude oil sales period commencing February 1, 1974, and (2) the total volume of crude oil so sold in such period by such refiner-seller pursu-

ant to contracts entered into prior to April 1, 1974.

(d) Each refiner-seller which did not purchase the total volume of crude oil which it was entitled to purchase in the crude oil sales period commencinig February 1, 1974, shall be eligible to purchase from refiner-sellers (to the extent specified in paragraph (c) above) a volume of crude oil equal to 31/89 of the difference between (1) the total volume of crude oil which it was so entitled to purchase and (2) the total volume of crude oil purchased by such refiner-buyer in such crude oil sales period. Each refiner-buyer which desires to purchase crude oil pursuanat to this paragraph shall request FEO prior to April 10, 1974, to direct the sale to such refiner-buyer of a specified volume of crude oil. Such request shall be accompanied by a certified statement setting forth such refiner-buyer's basis for being entitled to purchase such volume of crude oil. Upon such a request, the FEO may direct a refiner-seller or refiner-sellers to sell crude oil to such a refiner-seller.

(e) Prior to April 10, 1974, each refiner-seller hsall notify each refiner-seller of the volume of crude oil to be sold to such refiner-buyer by the refiner-seller pursuant to paragraph (b) of this rule.

(f) Prior to April 15, 1974, refiner-sellers and refiner-buyers shall enter into sales contracts for the delivery and purchase of crude oil pursuant to paragraph (b) of this rule.

(g) Any refiner-seller which is unable to negotiate a contract prior to April 15, 1974 to purchase crude oil pursuant to paragraph (b) of this rule may request the FEO, prior to April 20, 1974, to direct a refiner-seller or refiner-sellers to sell an appropriate amount of an acceptable type of crude oil to such refiner-buyer. Upon such a request, the FEO may so direct the refiner-seller or refiner-sellers.

(h) The provisions of § 211.65(a), (b), (c) and (k) are applicable to all sales made pursuant to this rule. The provisions of § 211.65(1) apply in the same manner during the month of May, 1974, with respect to the second crude oil sales period as was provided for imports during the first crude oil sales period.

(i) The provisions of Subpart C of Part 211 (including but not limited to the procedures and reporting requirements of § 211.66) shall remain in full force and effect except as expressly modified by the provisions of this rule.

SPECIAL RULE NO. 2

1. *Scope.* This special rule applies to all refiner-buyers and refiner-sellers for the allocation quarter commencing September 1, 1974.

2. *Purpose.* This special rule provides for adjustments to the sale obligations of refiner-sellers and to the purchase opportunities of refiners-buyers in the allocation quarter commencing September 1, 1974, based on volumes required to be offered for sale, but not sold, in May, 1974 and on variances between the estimated crude oil runs to stills for February through April, 1974 (prorated for May) and reported crude oil runs to stills for May, 1974. The adjustments provided for in this special rule are in addition to adjustments set forth in § 211.65. This special rule also provides for a revised date for publication of the buy/sell list.

3. *Adjustments to Purchase Opportunities of Refiners-Buyers.* For the allocation quarter commencing September 1, 1974, in addition to the adjustments specified in § 211.65, the following adjustments shall be made to the purchase opportunities of refiner-buyers.

(a) The purchase opportunity of each refiner-buyer which was classified as a refiner-seller in May 1974, and did not sell the total quantity of crude oil that it was required to offer for sale in such period pursuant to paragraphs 3 (b) and (c) of Special Rule No. 1 for May 1974, shall be reduced by such unsold amount in the allocation quarter commencing September 1, 1974.

(b) The purchase opportunity of each refiner-buyer shall be (i) reduced by the excess of the volume of domestic crude oil runs to stills of that refiner-buyer for May 1974 over 31/89 of the reported estimated domestic crude oil runs to stills of that refiner-buyer for the period February through April 1974, and (ii) increased by (A) the excess of 31/89 of such estimated domestic crude oil runs to stills for such period over the volume of its domestic crude oil runs to stills for May 1974, and (B) the excess of 31/89 of the reported estimates of imported crude oil runs to stills of that refiner-buyer for the period February through April 1974, over the volume of its imported crude oil runs to stills for May 1974.

4. *Adjustments to Sale Obligations of Refiner-Sellers.* For the allocation quarter commencing September 1, 1974, in addition to the adjustments specified in § 211.65, the following adjustments shall be made to the sale obligations of refiner-sellers.

(a) Each refiner-seller that was classified as a refiner-seller in May 1974, and did not sell the total quantity of crude oil that it was required to offer for sale in such period pursuant to paragraphs 3 (b) and (c) of Special Rule No. 1, shall first be required to offer for sale such unsold amount (together with any unsold amounts specified in § 211.65 (d)(3)) to refiner-buyers; *provided, however,* That such unsold amounts shall constitute a sales obligation of a refiner-seller only for the allocation quarter commencing September 1, 1974.

(b) The quantity of crude oil that a refiner-seller shall be required to offer for sale shall be (i) increased by the excess of the volume of domestic crude oil runs to stills of that refiner-seller for May 1974 over 31/89 of the reported estimated domestic crude oil run to stills of that refiner-seller for the period February through April 1974, and (ii) reduced by (A) the excess of 31/89 of such estimated domestic crude oil runs to stills for such period over the volume of its domestic crude oil runs to stills for May 1974, and (B) the excess of 31/89 of the reported estimates of imported crude oil runs to stills of that refiner-seller for the period February through April 1974 over the volume of its imported crude oil runs to stills for May 1974.

(c) Sales by a refiner-seller in the allocation quarter commencing September 1, 1974, shall be deemed to be first in satisfaction of that refiner-seller's obligations under § 211.65 (d)(3) and paragraph 4(a) of this special rule, to the extent of such obligations, and next in satisfaction of the balance of that refiner-seller's sale obligation under § 211.65.

5. *Adjustments for Purposes of Paragraphs (3) and (4).* For purposes of paragraphs (3) and (4) of this special rule, the volume of a refiner's crude oil runs to stills shall reflect the adjustments specified in § 211.65(a)(2), shall include amounts sold under Special Rule No. 1 for May 1974 and shall exclude amounts purchased under Subpart C for the period February through April 1974 and under Special Rule No. 1 for May 1974.

6. *Calculation of Sale Obligations of Refiner-Sellers.* For the allocation quarter commencing September 1, 1974, after calculation of the amount of each refiner-seller's fixed percentage share of the total allocation obligation less the quantities of crude oil required to be sold under § 211.65(d)(3) and under paragraph 4(a) of this special rule, the adjustments specified in paragraph 4(b) of this special rule shall be made to such amount. To the extent that the aggregate of such adjusted obligations of all refiner-sellers either exceeds or is less than the aggregate of such obligations prior to any adjustment, the adjusted obligation of each refiner-seller shall be either reduced or increased, as the case may be, by its fixed percentage share of such excess or shortfall.

7. *Date of Publication of Buy/Sell List.* Notwithstanding the provisions of § 211.65 (e), the notice specified in that section for the allocation quarter commencing September 1, 1974, shall be published by FEA on or prior to September 6, 1974.

8. *Provisions of Subpart C to Remain in Effect.* The provisions of Subpart C of Part 211 shall remain in full force and effect except as expressly modified by the provisions of this special rule.

Subpart D—Propane

§ 211.81 Scope.

(a) This subpart describes the allocation program for propane and propane-butane mixes produced in or imported into the United States. This subpart does not apply to:

(1) Sales of bottled propane; and

(2) Propane in mixtures of light hydrocarbons produced in a refinery and used in that refinery for use other than as a feedstock.

(b) This subpart provides for a State set-aside.

§ 211.82 Definitions.

For purposes of this subpart—

"Base period" means each calendar quarter during the period April 1, 1972, through March 31, 1973, which corresponds to the present calendar quarter except that for the period June 1, 1974, through June 30, 1974, purchasers of propane may, at their option, use the period June 1, 1972 through June 30, 1972, as the base period.

"Bottled propane" means propane bottled in cylinders with a capacity of one hundred (100) pounds or less, provided that the cylinders are not manifolded at the time of sale.

"Dispensing station" means those retail sales outlets which sell less than 15,000 gallons per year and sell or fill only bottled propane.

"Merchant storage facility" means any facility which is utilized to store propane for firms other than the owner or operator of such a facility.

"Plant protection fuel" means the use of propane in the minimum volume required to prevent physical harm to the plant facilities or danger to plant personnel. This includes the protection of such material and equipment which would otherwise be damaged, but does not include sufficient quantities of propane required to maintain plant production. Propane may not be considered plant protection fuel if an alternate fuel is available and technically feasible for substitution.

"Producer" means a firm which produces propane in a refinery, natural gas processing plant or fractionating plant, or imports more than 2,000,000 gallons per year, including firms which own natural gas and have their gas processed for their account by others but retain title.

"Producer-purchaser" means a producer which purchases or obtains propane from another producer.

"Producer-supplier" means a producer which supplies propane to another producer.

"Process fuel" means propane used to convert a substance from one form to another such as in applications requiring precise temperature controls or precise flame characteristics. Propane may not be considered process fuel if an alternate fuel is available and technically feasible for substitution.

"Propane" means the chemical C_3H_8 in its commercial forms including propane-butane mixes and the propane in other mixtures in which propane constitutes greater than ten (10) percent of the mixture by weight.

"Propane-butane mix" means any mixture consisting exclusively of propane and butane which contains greater than ten (10) percent propane by weight.

"Standby volumes" means those volumes of propane used by an industry as a temporary substitute for another product (such as natural gas) in times of shortage or curtailment of the other product. Volumes of propane which are used as a temporary substitute for a process fuel or plant protection fuel are not considered standby volumes for purposes of this subpart.

"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.

§ 211.83 Allocation levels.

(a) *General.* The allocation levels in this paragraph only apply to allocations made by suppliers or producers to wholesale purchaser-consumers and end-users. Except as otherwise provided in this subpart, suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase propane under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchase-consumers which are entitled to purchase propane under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Medical and nursing buildings;

(vii) Aviation ground support vehicles and equipment; and

(viii) Start-up, testing and flame stability of electrical utility plants.

(2) One hundred (100) percent of base period volumes for:

(i) Petrochemical feedstock use;

(ii) Synthetic natural gas plant feedstock use;

(iii) Industrial use as a process or plant protection fuel or where no substitute for propane is available;

(iv) Government use; and

(v) *Peak shaving for gas utilities.* The use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any non-residential customer who can use a fuel other than natural gas, propane or butane.

(3) Ninety-five (95) percent of base period use for all residential use.

(4) Ninety (90) percent of base period use for the following uses:

(i) Commercial use (The maximum volume which may be obtained for this use, however, is 210,000 gallons per year);

(ii) Standby volumes or any other industrial use;

(iii) Transportation services other than passenger transportation services or aviation ground support vehicles, for vehicles equipped to use propane as of December 27, 1973; and

(iv) Schools.

§ 211.85 Supplier/purchaser relationships.

Supplier/purchaser relationships shall be as set forth in § 211.9–13, unless otherwise specified in this subpart.

§ 211.86 Method of allocation.

(a) *General.* Except as specifically otherwise provided in this subpart, the allocation of propane shall be as specified in § 211.10. Adjustments to a wholesale purchaser's base period volume specified in § 211.13 shall apply to this subpart, except that wholesale purchaser-consumers using propane for industrial use or petrochemical feedstock use may not receive increased supplies of propane on the basis of an adjustment for unsual growth under § 211.13(b) until such adjustment has been approved by FEA. Wholesale purchaser-consumers of propane for such uses which have received adjustments for unusual growth shall submit to FEA the proposed adjustment and the basis therefor. FEA may require the wholesale purchaser-consumers to submit additional information to justify the adjustment. FEA may approve, deny or modify the adjustment. New wholesale purchasers and end-users are subject to the requirements of § 211.12. Notwithstanding the provisions of § 211.12 (c), each supplier or producer which sells propane to a wholesale purchaser-consumer, end-user or dispensing station shall determine the base period volume of those purchasers but is not required to report that determination to such purchasers except on written request by a purchaser.

(b) *State set-aside.* The initial State set-aside level for propane is three (3) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the State's distribution system for consumption within the State. Section 211.17 shall control the distribution of propane from the State set-aside.

(c) *Dispensing stations.* Notwithstanding the provisions of § 211.10, dispensing stations which sell only bottled propane to end-users shall be entitled to receive a volume of propane equal to one hundred (100) percent of the volume necessary to supply the current requirements of all end-users purchasing from them, without being subject to an allocation fraction. The maximum volume which may be obtained pursuant to this paragraph may not exceed 15,000 gallons per year.

(d) *Producers.* Notwithstanding the provisions of § 211.9–13, producers shall allocate their allocable supply in the following manner:

(1) A firm which operates both in the capacity of a producer and in the capacity of a wholesale purchaser-reseller shall only be considered as a producer for purposes of this subpart.

(2) Producer-suppliers shall allocate their total supply in the following manner:

(i) Each producer-supplier shall first allocate to each producer-purchaser which purchased from it during the base period a volume of propane equal to the same proportion of its total propane available for sale, transfer or internal use as a raw material feedstock as was provided to the producer-purchaser during the base period.

(ii) After meeting the requirements of paragraph (d) (2) (i), above, a producer-supplier shall allocate the remainder of its total supply to its purchasers in accordance with § 211.10.

(3) Producer-purchasers shall allocate their total supply in accordance with § 211.10 except that if a producer-purchaser also supplies wholesale purchaser-resellers which have certified amounts of propane to be for ultimate use under an allocation level not subject to an allocation fraction that producer-purchaser may not recertify such amounts to the producer-supplier which supplies it.

(4) A firm which qualifies as both a producer-purchaser and producer-supplier shall allocate as if it were a producer-supplier except that if such firm also supplies wholesale purchaser-resellers which have certified amounts of propane to be for ultimate use under an allocation level not subject to an

allocation fraction that firm may not recertify such amounts to the producer-supplier which supplies it.

(5) A wholesale purchaser-reseller which receives a certification of allocation requirements not subject to an allocation fraction may recertify those amounts to a producer in the same manner as such amounts may be recertified to a supplier pursuant to § 211.12(d).

(6) Except as provided in this subpart, all provisions pertaining to suppliers in Subpart A shall also pertain to producers.

(e) Operators of merchant storage facilities shall not release for shipment to gas utilities any quantity of propane which, when taken together with other amounts of propane supplied to that utility for the allocation quarter, exceeds the quantity of propane which may be supplied under the allocation level for gas utilities in § 211.83(c)(2)(v).

(f) Suppliers or producers with two or more distribution subsystems or regions independent of one another may calculate separate allocation fractions for each such area provided that the supplier or primary producer notifies the FEA by certified mail of the use of multiple allocation fractions and fully justifies such practices at least fifteen days prior to distributing any supplies pursuant to multiple allocation fractions. The FEA may disallow the use of multiple allocation fractions to the extent that it determines that such a practice contravenes the intent of this part.

(g) Producers, suppliers and wholesale purchasers (except gas utilities and industrial users) shall be permitted to accumulate an inventory of propane during the summer in quantities which are normal and reasonable for seasonal usage in accordance with their normal business practices. Inventories controlled by gas utilities and industrial users (including petrochemical producers) shall be limited to:

(1) One hundred twenty (120) percent of the allocation entitlement specified in § 211.83(c)(2)(v).

(2) One hundred twenty (120) percent of the volumes used for all industrial uses (including standby volumes) during the period April 1, 1972 through March 31, 1973, provided, however, that an industrial firm may not use such inventories to exceed its allocation entitlement as specified in § 211.83.

If a firm currently controls greater than the above-mentioned inventories, it shall not accept an allocation from a supplier or producer until its inventories are reduced to conform to the limits imposed in this paragraph.

§ 211.87 Procedures and reporting requirements.

(a) All owners of storage facilities (or operators thereof) with a capacity in excess of 500,000 gallons which store propane shall report to the FEA National Office, at the address provided in § 205.12, the total volume, locations, and ownership of propane in storage including that owned by the storage owner or operator of affiliated companies, and that held in transit. If it is not possible to report each separate account of "in transit" storage, then the total volume shall be reported. This same information shall be reported as of the end of each month on Form FEA 103B and filed within fifteen (15) days after the close of that month. All owners of propane in a merchant storage facility shall file Form FEA 101A with the operator of the merchant storage facility, and shall revise such form prior to withdrawal of propane from storage. These reports shall be kept on file by the merchant storage facility operator, and are subject to FEA audit.

(b) All applications for adjustment or assignment shall be filed with the appropriate State Office or FEA Regional Office in accordance with the procedures specified in Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to the allocation of propane shall be addressed to the appropriate FEA Regional Office at the address provided in § 205.12.

(c) The general reporting and recordkeeping requirements contained in Subpart L of this part apply to this subpart except that the requirements of § 211.224 shall not apply and the information required to be kept on FEA forms in § 211.223 may be kept by suppliers or producers in accordance with that firm's customary recordkeeping practices.

(d) An application for an assignment from the state set-aside system, as provided in § 211.17, based on hardship or emergency requirements is to be filed with the appropriate State Office in accordance with the procedures stated in Subpart Q of Part 205 of this chapter.

(e) Producers and specified wholesale purchaser-resellers of propane shall report on Form FEA 100-A.

Subpart E—Butane and Natural Gasoline

§ 211.91 Scope.

(a) This subpart applies to the mandatory allocation of isobutane, normal butane, natural gasoline and certain mixtures containing butane produced in or imported into the United States, except bottled butane.

(b) This subpart does not provide for a State set-aside.

§ 211.92 Definitions.

For purposes of this subpart—

"Base period" means each calendar quarter during the period April 1, 1972, through March 31, 1973 which corresponds to the present calendar quarter.

"Butane" means the chemical C_4H_{10} in its commercial forms, including both normal butane and isobutane, their mixtures and mixtures of butane and propane containing ten (10) percent by weight or less of propane. Included within the definition of butane is the butane content of other mixtures in which either or both butane isomers constitute greater than ten (10) percent of the mixture by weight.

"Bottled butane" means butane bottled in cylinders with a capacity of one hundred (100) pounds or less; *Provided*, That the cylinders are not manifolded at the time of sale.

"Merchant storage facility" means any facility which is utilized to store butane for firms other than the owner or operator of such a facility.

"Natural gasoline" means those liquid hydrocarbon mixtures containing substantial quantities of pentanes and heavier hydrocarbons, which have been extracted from natural gas.

"Plant protection fuel" means the use of butane in the minimum volume required to prevent physical harm to plant facilities or danger to plant personnel. This includes the protection of such material and equipment which would otherwise be damaged, but does not include sufficient quantities of butane required to maintain plant production. Butane may not be considered plant protection fuel if an alternate fuel is available and technically feasible for substitution.

"Process fuel" means butane used to convert a substance from one form to another such as in applications requiring precise temperature controls or precise flame characteristics. Butane may not be considered process fuel if an alternate fuel is available and technically feasible for substitution.

"Standby volumes" means those volumes of butane used by an industry as a temporary substitute for another product (such as natural gas) in times of shortage or curtailment of the other product. Volumes of butane which are used as a temporary substitute for a process fuel or plant protection fuel are not considered standby volumes for purposes of this subpart.

"Where no substitute for butane is available" means those circumstances in which no alternate fuel is available or in which a firm has historically relied upon butane as its sole fuel source.

§ 211.93 Allocation levels.

(a) *General.* The allocation levels in this paragraph only apply to allocations made by suppliers to wholesale purchaser-consumers and end-users. Except as otherwise provided in this subpart, suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase butane or natural gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet one hundred (100) percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase butane or natural gasoline under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production; and

(ii) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;
(iii) Sanitation services;
(iv) Telecommunications services;
(v) Passenger transportation services;
(vi) Medical and nursing buildings;
(vii) Aviation ground support vehicles and equipment;
(viii) Start-up, testing and flame stability of electrical utility plants; and
(ix) Petrochemical feedstock use.

(2) One hundred (100) percent of base period use for:

(i) Synthetic natural gas plant feedstock use;
(ii) Industrial use as a process or plant protection fuel or where no substitute for butane is available;
(iii) Governmental use; and
(iv) *Peak shaving for gas utilities.* The use of butane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of butane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Butane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any non-residential customer who can use a fuel other than natural gas, propane or butane.

(3) Ninety-five (95) percent of base period use for all residential use.

(4) Ninety (90) percent of base period use for the following uses:

(i) Commercial use (the maximum volume which may be obtained for this use, however, is 210,000 gallons per year);
(ii) Standby volumes or any other industrial use;
(iii) Transportation services other than passenger transportation services or aviation ground support vehicles, for vehicles equipped to use butane as of December 27, 1973;
(iv) Gasoline blending and manufacturing use; and
(v) Schools.

§ 211.95 Supplier/purchaser relationships.

Supplier/purchaser relationships shall be as set forth in § 211.9–13, unless otherwise specified in this subpart.

§ 211.96 Method of allocation.

(a) *General.* Except as otherwise specifically provided by this subpart, the allocation of butane and natural gasoline shall be as specified in § 211.10. Adjustments to a wholesale purchaser's base period volume specified in § 211.13 shall apply to this subpart, except that wholesale purchaser-consumers using butane or natural gasoline for industrial use or petrochemical feedstock use may not receive increased supplies of butane or natural gasoline on the basis of an adjustment for unusual growth under § 211.13(b) until such adjustment has been approved by FEA. Wholesale purchaser-consumers of butane or natural gasoline for such uses as have received adjustments for unusual growth shall submit by September 1, 1974 to FEA the proposed adjustment and the basis therefor. FEA may require the wholesale purchaser-consumers to submit additional information to justify the adjustment. FEA may approve, deny or modify the adjustment. New wholesale purchasers and end-users are subject to the requirements of § 211.12.

(b) The provisions of § 211.12(e)(1) concerning mutual arrangements between new wholesale purchaser-consumers and suppliers shall not apply to this subpart. New wholesale purchaser-consumers must apply to the FEA National Office for an assignment pursuant to § 211.12(e)(3) in order to establish a supplier/purchaser relationship and a base period volume. Such applications shall be filed in accordance with Subpart C of Part 205 of this chapter.

(c) Operators of storage facilities, including merchant storage facilities, shall not release for shipment to gas utilities any quantity of butane which, when taken together with other amounts of butane supplied to that utility for a period corresponding to a base period, exceeds the quantity of butane which may be supplied under the allocation level for gas utilities in § 211.93(c)(2)(iv).

(d) Suppliers with two or more distribution subsystems or regions independent of one another may calculate separate allocation fractions for each such area provided that the supplier notifies the FEA by certified mail of the use of multiple allocation fractions and fully justifies such practices at least fifteen days prior to distributing any supplies pursuant to multiple allocation fractions. The FEA may disallow the use of multiple allocation fractions to the extent that it determines that such a practice contravenes the intent of this part.

(e) Suppliers and wholesale purchasers (except gas utilities and industrial users) shall be permitted to accumulate an inventory of butane during the summer in quantities which are normal and reasonable for seasonal usage in accordance with their normal business practices. Inventories controlled by gas utilities and industrial users (including petrochemical producers) shall be limited to:

(1) One hundred (100) percent of the allocation entitlement specified in § 211.93 for gas utilities.

(2) One hundred twenty (120) percent of the volumes used for all industrial uses (including standby volumes) during the period April 1, 1972 through March 31, 1973; *Provided, however,* That an industrial firm may not use such inventories to exceed its allocation entitlement specified in §211.93.

As long as a firm controls greater than the above mentioned inventories, it shall not accept an allocation from a supplier until its inventories are reduced to conform to the limits imposed in this paragraph.

§ 211.97 Procedures and reporting requirements.

(a) All owners of storage facilities, including merchant storage facilities (or operators thereof), with a capacity in excess of 500,000 gallons which store butane, shall report to the Administrator, FEA, Washington, D.C. 20461, the total volume, locations, and ownership of butane storage including that owned by the storage owner or operator of affiliated companies, and that held in transit. If it is not possible to report each separate account of "in transit" storage, then the total volume shall be reported. The same information shall be reported as of the end of each month on form FEA #103B and filed within fifteen (15) days after the close of that month. All owners of butane in merchant storage facilities shall file form FEA #101A with the operator of the storage facility. These reports shall be kept on file by the storage operator, and are subject to FEA audit.

(b) All applications for adjustment and assignment of butane and natural gasoline shall be filed with the FEA National Office in accordance with Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to the allocation of butane and natural gasoline shall be addressed to the FEA National Office at the address provided in § 205.12, unless otherwise specified.

(c) The general reporting requirements contained in §§ 211.222 and 211.224 shall not apply to this subpart. The reporting requirements of § 211.225 shall, however, apply to this subpart. The information required to be maintained on FEA forms by § 211.223 may be maintained by suppliers in accordance with that firm's customary recordkeeping practices.

(d) Suppliers and importers shall report in accordance with forms and instructions to be issued by the FEA for reporting under § 211.87(e).

Subpart F—Motor Gasoline

§ 211.101 Scope.

(a) This subpart applies to the mandatory allocation of all motor gasoline produced in or imported into the United States.

(b) This subpart provides for a State set-aside of motor gasoline.

§ 211.102 Definitions.

For purposes of this subpart—

"Base period" means the month of 1972 corresponding to the current month.

"Bulk purchaser" means any firm which is an ultimate consumer which, as part of its normal business practices, purchases or obtains motor gasoline from a supplier and either (a) receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location, (b) with respect to use in agricultural production, receives delivery into a storage tank with a capacity not less than 50 gallons substantially under the control of that firm, or (c) receives delivery of that product

for use in cargo, freight and mail hauling by truck.

"Truck" means a motor vehicle with motive power designed primarily for the transportation of property or special purpose equipment and with a gross vehicle weight rating for a single vehicle (the value specified by the manufacturer as the loaded weight of the vehicle) or the equivalent thereof in excess of 20,000 pounds, or in the case of trucks designed primarily for drawing other vehicles and not so constructed as to carry a load other than part of the weight of the vehicle and the load so drawn, with a gross combination weight rating (the value specified by the manufacturer as the loaded weight of the combination vehicle) or the equivalent thereof in excess of 20,000 pounds.

§ 211.103 Allocation levels.

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of the allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Cargo, freight and mail hauling by truck;

(vii) Aviation ground support vehicles and equipment.

(2) One hundred (100) percent of base period use (as reduced by application of the allocation fraction) for the following uses:

(i) Industrial use;

(ii) Commercial use;

(iii) Governmental use; and

(iv) Social service agency use.

(d) *Purchasers without an allocation level.* There shall be no allocation levels for end-users which are not bulk purchasers or for purchasers which are not otherwise described in paragraphs (b) and (c) of this section. Such end-users shall be supplied in accordance with the provisions of § 211.10(d)(2).

(e) *Wholesale purchaser-resellers.* Wholesale purchaser-resellers shall receive allocations on the basis of their base period volumes as determined by § 211.12(c) and adjusted in accordance with § 211.13.

§ 211.105 Supplier/purchaser relationships.

Supplier/purchaser relationships are set forth in § 211.9–211.13 except as provided in § 211.106.

§ 211.106 Retail sales outlets.

(a) *General.* Notwithstanding the provisions of § 211.11, the provisions of this section shall apply to retail sales outlets which sell motor gasoline.

(b) *Retail sales outlets as a firm.* (1) Each firm or part of a firm which operates an ongoing business at a retail sales outlet shall be considered a separate firm with respect to each such outlet for purposes of this subpart and, therefore, shall be a separate wholesale purchaser-reseller. The entity which merely holds a real property interest in a retail sales outlet on which another entity operates the ongoing business shall not be considered the wholesale purchaser-reseller with respect to that outlet.

(2) An independent marketer, or a small or independent refiner, which operates two or more retail sales outlets may apply to the FEA for treatment of some or all of such outlets as a single firm in accordance with the procedures established in Subpart G of Part 205 of this chapter. The FEA may allow such treatment to the extent that the petitioner can demonstrate that treatment of each outlet as a separate firm would tend to lessen its competitive market position and that allowance of the petition would not result in an inequitable distribution of gasoline in the market areas served by that marketer.

(3) (i) A supplier's obligation to provide motor gasoline shall be determined separately for each retail sales outlet for which it has a supply obligation without distinguishing between retail sales outlets operated by the supplier and retail sales outlets not operated by the supplier. A supplier may not reassign all or part of an allocation entitlement from one retail sales outlet to another, including reassignments among its own retail sales outlets, without the express written permission of FEA except as provided by paragraph (b)(3)(ii) of this section unless an application for treatment as a single firm of some or all of such supplier's retail sales outlets has been granted pursuant to paragraph (b)(2) of this section.

(ii) An independent marketer, or small or independent refiner, may reassign up to twenty (20) percent of the allocation entitlement (excluding any amounts which those retail sales outlets have certified pursuant to § 211.12(d) to be for ultimate use under an allocation level not subject to an allocation fraction) of a retail sales outlet which it operates to another retail sales outlet which it operates provided that no retail sales outlet may have its allocation entitlement (excluding any amounts which those retail sales outlets have certified pursuant to § 211.12(d) to be for ultimate use under an allocation level not subject to an allocation fraction) increased by more than twenty (20) percent pursuant to any reassignment permitted by this paragraph (b)(3)(ii). If an independent marketer or small or independent refiner is not the supplier of all of the retail sales outlets which it operates from a single terminal facility, it may make the reassignments permitted by this paragraph only among the retail sales outlets which it operates and which are supplied by the same supplier and terminal facility.

(4) To the extent that retail sales outlets have not been considered separate firms and therefore separate wholesale purchaser-resellers in the base period volume determination required under § 211.12(c), an operator of more than one retail sales outlet shall by July 1, 1974, determine the base period volume of each of its retail sales outlets and calculate the adjustment to base period volume for unusual growth as specified in § 211.13(b)(1). To the extent that the sum of all the adjustments for each of its retail sales outlets as calculated by the operator differs from the unusual growth adjustment as calculated by the supplier in accordance with the provisions of § 211.13(b)(1) treating all outlets together as a single firm, the operator of the retail sales outlets shall notify the supplier. If the supplier disputes the automatic growth adjustment as calculated by the operator, the operator shall make application to the appropriate FEA regional office for validation of the adjustment.

(c) *Loss of allocation entitlement for going out of business.* (1) A wholesale purchaser-reseller which operates a retail sales outlet shall be deemed to have gone out of business with respect to that outlet for purposes of § 211.11 if it vacates the site on which it conducts such business. Notwithstanding the foregoing, an independent marketer shall not be deemed to have gone out of business if (i) the independent marketer vacates the site on which it formerly operated a retail sales outlet, (ii) the former site is closed as a retail sales outlet or is operated as such by a firm that is not an independent marketer, and (iii) the independent marketer that occupied the former site, within a reasonable period of time, as determined by FEA, reestablishes another retail sales outlet at another location serving substantially the same customers or market that was served by the former site.

(2) (i) *Closings of retail outlets after June 1, 1974.* An entity which operates more than one retail sales outlet and which intends to go or goes out of business at one or more such retail sales outlets may apply to FEA for an adjustment to the base period volumes of its retail sales outlets which will remain in business. FEA may allow such adjustments to the extent that the vacating of business at a particular retail sales outlet does not result in an inequitable distri-

bution of motor gasoline in the market areas served by the entity and that such an adjustment would not otherwise be inconsistent with the objectives of the allocation program. Pending FEA action on an application, FEA may provide adjustments to the base period volumes of the pertinent retail sales outlets, which will remain in business.

(ii) *Closings of retail outlets prior to June 1, 1974.* An independent marketer, or a small or independent refiner which went out of business with respect to one or more retail sales outlets which it operated during the period January 1, 1973 through June 1, 1974, shall receive an adjustment on June 1, 1974 to the base period volumes of its retail sales outlets which remain in business. An independent marketer or a small or independent refiner shall determine the net amount by which the base period volumes of the retail sales outlets which it operated and which went out of business during the period January 1, 1973 through June 1, 1974, exceed the base period volumes of the retail sales outlets which it opened for business and operated during the period January 1, 1973 through June 1, 1974. The base period volumes of each retail sales outlet which the independent marketer or small or independent refiner operates as of June 1, 1974 shall be increased by an amount which bears the same proportion to such net amount as the base period volume of the retail outlet bears to the sum of the base period volumes of all the retail sales outlets which the independent marketer, or small or independent refiner operates as of June 1, 1974. The independent marketer or small or independent refiner shall certify the adjustments to the base period volumes of its retail sales outlets under this subparagraph to the supplier or suppliers of such retail sales outlets. If a supplier disputes the validity of such adjustments certified to it, it may apply to the appropriate regional FEA for validation of the amounts of such adjustments. During the period that a request for validation is pending, the supplier shall supply motor gasoline based upon adjustments under this subparagraph.

(d) *Suppliers of retail sales outlets.* (1) The supplier of a retail sales outlet shall be that part of a firm which actually furnishes or physically delivers the gasoline to the retail sales outlet. The operator of one or more retail sales outlets shall not be considered the supplier of its own retail sales outlets unless it operates a terminal facility from which it furnishes a product to each outlet or unless it otherwise physically delivers the gasoline to each outlet.

(2) Whenever an operator of a retail sales outlet goes out of business with respect to that retail sales outlet under paragraph (c) of this section, the supplier of that outlet shall, in calculating its allocation fraction, remove the amount of the allocation entitlement of that retail sales outlet from its supply obligation, unless the right to such allocation has transferred to a successor wholesale purchaser-reseller under paragraph (e) of this section.

(3) Any supplier which supplies its own operated retail sales outlets shall report to the National and appropriate regional FEA and to the appropriate State office whenever it ceases to supply any retail sales outlet, without regard to whether such retail sales outlet is operated by the supplier.

(e) *Transfer of entitlement.* Whenever a wholesale purchaser-reseller is deemed to have gone out of busines 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.

§ 211.107 Method of allocation.

(a) The initial State set-aside level for motor gasoline for a particular month and state is three (3) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the State's distribution system for consumption within the State. Subsequent adjustments to the percentage unit will be published by the FEA.

(b) Allocations of motor gasoline to retail sales outlets and other purchasers shall be made as specified in § 211.10. Suppliers which have an allocation fraction greater than one (1.0) shall distribute their surplus product in accordance with the provisions of § 211.10(g) notwithstanding the provisions of § 211.106 with respect to reassignments among retail sales outlets.

(c) Provisions to adjust a wholesale purchaser's base period volume are specified in § 211.13. New wholesale purchasers and end-users are subject to the requirements of § 211.12.

§ 211.108 Allocation of unleaded gasoline.

(a) *General.* All the provisions of this subpart shall apply to all substances meeting the definition of motor gasoline, including unleaded gasoline, premium and regular gasoline without regard to the different characteristics of those substances except as provided in this section with respect to unleaded gasoline. In addition to the provisions of § 211.105, a supplier of unleaded gasoline shall further allocate unleaded gasoline in accordance with the provisions of this section to retail sales outlets and other purchasers which are entitled to receive motor gasoline (whether leaded or unleaded) from that supplier without regard to whether the supplier has previously supplied unleaded gasoline to that purchaser.

(b) *Definitions.* "Allocation entitlement" means for a wholesale purchaser-reseller, its allocation entitlement as described in § 211.12(b)(1) and for a wholesale purchaser-consumer or an end-user, its allocation entitlement as described in § 211.12(b)(2).

"Allocation ratio" means that ratio of a supplier's total supply of unleaded gasoline to the supplier's total supply of motor gasoline (leaded and unleaded).

"Unleaded gasoline" means unleaded gasoline as defined by the Environmental Protection Agency.

(c) *Method of allocation for unleaded gasoline.* (1)(i) For a period which corresponds to a base period, each supplier shall make available to each of its purchasers which are entitled to receive motor gasoline from that supplier a volume of unleaded gasoline which bears the same ratio to that purchaser's allocation entitlement as the supplier's allocation ratio for that period. Suppliers may refuse to supply unleaded gasoline to any wholesale purchaser-reseller which does not have facilities suitable for the storage and delivery of unleaded gasoline, as required by the provisions of 40 CFR Ch. I, Part 80, Subpart B.

(ii) This subparagraph (1) applies as of September 1, 1974, to all of the supplier's wholesale purchasers and end-user's which are entitled to receive motor gasoline from that supplier except those retail sales outlets which were not selling unleaded gasoline during the thirty (30) days prior to July 1, 1974, and which are not required to sell unleaded gasoline pursuant to 40 CFR Ch. I, Part 80, Subpart B. This subparagraph becomes applicable to retail sales outlets which were not selling unleaded gasoline during the thirty (30) days prior to July 1, 1974 and which are not required to sell unleaded gasoline pursuant to 40 CFR Ch. I, Part 80, Subpart B, on October 1, 1974.

(2) No purchaser may be required to accept any quantity of unleaded gasoline in lieu of part or all of its allocation entitlement to motor gasoline for a period which corresponds to a base period.

(3)(i) After its initial offer of unleaded gasoline pursuant to subparagraph (1) of this paragraph a supplier shall offer any of its supply of unleaded gasoline which remains only to its purchasers which are entitled to receive motor gasoline from that supplier and which desire to purchase unleaded gasoline. Automobile manufacturers, new car dealers, fleet owners or operators, or any other wholesale purchaser-consumers which require unleaded gasoline as a greater proportion of their allocation entitlement than the supplier's allocation ratio shall have first priority to any such additional quantities of unleaded gasoline.

(ii) Any supplier with a motor gasoline allocation fraction less than or equal to one (1.0) which has a supply of unleaded gasoline that none of its purchasers entitled to receive motor gasoline from that supplier desire to purchase shall notify FEA and may dispose of such supply in accordance with the provisions of § 211.10(f)(2).

(4) The total volume of leaded and unleaded gasoline which a supplier allocates to a purchaser for a period which corresponds to a base period shall equal the total amount of motor gasoline which the supplier could otherwise allocate to that purchaser pursuant to this subpart without regard to the provisions of this section.

(5) Any purchaser which has been notified that its supplier will not supply

it with unleaded gasoline and which with reasonable diligence cannot otherwise obtain a supply of unleaded gasoline under the provisions of this part, may apply to the appropriate FEA Regional Office in accordance with Subpart C of Part 205 of this chapter for assignment of a supplier of unleaded gasoline.

(6) FEA may require recipients of assigned quantities of unleaded gasoline to provide leaded gasoline in exchange for the assigned product.

(d) *Apportionment among retail sales outlets.* Notwithstanding the provisions of § 211.106(b), entities operating two or more retail sales outlets may apportion their entitlements of unleaded gasoline for those outlets between and among those retail sales outlets without restriction: *Provided,* That no retail sales outlets shall be supplied a total volume of motor gasoline (leaded and unleaded) which exceeds the total amounts of motor gasoline which the supplier could otherwise allocate to that retail sales outlet pursuant to this subpart without regard to the provisions of this section.

(e) *Prime suppliers.* Prime suppliers shall make available in their State set-aside a ratio of unleaded gasoline to all motor gasoline equal to their allocation ratio.

(f) *Relationship to EPA regulations.* Nothing in this section shall be interpreted to supersede any regulation concerning unleaded gasoline issued by the Environmental Protection Agency.

§ 211.109 Procedures and reporting requirements.

(a) All applications for adjustment or assignment of motor gasoline shall be filed with the appropriate State Office or FEA Regional Office in accordance with Subparts B and C of Part 205, respectively, of this chapter. All other matters pertaining to the allocation of motor gasoline shall be addressed to the appropriate FEA Regional Office at the address provided in § 212.12, unless otherwise specified.

(b) The general reporting and recordkeeping requirements contained in Subpart L of this part shall apply to this subpart.

(c) An application for an assignment under the state set-aside system, as provided in § 211.17, for hardship or emergency requirements shall be submitted to the appropriate State Office in accordance with the procedures established in Subpart Q of Part 205 of this chapter.

Subpart G—Middle Distillate

§ 211.121 Scope.

(a) This subpart applies to all middle distillate fuels produced in or imported into the United States.

(b) This subpart provides for a state set-aside.

§ 211.122 Definitions.

For the purposes of this subpart—

"Base period" means the month of 1972 corresponding to the current month.

§ 211.123 Allocation levels.

(a) *General.* The allocation levels in this section only apply to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase middle distillate fuels under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase middle distillate fuels under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production;

(ii) Department of Defense use as specified in § 211.26.

(2) One hundred (100) percent of base period use for space heating requirements subject to the following specifications:

(i) No reduction for medical and nursing buildings for all uses;

(ii) Six (6) degree F reduction for residences and schools;

(iii) Ten (10) degree F reduction for all others; or

(iv) Reduction of the ambient indoor temperature by the appropriate amount, or other action which results in a fuel saving equivalent to that which would otherwise result under paragraph (b)(2)(ii)–(iii) of this section.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Manufacture of ethical drugs and related research;

(iv) Sanitation services;

(v) Telecommunications services;

(vi) Passenger transportation services;

(vii) Cargo, freight, and mail hauling except as set forth elsewhere in this section;

(viii) Aviation ground support vehicles and equipment; and

(ix) Nonmilitary marine shipping, both foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a nondiscriminatory basis in regard to flag of registration, subject to modification by the FEA following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal nondiscriminatory allocation of middle distillate fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States.

(2) One hundred ten (110) percent of base period use (as reduced by application of an allocation fraction) for industrial use except for space heating.

(3) *Electric utilities.* (i) One hundred (100) percent of base period use (as reduced by application of an allocation fraction) or as otherwise determined by the FEA upon recommendation by the Federal Power Commission (FPC), but not less than one hundred (100) percent of current requirements for nuclear plants, start-up, testing and flame stability of coal-fired plants (except for peaking uses).

(ii) In determining the middle distillate allocation for each utility, the FEA may take into account but is not limited to the following considerations:

(A) The fact that electric generating plants which now burn middle distillate fuel oil have been identified by the FEA as candidates for conversion to coal and the maximum possible extent to which such plants could be utilized after conversion;

(B) The extent to which any electric generating plants which burn coal may be utilized more fully than at present;

(C) The extent to which it is possible for electric utilities to obtain necessary supplies of coal;

(D) The extent to which certain minimal levels of middle distillate consumption are essential, as determined by the FEA upon recommendation of the FPC, to supply portions of a power system that cannot be supplied by non-middle distillate-fired generation, or for other special considerations (Any volumes so identified shall be counted as part of the utility's total allocation);

(E) The extent to which utilities currently utilizing natural gas supplied under interruptible contracts experience gas service interruptions;

(F) Available stocks of middle distillate held by each utility.

(4) One hundred (100) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(i) Petrochemical feedstock use;

(ii) Synthetic natural gas plant feedstock use;

(iii) All other non-space heating uses.

§ 211.125 Supplier/purchaser relationships.

Supplier/purchaser relationships are set forth in §§ 211.9–211.13.

§ 211.126 Method of allocation.

(a) The initial State set-aside level for middle distillate fuels for a particular month and state is four (4) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the state's distribution system for consumption within the State. Subsequent adjustments to the percentage unit will be published by the FEA.

(b) Allocation of middle distillate fuels shall be made as specified in § 211.10. Provisions to adjust a wholesale purchaser's base period volume are specified in § 211.13. New wholesale purchasers and

end-users are subject to the requirements of § 211.12.

(c) Suppliers shall, to the extent practicable, make deliveries to all space-heating end-users and wholesale purchaser-consumers on the basis of certified need. Certified need for space-heating is the calculated quantity of fuel needed to maintain the ambient indoor temperature of a building at the reduced temperature required in § 211.123(b)(2).

(1) This calculation of certified need shall be done using historical usage factors for each building heated. Where suppliers do not have an historical usage factor for a building, this factor shall be calculated based on gallons of fuel consumed and actual degree-days exposure during the latest thirty (30) day period of normal heating usage before January 15, 1974. If no such period exists, a usage factor for that unit shall be established by an initial period of normal space-heating operations, subject to review by the State Office.

(i) Historical usage factors shall be associated with units and not with end-users or wholesale purchaser-consumers.

(ii) If this calculation of certified need results in undue hardship, the owners or occupants may apply to their State Office to obtain relief.

(2) To the extent practicable, the following procedure shall be followed by heating oil suppliers:

(i) Each space-heating end-user or wholesale purchaser-consumer shall be entitled to an initial fill-up at its first delivery after these regulations become effective, if sufficient supplies are available.

(ii) At the next delivery, the supplier shall again provide a full tank and determine, to the extent possible, compliance with this part. If the space-heating end-user or wholesale purchaser-consumer has clearly not complied, the supplier shall present a warning notice to the end-user or wholesale purchaser-consumer. The warning notice shall indicate that the end-user or wholesale purchaser-consumer faces the danger of running out of fuel if it does not reduce its ambient indoor temperature by the required amount or take equivalent actions to conserve fuel.

(iii) For each subsequent delivery, the supplier shall continue to deliver only the calculated certified need regardless of the quantity required to fill the tank, unless otherwise directed by the State Office.

§ 211.127 Procedures and reporting requirements.

(a) All applications for adjustment and assignment of middle distillate fuels, except to utility users, shall be filed with the appropriate State Office or FEA Regional Office in accordance with Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to the allocation of middle distillate fuels, except to utility users, shall be submitted to the appropriate FEA Regional Office at the address provided in § 205.12. All matters pertaining to the allocation of middle distillate fuels to utility users shall be addressed FEA National Office at the address provided in § 205 12, unless otherwise specified.

(b) Bonded aviation fuel is excluded from allocation; provision for bonded fuel shortfalls is addressed in § 211.146.

(c) Applications for assignment from the state set-aside system for hardship or emergency requirements shall be submitted to the appropriate State Office in accordance with the procedures established in Subpart Q of Part 205 of this chapter.

Subpart H—Aviation Fuels

§ 211.141 Scope.

(a) This subpart applies to the mandatory allocation of aviation fuels produced in or imported into the United States.

(b) Bonded aviation fuel is excluded from allocation; provision for bonded fuel shortfalls is addressed in § 211.146.

(c) No state set-aside is provided for in this subpart.

§ 211.142 Definitions.

For the purposes of this subpart—

"Adjusted allocable supply" means a supplier's allocable supply for a month plus the sum of the bonded fuel factors for all the international air carriers to be supplied for the month by the supplier.

"Agricultural production flying" means the use of general aviation aircraft under 14 CFR Parts 91, 133, and 137 in agricultural production, including seeding, spraying, fertilizing, and dusting of food and forestry crops by air, the use of aircraft by those engaged in agricultural production to transport priority supplies and personnel to sustain or increase crop and animal yields, to transport crop, forestry, and animal products to distribution points, and in commercial fishing.

"Air taxi"—See "Other air carrier."

"Air travel club flying" means any use of aircraft operated under 14 CFR Part 123.

"Aircraft manufacturing uses" means the consumption of aviation fuels for aircraft production, major overhaul of aircraft, static and flight testing of aircraft and components, the ferrying of aircraft from the manufacturer, and initial type aircraft certification training provided by the manufacturer for the purchaser.

"Aviation fuels" means aviation gasoline and aviation turbine fuel.

"Aviation gasoline" means petroleum based fuels designed for use in aircraft internal combustion engines, and complying with MIL–G–5572 specification (ASTM—specification D–910–70).

"Aviation turbine fuel" means all refined petroleum fuel designed to operate aircraft turbine engines. The basic specification is ASTM D–1655 which covers both Type A (kerosene base) and Type B (naphtha base).

"Base period" means (a) the calendar month of 1972 corresponding to the current month; and (b) after March 31, 1974, the calendar quarter of 1972 corresponding to the current quarter.

"Base period supplier" means for an international air carrier its base period supplier of bonded or non-bonded aviation fuel or its supplier as assigned by FEA.

"Base period volume" means for an international air carrier the volume of bonded and non-bonded aviation fuels purchased by an international air carrier during a base period.

"Bonded fuel factor" means, for each international air carrier to be supplied by a supplier, that amount of bonded aviation fuel which bears the same proportion to the total volume of bonded aviation fuel to be received by the international air carrier from all sources for a month as that amount of the international air carrier's base period volume which was supplied by the supplier for the base period bears to the international air carrier's base period volume.

"Business flying" means any use of aircraft under 14 CFR Parts 91 and 133 by a firm for the purpose of transportation required by a business in which it is engaged and for the purpose of transporting its employees and/or property. Business flying includes such aerial uses as photography, advertising, survey and helicopter operations.

"Civil air carrier" means (a) a domestic, supplemental, and scheduled cargo air carrier; (b) an international air carrier; (c) an intrastate air carrier; (d) a local service air carrier; or (e) other air carrier.

"Commercial operator" see "Other air carrier."

"Commuter air carrier" see "Other air carrier."

"Domestic, supplemental, and scheduled cargo air carrier" means those air carriers holding a certificate of public convenience and necessity providing for interstate and overseas air transportation, issued pursuant to section 401 of the Federal Aviation Act of 1958, as amended and operating under 14 CFR Part 121.

"Emergency aviation services, safety, and mercy missions" means public or private aircraft dedicated to emergency operations, safety and mercy missions operating under 14 CFR Parts 91 or 137, except however, it does not include mercy missions of the Civil Air Patrol.

"Energy production flying" means the use of general aviation aircraft operating under 14 CFR Parts 91 and 133 in the production of energy sources, including pipeline and powerline patrol, oil and gas exploration activities, necessary movement of supplies and personnel for the production of energy resources, and other essential flying for energy production.

"FAR" means the Federal Aviation Regulations, Title 14, Chapter I, of the Code of Federal Regulations.

"General aviation" means (a) agricultural production flying; (b) air travel club flying; (c) business flying; (d) instructional flying; (e) personal non-business flying; (f) energy production flying; (g) aircraft manufacturing uses; and (h) telecommunications flying.

"Instructional flying" means any use of aircraft operating under 14 CFR Parts 91, 127, and 141 for the purpose of formal instruction.

"International air carrier" means those United States air carriers operating under 14 CFR Part 121 holding a certificate of public convenienec and necessity, providing for foreign air transportation, issued pursuant to section 401 of the Federal Aviation Act of 1958, and foreign air carriers operating under 14 CFR Part 129 holding permits issued pursuant to section 402 of the Federal Aviation Act of 1958, but excluding those with permits which restrict operation to the use of aircraft not exceeding 12,500 pounds gross take-off weight.

"Intrastate air carriers" means those carriers operating under 14 CFR Part 121 licensed by a state regulatory agency, and operating equipment having more than thirty (30) seats or a pay load of at least 7,500 pounds.

"Local service air carriers" means those carriers operating under Part 121 or 127 holding a certificate pursuant to section 401 of the Federal Aviation Act of 1958, and (a) receiving Federal subsidy, or (b) operating solely within the States of Hawaii or Alaska, or (c) operating scheduled helicopter service.

"Non-flying use of aviation fuels" means the consumption of aviation fuels associated with gas turbine engines in industry, utilities and passenger transportation services.

"Other air carriers" means (a) those carriers holding a Federal Aviation Administration Air Taxi/Commercial Operator Certificate issued under 14 CFR Part 135 and operating under the exemption authority of 14 CFR Part 298 of the Civil Aeronautical Board Regulations, including operations by scheduled commuter airlines, and non-scheduled air taxi operations; (b) those foreign carriers operating under Part 129 of the FAR holding permits under section 402 of the Federal Aviation Act of 1958 authorizing casual and infrequent service with aircraft and exceeding 12,500 pounds gross take-off weight; and (c) those commercial operators of large aircraft under Federal Aviation Regulations 14 CFR Part 121, except Intrastate carriers.

"Personal non-business flying" means any use of aircraft under 14 CFR Part 91 for personal purposes not associated with a business or profession and not for hire.

"Public aviation" means any aircraft operating under 14 CFR Parts 91, 133 or 137 used exclusively in the service of the Federal government or the government of the District of Columbia or of any state, territory or possession of the United States, and any political subdivisions thereof, excluding military aircraft.

"Scheduled cargo air carrier" see "Domestic, supplemental and scheduled cargo air carrier."

"Supplemental air carrier" see "Domestic, supplemental, and scheduled cargo air carrier."

"Telecommunications flying" means the use of aircraft operating under 14 CFR Parts 91 and 133 in "telecommunications services" as defined in Subpart B of this part.

"Wholesale purchaser-consumer" means wholesale purchaser-consumer as defined in § 211.51, and any civil air carrier as defined in this section.

§ 211.143 Allocation levels.

(a) *General.* The allocation levels listed in this section apply only to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase aviation fuels under an allocation level not subject to an allocation fraction shall receive first priority and shall be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase aviation fuels for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred percent of current requirements for the following uses:

(i) Agricultural production flying;

(ii) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of an allocation fraction) for the following uses:

(i) Emergency aviation services, safety and mercy missions;

(ii) Energy production flying;

(iii) Aircraft manufacturing but not to exceed one hundred thirty (130) percent of base period use;

(iv) Telecommunications flying.

(2) One hundred (100) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(i) Local service air carriers, including requirements for crew training and proficiency flying;

(ii) Other air carriers, including requirements for crew training and proficiency flying;

(iii) Non-flying use of aviation fuels.

(3) Ninety-five (95) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(i) Domestic, supplemental, and scheduled cargo air carriers, including requirements for crew training and proficiency flying;

(ii) International air carriers, including requirements for crew training and proficiency flying—the total of both bonded and non-bonded fuels;

(iii) Intra-state carriers, including requirements for crew training and proficiency flying.

(d) Ninety (90) percent of base period use (as reduced by application of an allocation fraction) for business flying, including requirements for crew training and proficiency flying.

(e) Eight-five (85) percent of base period use (as reduced by application of an allocation fraction) for public aviation.

(f) Seventy-five (75) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(1) Personal non-business flying;

(2) Instructional flying;

(3) Air travel club flying including requirements for crew training and proficiency flying.

§ 211.145 Supplier/purchaser relationships and adjustments of base period use.

(a) Unless otherwise specified, the provisions of § 211.9–§ 211.13 apply to this subpart.

(b) Civil air carriers may apply to the National FEA for an adjustment to base period use based upon changed circumstances. In processing such applications, the FEA may consider situations that indicate a need for increased amounts over base period use. FEA, following consultation with appropriate Federal agencies, shall only make adjustments for changed circumstances when there are compelling situations requiring relief.

§ 211.146 Method of allocation.

(a) Suppliers of wholesale purchasers and end-users shall allocate aviation fuels in accordance with the provisions of § 211.10.

(b) Aviation fuel for international flights shall be allocated on a non-discriminatory basis among international carriers, subject to modification by the FEA, following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of aviation fuel for U.S. carriers engaged in international flights.

(c) (1) International air carriers which have traditionally used bonded aviation fuel for international flights shall be allocated non-bonded aviation fuels, including naphtha-base jet fuel, by their base period suppliers to reduce their shortages of bonded aviation fuel. Upon certification by an international air carrier to its base period suppliers that the carrier is unable to purchase or obtain sufficient bonded aviation fuel from its base period suppliers of bonded fuel for a month at prices which do not exceed the lawful price of its base period suppliers of bonded fuel for similar volumes of non-bonded aviation fuel at the desired location, the base period suppliers shall provide non-bonded aviation fuel, including naphtha-base jet fuel to that carrier. Unless the international air carrier certifies that it cannot utilize naphtha-base jet fuel, the base period suppliers may to the extent of the carrier's capability to use such fuel allocate non-bonded naphtha base jet fuel prior to allocating other non-bonded aviation fuels to the international air carrier. International air carriers which do not have base period suppliers or whose base period suppliers are unable to supply them currently with non-bonded aviation fuel shall apply to FEA for assignment of suppliers of non-bonded aviation fuels.

(2) Each base period supplier of bonded fuel shall notify international air carriers, upon request, whether the sup-

plier will provide bonded fuel at the supplier's lawful price for its non-bonded fuel at a station. For the month of April 1974, suppliers shall notify their international air carrier purchasers whether bonded fuel can be so supplied by April 16, 1974.

(3) (i) An international air carrier which files a certification with a supplier under this paragraph shall provide such certification to its supplier at least fifteen days prior to the beginning of the month to which the certification applies. The certification shall specify the volumes of bonded aviation fuel which can be obtained for a month, the international air carrier's base period volume, the amount of the international air carrier's base period volume which was supplied by the supplier, and whether and to what extent the international air carrier can use naptha-base jet fuel.

(ii) For the period April 16, 1974 through April 30, 1974, international air carriers shall provide their suppliers with certifications pursuant to this paragraph by April 17, 1974. Suppliers shall then calculate their allocation fractions for the period April 16 through April 30, 1974, taking into account said certifications and shall make deliveries in accordance with the provisions of this paragraph. For the period of May 1 through May 31, 1974, international air carriers shall provide their suppliers with certifications pursuant to this paragraph by April 20, 1974.

(4) Suppliers of non-bonded aviation fuel shall allocate supplies of non-bonded aviation fuel as follows:

(i) The allocation fraction for providing aviation fuel pursuant to this paragraph shall be equal to the supplier's adjusted allocable supply divided by its base period volume.

(ii) For each civil air carrier to be supplied, the supplier shall multiply the civil air carrier's allocation requirement times the supplier's allocation fraction as determined pursuant to this paragraph. The resulting volume minus the bonded fuel factor for that civil air carrier shall be the amount of non-bonded aviation fuel allocated by the supplier to the civil air carrier for that month. The amount of non-bonded aviation fuel allocated each month to any civil air carrier when added to the bonded aviation fuel available to that civil air carrier shall not exceed the volume of aviation fuel which the civil air carrier would receive if the carrier were to use only non-bonded aviation fuels to meet its base period use.

(iii) If a carrier purchases or otherwise obtains a quantity of bonded aviation fuel for a month regardless of price in addition to the amount of bonded fuel which it certifies is available to it for that month under this paragraph, the carrier shall immediately report such quantity to its supplier by filing an amended certification and its supplier shall reduce by such quantity the amount of non-bonded aviation fuel which would otherwise be allocated to that carrier in the current or a subsequent month.

(5) None of the provisions of this paragraph shall affect existing contracts for the purchase of bonded aviation fuels.

(d) Civil Air Patrol assigned to mercy missions shall be provided aviation fuel from the Department of Defense allocation.

(e) Notwithstanding the provisions of § 211.143(c)(2)(iii), the use of aviation fuel for non-flying purposes by a utility may not exceed those volumes of aviation fuel contracted for or purchased during the base period. Aviation fuel shall not be used for peaking as long as the utility continues service during such peaking to interruptible non-priority industrial users (except where no suitable substitute fuel is available to the user) or to any purchaser which can use a fuel other than aviation fuel.

§ 211.147 Procedures and reporting requirements.

(a) All applications for adjustment or assignment of aviation fuels to civil air carriers (except air taxi/commercial operators) shall be filed with the FEA National Office in accordance with Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to the allocation of aviation fuels to civil air carriers (except air taxi/commercial operators) shall be addressed to the FEA National Office at the address provided in § 205.12, unless otherwise specified.

(b) All matters pertaining to the allocation of aviation fuels for general aviation, air taxi/commercial operators, public aviation and non-flying uses of aviation fuels shall be addressed to the appropriate supplier. Any matters unresolved at the supplier level may be referred directly to the appropriate Regional FEA office at the address provided in § 205.12.

(c) The general reporting and recordkeeping requirements contained in § 211.222 shall apply to this subpart. In addition, civil air carriers (excluding air taxi/commercial operators) shall make a one time only report to the Administrator, FEA, of their base period volume, or adjusted base period volume, of aviation gasoline and of both naphtha-base and kerosene-base jet fuel broken down by month. At the option of the user, this may be modified to reflect one-twelfth (1/12) of the annual allocation volumes for each month or the estimated requirements by month, not to exceed total annual allocation volume. Use of this reporting option shall be applied for purposes of choosing the most realistic figures. The report required by this paragraph shall indicate the purchases of non-bonded fuel for domestic flights, non-bonded fuel for international flights, and bonded fuel for international flights, as applicable.

(d) For general aviation wholesale purchasers, the recordkeeping requirements specified in § 211.223 shall apply provided, however, that such reports need reflect only jet fuel and aviation gasoline usage for local purchasers and their uses and activities and total pumpage per month of jet fuel and aviation gasoline.

Subpart I—Residual Fuel Oil

§ 211.161 Scope.

(a) This subpart applies to the mandatory allocation of residual fuel oil produced in or imported into the United States.

(b) This subpart provides for a state set-aside.

§ 211.162 Definitions.

For the purposes of this subpart—

"Base period" means (a) with respect to all non-utility users, the month of 1973 corresponding to the current month and (b) with respect to all utility users the period October 1, 1973, through December 31, 1973.

§ 211.163 Allocation levels.

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase residual fuel oil under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. Wholesale purchaser-consumers and end-users which are entitled to purchase residual fuel oil for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production; and

(ii) Department of Defense for use as specified in § 211.26.

(2) One hundred (100) percent of base period use for space heating requirements subject to the following specifications:

(i) No reduction for medical and nursing building uses;

(ii) Six (6) degrees F reduction for residences and schools;

(iii) Ten (10) degrees F reduction for all others;

(iv) Reduction of the ambient indoor temperature by the appropriate amount, or other actions which result in a fuel saving equivalent to that which would otherwise result under paragraph (b)(2)(ii)–(iii) of this section.

(3) The allocation level as specified each month by the FEA for utility use. In specifying the allocation levels for each utility the FEA may include but is not limited to the following considerations:

(i) Each utility within appropriate groupings shall absorb an equal percentage cutback in electricity generation, to the maximum extent possible.

(ii) The fact that electric generating plants which now burn residual fuel oil that have been identified by the FEA as candidates for conversion to coal, and the maximum possible extent to which such plants could be utilized after conversion.

(iii) The extent to which any electric generating plants which burn coal may be utilized more fully than at present.

(iv) The extent to which certain minimal levels of residual fuel oil consumption are essential, as determined by the FEA upon recommendation of the Federal Power Commission (FPC) to supply portions of a power system requirement that cannot be supplied by non-oil-fired generation, or for other special considerations. Any volumes so identified shall be counted as part of a utility's total allocation.

(v) The extent to which utilities currently utilize natural gas supplies under interruptible contracts and which have been interrupted.

(vi) Available stocks of residual fuel oil held by each utility.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Manufacture of ethical drugs and related research;

(iv) Non-military marine shipping, foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a non-discriminatory basis in regard to flag of registration, subject to modification by the FEA following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of bunker fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States;

(v) Sanitation services;

(vi) Telecommunications services;

(vii) Passenger transportation services.

(2) One hundred (100) percent of base period use for industrial use and all other users and uses of residual fuel oil not included in paragraph (b) or (c)(1) of this section.

§ 211.165 Supplier/purchaser relationships.

Unless otherwise specified, supplier/purchaser relationships are set forth in § 211.9–13.

§ 211.166 Method of allocation.

(a) *State set-aside.* The State set-aside level for residual fuel oil for a particular month and State is three (3) percent of a prime supplier's estimated portion of its total supply of residual fuel oil for non-utility use for that month which will be sold into that State's distribution system for consumption within the State. Subsequent adjustments to the percentage unit will be published by the FEA.

(b) *General.* Based on the estimated total supply of residual fuel oil, on allocation levels set forth in § 211.163, on the State set-aside percentage and on other relevant considerations, the FEA shall determine the portion of total supply for non-utility use and the portion of total supply for utility use for delivery during a month or months in accordance with paragraphs (c) and (d) of this section. The FEA may make its determination for a single month or for several months at a time.

(c) *Non-utility.* The portion of each supplier's allocable supply not directed by the FEA to be distributed for utility use shall be allocated pursuant to § 211.10. With respect to space heating uses, suppliers must comply, to the fullest extent practicable, with the provisions of paragraph (e) of this section. Notwithstanding the provisions of § 211.165 or § 211.10, suppliers may not supply a utility in excess of the amounts established pursuant to paragraph (d) of this section until the non-utility allocation levels listed in § 211.163 have been filled, unless otherwise directed by the FEA.

(d) *Utilities.* (1) For purposes of calculating the allocation of residual fuel oil to utilities for delivery during the month of February 1974—

(i) The FEA will determine the amount of residual fuel oil allocated to each utility for delivery during the month of February and publish that determination. The volume of residual fuel oil allocated to each utility shall be based upon the supply available for utilities, the considerations specified in § 211.163 (b)(3) and other relevant considerations.

(ii) Based upon total deliveries from suppliers during the base period, each utility shall calculate the percentage of the utility's total deliveries during the base period which were supplied by each supplier. Within 7 days following the date of notification of allocation amounts pursuant to paragraph (d)(1)(i) of this section, each utility shall notify each of its suppliers and the FEA of the amount required to be supplied by each supplier for delivery in February 1974 and of the percentage of the amount allocated to each utility which each supplier must supply. The amount required to be supplied by a supplier shall be calculated by multiplying the utility's specified monthly allocation amount by the percentage of the utility's total deliveries during the base period which were supplied by the supplier.

(iii) Following notification by the utilities of the amounts and percentages required to be supplied by each supplier for delivery in February 1974, FEA will publish these percentages.

(2) For purposes of calculating the allocation of residual fuel oil to utilities for delivery in every month after February 1974—

(i) The FEA will determine the amount of residual fuel oil allocated for delivery to each utility for a single month or several months at a time. The volume of residual fuel allocated to each utility for each month shall be based upon the supply available for utilities, the considerations specified in § 211.163(b)(3) and other relevant considerations.

(ii) Following the determination in paragraph (d)(2)(i) of this section, the FEA will publish the amounts of residual fuel oil allocated to each utility for delivery for a single month or several months at a time, and the amounts required to be supplied for each month by each supplier. The amounts required to be supplied by each supplier will be calculated by multiplying each utility's specified monthly allocation amount by the percentage of the utility's total deliveries during the base period which were supplied by the supplier as computed from the information reported to FEA by the utility pursuant to the provisions of paragraph (d)(1)(ii) of this section.

(3) Within 48 hours of the notification by the utility to the supplier required in paragraph (d)(1)(ii) of this section, and within 7 days of the date of publication by the FEA of the information set forth in paragraph (d)(2)(ii) of this section, or fifteen days prior to the beginning of the month in which the specified amount is to be delivered, whichever is later, each supplier of a utility shall notify that utility of its anticipated ability to supply, during the month for which the allocation amount is specified, the entire amount of residual fuel required to be supplied by that supplier. If a supplier of a utility is unable to supply its specified amount, the supplier may request an extension to the delivery period in that month of up to 12 days. Following receipt of a request for extension, the utility must notify the supplier within 48 hours of its determination of the acceptability of the requested extension and of the amount to be delivered during the extension period. If the utility refuses to accept the extension, the supplier and utility shall notify the FEA of the reason for the request for extension by the supplier and the refusal to accept the extension by the utility. The FEA shall then determine the amounts to be delivered and the date or dates for delivery.

(4) Suppliers and utilities may apply to the FEA for adjustment to the requirement of § 211.165 and paragraph (d)(1)(i) of this section, or assignment of a new supplier, in accordance with Subparts B and C, respectively, of Part 205 of this chapter. Such applications must be filed by the tenth day of the current month in order to be considered for decision or relief with respect to adjustment to the allocation amounts to be published in the following month or assignment of a new supplier for the following month.

(5) Utilities may, and are encouraged to, by mutual agreement and after notice to FEA, apportion their respective allocated residual fuel oil volumes, other fuel volumes, or generated power among themselves.

(e) *Space heating uses.* To the extent practicable, suppliers shall use the following procedures for residual fuel oil distributed for space heating use. Suppliers to end-users shall calculate the quarterly allotment of their customers for space heating using the most recently available usage factors on or before November 1, 1973, for each building winter, and notify the end-user of its winter, and notify the end-user of his allotment. Where suppliers do not have an historical usage factor for a building, a usage factor shall be calculated based on gallons of fuel consumed and actual degree-days exposure in the base period.

For new buildings, the usage factor shall be determined based on gallons of fuel consumed and actual degree-days exposure during the latest thirty (30) day period of normal heating usage before January 15, 1974. If no such period exists, a usage factor of that unit shall be established by an initial period of normal space heating operation, subject to review by the State Office. Suppliers to end-users shall recalculate monthly the quarterly allotment for each space heating user by applying its usage factor to actual degree-days, less an adjustment for the required reduction in ambient indoor temperature. The supplier shall notify the end-user monthly of the end-user's adjusted allotment, and shall inform the end-user whether and by how much its usage rate exceeds that required to achieve the required reduction in ambient indoor temperature, and that it faces the danger of running out of fuel if it does not reduce its ambient indoor temperature as required by § 211.163(b)(2)(iv). The supplier shall notify the appropriate Regional FEO of any customer whose usage is excessive for two successive months. Suppliers' usage factors shall be associated with units (e.g., an apartment house) and not with end-users. The usage factor of record for a unit shall be used for that unit throughout the duration of his program regardless of changes in occupants or ownership.

§ 211.167 Procedures and reporting requirements.

(a) All applications for adjustment and assignment of residual fuel oil for the electric utility industry shall be filed in accordance with Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to the allocation of residual fuel oil for the electric industry shall be addressed, separately, to the Chairman, Federal Power Commission and to the FEA National Office, at the address provided in § 205.12.

(b) All applications for adjustment and assignment of residual fuel oil to non-utility users of residual fuel oil shall be filed in accordance with Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to the allocation of residual fuel oil to non-utility users of residual fuel oil shall be addressed to the appropriate FEA Regional Office at the address provided in § 205.12.

(c) The general reporting and record-keeping requirements contained in § 211.222 shall apply to non-utility customers of residual fuel oil.

(d) Suppliers of residual fuel oil to utilities shall comply with the reporting requirements of § 211.222. Utilities using residual fuel oil shall comply with the reporting requirements of the Federal Power Commission and the FEA.

(e) Applications for assignment from the state set-aside system for hardship or emergency requirements shall be submitted to the appropriate State Office in accordance with Subpart Q of Part 205 of this chapter.

Subpart J—Naphthas and Gas Oils

§ 211.181 Scope.

(a) This subpart applies to the mandatory allocation of certain naphthas and gas oils produced in or imported into the United States.

(b) This subpart does not provide for a State set-aside.

§ 211.182 Definitions.

For purposes of this subpart—

"Base Period" means each calendar quarter of 1973 which corresponds to the current calendar quarter.

"Gas oils" means petroleum fractions made up predominantly of material which boils at or above 430° F., including heavy aromatic gas oil used as carbon black feedstock, but excluding process oils and refined lubricating oils.

"Naphthas" mean petroleum fractions made up predominantly of hydrocarbons whose boiling points fall within the temperature range of 85° to 430° F. This definition does not include specific hydrocarbon constitutents such as hexane or special naphthas (solvents).

"Special naphthas (solvents)" means all finished products within the gasoline range, specially refined to specified flash point and boiling range, for use as paint thinners, cleaner's naphthas, and solvents, but not to be marketed as motor gasoline, aviation gasoline, or used as petrochemical or synthetic natural gas plant feedstocks.

§ 211.183 Allocation levels.

(a) *General.* The allocation levels in this paragraph apply only to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall first allocate one hundred (100) percent of the allocation requirements of all their purchasers entitled to an allocation under this part without application of an allocation fraction. Suppliers may then dispose of the remainder of their total supply at their discretion. The allocation levels listed below are not arranged in sequence of priority. Suppliers shall distribute available supplies of naphthas and gas oils to all classifications of purchasers listed in the following allocation levels without regard to order of listing.

(b) *Allocation levels (not subject to an allocation fraction).* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production;

(ii) Department of Defense use as specified in § 211.26; and

(iii) Petrochemical feedstock use.

(2) One hundred (100) percent of base period use for synthetic natural gas plant feedstock use.

(3) Ninety (90) percent of base period use for the following uses:

(i) Gasoline blending and manufacturing; and

(ii) All other uses.

§ 211.184 Supplier/purchaser relationships.

Supplier/purchaser relationships shall be as set forth in § 211.9–13, unless otherwise specified in this subpart.

§ 211.185 Method of allocation.

(a) The provisions of § 211.10 shall not apply to this subpart.

(b) Suppliers shall supply one hundred (100) percent of their purchasers' allocation requirements without application of an allocation fraction.

(c) New wholesale purchasers and end-users are subject to the requirements of § 211.12.

(d) Any supplier which experiences a hardship as a result of its supply obligation under this subpart may apply to the National Office of FEA for an assignment of additional suppliers, the designation of an allocation fraction which may be applied to its purchaser's allocation requirements, or the reassignment of its purchasers.

(e) In order to remedy supply imbalances which may exist, the National FEA may order the transfer of supplies of naphthas or gas oils from any firm which controls naphthas or gas oils and may assign to any such firm new purchasers of naphthas or gas oils.

§ 211.186 Procedures and reporting requirements.

(a) All refiners and importers shall report in accordance with forms and procedures to be issued by FEA.

(b) The provisions contained in Subpart L of this part shall not apply to this subpart except §§ 211.223 and 211.225.

(c) All applications for adjustment or assignment of naphthas and gas oils shall be filed with the FEA National Office in accordance with Subparts B and C, respectively, of Part 205 of this chapter. All other matters pertaining to allocation of naphthas and gas oils shall be addressed to the FEA National Office at the address provided in § 205.12.

Subpart K—Other Products

§ 211.201 Scope.

(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 xylenes, hexane, lubricants, greases, special naphthas (solvents), lubricating base stock oils and process oils produced in or imported into the United States.

(b) This subpart does not provide for a State set-aside.

§ 211.202 Definitions.

For purposes of this subpart—

"Base period" means the calendar quarter of 1973 which corresponds to the current quarter.

"Chemical processing" means the use of an allocated product in the manufacture of any chemical (including petrochemicals) for purposes other than as feedstock or use solely as fuel.

"Greases" means lubricating greases which are solid semi-fluid products comprising a dispersion of a thickening agent in a liquid lubricant.

"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.

"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.

"Other products" means allocated products which are not subject to allocation under subparts D through J of this part, including benzene, toluene, mixed xylenes, hexane, lubricants, greases, special naphthas (solvents), lubricant base stock oils and process oils.

"Special naphthas (solvents)" means all finished products within the gasoline range, specially refined to specified flash point and boiling range, for use as paint thinners, cleaner's naphthas, and solvents, but not to be marketed as motor gasoline, aviation gasoline, or used as petrochemical or synthetic natural gas plant feedstocks.

"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 this subpart in any completed calendar year subsequent to 1971.

§ 211.203 Allocation levels.

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase other products under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet one hundred (100) percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase other products under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production; and

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Passenger transportation services;

(v) Telecommunications services;

(vi) Cargo, freight and mail hauling;

(vii) Chemical processing; and

(viii) Petrochemical feedstock use.

(2) One hundred (100) percent of base period use for:

(i) Industrial use;

(ii) Synthetic natural gas plant feedstock use; and

(iii) Blending and compounding of lubricants.

(3) Ninety (90) percent of base period use for:

(i) Gasoline blending and manufacturing; and

(ii) All other uses.

§ 211.205 Supplier/purchaser relationships.

Supplier/purchaser relationship shall be as set forth in § 211.9–13, unless otherwise specified in this subpart.

§ 211.206 Method of allocation.

(a) *General.* Except as provided in paragraph (b) below, the allocation of other products shall be as specified in § 211.10. New wholesale purchasers and end-users are subject to the requirements of § 211.12.

(b) Firms which purchase lubricants, greases, or other products, whether for resale or for their own end-use, in containers with a capacity of 55 gallons or less, and which have not purchased more than 2,000 gallons of lubricants, 1,000 pounds of greases or 2,000 gallons of any remaining other product in any completed calendar year subsequent to 1972 shall be entitled to receive a volume of lubricants and greases equal to one hundred (100) percent of their current requirements without being subject to an allocation fraction. The maximum volume which any such firm may obtain pursuant to this paragraph is 2,000 gallons of lubricants, 1,000 pounds of greases or 2,000 gallons of any remaining other product.

§ 211.207 Procedures and reporting requirements.

(a) All documents to be filed by wholesale purchasers pertaining to the allocation of other products shall be addressed to the FEA National Office at the address provided in § 205.12.

(b) All applications by end-users for adjustment or assignment of a base period volume of any other product shall be filed in accordance with Subparts B and C, respectively, of Part 205 of this chapter.

(c) The provisions contained in subpart L of this part shall not apply to this subpart except §§ 211.223 and 211.225.

(d) All suppliers of products subject to this subpart shall report to the National FEA in accordance with forms and instructions to be issued by FEA.

Subpart L—General Reporting and Recordkeeping Requirements

§ 211.221 Scope.

This subpart provides the general reporting and recordkeeping requirements applicable to this part. Reporting and recordkeeping requirements that are limited in application to specific products or situations are contained in the other appropriate subparts of this part.

§ 211.222 Monthly reports by refiners and importers.

(a) Every refiner for each of its refineries; importer for each importing terminal; and gas processing plant operator for each of its processing plants shall report monthly to the National FEA in accordance with forms and instructions issued by FEA such information as is required including the following information for each allocated product:

(1) The inventory at the beginning and end of the preceding month by allocated product.

(2) Deliveries received during the preceding month by allocated products; deliveries of domestic crude oil should be segmented into new and released domestic crude oil. All allocated products should be listed by source and by country of origin for imports.

(3) Inventory fluctuations which occurred during the preceding month and were caused by other than deliveries, receipts and transfers.

(4) Total deliveries and supply redistribution in each State during the preceding month by allocated product.

(5) The estimated total supply for distribution in each State during the following month by product as described in § 211.10(b)(1) before adjustment for State set-aside and allocation requirements not subject to the supplier's allocation fraction.

(6) The estimated State set-aside volume for distribution in each State during the following month by product.

(7) The estimated volume by category for allocation requirements not subject to the supplier's allocation fraction to be supplied during the following month.

(8) Any existing inventory or production, importation, or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 by product.

(9) The allocable supply (i.e., paragraph (a)(5) minus paragraphs (a) (6), (7), and (8)), for distribution in each State during the following month, by product.

(10) The estimated supply obligation as described in § 211.10(b)(2) for the following month for purchasers to be supplied within each State, by product.

(11) The estimated average or shortfall, i.e., paragraph (a)(5) minus paragraphs (a) (7) and (10).

(12) The estimated allocation fraction, i.e., paragraph (a)(9) divided by (a)(10).

(13) The estimated total supply of allocated product which will be available in each of the following three (3) months.

(b) Beginning with the month of March, 1974, and thereafter, prime suppliers shall report monthly to the National FEA, appropriate regional offices and appropriate State Offices subparagraphs (4) through (13) of paragraph (a) above by refiner (not refinery). This

report will be the basis of the State set-aside program. Notwithstanding the provisions of § 205.4 concerning constructive receipt of documents submitted by registered or certified mail, the prime supplier's monthly report must be delivered to the National FEA in Washington, D.C., on or before the tenth (10th) day prior to the commencement of the month described as "the following month" in § 211.222(a)(5).

§ 211.223 Recordkeeping requirements.

Suppliers which sell to wholesale purchaser-consumers and end-users shall maintain records on FEA forms, subject to FEA audit, which demonstrate the basis for distribution of allocable supplies among their various purchasers. These records shall contain the following information for each allocated product and for each purchaser, on a monthly basis:

(a) Purchaser identification.

(b) Base period volume, adjusted base period volume, or current requirements, as appropriate.

(c) Allocation level.

(d) Allocation requirements (item (c) multiplied by item (b)).

(e) Purchaser's share of supplier's allocable supply (item d) multiplied by the supplier's allocation fraction if the fraction applies).

(f) Actual volume supplied.

§ 211.224 Weekly petroleum reporting system.

(a) This section establishes a weekly petroleum reporting system for each refiner or other firm which operates or controls a (1) refinery, (2) bulk terminal, (3) crude oil pipeline or (4) petroleum products pipeline, and for each importer which imports petroleum products by tanker, barge, or pipeline.

(b) *Definitions.* For the purposes of this section—

"Bulk terminal" means a facility which is primarily used for the marketing of gasoline, kerosene, and distillate and residual fuel oils and which (1) has total bulk storage capacity of 2,100,000 gallons or more, or (2) receives its petroleum products by tanker, barge or pipeline.

"Crude oil pipeline" means a pipeline which performs the trunk function as defined in 49 CFR § 1204.4–3(b) and which carries crude oil, including interstate, intrastate and intracompany pipelines.

"Petroleum products pipeline" means a pipeline which performs the trunk function as defined in 49 CFR § 1204.4–3 (b) and which carries petroleum products, including interstate, intrastate and intracompany pipelines.

(c) *Initial report.* By February 15, 1974, every refiner or other firm, and every importer which receives petroleum products by tanker, barge or pipeline, shall prepare and file with FEA a report entitled "Petroleum Reporting Address Information," in accordance with forms and instructions issued by FEA.

(d) *Weekly report.* Every refiner or other firm, and every importer which receives petroleum products by tanker, barge or pipeline, shall prepare and file with FEA a weekly report in accordance with forms and instructions issued by FEA. The weekly petroleum reporting system shall become effective February 22, 1974. The first weekly report must be received by FEA by 5 p.m., March 4, 1974.

§ 211.225 Report of new end-user and wholesale purchaser-consumer importers.

Pursuant to § 211.12(g) of this part, end-user and wholesale purchaser-consumer importers of an allocated product are required to report both to the National FEA and the appropriate regional FEA at least fifteen (15) days prior to commencing use of any allocated product which they import:

(a) The amounts and sources of these imports;

(b) Their intended use;

(c) Their projected monthly consumption; and

(d) A complete record of the domestic suppliers and amounts supplied of the allocated product which the purchaser intends to import, from January 1, 1972, to the date of the filing of the report.

APPENDIX A—FORMS AND INSTRUCTIONS

FEDERAL ENERGY ADMINISTRATION

INSTRUCTIONS FOR THE PREPARATION OF THE PETROLEUM REPORTING ADDRESS

This report is due at FEA when an item becomes obsolete or when an item requires change/correction.

GENERAL INSTRUCTIONS

A. Identification.

1. *FEA Identification Number:* Enter the six (6) position FEA identification code number, if known.

B. Executive Offices.

2. *Corporate Name:* Enter the primary parent company name.

3. *Corporate Address:* Enter the corporate street address or box number of the corporate headquarters.

4. *City:* Enter city name, location of the corporate headquarters.

5. *State:* Enter State name, where the corporate headquarters is located.

6. *ZIP Code:* Enter the ZIP code for the corporate headquarters location.

C. Reporting location.

7. *Reporting Office Name:* Enter name of Reporting Office. Refineries should enter the plant name, company divisions should enter division name, others should enter office or group name as appropriate.

8. *Reporting Office Address:* Enter the address of the reporting office.

9. *City:* Enter city of reporting office.

10. *State:* Enter State of reporting office.

11. *ZIP Code:* Enter ZIP code of reporting office.

12. *Reporting Agent:* Enter name of person, preferably who will prepare the FEA Weekly Petroleum Report, who may be contacted with questions concerning the report.

13. *Telephone Number:* Enter the area code, number, and extension where this person may be called.

14. *Reporting Category:* Check one only; complete separate form for each separate type of reporting unit.

a. Refinery (RF) means all those industrial plants, regardless of capacity, processing crude oil feedstocks and manufacturing refined petroleum products, except when such plant is a petrochemical plant.

b. Bulk terminal (BT) means a facility which is primarily used for the marketing of gasoline, kerosine, and distillate and residual fuel oils and which (1) has total bulk storage capacity of 2,100,000 gallons or more, or (2) receives its petroleum products by tanker, barge, or pipeline.

c. Crude Oil Pipeline (CP) means a pipeline which performs the trunk function as defined in 49 CFR 1204.4–3(b) which carries crude oil, including interstate, intrastate, or intracompany pipeline.

d. Petroleum Product Pipeline (PP) means a pipeline company which carries petroleum products including interstate, intrastate, and intracompany pipeline.

e. Importers (IM) means any firm, corporation, cooperative or government unit (excluding the Department of Defense), or any other person who receives any allocated substance into this country to the first place of storage, not necessarily the holder of import license. Only those receiving petroleum products by tanker, barge, or pipeline must report.

15. *Report Cutoff Time:* Check one only. Indicate report cutoff time of 7 a.m. Friday by checking the first box. For those companies where 7 a.m. Friday report cutoff is inconsistent with the normal accounting procedures of the company, a time within 24 hours of the 7 a.m. Friday time may be acceptable. If you request an exception to this time, check the second box and specify both the day and time you propose for a cutoff (e.g., Thursday, 12:00 p.m.). An exception to the cutoff time does not affect the Monday 5 p.m. reporting requirement.

D. Site location.

16. *Site Name:* Enter the site location name.

17. *Site Address:* Enter the address or box number at the site location.

18. *City:* Enter the site location city.

19. *State:* Enter the site location State.

20. *ZIP Code:* Enter the site location ZIP Code.

REPORTING ADDRESS

Mail, via U.S. Postal Service, a copy of this form with all necessary information completed to:

Federal Energy Administration
Code 2891
Washington, D.C. 20461

Note: ZIP Code 20462 is the submission of Mailgram data to the Weekly Petroleum Reporting System *ONLY*; it is not to be used for regular correspondence.

FEA-RA (7-74)

FEDERAL ENERGY ADMINISTRATION

PETROLEUM REPORTING ADDRESS INFORMATION

(Print or Type All Information in Spaces Provided)

1. FEA Identification Number ☐☐☐☐☐☐

2. Corporate Name _____

3. Corporate Address _____

4. City _____ 5. State _____ 6. ZIP _____

REPORTING LOCATION

7. Reporting Office Name _____

8. Reporting Address _____

9. City _____ 10. State _____ 11. ZIP _____

12. Reporting Agent _____

13. Phone No. (area code) _____ Ext. _____

14. Reporting Category: ☐ RF ☐ BT ☐ CP ☐ PP ☐ IM

15. Reporting Cutoff Time ☐ 7:00 a.m. Friday ☐ Other (Specify) _____

SITE LOCATION

16. Site Name _____

17. Site Address _____

18. City _____ 19. State _____ 20. ZIP _____

FOR OFFICIAL USE ONLY

Capacity _____ Category _____

Importance _____ Address Flag _____ Pad _____

Ref. District _____ FEA Region _____

Create _____ Update _____ Delete _____

FEA-RA-F-08.

U. S. GOVERNMENT PRINTING OFFICE : 1974 O - 561-818

Form Approved OMB 180-R0006

FEDERAL ENERGY OFFICE

PRIME SUPPLIERS MONTHLY REPORT

FEO-1000
INSTRUCTIONS

I. PURPOSE

Form FEO-1000 provides the means by which prime suppliers report pursuant to 10 CFR §211.222(b).

Form FEO-1000 is designed to provide summary data regarding product supply in the State during the month immediately preceding the month in which the report is submitted (the "report month"), and detailed data on estimated product availability within the State, during the month following the report month.

II. WHO MUST SUBMIT

Form FEO-1000 must be filed by every prime supplier of any product subject to a State set-aside. A prime supplier is the supplier (or producer in the case of propane) which makes the first sale of an allocated product subject to State set-aside into the State distribution system *for consumption within the State*. Transactions which occur for transshipment only are excluded.

III. TO WHOM

Prime suppliers must file Form FEO-1000 and attachments that may be required as follows:

Two copies to:

FEDERAL ENERGY OFFICE
Code 2890
Washington, D.C. 20461

One copy each to the appropriate:

FEO Regional Office (see attached list)
State Office of Petroleum Allocation (see attached list)

IV. WHEN

A prime supplier must file Form FEO-1000 each month. A separate Form FEO-1000 must be submitted for each State for which the supplier is a prime supplier. The report must be delivered to the specified addresses at least 10 calendar days before the end of the month (§ 211.222(b)).

V. DEFINITIONS

A **"prime supplier"** is the supplier (or "producer" as defined under the propane allocation program) which makes the first sale of any quantity of any allocated product subject to a State set-aside into the State distribution system of any State for consumption within the State.

"State set-aside" is the amount of an allocated product which is reserved from the total supply of each prime supplier with respect to any State, for utilization by that State to resolve emergencies and hardships due to fuel shortages. State set-asides are reserved from the total supply for the following allocated products at the percentage levels indicated:

Propane, 3%
Motor Gasoline, 3%
Middle distillate, 4%
Residual fuel oils, except for utility use and as bunker fuel for maritime shipping, 3%

A **"Refiner"** means a firm that owns, operates, or controls the operations of one or more refineries.

A **"Refinery"** means an industrial plant, regardless of capacity, which processes crude oil feedstock and manufactures refined petroleum products, except when such plant is a petrochemical plant.

"Importer" means the firm—excluding the Department of Defense—which owns at the first place of storage in the United States, any allocated product or crude oil brought into the United States.

As used herein, a "gas processing plant operator" means a firm that owns, operates, or controls the operation of one or more gas processing plants.

"Gas processing plant" means a facility which recovers ethane, propane, butane and/or other natural gas products by a process of absorption, adsorption, compression, refrigeration cycling, or a combination of such processes, from mixtures of hydrocarbon that existed in a reservoir.

VI. SPECIFIC INSTRUCTIONS

The prime supplier must complete Form FEO-1000 as specified below. The entries required by Item 1 of the form are repeated at the top of page 2 for data processing purposes. These include: whether the report is original or a revision of an earlier report; the state which the report covers; the date of the report; the "EIN" (IRS Employer Identification Number); and the supplier's Zip Code.

Item No. 1

(a) Check the applicable box at Item 1(a) to indicate whether the submission is a revision to a previously submitted FEO-1000 (Rev. 5-74). If the report is the initial report for the report month, the box labeled "Original" should be checked. If, however, a report has already been submitted for the report month and this report is a revision of the initial report, the entry titled "Revision to Report Dated _____" should be completed, including the exact date of the earlier report.

(b) In "Date of Report" Item 1(b), enter the *exact date on which this report is completed, by month, day and year* (for example, May 19, 1974).

(c) Enter the name of the State to which the report pertains in Item 1(c).

(d) Enter the prime supplier's "EIN" (IRS Employer Identification Number) in Item 1(d).

(e) Enter prime supplier's Postal Service ZIP code in Item 1(e).

Item No. 2: REPORTING PRIME SUPPLIER IDENTIFICATION INFORMATION

(a) Enter name of the reporting prime supplier in Item 2(a).

(b, c, d) Enter complete street number and name (or box/RFD number if appropriate), city and State in Items 2(b), (c) and (d).

(e, f) In Items 2 (e) and (f), provide the name and telephone number of a responsible person who can respond to inquiries concerning the submission.

Item No. 3: CLASSIFICATION

Check all appropriate boxes indicating classification of reporting prime supplier. Note that *all* classifications which describe the prime supplier should be checked (see definitions in Section V, above).

Item No. 4: DELIVERIES DURING PRECEDING MONTH AND DETAILED ESTIMATED SUPPLY DATA FOR FOLLOWING MONTH (1000's OF BARRELS)

Provide indicated data for *all* products, Items 4(a) through (r), for which the prime supplier makes the first sale into the State distribution system for consumption within the State (not just those subject to the State set-aside). Note that in addition to providing the indicated data for all motor gasoline in Item 4(b), the reporting firm is to report, in Item 4(c), that amount of its total gasoline (4(b)) for each State which is unleaded. The quantities entered in Columns (1) through (7), should be stated in thousands of barrels to three decimal places. For example:

1,234 barrels should be entered as "1.234";

970 barrels should be entered as "0.970";

Above Column (1), in the blank following the phrase, "Total Delivered during the preceding month of", enter the appropriate four-digit code (for example, if the "Date of this report" in Item (1) is May 19, 1974, the "preceding month" is April, 1974, and the entry should be "04-74").

In Column (1), "Total Delivered During the Preceding Month of _____," enter the total amount of each product for which the prime supplier made the first sale into the State distribution system for consumption within the State during the preceding month.

Above Columns (2) through (8), in the blank following the phrase, "Data for the following month of," enter the appropriate four-digit code (for example, if the "Date of this report" in Item (1) is May 19, 1974, the "following month" is June, 1974, and the entry should be "06-74").

In Column (2), "Total Supply" means for the following month that portion of the prime supplier's total supply as defined in FEO's regulations which the prime supplier will distribute in the State. Total supply for a product means the sum of the prime supplier's estimated production, including amounts received under processing and any reduction in inventory of that product made pursuant to § 211.22 of FEO's regulations except as otherwise ordered by FEO. Total supply is calculated *before* adjustments for State set-aside and allocation requirements not subject to an allocation fraction. Any existing inventory, or production, importation or purchase of product used to increase that inventory consistent with the provisions of § 211.22 shall not be included in total supply. In calculating total supply, any amounts supplied to customers through exchange agreements should not be included.

In Column (3), "State set-aside", enter the number which results from multiplying the amount entered under total supply (column (2)) by the appropriate FEO State set-aside percent for that product. For example, the State set-aside for motor gasoline is 3%; therefore, if the total supply shown in column 1 is 100,000, the figure "3,000" would be entered in column 2 (.03 × 100,000).

See the definition of "State set-aside" in section V, above.

In Column (4), "Amounts supplied under Allocations not subject to an Allocation Fraction", enter the amounts to be supplied in the State which are *not* subject to an allocation fraction (for example, for agricultural production or for Department of Defense Use). Detailed data concerning entries in Column (4) must be provided in Item 7, page 2.

In Column (5), "Allocable Supply", enter the amount that is the total supply (Column (2)), less amounts designated for the State set-aside (Column (3)), and less amounts to be supplied under allocation levels not subject to an allocation fraction (Column (4)).

In Column (6), "Supply Obligation", enter the amount of the prime supplier's supply obligation for a product as defined in 10 CFR § 211.10(b)(2) which is to be delivered within the State. A prime supplier's supply obligation for a product is the sum of the amounts of its wholesale purchaser-resellers' base period uses as adjusted pursuant to FEO's regulations, and the amounts of allocation requirements of end-users and wholesale-purchaser-consumers supplied by the prime supplier, but excluding those amounts to be supplied for use under an allocation level not subject to an allocation fraction.

In Column (7), "Excess or shortfall", enter the amount by which the allocable supply (Column (5)) of a product exceeds or is short of the supply obligation (Column (6)) of the product. For example, if the allocable supply of kerosene is 285,000 barrels (entered as 285,000 in Column (4)) and the supply obligation is 295,000 barrels (entered as 295,000 in Column (6)), the entry in Column (7) will be (−) 10,000 (285,000 − 295,000 = (−) 10,000 or a shortfall of 10,000 barrels. If the allocable supply of kerosene is 285,000 barrels (entered as 285,000 in Column (5)) and the supply obligation of kerosene is 280,000 barrels (entered as 280,000 in Column (6)) then the entry in Column (7) is 5,000 (285,000 − 280,000 = 5,000) or an excess of 5,000 barrels.

In Column (8), "Allocation Fraction", enter the number which results from dividing the amount entered under "Allocable Supply" (Column (5)) by the amount entered under "Supply Obligation" (Column (6)). For example, if the allocable supply is 100,000 barrels and the supply obligation is 125,000 barrels, the entry in Column (8) will be 100,000 divided by 125,000 or ".80".

If the resulting allocation fraction exceeds 1.0, this report may serve as the required notification to the Federal Office pursuant to (10 CFR 211.10(g)(2)). Form FEO-22 provides directions for the computation of the distribution of excess product when the supplier's allocation fraction exceeds 1.0 for that product.

Suppliers with two or more distribution subsystems or regions independent of one another may petition National FEO for permission to use multiple allocation fractions whenever use of a single allocation fraction would be impracticable or inconsistent with the objectives of the program.

Item No. 5: CERTIFICATION

Type the name and title of the individual who has signed the certification (Item 5(a)) and the date of signing (Item 5(c)). The individual who signs and certifies this Form FEO-1000 (Item 5(b)) must be the Chief Executive Officer of the Parent or such other executive officer authorized to sign for him for this purpose. In the latter case, the reporting firm must file with FEO a letter of authorization signed by the Chief Executive Officer which identifies other officials authorized to certify forms for the firm. A sample format for this letter is available from any FEO Regional Office.

Item No. 6: AMOUNTS CERTIFIED FOR USE UNDER ALLOCATION LEVELS NOT SUBJECT TO AN ALLOCATION FRACTION (1,000's OF BARRELS)

Item 6 must be completed to provide data concerning any "Amounts Supplied under Allocations not Subject to an Allocation Fraction" reported in Column (4), Item 5, on page 1. Provide the indicated data for all products in Item 6(a), (b), and (d) through (q) in the appropriate, non-shaded boxes, in thousands of barrels to three decimal places. For example:

1,234 barrels should be entered as "1.234";

970 barrels should be entered as "0.970".

In Columns (1) and (2), enter amounts certified to or by the prime supplier for (1) agricultural production and (2) Department of Defense uses, respectively.

Entries may *NOT* be made in Columns (1) and (2) for #4 Fuel Oil for Utility Use (Code 510, Item 6(k)) or for #5, #6 Fuel Oils for Utility Use (Code 520, Item 6(l)).

Column (3), "Space heating", may be used *ONLY* for kerosenes (Code 310, Item 6(d)), No. 2 heating oil (Code 320, Item 6(e)) and residual fuel oils (Codes 530, 540, and 570 (Item 6(m), (n), and (q)).

Column (4), "For Utility Use", may be used *ONLY* for #4 Fuel Oil for Utility Use (Code 510, Item 6(k)), and for #5, #6 Fuel Oils for Utility Use (Code 520, Item 6(l)).

The amount shown under Column (5), "Total", for each product must agree with the amount shown for that product under "Amounts Supplied under Allocations not Subject to an Allocation Fraction" (Item 5, Column (4), and with the amounts shown for that product in Columns (1) through (4).

FEDERAL ENERGY OFFICE
PRIME SUPPLIER'S MONTHLY REPORT
FEO-1000

FOR FEO USE ONLY
FORM NO. 0 4
ACCESSION NO.
STATE CODE

1. a. This Report is (1) ☐ Original or (2) ☐ Revision to Report Dated _____ b. Date of this Report _____
c. Report for State of _____ d. Prime Supplier EIN ☐☐☐☐☐☐☐☐☐ e. Prime Supplier ZIP Code ☐☐☐☐☐

2. REPORTING PRIME SUPPLIER IDENTIFICATION INFORMATION
a. Name
b. Street/Box/RFD c. City d. State
e. Name of Contact Official f. Telephone Number (Including Area Code) (☐☐☐) ☐☐☐ – ☐☐☐☐

3. CLASSIFICATION OF REPORTING PRIME SUPPLIER (Check all applicable boxes):
a. ☐ Refiner b. ☐ Importer c. ☐ Gas Processing Plant Operator d. ☐ Other

4. DELIVERIES DURING PRECEDING MONTH AND DETAILED ESTIMATED SUPPLY DATA FOR FOLLOWING MONTH (IN 1,000's OF BARRELS)

PETROLEUM PRODUCTS	CODE	TOTAL DELIVERED DURING THE PRECEDING MONTH OF [000'S BBLS] (1)	DATA FOR THE FOLLOWING MONTH OF _____ (000'S BBLS.) TOTAL SUPPLY (2)	STATE SET-ASIDE AMOUNT (3)	AMOUNTS SUPPLIED UNDER ALLOCATIONS NOT SUBJECT TO ALLOCATION FRACTION* (4)	ALLOCABLE SUPPLY (Col. 2 – Col. 3 – Col. 4) (5)	SUPPLY OBLIGATION (6)	EXCESS SHORTFALL (Col. 5 – Col. 6) (7)	ALLOCATION FRACTION (Col. 5 / Col. 6) (8)
a. PROPANE	110								
b. MOTOR GASOLINE (TOTAL)	200								
c. UNLEADED MOTOR GASOLINE	220								
d. KEROSENE	310								
e. #2 HEATING OIL	320								
f. DIESEL FUEL	330								
g. OTHER MIDDLE DISTILLATES	340								
h. AVIATION GASOLINE	410								
i. KEROSENE-BASE JET FUEL	420								
j. NAPHTHA-BASE JET FUEL	430								
k. #4 FUEL OIL FOR UTILITY USE	510								
l. #5, #6 FUEL OILS FOR UTILITY USE	520								
m. #4 FUEL OIL FOR NON-UTILITY USE	530								
n. #5, #6 FUEL OILS FOR NON-UTILITY USE	540								
o. BUNKER C	550								
p. NAVY SPECIAL FUEL OIL	560								
q. OTHER RESIDUAL FUEL OILS	570								
r. CRUDE OIL (USED AS FUEL ONLY)	940								

*IF ANY DATA ARE ENTERED IN COLUMN 4, PAGE 2 MUST BE COMPLETED AND ATTACHED. (Continued on reverse side)

FEO-1000 (REV. 6-74)

5. CERTIFICATION. I certify that the information shown above and appended hereto (if any) is true and accurate to the best of my knowledge.

a. _____ b. _____ c. _____
Name and Title of Certifying Official Signature Date of Certification

Title 18 USC 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

FEO-1000 PAGE 2

FOR FEO USE ONLY
FORM NO. 0 2
ACCESSION NO.
STATE CODE

1. a. This Report is (1) ☐ Original or (2) ☐ Revision to Report Dated _____ b. Date of this Report _____
c. Report for State of _____ d. Prime Supplier EIN ☐☐☐☐☐☐☐☐☐ e. Prime Supplier ZIP Code ☐☐☐☐☐

6. AMOUNTS CERTIFIED FOR USE UNDER ALLOCATION LEVELS NOT SUBJECT TO AN ALLOCATION FRACTION (1,000's OF BARRELS):

PETROLEUM PRODUCTS	CODE	FOR AGRICULTURAL PRODUCTION (1)	FOR DEPARTMENT OF DEFENSE USE (2)	FOR SPACE HEATING (3)	FOR UTILITY USES (4)	TOTAL* (Col. 1 + Col. 2 + Col. 3 + Col. 4) (5)
a. PROPANE	110					
b. MOTOR GASOLINE (TOTAL)	200					
c. UNLEADED MOTOR GASOLINE	220					
d. KEROSENE	310					
e. #2 HEATING OIL	320					
f. DIESEL FUEL	330					
g. OTHER MIDDLE DISTILLATES	340					
h. AVIATION GASOLINE	410					
i. KEROSENE-BASE JET FUEL	420					
j. NAPHTHA-BASE JET FUEL	430					
k. #4 FUEL OIL FOR UTILITY USE	510					
l. #5, #6 FUEL OILS FOR UTILITY USE	520					
m. #4 FUEL OIL FOR NON-UTILITY USE	530					
n. #5, #6 FUEL OILS FOR NON-UTILITY USE	540					
o. BUNKER C	550					
p. NAVY SPECIAL FUEL OIL	560					
q. OTHER RESIDUAL FUEL OILS	570					
r. CRUDE OIL (USED AS FUEL ONLY)	940					

*ALSO MUST EQUAL COLUMN (5), ITEM 5.

FEO-1000 (Rev. 6-74)

U.S. GOVERNMENT PRINTING OFFICE: 1974 O - 695-783

Form Approved OMB [illegible]

FEDERAL ENERGY OFFICE
REFINER/IMPORTER/GAS PROCESSING PLANT OPERATOR MONTHLY REPORT BY FACILITY

FEO-1001

INSTRUCTIONS

I. PURPOSE

Form FEO-1001 provides the means by which the monthly reporting requirements of 10 CFR § 211.222(a) are satisfied. (Form FEO-1000 provides the means by which prime suppliers report pursuant to 10 CFR § 211.222(b)).

Form FEO-1001 is designed to provide summary data regarding production and inventory for each facility of the reporting firm.

II. WHO MUST SUBMIT

The following are required to submit Form FEO-1001:

Refiners: a separate FEO-1001 must be filed by a refiner for each of its refineries.

Importers: a separate FEO-1001 must be filed by an importer for each of its importing terminals, with respect only to those allocated products or crude oil for which the importer was the "importer" as defined below in Section V.

Importers: a separate FEO-1000 must be filed by a refiner for each of its importing terminals.

Gas processing plant operators: a separate FEO-1001 must be filed by a gas processing plant operator for each of its gas processing plants.

Note: A facility reporting on Form FEO-1001 can be more than one type of facility for the purposes of this report. Such a facility must report separately for each such capacity in which it acts.

III. TO WHOM

The reporting firm must file two copies of Form FEO-1001 with:

Federal Energy Office
Code 2890
Washington, D.C. 20461

IV. WHEN

The reporting firm must file Form FEO-1001 every month, by the 10th day before the end of the month.

V. DEFINITIONS

A "Refiner" means a firm that owns, operates, or controls the operations of one or more refineries.

A "Refinery" means an industrial plant, regardless of capacity, which processes crude oil feedstock and manufactures refined petroleum products, except when such plant is a petrochemical plant.

"Importer" means the firm—excluding the Department of Defense—which owns at the first place of storage in the United States, any allocated product or crude oil brought into the United States.

As used herein, "importing terminal" means the first place of storage used by the importer (as defined above) of any allocated product or crude oil to store the allocated product or crude oil, regardless of whether the importer owns or operates the "importing terminal."

As used herein, a "gas processing plant operator" means a firm that owns, operates, or controls the operation of one or more gas processing plants.

"Gas processing plant" means a facility which recovers ethane, propane, butane and/or other natural gas products by a process of absorption, adsorption, compression, refrigeration cycling, or a combination of such processes, from mixtures of hydrocarbon that existed in a reservoir.

VI. SPECIFIC INSTRUCTIONS

The entries required by Items 1–4 and at the top of each page including "Date of This Report", reporting firm "EIN" (IRS Employer Identification Number), "Facility ZIP", and whether the report is the initial report for this facility for the month or a revision to the initial report are needed for computer processing. These entries must be completed on all pages as indicated.

Item No.1

(a) If the report is the initial report for this facility for the report month, check the box labeled "(1) Original". If, however, a report has already been submitted for the report month and this report is a revision of the original report, check the box labeled "(2) Revision to Report Dated _____" and enter the exact date of the initial report in the space provided.

(b) For the "Date of This Report" (Item No. 1(b)), enter the exact date on which this report is completed including full month, day and year (for example, May 19, 1974).

(c) Enter the reporting firm's IRS Employer Identification Number, in Item 1(c), "EIN".

(d) Enter the reporting facility's Postal Service Zip Code.

Item No. 2: REPORTING FIRM

(a) Enter the name of the reporting firm.

(b,c,d) Enter the complete street number and name (or box/RFD number, if appropriate), city and State in Items 2(b), (c), and (d).

(e,f) In Items 2(e) and (f), provide the name and telephone number of a responsible person who can respond to inquiries concerning the submission.

Item No. 3: REPORTING FACILITY

A separate report must be submitted for each facility. Item 3 provides the means of identifying the reporting facility. Enter the appropriate facility name, street address, city, state, and EIN.

Item No. 4: CLASSIFICATION OF REPORTING FACILITY

Check the box which indicates the classification of the *facility* to which the report pertains. Note that only one classification should be checked.

Item No. 5: DATA FOR PRECEDING MONTH

"Preceding month" means the month preceding the month during which the report is to be submitted. For example, if the "Date of This Report" (as given in Item 1) is May 19, 1974, then April, 1974, is the "preceding month".

(1-6) The quantities entered in Columns (1)–(6) should be stated in thousands of barrels to three decimal places (e.g., 1,234 barrels should be entered as "1.234"; 970 barrels should be entered as ".970").

Provide indicated data for *all* petroleum products for the specified facility.

(q) "All other outputs" (Code 800) includes all outputs not categorized in Codes 210 through 570, including unfinished products.

(s) "Natural gas liquids" (Code 950) include such substances as propane, normal butane, isobutane, butane-propane mixes, natural gasoline, isopentane, and plant condensate, *when used as feedstocks for crude processing units.*

(t) "Other inputs" (Code 960) include unfinished oils and other hydrocarbons not included in codes 900 and 950, *when used as feedstocks for crude processing units.*

(1) The entry in Column (1) "Inventory: Start of Month" for each product is the inventory of that product on-hand at beginning of the "preceding month" discussed above.

In Column (2) "Quantity Received", enter the total amount of product shipments received during the month at the facility.

(3) Figures entered in Column (3) "Production" may be either positive or negative, depending on the specific product involved.

Normally, figures in this column indicate "Production" in the conventional sense, that is, they represent amounts of a product which are produced and which thus add to the available supply of that product. Therefore, these figures are *positive* numbers. However, "Production" also entails the use of input materials. For example, the last three products on the list—Crude oil (Code 900) Natural gas liquids (Code 950), and Other inputs to crude oil processing units (Code 960)—are consumed in the production of the other products on the list. Therefore, for these three products Column (5) may contain a negative number which will indicate an amount consumed in the "Production" of *other* products.

The "Production" date shown in Column (3) must relate only to processing operations within the reporting facility.

In Column (4) "Domestic Shipments", report only those shipments from the reporting facility to customers within the United States.

In Column (5) "Other", report all occurrences which affect inventory, other than those reported in Columns (2), (3), and (4). For example, losses, direct export shipments or any additions not accounted for by "Quantity Received" Column (2) and "Production" Column (3) would be reported in Column (5).

In Column (6) "Inventory, End of Month", enter the end-of-month inventory, which equals the sum of Columns (1) through (5).

Item No. 6: RECEIPTS OF CRUDE OIL

Item 6 is to be completed for refineries only.

Quantities should be entered in thousands of barrels stated to three decimal places. For example: 1.234 barrels should be entered as "1.234"; 970 barrels should be entered as ".970".

"Old domestic crude oil" is that portion of any month's base production control level for any property (see § 212.72 of the Petroleum Allocation and Price Regulations) remaining after "released domestic crude oil" (see explanation in the next item) has been deducted.

"Released domestic crude oil" is that portion of any month's base production control level which has been "released" from the otherwise applicable ceiling price, and which may be sold at the free market price (see § 212.74(b)), due to production of new domestic crude oil (see § 212.72). The volume of released crude oil is equal to the volume of new crude oil produced.

"New domestic crude oil" is production in excess of the base production control level (also see § 212.72, "new crude petroleum"). For purposes of this report, new crude includes crude oil from stripper well leases (see § 210.32).

Item No. 7: RECEIPTS OF IMPORTED PRODUCTS

Item 7 is to be completed by importers only. The importer should include in the FEO–1001 for each importing terminal, data with respect only to allocated products or crude oil for which it was the "importer", as defined above in Section V.

Item 7 must provide data for receipts of imported products on a country-by-country basis. One page 3 should be completed for each country of origin and the specific country should be named in the block provided in Item No. 7 names. Please reproduce as many page 3's as needed to submit one for each country of origin. The quantities entered under "Quantity Received" should be stated in thousands of barrels to three decimal places. For example: 1.234 barrels should be entered as "1.234"; 970 barrels should be entered as ".970".

Enter in the block provided in Item 7, the total number of pages 3 completed and included as part of your report.

Number the first page 3 as "3–1". If you have completed more than one page 3, number subsequent pages "3–2", "3–3", etc.

Item No. 8: PROJECTED AVAILABILITY

Enter an estimate of the amounts of each petroleum product that the facility will have available for distribution in each of the three months following the month during which the report is to be submitted. The quantities entered in Columns (1), (2), and (3) should be stated in thousands of barrels to three decimal places. For example: 1.234 barrels should be entered as "1.234"; 970 barrels should be entered as ".970".

Refer to the instructions for Item No. 5 for explanation of the terms, "Natural Gas Liquids" and "Other Inputs".

Over Columns (1), (2), and (3) following "Month of _____" enter four-digit month and year codes for the three months following the report month (the report month is the month in which the FEO–1001 is being submitted pursuant to § 211.222 (a)). For example, if the report is prepared on May 10, 1974, the three following months would be June, July, and August and "06–74", "07–74", and "08–74" would be entered over columns (1), (2), and (3), respectively.

Item No. 9: CERTIFICATION

Type the name and title of the individual who has signed the certification, and the date of signing, in the spaces provided on the form. The individual who signs and certifies this form must be the Chief Executive Officer of the Parent *or* such other executive officer of the entity as authorized by the Chief Executive Officer to sign for him for this purpose. In the latter case, the reporting firm *must* file with the addressee office, a letter of authorization signed by the Chief Executive Officer which identifies other officials authorized to certify forms for the firm. A sample format for this letter is available from any FEO Regional Office.

FEDERAL ENERGY OFFICE
REFINER/IMPORTER/GAS PROCESSING PLANT OPERATOR
MONTHLY REPORT BY FACILITY
FEO–1001

FOR FEO USE ONLY
FORM NO. 0 5
ACCESSION NO.

1. a. THIS REPORT IS (1) ☐ ORIGINAL, OR (2) ☐ REVISION TO REPORT DATED_____ b. DATE OF THIS REPORT_____

c. REPORTING FIRM EIN ☐☐☐☐☐☐☐☐☐ d. REPORTING FACILITY ZIP ☐☐☐☐☐

2. REPORTING FIRM

a. NAME

b. STREET/BOX/RFD c. CITY d. STATE

e. NAME OF CONTACT OFFICIAL f. TELEPHONE (INCL. AREA CODE) (☐☐☐) ☐☐☐–☐☐☐☐

3. REPORTING FACILITY

a. NAME b. EIN ☐☐☐☐☐☐☐☐☐

c. STREET/BOX/RFD d. CITY e. STATE f. ZIP CODE ☐☐☐☐☐

4. CLASSIFICATION OF REPORTING FACILITY (CHECK ONE BOX ONLY) (SEE SECTION II OF THE INSTRUCTIONS)

a. ☐ REFINERY — Complete pages 1, 2, and 4 only
b. ☐ IMPORTING TERMINAL — Complete pages 1, 3, and 4 only
c. ☐ GAS PROCESSING PLANT — Complete pages 1 and 4 only

5. a. DATA FOR PRECEDING MONTH OF_____ (1,000's OF BARRELS):

PETROLEUM PRODUCTS	CODE	INVENTORY START OF MONTH (1)	QUANTITY RECEIVED (2)	PRODUCTION (3)	DOMESTIC SHIPMENTS (4)	OTHER (5)	INVENTORY END OF MONTH (COL. 1 + COL. 2 ± COL. 3 – COL. 4 ± COL. 5) (6)
OUTPUTS:							
b. LEADED MOTOR GASOLINE	210						
c. UNLEADED MOTOR GASOLINE	220						
d. KEROSENE	310						
e. #2 HEATING OIL	320						
f. DIESEL FUEL	330						
g. OTHER MIDDLE DISTILLATES	340						
h. AVIATION GASOLINE	410						
i. KEROSENE-BASE JET FUEL	420						
j. NAPHTHA-BASE JET FUEL	430						
k. #4 FUEL OIL FOR UTILITY USE	510						
l. #5, #6 FUEL OILS FOR UTILITY USE	520						
m. #4 FUEL OIL FOR NON-UTILITY USE	530						
n. #5, #6 FUEL OILS FOR NON-UTILITY USE	540						
o. BUNKER C	550						
p. NAVY SPECIAL FUEL OIL	560						
q. OTHER RESIDUAL FUEL OILS	570						
r. ALL OTHER OUTPUTS	800						
INPUTS:							
s. CRUDE OIL	900						
t. NATURAL GAS LIQUIDS	950						
u. OTHER INPUTS	960						

FEO–1001 (REV. 8-74)

FEO–1001 PAGE 2

FOR FEO USE ONLY
FORM NO. 0 7
ACCESSION NO.

7. a. THIS REPORT IS (1) ☐ ORIGINAL, OR (2) ☐ REVISION TO REPORT DATED_____ b. DATE OF THIS REPORT_____

c. REPORTING FIRM EIN ☐☐☐☐☐☐☐☐☐ d. REPORTING FACILITY ZIP ☐☐☐☐☐

8. RECEIPTS OF CRUDE OIL (TO BE COMPLETED FOR REFINERIES ONLY)

CRUDE OIL RECEIPTS	CODE	QUANTITY RECEIVED (1,000's OF BBLS)	AVERAGE PRICE PER BARREL
a. OLD DOMESTIC CRUDE OIL	910		
b. RELEASED DOMESTIC CRUDE OIL	915		
c. NEW DOMESTIC CRUDE OIL	920		
d. IMPORTED CRUDE OIL	930		
TOTAL CRUDE OIL	900		

FEO-1001 PAGE 3

FOR FEO USE ONLY
FORM NO. 0 8
ACCESSION NO.

1. a. THIS REPORT IS (1) ☐ ORIGINAL, OR (2) ☐ REVISION OF REPORT DATED _____ b. DATE OF THIS REPORT _____

c. REPORTING FIRM EIN

d. REPORTING FACILITY ZIP

7. RECEIPTS OF IMPORTED PRODUCTS (To be completed for Importing Terminals only).

a. COUNTRY OF ORIGIN* _____

b. NUMBER OF PAGE(S) 3 COMPLETED (INCLUDING THIS PAGE) _____

IMPORTED PRODUCT NAME	CODE	QUANTITY RECEIVED (1,000's OF BBLS)	AVERAGE PRICE PER BARREL
c. LEADED MOTOR GASOLINE	210		
d. UNLEADED MOTOR GASOLINE	220		
e. KEROSENE	310		
f. #2 HEATING OIL	320		
g. DIESEL FUEL	330		
h. OTHER MIDDLE DISTILLATES	340		
i. AVIATION GASOLINE	410		
j. KEROSENE-BASE JET FUEL	420		
k. NAPHTHA-BASE JET FUEL	430		
l. #4 FUEL OIL FOR UTILITY USE	510		
m. #5, #6 FUEL OILS FOR UTILITY USE	520		
n. #4 FUEL OIL FOR NON-UTILITY USE	530		
o. #5, #6 FUEL OILS FOR NON-UTILITY USE	540		
p. BUNKER C	550		
q. NAVY SPECIAL FUEL OIL	560		
r. OTHER RESIDUAL FUEL OILS	570		
s. CRUDE OIL	930		

*IF PRODUCTS WERE IMPORTED FROM MORE THAN ONE COUNTRY, COMPLETE A SEPARATE PAGE THREE FOR EACH COUNTRY OF ORIGIN. IN THE SPACE PROVIDED, INDICATE THE NUMBER OF PAGE(S) 3 YOU HAVE COMPLETED.

FEO-1001 PAGE 4

FOR FEO USE ONLY
FORM NO. 0 6
ACCESSION NO.

1. a. THIS REPORT IS (1) ☐ ORIGINAL, OR (2) ☐ REVISION TO REPORT DATED _____ b. DATE OF THIS REPORT _____

c. REPORTING FIRM EIN

d. REPORTING FACILITY ZIP

8. ESTIMATED TOTAL SUPPLY FOR THE FOLLOWING THREE MONTHS (1,000's OF BARRELS):

PETROLEUM PRODUCT	CODE	MONTH OF _____ (1)	MONTH OF _____ (2)	MONTH OF _____ (3)
OUTPUTS:				
a. LEADED MOTOR GASOLINE	210			
b. UNLEADED MOTOR GASOLINE	220			
c. KEROSENE	310			
d. #2 HEATING OIL	320			
e. DIESEL FUEL	330			
f. OTHER MIDDLE DISTILLATES	340			
g. AVIATION GASOLINE	410			
h. KEROSENE-BASE JET FUEL	420			
i. NAPHTHA-BASE JET FUEL	430			
j. #4 FUEL OIL FOR UTILITY USE	510			
k. #5, #6 FUEL OILS FOR UTILITY USE	520			
l. #4 FUEL FOR NON-UTILITY USE	530			
m. #5, #6 FUEL OILS FOR NON-UTILITY USE	540			
n. BUNKER C	550			
o. NAVY SPECIAL FUEL OIL	560			
p. OTHER RESIDUAL FUEL OILS	570			
q. ALL OTHER OUTPUTS	800			
INPUTS:				
r. CRUDE OIL	900			
s. NATURAL GAS LIQUIDS	950			
t. OTHER INPUTS	960			

9. I CERTIFY THAT INFORMATION SHOWN HEREIN AND APPENDED HERETO IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

CERTIFYING OFFICER:

NAME _____ SIGNATURE _____ DATE _____

TITLE 18 USC 1001, MAKES IT A CRIME FOR ANY PERSON KNOWINGLY AND WILLINGLY TO MAKE TO ANY AGENCY OR DEPARTMENT OF THE UNITED STATES ANY FALSE, FICTITIOUS OR FRAUDULENT STATEMENTS AS TO ANY MATTER WITHIN ITS JURISDICTION.

U.S. GOVERNMENT PRINTING OFFICE : 1974 O—550-772

Form Approved OMB 180–R0023

FEDERAL ENERGY ADMINISTRATION

INSTRUCTIONS FOR PREPARATION OF THE WEEKLY CRUDE OIL PIPELINE REPORT

(FEA–1002–CP)

(7–74)

Reports are due each Monday by MAILGRAM for the previous week.

IDENTIFICATION DATA

This report form must be completed by all trunk pipeline companies which carry crude oil including interstate, intrastate, and intra-company pipeline in the 50 States and the District of Columbia.

FEA Identification Number:

Enter the six-digit code which the FEA has assigned to you. This number is included on the label of this package. If you do not presently have this number, FEA will assign you one; regardless, you must submit these data, leaving the FEA Identification Number blank.

For Week Ended 7 a.m.:

Seven-day period *ending* 7 a.m. Friday. Indicate the specific month and ending day using the following format: Month/Day/Year (e.g., 03/15/74). Please use the following numerical codes for each month in order to design a six-digit date code:

January	01	July	07
February	02	August	08
March	03	September	09
April	04	October	10
May	05	November	11
June	06	December	12

Zip Code:

Enter the ZIP code of the pipeline location, not the reporting office.

Pipeline Company Name:

Enter the legal name of the crude oil pipeline company.

NUMBER SIGN

There is a # (number sign—also called a pound sign or tic-tac-toe sign) appearing as a separate line (paragraph) preceding the first product data line (paragraph). There is also a # following the last product data line (paragraph).

When calling (or keying) in this form's data to Western Union, please be sure to specify the # (only once) as a *separate* line just *before* reporting the first product data line. Likewise, specify the # (only once) as a *separate* line right *after* the last product data line has been reported.

Refer to the MAILGRAM instructions for a detailed explanation of # usage.

SUMMARY TABULAR DATA

General Instructions:

1. Report all figures in THOUSANDS OF 42-GALLON BARRELS.

2. All figures should represent actual physical inventories of crude oil on the last day of the reporting period.

3. Report all stocks of crude oil on a CUSTODY BASIS regardless of ownership.

4. Report stocks less bottom settlings and water (BS&W).

5. Remember to fill in all blanks. If necessary, include zero (0) as an entry, but do not leave any blank spaces.

6. Include all crude oil stocks of domestic origin held in your custody at tankfarms operated by the reporting company, including pipeline fill and stocks in working tanks of pipelines. Include as stocks of foreign origin only those that have cleared customs or for which duty has been paid. Exclude stocks of foreign origin held in bonded storage. Do not include lease stocks.

7. Identify stocks by individual P.A.D. District, generating a total for each product code. Consult the list which follows to identify the breakdown by P.A.D. District.

STATE LIST

State	P.A.D. No.	State	P.A.D. No.
Alabama	III	Nebraska	II
Alaska	V	Nevada	V
Arizona	V	New Hampshire	IA
Arkansas	III	New Jersey	IB
California	V	New Mexico	III
Colorado	U	New York	IB
Connecticut	IA	North Carolina	IC
Delaware	IB	North Dakota	II
District of Columbia	IB	Ohio	II
Florida	IC	Oklahoma	II
Georgia	IC	Oregon	V
Hawaii	V	Pennsylvania	IB
Idaho	IV	Rhode Island	IA
Illinois	II	South Carolina	IC
Indiana	II	South Dakota	II
Iowa	II	Tennessee	II
Kansas	II	Texas	III
Kentucky	II	Utah	IV
Louisiana	III	Vermont	IA
Maine	IA	Virginia	IC
Maryland	IB	Washington	V
Massachusetts	IA	West Virginia	IC
Michigan	II	Wisconsin	II
Minnesota	II	Wyoming	IV
Mississippi	III	Puerto Rico	VI
Missouri	II	Virgin Islands	VII
Montana	IV		

PRODUCT DEFINITIONS

Domestic Crude Oil (010):

A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Also, lease condensate moving to a refinery is included. Lease condensate is defined as a natural gas liquid recovered from gas-well gas (associated and non-associated) in lease separators or field facilities. Drips are also included but topped crude oil and other unfinished oils are excluded. Natural gas liquids produced at natural gas processing plants and mixed with crude oil are likewise excluded. Domestic crude is petroleum produced in the United States or from its "outer continental shelf" as defined in 43 U.S.C. 1331. Puerto Rico is considered to be part of the U.S. for this system.

Foreign Crude Oil (020):

A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Also lease condensate moving to a refinery is included. Lease condensate is defined as a natural gas liquid recovered from gas-well gas (associated and non-associated) in lease separators or field facilities. Drips are also included but topped crude oil and other unfinished oils are excluded. Natural gas liquids produced at natural gas processing plants and mixed with crude oil are likewise excluded. Foreign crude is petroleum produced outside the United States. Puerto Rico is considered to be a part of the U.S. for this system.

REPORT TO

Use this form as a worksheet. Report the information via Mailgram to:

Federal Energy Administration
Code 2891
Washington, D.C. 20462

NOTE: ZIP Code 20462 is for submission of Mailgram data to the Weekly Petroleum Reporting System *ONLY;* it is not to be used for other correspondence.

Corrections:

Submit all corrections using this form to the FEA via U.S. Postal Service to:

Federal Energy Administration
Code 2891
Washington, D.C. 20461

Form Approved OMB 180-R0003

FEDERAL ENERGY ADMINISTRATION
WEEKLY CRUDE OIL PIPELINE REPORT

REPORT TYPE FEA-1002-CP

FEA Identification Number

Week Ending Date Month Day Year

ZIP Code

Pipeline Company Name

#

Stocks of Crude Oil in Pipelines and Tankfarms at End of Reporting Period by P.A.D. District
(REPORT ALL FIGURES IN THOUSANDS OF 42-GALLON BARRELS)

Item Description	Product Code	P.A.D. Districts IA	IB	IC	II	III	IV	V	TOTAL
Domestic Crude Oil	010								
Foreign Crude Oil	020								

#

FEA-1002-CP (7-74)

U.S. GOVERNMENT PRINTING OFFICE : 1974 O-553-031

Form Approved OMB 180–R0024

FEDERAL ENERGY ADMINISTRATION

INSTRUCTION FOR THE PREPARATION OF THE WEEKLY REFINERY REPORT

(FEA–1003–RF)

(7–74)

Reports are due each Monday by MAILGRAM for the previous week.

IDENTIFICATION DATA

This report must be completed by all refineries or other firms for each refinery operated or controlled by them in the 50 States, District of Columbia, and Puerto Rico.

FEA Identification Number:

Enter the six-digit code which the FEA has assigned to you. This number is included on the label of this package. If you do not presently have this number, FEA will assign you one; regardless, you must submit these data, leaving the FEA identification number blank.

For Week Ended 7 a.m.:

Seven-day period *ending* 7 a.m. Friday. Indicate the specific month and ending day using the following format: Month/Day/Year (e.g., 03/15/74). Please use the following numerical codes for each month in order to design a six-digit code:

January	01	July	07
February	02	August	08
March	03	September	09
April	04	October	10
May	05	November	11
June	06	December	12

ZIP Code:

Enter the ZIP Code of the refinery location, not the reporting office.

Refinery name:

Enter the legal name of the refinery.

NUMBER SIGN

There is a # (number sign—also called a pound sign or tic-tac-toe sign) appearing as a separate line (paragraph) preceding the first product data line (paragraph). There is also a # following the last product data line (paragraph).

When calling (or keying) in this form's data to Western Union, please be sure to specify the # (only once) as a *separate* line just *before* reporting the first product data line. Likewise, specify the # (only once) as a *separate* line right *after* the last product data line has been reported.

Refer to the MAILGRAM instructions for a detailed explanation of # usage.

SUMMARY TABULAR DATA

General Instructions:

1. Enter the beginning of the reporting week refinery stocks which are expressed in THOUSANDS OF 42-GALLON BARRELS. Report all stocks IN CUSTODY of the refinery, regardless of ownership.

2. Submit the total amount of crude petroleum, natural gas liquids, and unfinished oils which are *received* at the refinery during the week. Receipts are to include material in transit to the refinery from domestic sources via means other than pipeline.

3. Report stocks less bottom settlings and water (BS&W).

4. Enter the amount of crude oil, unfinished oils, and natural gas liquids which are used as inputs for the refining process. Please do not confuse inputs with receipts since inputs may be either drawn from current receipts or from existing stocks.

5. Include the current week's production level IN THOUSANDS OF 42-GALLON BARRELS for each item.

6. Enter shipments *from* the refinery and all losses (including the refinery's own fuel use during the week). Enter negative values as applicable.

7. Enter the end-of-week stocks held IN CUSTODY by the refinery for each item.

8. Include separate values only for receipts of domestic and foreign natural gas liquids and unfinished oils. Beginning stocks, inputs, production, and ending stocks are to be a total of domestic and foreign.

Notes

1. The following arithmetic check is suggested for each line entry, for the following products: "Domestic Crude Oil, Foreign Crude Oil, Domestic Natural Gas Liquids, Foreign Natural Gas Liquids, Domestic Unfinished Oils, and Foreign Unfinished Oils": the sum of the columns "Stocks at the Beginning of Reporting Period, Receipts During Reporting Period, and Production During Reporting Period" should equal the sum of columns "Inputs During Reporting Period, Shipments, Losses and Refinery Fuel Use During Reporting Period, and Stocks at End of Reporting Period."

2. Also, remember to fill in *all* nonshaded blanks. If necessary, include zero (0) as an entry, but do not leave any blank spaces.

3. When calling (keying) in this form's data to Western Union, the × shown in a shaded block must be specified as data. Thus, each data block will have an entry, whether it is a value you have entered, zero, or an ×.

PRODUCT DEFINITIONS

Domestic Crude Oil (010):

A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Also, lease condensate moving to a refinery is included. Lease condensate is defined as a natural gas liquid recovered from gas-well gas (associated and nonassociated) in lease separators or field facilities. Drips are also included, but topped crude oil and other unfinished oils are excluded. Natural gas liquids produced at natural gas processing plants and mixed with crude oil are likewise excluded. Domestic crude is petroleum produced in the United States or from its "outer continental shelf" as defined in 43 U.S.C. 1331 (Puerto Rico is considered to be a part of U.S. for this system).

Foreign Crude Oil (020):

A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Also, lease condensate moving to a refinery is included. Lease condensate is defined as a natural gas liquid recovered from gas-well gas (associated and nonassociated) in lease separators or field facilities. Drips are also included but topped crude oil and other unfinished oils are excluded. Natural gas liquids produced at natural gas processing plants and mixed with crude oil are likewise excluded. Foreign crude is petroleum produced outside the United States. Puerto Rico is considered to be a part of the U.S. for this system.

Domestic Natural Gas Liquids (230):

Includes all products received directly, or through jobbers, from natural gas processing plants for processing or blending at a refinery. These products include propane, butane (isobutane, normal butane, and other butane), butane-propane mixtures, natural gasoline and isopentane, and plant condensate. Domestic natural gas liquids are produced within the confines of the 50 States, the District of Columbia, and Puerto Rico.

Foreign Natural Gas Liquids (239):

Includes all products received directly, or through jobbers, from natural gas processing plants for processing or blending at a refinery. These products include propane, butane (isobutane, normal butane, and other butane), butane-propane mixtures, natural gasoline and isopentane, and plant condensate. Foreign natural gas liquids are produced outside the 50 States, the District of Columbia, and Puerto Rico.

Domestic Unfinished Oils (813):

Includes all oils requiring further processing, i.e., any operation except mechanical blending. Foreign unfinished oils are those unfinished oils which are produced within the confines of the 50 States, the District of Columbia, and Puerto Rico.

Foreign Unfinished Oils (814):

Includes all oils requiring further processing, i.e., any operation except mechanical blending. Foreign unfinished oils are those unfinished oils which are imported from countries and trust territories outside the 50 States, the District of Columbia, and Puerto Rico.

Motor Gasoline (131):

A complex mixture of relatively volatile hydrocarbons, with or without small quantities of additives, which have been blended to form a fuel suitable for use in spark ignition engines. Includes all refinery products within the gasoline range (ASTM Specification D 439; Federal Specification VV–G–766) that are to be marketed as motor gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into finished gasoline.

Aviation Gasoline (111):

All special grades of gasoline for use in aviation reciprocating engines, as given in ASTM Specification D 910. Includes all refinery products within the gasoline range that are to be marketed straight or in blends as aviation gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into aviation gasoline.

Jet Fuel—Naphtha-Type (211):

A fuel in the heavy naphtha boiling range with an average gravity of 52.8° API and 10 percent to 90 percent distillation temperatures of 210° F. to 420° F. and meeting Military Specifications MIL–F–5624 and MIL–T–5624G. Used for turbojet and turboprop aircraft engines, primarily by the military. Includes JP–4. Excludes ramjet and petroleum rocket fuels.

Jet Fuel—Kerosine-Type (213):

A quality kerosine product with an average gravity of 40.7° API and 10 percent to 90 percent distillation temperatures of 390° F. to 470° F. covered by ASTM D 1655 specifications. Used primarily as fuel for commercial turbojet and turboprop aircraft engines. A relatively low freezing point distillate of the kerosine type. Includes Military JP–5 (MIL–T–562G Amend. 1).

Kerosine (311):

A petroleum distillate in the 300°F. to 550°F. boiling range and generally having a flashpoint higher than 100°F. by ASTM Method D 56, a gravity ranging from 40°

to 46° API, and a burning point in the range of 150°F. to 175°F. It is a clean burning product suitable for use as an illuminant when burned in wick lamps. Kerosine is often used as range oil.

Distillate Fuel Oil (Less No. 4) (412):

A general classification for one of the petroleum fractions which, when produced in conventional distillation operations, has a boiling range from 10 percent point at 300°F. to 90 percent point at 675°F. Included are products known as Nos. 1 and 2 heating oils and diesel fuels.

No. 4 Fuel Oil (414):

No. 4 fuel oil is defined as an oil for commercial burner installations not equipped with preheating facilities. Extensively used in industrial plants. This grade is a blend of distillate fuel oil and residual fuel oil stocks. Tentative ASTM D 396 specifications for this grade specify kinematic viscosities between 5.8 and 26.4 cs at 100°F.

Residual Fuel Oil (511):

Topped crude oil obtained in refinery operations, includes ASTM Grades No. 5 and No. 6, heavy diesel. Navy Special, and Bunker C oils used for generation of heat and/or power. Also includes acid sludge and pitch used for refinery fuels.

Total Input to Crude Oil Distillation Units (888):

Enter the sum of all refinery inputs which tillation units. Reprocessing of gross unfintillation unts. Reprocessing of gross unfinished oil in a distillation unit is to be included. Do not include crude oil charged directly to coking units.

REPORT TO

Use this form as a worksheet. Report the information via Mailgram to:

Federal Energy Administration
Code 2891
Washington, D.C. 20462

NOTE: ZIP Code 20462 is for submission of Mailgram data to the Weekly Petroleum Reporting System *ONLY;* it is not to be for other correspondence.

Corrections:

Submit all corrections using this form to the FEA via U.S. Postal Service to:

Federal Energy Administration
Code 2891
Washington, D.C. 20461

Form Approved OMB 180-R0024

FEDERAL ENERGY ADMINISTRATION
WEEKLY REFINERY REPORT

REPORT TYPE FEA-1003-RF

FEA Identification Number

Week Ending Date (Month / Day / Year)

ZIP Code

Refinery Name
#

Report All Figures in Thousands of 42-Gallon Barrels.

Item description	Product Code	Stocks at Beginning of Reporting Period	Receipts During Reporting Period	Inputs During Reporting Period	Production During Reporting Period	Shipments, Losses, Refinery Use During Reporting Period	Stock at End of Reporting Period
Domestic Crude Oil	010				X		
Foreign Crude Oil	020				X		
Domestic Natural Gas Liquids	230				X		
Foreign Natural Gas Liquids	239	X		X	X	X	X
Domestic Unfinished Oils	813						
Foreign Unfinished Oils	814	X		X	X	X	X
Motor Gasoline	131		X	X		X	
Aviation Gasoline	111		X	X		X	
Jet Fuel—Naphtha Type	211		X	X		X	
Jet Fuel—Kerosine Type	213		X	X		X	
Kerosine	311		X	X		X	
Distillate Fuel Oil (Less No. 4)	412		X	X		X	
No. 4 Fuel Oil	414		X	X		X	
Residual Fuel Oil	511		X	X		X	
Total Input to Crude Distl. Units	888						

#

Company Name

FEA-1003-RF (7-74)

U.S. GOVERNMENT PRINTING OFFICE : 1974 O-560-302

FEDERAL ENERGY ADMINISTRATION

INSTRUCTIONS FOR PREPARATION OF THE WEEKLY PRODUCTS PIPELINE REPORT

(FEA-1004-PP)

(7-74)

Reports are due each Moday by MAILGRAM for the previous week.

IDENTIFICATION DATA

This report must be completed by all product pipeline companies which carry petroleum products including interstate, intrastate, and intracompany pipeline in the 50 States and the District of Columbia.

FEA Identification Number:

Enter the six-digit code which the FEA has assigned to you. This number is included on the label of this package. If you do not presently have this number, FEA will assign you one; regardless, you must submit these data, leaving the FEA identification number blank.

For Week Ended 7 a.m.:

Seven-day period *ending* 7 a.m. Friday. Indicate the specific month and ending day using the following format: Month/Day/Year (e.g., 03/15/74). Please use the following numerical codes for each month in order to design a six-digit date code:

January	01	July	07
February	02	August	08
March	03	September	09
April	04	October	10
May	05	November	11
June	06	December	12

ZIP Code:

Enter the ZIP code of the pipeline location, not the reporting office.

Pipeline Company Name:

Enter the legal name of the products pipeline company.

NUMBER SIGN

There is a # (number sign—also called a pound sign or tic-tac-toe sign) appearing as a separate line (paragraph) preceding the first product data line (paragraph). There is also a # following the last product data line (paragraph).

When calling (or keying) in this form's data to Western Union, please be sure to specify the # (only once) as a *separate* line just *before* reporting the first product data line. Likewise, specify the # (only once) as a *separate* line right *after* the last product data line has been reported.

Refer to the MAILGRAM instructions for a detailed explanation of # usage.

SUMMARY TABULAR DATA

1. Report all figures in THOUSANDS OF 42-GALLON BARRELS.

2. All figures should represent actual inventories of petroleum products on the last day of the reporting period.

3. Report all stocks on a CUSTODY BASIS regardless of ownership.

4. Report stocks less bottom settlings and water (BS&W).

5. Remember to fill in *all* blanks. If necessary, include zero (0) as an entry, but do not leave any blank spaces.

6. Include all pipeline products stocks of domestic origin held in your custody, including pipeline fill and stocks in working tanks of pipelines. Include as stocks of foreign origin only those that have cleared customs or for which duty has been paid. Exclude stocks of foreign origin held in bonded storage.

7. Identify shipments by individual P.A.D. District, generating a total for each product code. Consult the list that follows to identify the breakdown by P.A.D. District.

STATE LIST

State	P.A.D. No.	State	P.A.D. No.
Alabama	III	Nebraska	II
Alaska	V	Nevada	V
Arizona	V	New Hampshire	IA
Arkansas	III	New Jersey	IB
California	V	New Mexico	III
Colorado	IV	New York	IB
Connecticut	IA	North Carolina	IC
Delaware	IB	North Dakota	II
District of Columbia	IB	Ohio	II
Florida	IC	Oklahoma	II
Georgia	IC	Oregon	V
Hawaii	V	Pennsylvania	IB
Idaho	IV	Rhode Island	IA
Illinois	II	South Carolina	IC
Indiana	II	South Dakota	II
Iowa	II	Tennessee	II
Kansas	II	Texas	III
Kentucky	II	Utah	IV
Louisiana	III	Vermont	IA
Maine	IA	Virginia	IC
Maryland	IB	Washington	V
Massachusetts	IA	West Virginia	IC
Michigan	II	Wisconsin	II
Minnesota	II	Wyoming	IV
Mississippi	III	Puerto Rico	VI
Missouri	II	Virgin Islands	VII
Montana	IV		

PRODUCT DEFINITIONS

Motor Gasoline (131):

A complex mixture of relatively volatile hydrocarbons, with or without small quantities of additives, which have been blended to form a fuel suitable for use in spark ignition engines. Includes all refinery products within the gasoline range (ASTM Specification D 439; Federal Specification VV-G-766) that are to be marketed as motor gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into finished gasoline.

Aviation Gasoline (111):

All special grades of gasoline for use in aviation reciprocating engines, as given in ASTM Specification D 910. Includes all refinery products within the gasoline range that are to be marketed straight or in blends as aviation gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into aviation gasoline.

Jet Fuel—Naphtha-Type (211):

A fuel in the heavy naphtha boiling range with an average gravity of 52.8° API and 10 percent to 90 percent distillation temperatures of 210°F. to 420°F. and meeting Military Specifications MIL-F-5624 and MIL-T-5624G. Used for turbojet and turboprop aircraft engines, primarily by the military. Includes JP-4. Excludes ramjet and petroleum rocket fuels.

Jet Fuel—Kerosine-Type (213):

A quality kerosine product with an average gravity of 40.7° API and 10 percent to 90 percent to 90 percent distillation temperatures of 390°F. to 470°F. covered by ASTM D 1655 specifications. Used primarily as fuel for commercial turbojet and turboprop aircraft engines. A relatively low freezing point distillate of the kerosine type. Includes Military JP-5 (MIL-T-5624G Amend. 1).

Kerosine (311):

A petroleum distillate in the 300°F. to 550°F. boiling range and generally having a flashpoint higher than 100°F. by ASTM Method D 56, a gravity ranging from 40° to 46° API, and a burning point in the range of 150°F. to 175°F. It is a clean burning product suitable for use as an illuminant when burned in wick lamps. Kerosine is often used as range oil.

Distillate Fuel Oil (Less No. 4) (412):

A general classification for one of the petroleum fractions which, when produced in conventional distillation operations, has a boiling range from 10 percent point at 300°F. to 90 percent point at 675°F. Included are products known as Nos. 1 and 2 heating oils and diesel fuels.

No. 4 Fuel Oil (414):

No. 4 fuel oil is defined as an oil for commercial burner installations not equipped with preheating facilities. Extensively used in industrial plans. This grade is a blend of distillate fuel oil and residual fuel oil stocks. Tentative ASTM D 396 specifications for this grade specify kinematic viscosities between 5.8 and 26.4 cs at 100°F.

REPORT TO

Use this form as a worksheet. Report the information via Mailgram to:

Federal Energy Administration
Code 2891
Washington, D.C. 20462

NOTE: ZIP code 20462 is for submission of Mailgram data to the Weekly Petroleum Reporting System *ONLY*; it is not to be used for other correspondence.

Corrections:

Submit all corrections using this form to the FEA via U.S. Postal Service to:

Federal Energy Administration
Code 2891
Washington, DC. 20461

Form Approved OMB 160-R0025

FEDERAL ENERGY ADMINISTRATION
WEEKLY PRODUCTS PIPELINE REPORT

REPORT TYPE FEA-1004-PP

FEA Identification Number

Week Ending Date Month Day Year

ZIP Code

Pipeline Company Name

#

Stocks of Pipeline Products in Lines and Working Tanks at End of Week by P.A.D. District
(REPORT ALL FIGURES IN THOUSANDS 42-GALLON BARRELS)

Item Description	Product Code	P.A.D. Districts							TOTAL
		IA	IB	IC	II	III	IV	V	
Motor Gasoline	131								
Aviation Gasoline	111								
Jet Fuel—Naphtha Type	211								
Jet Fuel—Kerosine Type	213								
Kerosine	311								
Distillate Fuel Oil (Less No. 4)	412								
No. 4 Fuel Oil	414								

#

FEA-1004-PP (7-74)

U.S. GOVERNMENT PRINTING OFFICE : 1974 O-559-559

Form Approved OMB 180–R0026

FEDERAL ENERGY ADMINISTRATION

INSTRUCTIONS FOR PREPARATION OF THE WEEKLY IMPORTS REPORT

(FEA–I005–IM)

(7–74)

Reports are due each Monday by MAILGRAM for the previous week

IDENTIFICATION DATA

This report form must be completed by all companies in the 50 States, the District of Columbia, and Puerto Rico who import petroleum products by ocean vessel or pipeline. Reports will be completed by terminal operators who take petroleum products into custody and who are not necessarily the importers of record.

FEA Identification Number:

Enter the six-digit code which the FEA has assigned to you. This number is included on the label of this package. If you do not presently have this number, FEA will assign you one; regardless, you must submit these data, leaving the FEA identification number blank.

For Week Ended 7 a.m.:

Seven-day period *ending* 7 a.m. Friday. Indicate the specific month and ending day using the following format: Month/Day/Year (e.g., 03/15/74). Please use the following numerical codes for each month in order to design a six-digit date code:

January	01	July	07
February	02	August	08
March	03	September	09
April	04	October	10
May	05	November	11
June	06	December	12

ZIP Code:

Enter the ZIP code of the import location, not the reporting office.

Dealer's Name:

Enter the legal name of the importing company.

NUMBER SIGN

There is a # (number sign—also called a pound sign or tic-tac-toe sign) appearing as a separate line (paragraph) preceding the first product data line (paragraph). There is also a # following the last product data line (paragraph).

When calling (or keying) in this form's data to Western Union, please be sure to specify the # (only once) as a *separate* line just *before* reporting the first product data line. Likewise, specify the # (only once) as a *separate* line right *after* the last product data line has been reported.

Refer to the MAILGRAM instructions for a detailed explanation of # usage.

SUMMARY TABULAR DATA

General Instructions:

1. Imported petroleum and petroleum products are those items which have been received from all countries and trust territories outside the 50 States, the District of Columbia, and Puerto Rico.

2. Report all figures in THOUSANDS OF 42-GALLON BARRELS.

3. Remember to fill in *all* blanks. If necessary, include zero (0) as an entry, but do not leave any blank spaces.

4. Identify shipments by individual P.A.D. District, generating a total for each product code. Consult the list which follows to identify the breakdown by P.A.D. District.

STATE LIST

State	P.A.D. No.	State	P.A.D. No.
Alabama	III	Nebraska	II
Alaska	V	Nevada	V
Arizona	V	New Hampshire	IA
Arkansas	III	New Jersey	IB
California	V	New Mexico	III
Colorado	IV	New York	IB
Connecticut	IA	North Carolina	IC
Delaware	IB	North Dakota	II
District of Columbia	IB	Ohio	II
Florida	IC	Oklahoma	II
Georgia	IC	Oregon	V
Hawaii	V	Pennsylvania	IB
Idaho	IV	Rhode Island	IA
Illinois	II	South Carolina	IC
Indiana	II	South Dakota	II
Iowa	II	Tennessee	II
Kansas	II	Texas	III
Kentucky	II	Utah	IV
Louisiana	III	Vermont	IA
Maine	IA	Virginia	IC
Maryland	IB	Washington	V
Massachusetts	IA	West Virginia	IC
Michigan	II	Wisconsin	II
Minnesota	II	Wyoming	IV
Mississippi	III	Puerto Rico	VI
Missouri	II	Virgin Island	VII
Montana	IV		

PRODUCT DEFINITIONS

Motor Gasoline (131):

A complex mixture of relatively volatile hydrocarbons, with or without small quantities of additives, which have been blended to form a fuel suitable for use in spark ignition engines. Includes all refinery products within the gasoline range (ASTM Specification D 439; Federal Specification VV–G–766) that are to be marketed as motor gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into finished gasoline.

Aviation Gasoline (111):

All special grades of gasoline for use in aviation reciprocating engines, as given in ASTM Specification D 910. Includes all refinery products within the gasoline range that are to be marketed straight or in blends as aviation gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into aviation gasoline.

Jet Fuel—Naphtha-Type (211):

A fuel in the heavy naphtha boiling range with an average gravity of 52.8° API and 10 percent to 90 percent distillation temperatures of 210° F. to 420° F. and meeting Military Specifications MIL–F–5624 and MIL–T–5624G. Used for turbojet and turboprop aircraft engines, primarily by the military. Includes JP–4. Excludes ramjet and petroleum rocket fuels.

Jet Fuel—Kerosine-Type (213):

A quality kerosine product with an average gravity of 40.7° API and 10 percent to 90 percent distillation temperatures of 390° F. to 470° F. covered by ASTM D 1655 specifications. Used primarily as fuel for commercial turbojet and turboprop aircraft engines. A relatively low freezing point distillate of the kerosine type. Includes Military JP–5 (MIL–T–5624G Amend. 1).

Kerosine (311):

A petroleum distillate in the 300° F. to 550° F. boiling range and generally having a flashpoint higher than 100° F. by ASTM Method D 56, a gravity ranging from 40° to 46° API, and a burning point in the range of 150° F. to 175° F. It is a clean burning product suitable for use as an illuminant when burned in wick lamps. Kerosine is often used as range oil.

Distillate Fuel Oil (Less No. 4) (412):

A general classification for one of the petroleum fractions which, when produced in conventional distillation operations, has a boiling range from 10 percent point at 300°F. to 90 percent point at 675°F. Included are products known as Nos. 1 and 2 heating oils and diesel fuels.

No. 4 Fuel Oil (414):

No. 4 fuel oil is defined as an oil for commercial burner installations not equipped with preheating facilities. Extensively used in industrial plants. This grade is a blend of distillate fuel oil and residual fuel oil stocks. Tentative ASTM D 396 specifications for this grade specify kinematic viscosities between 5.8 and 26.4 cs at 100°F.

Residual Fuel Oil (511):

Topped crude oil obtained in refinery operations, includes ASTM Grades No. 5 and No. 6, heavy diesel. Navy Special, and Bunker C oils used for generation of heat and/or power. Also includes acid sludge and pitch used for refinery fuels.

Petrochemical Feedstocks (042):

Includes all refinery streams which are sold to or directed to chemical or rubber manufacturing operations for further processing. Excludes finished petrochemical products. For example, marketable benzene, tolulene, cumene, etc., are considered petrochemical products and only their feedstock equivalents should be reported. Omit coke.

Special Naphthas (051):

All finished products within the gasoline range, specially refined to specified flashpoint and boiling range, for use as paint thinners, cleaners, solvents, etc., but not to be marketed as motor gasoline, aviation gasoline, or used as petrochemical feedstocks.

Liquefied Petroleum Gas (238):

Includes propane and butane (isobutane, normal butane, and other butane) and butane-propane mixtures, but not ethane. (Do not report imports for use at refineries.)

Asphalt (900):

The definition includes crude asphalt as well as finished products such as cements, fluxes, the asphalt content of emulsions (exclusive of water), and petroleum distillates blended with asphalt ,to make cutback asphalts. The conversion factor is 5.5 barrels of 42 gallons each per short ton.

Crude Oil (020):

Crude Oil (020):

A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Also, lease condensate moving to a refinery is included. Lease condensate is defined as a natural gas liquid recovered from gas-well gas (associated and nonassociated) in lease separators or field facilities. Drips are also included but topped crude oil and other unfinished oils are excluded. Natural gas liquids produced at natural gas processing plants and mixed with crude oil are likewise excluded. (Do not report imports for use at refineries.)

Plant Condensate (210):

One of the natural gas plant products, mostly pentanes and heavier, recovered and separated as liquids at gas inlet separators or scrubbers in processing plants or field facilities. Plant condensate is not suitable for blending with natural gasoline or refinery gasoline. (Do not report imports for use at refineries.)

Unfinished Oils (814):

Includes all oils requiring further processing, i.e., any operation except mechanical blending. (Do not report imports for use at refineries.)

REPORT TO

Use this form as a worksheet. Report the information via Mailgram to:

Federal Energy Administration
Code 2891
Washington, D.C. 20462

NOTE: ZIP code 20462 is for submission of Mailgram data to the Weekly Petroleum Reporting System *ONLY;* it is not to be used for other correspondence.

Corrections:

Submit all corrections using this form to the FEA via U.S. Postal Service to:

Federal Energy Administration
Code 2891
Washington, D.C. 20461

Form Approved OMB 180-R0026

FEDERAL ENERGY ADMINISTRATION
WEEKLY IMPORTS REPORT

REPORT TYPE FEA-1605-IM

FEA Identification Number

Week Ending Date (Month / Day / Year)

ZIP Code

Dealer Name

#

Imports (Receipts) of Foreign Crude Petroleum and Petroleum Products by P.A.D. District
(REPORT ALL FIGURES IN THOUSANDS OF 42-GALLON BARRELS)

Item Description	Product Code	P.A.D. District								TOTAL
		IA	IB	IC	II	III	IV	V	VI	
Motor Gasoline	131									
Aviation Gasoline	111									
Jet Fuel—Naphtha Type	211									
Jet Fuel—Kerosine Type	213									
Kerosine	311									
Distillate Fuel Oil (Less No. 4)	412									
No. 4 Fuel Oil	414									
Residual Fuel Oil	511									
Petrochemical Feedstocks	042									
Special Naphthas	051									
Liquified Petroleum Gas	238									
Asphalt	900									
Crude Oil	920									
Plant Condensate	210									
Unfinished Oils	814									

#

FEA-1005-IM (7-74) U.S. GOVERNMENT PRINTING OFFICE : 1974 O—538-334

Form Approved OMB 180-R0027

FEDERAL ENERGY ADMINISTRATION

INSTRUCTIONS FOR PREPARATION OF THE WEEKLY BULK TERMINAL STOCKS REPORT

(FEA-1006-BT)

(7-74)

Reports are due each Monday by MAILGRAM for the previous week

IDENTIFICATION DATA

This report form must be completed by every terminal operating company to include all bulk terminals it operates within each P.A.D. District.

FEA Identification Number:

Enter the six-digit code which the FEA has assigned to you. This number is included on the label of this package. If you do not presently have this number, FEA will assign you one; regardless, you must submit these data, leaving the FEA identification number blank.

For Week Ended 7 a.m.:

Seven-day period *ending* 7 a.m. Friday. Indicate the specific month and ending day using the following format: Month/Day/Year (e.g., 03/15/74). Please use the following numerical codes for each month in order to design a six-digit date code:

January	01	July	07
February	02	August	08
March	03	September	09
April	04	October	10
May	05	November	11
June	06	December	12

ZIP Code:

Enter the ZIP code of the bulk terminal location, not the reporting office.

Terminal Operating Company Name:

Enter the legal name of the terminal operating company.

NUMBER SIGN

There is a # (number sign—also called a pound sign or tic-tac-toe sign) appearing as a separate line (paragraph) preceding the first product data line (paragraph). There is also a # following the last product data line (paragraph).

When calling (or keying) in this form's data to Western Union, please be sure to specify the # (only once) as a *separate* line just *before* reporting the first product data line. Likewise, specify the # (only once) as a *separate* line right *after* the last product data line has been reported.

Refer to the MAILGRAM instructions for a detailed explanation of # usage.

SUMMARY TABULAR DATA

General Instructions:

1. Report all figures in THOUSANDS OF 42-GALLON BARRELS.

2. All figures should represent actual physical inventories. Make sure to include the individual product totals for all districts.

3. Remember to fill in all blanks. If necessary, include zero (0) as an entry, but do not leave any blank spaces.

4. Bulk terminal means a facility which is primarily used for the marketing of gasoline, kerosine and distillate and residual fuel oils and which (1) has total bulk storage capacity of 2,100,000 gallons or more or (2) receives its petroleum products by tanker, barge, or pipeline.

5. *Stocks:* Report stocks less bottom settlings and water (BS & W). Include all stocks of domestic origin held IN CUSTODY by your

company at bulk terminals and in transit, other than by pipeline. Include all stocks of foreign origin held in the CUSTODY of your company at bulk terminals, which have cleared customs for domestic consumption. Exclude stocks of foreign origin held in bond.

6. Identify shipments by individual P.A.D. District, generating a total for each product code. Consult the list that follows to identify the breakdown by P.A.D. District.

STATE LIST

State	P.A.D. No.	State	P.A.D. No.
Alabama	III	Nebraska	II
Alaska	V	Nevada	V
Arizona	V	New Hampshire	IA
Arkansas	III	New Jersey	IB
California	V	New Mexico	III
Colorado	IV	New York	IB
Connecticut	IA	North Carolina	IC
Delaware	IB	North Dakota	II
District of Columbia	IB	Ohio	II
Florida	IC	Oklahoma	II
Georgia	IC	Oregon	V
Hawaii	V	Pennsylvania	IB
Idaho	IV	Rhode Island	IA
Illinois	II	South Carolina	IC
Indiana	II	South Dakota	II
Iowa	II	Tennessee	II
Kansas	II	Texas	III
Kentucky	II	Utah	IV
Louisiana	III	Vermont	IA
Maine	IA	Virginia	IC
Maryland	IB	Washington	V
Massachusetts	IA	West Virginia	IC
Michigan	II	Wisconsin	II
Minnesota	II	Wyoming	IV
Mississippi	III	Puerto Rico	VI
Missouri	II	Virgin Islands	VII
Montana	IV		

PRODUCT DEFINITIONS

Motor Gasoline (131):

A complex mixture of relatively volatile hydrocarbons, with or without small quantities of additives, which have been blended to form a fuel suitable for use in spark ignition engines. Includes all refinery products within the gasoline range (ASTM Specification D 439; Federal Specification VV–G–766) that are to be marketed as motor gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into finished gasoline.

Aviation Gasoline (111):

All special grades of gasoline for use in aviation reciprocating engines, as given in ASTM Specification D 910. Includes all refinery products within the gasoline range that are to be marketed straight or in blends as aviation gasoline without further processing, i.e., any refinery operation except mechanical blending. Also includes finished components in the gasoline range which will be used for blending or compounding into aviation gasoline.

Jet Fuel—Naptha-Type (211):

A fuel in the heavy naphtha boiling range with an average gravity of 52.8° API and 10 percent to 90 percent distillation temperatures of 210°F. to 420°F. and meeting Military Specifications MIL–F–5624 and MIL–T–5624G. Used for turbojet and turboprop aircraft engines, primarily by the military. Includes JP–4. Excludes ramjet and petroleum rocket fuels.

Jet Fuel—Kerosine-Type (213):

A quality kerosine product with an average gravity of 40.7° API and 10 percent to 90 percent distillation temperatures of 390°F. to 470°F. covered by ASTM D 1655 specifications. Used primarily as fuel for commercial turbojet and turboprop aircraft engines. A relatively low freezing point distillate of the kerosine type. Includes Military JP–5 (MIL–T–5624G Amend. 1).

Kerosine (311):

A petroleum distillate in the 300°F. to 550°F. boiling range and generally having a flashpoint higher than 100°F. by ASTM Method D 56, a gravity ranging from 40° to 46° API, and a burning point in the range of 150°F. to 175°F. It is a clean burning product suitable for use as an illuminant when burned in wick lamps. Kerosine is often used as range oil.

Distillate Fuel Oil (Less No. 4) (412):

A general classification for one of the petroleum fractions which, when produced in conventional distillation operations, has a boiling range from 10 percent point at 300°F. to 90 percent point at 675°F. Included are products known as Nos. 1 and 2 heating oils and diesel fuels.

No. 4 Fuel Oil (414):

No. 4 fuel oil is defined as an oil for commercial burner installations not equipped with preheating facilities. Extensively used in industrial plants. This grade is a blend of distillate fuel oil and residual fuel oil stocks. Tentative ASTM D 396 specifications for this grade specify kinematic vicosities between 5.8 and 26.4 cs at 100°F.

Residual Fuel Oil (511):

Topped crude oil obtained in refinery operations includes ASTM grades No. 5 and No. 6, heavy diesel, Navy special, and Bunker C oils used for generation of heat and/or power. Also includes acid sludge and pitch used for refinery fuels.

REPORT TO

Use this form as a worksheet. Report the information via Mailgram to:

Federal Energy Administration
Code 2891
Washington, D.C. 20462

NOTE: ZIP code 20462 is for submission of Mailgram data to the Weekly Petroleum Reporting System ONLY; it is not to be used for other correspondence.

Corrections:

Submit all corrections using this form to the FEA via U.S. Postal Service to:

Federal Energy Administration
Code 2891
Washington, D.C. 20461

Form Approved OMB 160-R0027

FEDERAL ENERGY ADMINISTRATION
WEEKLY BULK TERMINAL STOCKS REPORT

REPORT TYPE FEA–1006–BT

FEA Identification Number

Week Ending Date Month Day Year

ZIP Code

Terminal Operating Company Name

#

Bulk Terminal Stocks of Petroleum Products Held in Custody by your Company at the End of the Reporting Period According to P.A.D. District
(REPORT ALL FIGURES IN THOUSANDS OF 42-GALLON BARRELS)

Item Description	Product Code	P.A.D. Districts IA	IB	IC	II	III	IV	V	VI	TOTAL
Motor Gasoline	131									
Aviation Gasoline	111									
Jet Fuel – Naphtha Type	211									
Jet Fuel – Kerosine Type	213									
Kerosine	311									
Distillate Fuel Oil (Less No. 4)	412									
No. 4 Fuel Oil	414									
Residual Fuel Oil	511									

#

FEA–1006–BT (7–74)

U.S. GOVERNMENT PRINTING OFFICE : 1974 O—553-339

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

NOTE: This document in no way affects the existing Part 212—Mandatory Petroleum Price Regulations. The regulations published January 15, 1974 (39 FR 1949), as amended, remain in force. FEA anticipates that a compilation and republication of Part 212 will be issued in the near future.

PART 215—LOW SULFUR PETROLEUM PRODUCTS REGULATION

Sec.

AUTHORITY: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; E.O. 11748, 38 FR 33575; FEO Order 3 (Feb. 5, 1974).

§ 215.1 Purpose and intent.

The purpose of this part is to assure the optimum use of the limited supplies of low sulfur petroleum products in a manner consistent with the provisions of the Clean Air Act, as amended, and the Clean Fuels Policy of the Environmental Protection Agency. This Part is not intended to affect or preempt the development of individual source compliance schedules or other actions associated with implementation of the Clean Air Act, except with regard to the timing of actual shifts to burning lower sulfur oil during the period this Part is in effect.

§ 215.2 Definitions.

"Power generator" means any boiler, burner, or other combustor of fuel or any combination of boilers at a single site in any electric power generating plant or industrial or commercial plant having a total firing rate of 50 million B.T.U./hour or greater in commercial operation on or prior to December 7, 1973 and includes combustion turbines used in the generation of electrical energy.

"Petroleum product" means crude oil, residual fuel oil, and refined petroleum products as defined in Part 211 of this Title.

"Primary ambient air quality standards" means the national primary ambient air quality standards provided for in the Clean Air Act, as amended. (42 U.S.C. 1857 et seq.)

§ 215.3 Power generators not currently burning petroleum products.

No petroleum product shall be sold or otherwise provided to or accepted by any firm for burning under power generators that were not using the petroleum product on December 7, 1973. Automatic exception is granted for power generators converting from natural gas, provided that alternative fuels, such as coal, cannot practically be utilized.

§ 215.4 Power generators currently burning petroleum products.

(a) Petroleum products may continue to be purchased and utilized by firms using them in power generators burning petroleum products on December 7, 1973 except that:

(1) No petroleum product having a lower specified sulfur content, by weight, than the average content of the petroleum products in use in such a power generator during November, 1973 or during the last month in which the power generator consumed such products, shall be sold or otherwise provided or accepted by any firm for use in such power generator;

(2) The aggregate quantity of petroleum products utilized by such firm in any month subsequent to April, 1974 in any such power generator capable of burning coal and petroleum products shall not exceed the larger of the aggregate quantity of petroleum products consumed in the corresponding month of 1972 or in July 1973, except that the quantity of petroleum products burned may be increased in proportion to the increased output of energy or increased need for startups.

(3) The quantity of middle distillate fuel oil utilized by such firm in any month subsequent to April, 1974 in any such power generator shall not exceed the larger of the quantity of middle distillate fuel oil consumed in the corresponding month of 1972 or in July 1973, except that the quantity of middle distillate fuel oil burned may be increased in proportion to the increased output of energy, or increased need for startups.

(4) In order to discourage further increase in the indirect use of middle distillate and residual fuel oils:

(i) No firm shall blend more middle distillate fuel oils into residual fuel oil than the greater of the quantities blended in the corresponding month of 1972, or in July 1973, except where essential to meeting Primary Ambient Air Quality Standards.

(ii) No firm shall use under a power generator a blended fuel containing a greater proportion of middle distillate fuels from the larger of:

(A) The proportion included in the corresponding month of 1972, or

(B) The proportion included in July 1973, except where essential to meeting Primary Ambient Air Quality Standards.

(iii) Those quantities of fuels containing middle distillates that constitute plant or firm inventories as of the effective date of this Part may be consumed by or sold for use in power generators until those quantities are depleted.

(5) Automatic exception is granted for power generators converting from natural gas, provided that alternative non-petroleum product fuels, such as coal, cannot practically be utilized.

§ 215.5 New power generators.

(a) 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 new source performance standards or for startup.

(b) This part is not intended to preempt the new source performance standards of the Clean Air Act, as amended. In the event this Part conflicts with such standards, the provisions of the Clean Air Act prevail and the provisions of this Part do not apply.

§ 215.6 Exceptions to meet primary ambient air quality standards.

(a) The FEA shall automatically grant exceptions to the provisions of this Part as provided in Subpart D of Part 205 of this chapter when the use of petroleum products is properly certified by the appropriate State air pollution control agency to be essential to meeting the Primary Ambient Air Quality Standard of the air quality region in which the plant is located.

(b) With respect to § 215.3, FEA shall grant exceptions pursuant to this paragraph only when suitable alternative non-petroleum product fuels are not available.

§ 215.7 Other exceptions.

The FEA may also grant exceptions from the provisions of this Part as provided in Subpart D of Part 205 of this chapter if:

(a) Any firm subject to this Part can demonstrate that compliance would cause an undue economic hardship; or

(b) Fuels necessary for compliance with this Part are not available.

[FR Doc.74-22707 Filed 9-30-74;8:45 am]