SUPPLEMENTARY INFORMATION: Section 1888.17 of Part 1888 of Chapter XVIII, Title 7, Subchapter G, "Miscellaneous Regulations," in the Code of Federal Regulations (42 FR 19322; 42 FR 23158; 42 FR 37355; 42 FR 42843; 42 FR 53966) is amended. The text of paragraph (a) of this section is amended to provide that loan and grant funds must be obligated on or before December 31, 1977. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemptions in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published for proposed rulemaking since this assistance is currently needed and any delay would be contrary to the public interest. Accordingly § 1888.17(a) is amended to read as follows:

§ 1888.17 Termination provisions.

(a) For projects eligible for assistance provided under § 1888.13, funds must be obligated on or before December 31, 1977, and:

(1) The obligating documents must have been mailed before close of business September 30, 1977, to the Finance Office and actually received by the Finance Office; or

(2) The obligating documents would have been mailed before close of business September 30, 1977, to the Finance Office if requested National Office approval had been received on or before such date; or

(3) The State Office must have attempted to transmit for obligation via the online computer terminal system such documents to the Finance Office before close of business September 30, 1977.

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

NOTE.—The Farmers Home Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 16, 1977.

GORDON CAVANAUGH,
Administrator Farmers Home Administration.

[FR Doc.77-36445 Filed 12-21-77;8:45 am]

[3410-07]

[FmHA Instruction 2018-F]

SUBCHAPTER A—GENERAL

PART 1813—AVAILABILITY OF INFORMATION

SUBCHAPTER R—BUSINESS SERVICES

PART 2018—GENERAL

Subpart F—Availability of Information

REVISION; REDESIGNATION

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation to redesignate and revise the manner in which information may be obtained from the Agency under the Freedom of Information Act. This redesignation and revision is designed to facilitate and improve the administration of services involving requests from the general public.

DATE: Effective date December 22, 1977.

FOR FURTHER INFORMATION CONTACT:

James E. Bryan, Jr., Freedom of Information Officer, telephone 202-447-2211.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration (FmHA) amends its regulations to establish under Chapter XVIII, Subchapter R, "Business Services," Title 7, a new Part 2018, "General," Subparts A through G (§§ 2018.1 through 2018.350) in the Code of Federal Regulations. Subpart F, "Availability of Information" (§§ 2018.251–2018.300) of this new Part 2018 will redesignate and revise the regulation concerning the availability of records and materials for public inspection and copying. Most of Subpart F was taken from Part 1813 of this Chapter published at 40 FR 21696, and as amended at 40 FR 27475; 41 FR 19967, and is hereby deleted and reserved. This new Subpart F provides simplified guidelines for the use of the general public in obtaining information from FmHA. In implementation of the Freedom of Information Act (5 U.S.C. 552) and in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1–1.16, including Appendix A thereto, the FmHA lists officials within the Agency by title to whom members of the public should submit requests, and sets forth its policy governing the availability of records and materials for public inspection and copying. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This redesignation revision, however, is not published for proposed rulemaking since no substantive changes have been made which affect the public, and since changes that are made are administrative in nature, public participation is unnecessary. Accordingly, New Subpart F, Part 2018, as redesignated and revised, is set forth below:

1. Part 1813 is hereby deleted and reserved.

2. In Subchapter R, Part 2018, Subpart F is added:

* * * * *

Subpart F—Availability of Information

AUTHORITY: 5 U.S.C. 552.

§ 2018.251 General statement.

In keeping with the spirit of the Freedom of Information Act (FOIA), the policy of Farmers Home Administration (FmHA) governing access to information is one of nearly total availability, limited only by the administrative responsibilities recognized by the Act.

§ 2018.252 Public inspection and copying.

Facilities for inspection and copying will be provided by the Freedom of Information Officer (FOIO) in the National Office, the State Director in each State Office, and the County Supervisor in each County Office. A person who has requested information will be promptly notified that he may inspect and copy such materials, and upon payment of applicable fees, obtain copies. Material may be reviewed on business days from 9:30 a.m. to 4 p.m. If any of the FmHA materials requested are not located at the office to which the request was made, the request will be referred to the office where such materials are available.

§ 2018.253 Indexes.

Since FmHA does not maintain any materials to which 5 U.S.C. 552(a)(2) applies, it maintains no indexes.

§ 2018.254 Requests for records.

Requests for records are to be submitted in accordance with 7 CFR § 1.3 and may be made to the appropriate County Supervisor or State Director, but requests may be mailed to the Freedom of Information Officer, Management Information Systems Staff, Farmers Home Administration, Washington, D.C. 20250. The phrase "FOIA REQUEST" should appear on the outside of the envelop in capital letters. Requests should be as specific as possible in describing the records being requested. The FOIO is hereby delegated authority to:

(a) Deny requests for records determined to be exempt under one or more provisions of 5 U.S.C. 552(b);

(b) Make discretionary releases (unless prohibited by other authority) of such records when it is determined that the public interests in disclosure outweigh the public and/or private ones in withholding; and

(c) Reduce or waive fees to be charged where determined to be appropriate. A County or State Supervisor may grant requests for records but must refer any proposed denial, or reduction or waiver of fees, to the FOIO.

§ 2018.255 Appeals.

If all or any part of an initial request is denied, it may be appealed in accordance with 7 CFR § 1.7 to the Administrator, FmHA, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. The phrase "FOIA APPEAL" should appear on the front of the envelope in capital letters.

§§ 2018.256—2018.300 [Reserved]

NOTE.—The Farmers Home Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 7, 1977.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc.77-36555 Filed 12-21-77;8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

Guard Force Response to an Alarm

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify the alarm response requirements for onsite guards to protect special nuclear material from theft and licensed plants from industrial sabotage.

EFFECTIVE DATE: The amendments become effective January 23, 1978.

FOR FURTHER INFORMATION CONTACT:

George W. McCorkle, Chief, Physical Security Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4181.

SUPPLEMENTARY INFORMATION: On February 10, 1977, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (42 FR 8382) proposed amendments to its regulations in 10 CFR Part 73, "Physical Protection of Plants and Materials," which would clarify the responsibilities of the onsite guards for the protection of special nuclear material from theft and licensed plants from industrial sabotage, and would assure uniformity in the application of regulatory requirements in this important area.

Interested parties were invited to submit comments and suggestions in connection with the proposed amendments within 60 days after publication in the FEDERAL REGISTER. Upon consideration of the comments received and other factors involved, the Nuclear Regulatory Commission has adopted the proposed amendments, with certain modifications as set forth below. Significant differences from the proposed amendment published for comment are: (1) Restructuring and rewording of the measures to be taken to neutralize a threat, and (2) rewording of conditions for the use of deadly force.

Some of the comments received indicated a belief that the guard force actions listed in the proposed rule were sequential, that is, (iv) was not to begin until (iii) was completed. To clarify its intent, the rule was reworded to require that actions to neutralize the threat (interposing guards between special nuclear material and any person attempting entry for the purpose of industrial sabotage or theft, etc., and informing local law enforcement agencies of the threat and requesting assistance) be taken concurrently. Additionally, the words "if necessary" were deleted with regard to requesting assistance from the local law enforcement agency. In any instance where active measures to neutralize a threat are undertaken, requesting assistance from law enforcement personnel appears prudent.

Three commentors addressed the Commission's statement on the use of deadly force as contained in the proposed rule. One commentor felt the Atomic Energy Act of 1954, as amended, should be viewed as preempting state law in this area. Others said the rule should permit the use of deadly force to prevent a felony.

The use of deadly force by private guards at nuclear power plants and fuel cycle facilities has for many years presented a regulatory problem to the Nuclear Regulatory Commission. In the absence of overriding Federal authority, the law governing the liability of a private guard is State law. That is, if a private guard while on duty killed or wounded someone, the killing or wounding would be justifiable or not depending upon the law of the State in which it occurred. Experience with licensees and research has shown that considerable variation in State law exists on the question of justifiable homicide. However, in the narrow context of private guards doing their job on private property, there are three major aspects of justifiable homicide that the Commission thinks are universally acceptable in this country and that can, accordingly, be embodied in a rule of general application. The first is that the guard has no duty to retreat from a show of force, or from a situation that could lead to use of force. This principle is embodied in the response rule in the requirement that the guard interpose himself between the adversary and the material access areas or vital areas subject to attack. A second principle is that guards may generally meet force with force. This principle is stated in the response rule. Finally, there is general acceptance of the use of deadly force when there is a reasonable belief it is necessary in self-defense or defense of others. It is made clear in the rule that licensee's guards are expected to stand and use their right of self-defense against adversaries. The Commission believes that these three principles, taken together, constitute an adequate, practical, and publicly acceptable response rule.

Whether the Commission should go further in its response rule is a matter currently under consideration. The General Accounting Office, in a classified report on security at fuel-cycle facilities, has recommended that the Commission seek Federal and/or State legislative authority, "as appropriate," to allow guards to use firearms to prevent the theft of special nuclear material if such action is the minimum necessary to accomplish the task. The Commission is evaluating this recommendation in light of its current policy needs and the apposite legal authorities. An unclassified digest of the report has been published by GAO (EMD-77-40a, May 2, 1977).

To clarify the regulatory intent considering the above principles, the conditions for the use of deadly force were reworded to emphasize that the guard applying deadly force is the person who must have a reasonable belief that such force is necessary in self-defense or in the defense of others.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and Section 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 73 are published as a document subject to codification.

Section 73.50(g) is changed by amending subparagraph (2) and adding subparagraph (3) to read as follows:

§ 73.50 Response requirement.

* * * * *

(g) * * *

(2) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, a material access area, or a vital area; or upon evidence or indication of intrusion into a protected area, material access area, or vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responding guards to interpose themselves between material access areas and vital areas and any adversary attempting entry for the purpose of theft of special nuclear material or industrial sabotage and to intercept any person exiting with special nuclear material, and,

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(3) The licensee shall instruct every guard to prevent or impede attempted acts of theft or industrial sabotage by using force sufficient to counter the force directed at him including deadly force when the guard has a reasonable belief it is necessary in self-defense or in the defense of others.

(Sec. 1611, Pub. L. 83-703, 68 Stat. 948, Pub. L. 93-377, 88 Stat. 475; sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 2201, 5841).)

Dated at Washington, D.C. this 15th day of December 1977.

For the Nuclear Regulatory Committee.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-36454 Filed 12-21-77;8:45 am]

[3128-01]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1977 Price and Allocation Interpretations; Corrections

AGENCY: Department of Energy.

ACTION: Corrections to notice of interpretations.

SUMMARY: This document corrects errors in Department of Energy Interpretations as published in the FEDERAL REGISTER on December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Kathleen Williams, Department of Energy, 12th and Pennsylvania Avenue NW., Room 7132, Washington, D.C. 20461, 566-2454.

SUPPLEMENTARY INFORMATION: Certain typographical and editorial errors were made in publication of Interpretations 1977-42 and 1977-44, 42 FR 61271, December 2, 1977. These errors are hereby corrected as follows.

1. Interpretation 1977-42, published at 42 FR 61274-76, is republished in its entirety to read as follows:

INTERPRETATION 1977-42

To: Texaco, Inc.
Date: November 4, 1977.
Rules Interpreted: §§ 211.63 and 212.72.
Code: GCW-PI, AI—Definition of Property, New and Released Crude Oil; December 1 Rule.

FACTS

Texaco, Inc. ("Texaco") is a refiner subject to the petroleum price rules of 10 CFR Part 212, Subpart E, and the allocation rules of 10 CFR Part 211, Subpart C.

Under contracts in effect on December 1, 1973, and until August 1, 1974, Texaco purchased crude oil from Mobil Oil Corp. ("Mobil").

In July 1974, Texaco received notice that, effective August 1, 1974, Mobil's lease would terminate under its own terms and that Travelers Oil Co. ("Travelers"), having entered into an agreement with the lessor of the oil-producing property concerned, would become the new lessee upon that date.

Travelers took the position that, as the new lessee-producer, it was entitled under 10 CFR Part 212, Subpart D, to sell all production from the property concerned as "new" crude oil, regardless of the level of production for the property concerned in the 1972 base period.

Under the "December 1 rule" of 10 CFR 211.63, as in effect in 1974,[1a] domestic crude oil supplier/purchaser relationships in effect under sales, purchase, and exchange contracts on December 1, 1973, were required to remain in effect for the duration of the petroleum allocation program. The requirement did not apply, however, to the first sale of "new" and "released" crude petroleum from a property from which no "new" and "released" crude petroleum was produced and sold in December, 1973.[2] Travelers therefore took the further position that it was not required under the petroleum allocation regulations to continue to supply Texaco with any crude oil from the property concerned.

After July 31, 1974, Texaco was no longer supplied by any party with respect to its supply rights as previously associated with crude oil supply by Mobil from the property concerned. Texaco did not consent to termination of these supply rights.

ISSUE

Texaco asks in its interpretation request whether, solely by virtue of the substitution of a new lessee-producer of the previous lessee-producer whose lease had expired, the production of the property concerned qualifies to be priced as "new" crude oil under §§ 212.72 and 212.74.

Texaco also asks whether the supplier/purchaser relationship established as of December 1, 1973, with respect to crude oil produced from the property concerned, survives the change in the identity of the lessee of the property, so as to bind the new lessee-producer, Travelers, to supply Texaco.

INTERPRETATION

"New crude oil" is defined, for purposes of crude oil allocation in § 211.63 as well as the price regulations applicable to producers of crude oil in 10 CFR Part 212, Subpart D, as

> * * * the total number of barrels of domestic crude oil produced and sold (from the property concerned) in a specific month, less (A) the property's base production control level for that month and less (B) the curren cumulative deficiency * * *.[3]

Under this definition, "new" crude oil is, for most properties, the incremental production (if any) above the property's historic base production control level (BPCL), less any current cumulative deficiency. With respect to recently developed properties (basically those which began producing crude oil after 1972), the definition of "new crude oil" results in "new" crude oil status for all production because for such properties the BPCL is zero and there can be no current cumulative deficiency in such circumstances.[4]

The definition of "new crude oil" is significant, of course, chiefly because "new" crude oil is permitted to be sold in first sales at the substantially higher "upper tier" ceiling price compared with the "lower tier" ceiling price available with respect to first sales of "old" crude oil. The purpose of this two-tier pricing system has often been explained. The "upper tier" price is extended as an incentive to encourage additional production, where possible, from older properties (the incremental production is permitted to be sold at the higher upper tier price) and to stimulate exploration and development of new producing properties (total production in such cases is permitted to be sold at the higher price).

As indicated above, the unit to which the price rules pertaining to qualification for "new" crude oil apply is the "property." "Property" is defined as "the right to produce domestic crude oil, which arises from a lease or from a fee interest * * *."[5] In Ruling 1977-1[6] FEA reviewed in detail the meaning of the terms "property" and "lease" and concluded that—

> "Property," as defined by FEA, is generally to be understood as synonymous with the physical "tract" or "premises" as to which a working interest is established by an oil and gas lease, or by a fee interest.

> In other words, FEA has interpreted the "property" for price control purposes, in those cases involving an oil and gas lease, as the right to produce crude oil relating to specific leased premises as described in the lease and not to that right only as vested in a particular lessee.

While it is true that the meaning of "lease" is broad enough in ordinary usage to include the instrument of conveyance itself as well as the piece of land or other property leased, it would be wholly irrational, in the context of the definition of "property" in § 212.72, to interpret "lease" as a reference to a particular lessee's rights under a particular lease. If a "new" property (and thus "new" crude oil) could be created merely through the execution of new leasehold agreements between the same lessor and lessee, or through the substitution of a new lessee, the purpose of the two-tier crude oil pricing system as a production incentive would be quickly circumvented and defeated. The price regulations applicable to producers of crude oil require for their effectiveness a concept of "property" which provides a constant frame of reference for measurement of crude oil production between the base level and the current level. As stated in Ruling 1975-15 (40 FR 40832, September 4, 1975), "the need to compare like quantities, today and in 1972, in order to ensure a meaningful application of the new and released provisions," requires that the "property" be defined by reference to the

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[1] Editorial note: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

[1a] Effective February 12, 1976 (41 FR 7386, February 18, 1976) the December 1 rule was amended to relate to supplier/purchaser relationships in effect under contracts in existence on January 1, 1976. In view of the extension of price controls to "new," "released" and stripper well crude oil effective February 1, 1976, pursuant to the Energy Policy and Conservation Act, a more current base date for supplier/purchaser relationships under § 211.63 was deemed desirable. The amended rule (still generally referred to as the "December 1 rule") did not, however, impair any purchaser's rights under § 211.63 as in effect prior to February 1, 1976. See § 211.63(b)(3)(ii).

[2] Section 211.63(b), as in effect prior to February 12, 1976. Under current regulations, the "new" crude oil exception to the December 1 rule is restricted to the first sale of crude oil flowing from a property which first began production and sale after December 31, 1975. 10 CFR 211.63(a)(4).

[3] 10 CFR 212.72. "New crude petroleum" was formerly defined in § 211.62, for purposes of 10 CFR Part 211, Subpart C, as "new crude petroleum as defined in § 212.72." The current version of § 211.63 does not use the term "new crude petroleum" or "new crude oil."

[4] The definitions of "base production control level" and "current cumulative deficiency," which are found in § 212.72, are not directly at issue in this Interpretation and thus are not restated here.

[5] 10 CFR 212.72. Changes in the definition of "property," effective September 1, 1976, are not relevant to the matters at issue in this Interpretation.

[6] 42 FR 3628, January 19, 1977; originally published in other form at 41 FR 36172, August 26, 1976.

"property" as it existed in 1972. Thus, the definition of "property" was not made dependent upon the continued effectiveness of a specific lease agreement or upon the rights accruing to any specific lessee.[7]

This provision, in virtually identical form, was among the initial Phase IV petroleum price regulations effective August 19, 1973 (6 CFR 150.361(c)(2)).

The foregoing disposition of the pricing question also disposes of the allocation question, insofar as it concerns the "new" crude oil exception to the general supply obligation imposed by 10 CFR 211.63. Since Travelers at no time produced "new" crude oil under 10 CFR Part 212, Subpart D, by virtue of having become the successor lessee with respect to the property concerned, the rule excepting the first sale of "new" crude oil from the general supply obligation under § 211.63 did not apply on that basis to first sales of crude oil from the property concerned beginning August 1, 1974.

Beyond this, however, Texaco seeks an affirmative interpretation that Travelers is bound to continue to supply Texaco under the general supply obligation of § 211.63,[8] which generally requires that, except as otherwise provided, "all supplier/purchaser relationships" in effect under sales contracts on December 1, 1973, "shall remain in effect for the duration of this program."[9]

The rule as previously embodied in § 211.63(a) provided that the December 1, 1973, supply relationships to which the rule applied could be terminated only by (1) mutual consent of both the supplier and the purchaser, or (2) as to "new" and "released" crude oil, refusal of the purchaser to meet an offer of a higher lawful price tendered by another purchaser.[10]

It is clear from the foregoing discussion that case (2) is not applicable to the supplier/purchaser relationship between Mobil and Texaco. With regard to case (1), the facts indicate that Texaco did not at any time consent to termination of its December 1, 1973, relationship with Mobil. It follows that the unilateral withdrawal by Mobil did not terminate the supplier/purchaser relationship and that Texaco retains the right to insist upon fulfillment of the supply obligation.

The next question is whether the supply obligation remains with the former supplier-lessee (i.e., Mobil), requiring it to provide the purchaser with crude oil from alternate sources, or whether the supply obligation in effect runs with the property concerned, so that the successor supplier-lessee (i.e., Travelers) succeeds to Mobil's supply obligation. Our conclusion under the facts in this case is that the succesor supplier-lessee succeeds to the former supplier-lessee's obligations to Texaco.

On June 11, 1976, FEA issued a number of amendments to the crude oil supplier/purchaser rule in § 211.63. Among these amendments was a new § 211.63(c)(4), which provided (and today continues to provide) as follows:

In the event that a *property* which produces crude oil subject to this section is transferred to a new *owner*, the obligation to supply * * * purchasers of *that property's* crude oil production shall attach to the new *owner* and new supplier/purchaser relationships subject to this section shall be established on that basis (emphasis added).

The term "owner," while often used to refer to the owner of the fee interest in land, is not necessarily restricted to this meaning and has been construed in particular contexts to extend to lessees and other owners of possessory interests.[11] Moreover, the term "property," also used in § 211.63(c)(4), is specifically defined for price purposes to include production rights arising from a fee interest *or* a lease.[12] In addition, the FEA described § 211.63(c)(4), both at the time it was proposed and upon its adoption, as applying to "the ownership of or rights to the production of a property * * *."[13] For these reasons, plus the considerations noted below, we construe § 211.63(c)(4) as applying to the transfer of the rights of the owner of the working interest (lessee-producer) as well as to the rights of the owner of the royalty interest (lessor).

As noted above, § 211.63(c)(4) was one of a number of amendments to the crude oil supplier/purchaser rule issued on June 11, 1976. These amendments were made effective "immediately," as a group, without discussion of the timing of effectiveness or consideration of different effective dates for individual amendments. This treatment evidently resulted from the fact that most of the amendments represented true substantive modifications which would normally be issued on a prospective basis only. Moreover, the rulemaking which gave rise to the amendments concerned grew out of an initial rulemaking proceeding earlier in 1976 which was designed primarily to reflect changes in the domestic crude oil pricing structure mandated by the Energy Policy and Conservation Act, enacted December 22, 1975.[14] Thus, there was additional reason for viewing the package of amendments which included the rule at issue as generally consisting of evolutionary changes in the crude oil supplier/purchaser rule.

However, in the absence of any discussion in the preamble to the final rulemaking effective June 11, 1976, explaining why § 211.63(c)(4) in particular was made effective "immediately," we no not believe that the inclusion of § 211.63(c)(4) in that rulemaking is conclusive evidence that FEA viewed the rule in § 211.63(c)(4), as applied to the transfer of lessee interests, to be such as to preclude its application to transfers of such interests which occurred prior to June 11, 1976, through an interpretation of the preexisting crude oil supplier/purchaser rules in § 211.63 generally. We believe that the reasons set forth below for applying the substance of the rule in § 211.63(c)(4) to the present case substantially outweigh any presumption against such application arising from promulgation of § 211.61(c)(4) effective June 11, 1976.

Before passing to general considerations supporting application of the rule in § 211.63(c)(4) to the period prior to June 11, 1976, we note that at least one of the firms participating in the public hearings on May 6, 1976, concerning the group of proposed amendments eventually issued in final form on June 11, 1976, interpreted the then-proposed § 211.63(c)(4) as a clarifying amendment rather than a substantive change. This firm's testimony in support of § 211.63(c)(4) included the comment that "[t]he new proposed rules which facilitate transfers of ownership of producing properties * * * and imposing the existing supply obligations on the successor-owner is, in our minds, only a clarification of the present regulatory intent."[15]

At the time the working interest (lessee-producer) rights of Mobil were transferred to Travelers on August 1, 1974, the general supplier/purchaser rule in § 211.63 provided that 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 the petroleum allocation program. Such relationships could, however, be terminated by the mutual consent of both parties to the relationship.

It is not clear from the language of § 211.63 whether, when the supplier of crude oil is a producer, the obligation to supply for the duration of the program is a "personal" obligation which continues to attach to the producer if for whatever reason he lost his production rights to the property concerned prior to June 11, 1976, or whether this obligation in effect runs with the property and thus attaches to the new holder of the production rights. Although "supplier" is defined in § 211.51 as a "firm" rather than a "property," there is no general supply obligation affirmatively imposed on individual suppliers of crude oil in § 211.63. All that the general rule of § 211.63 requires is the maintenance of supply *relationships*. The term "supplier/purchaser relationships" is not defined in the petroleum allocation regulations.

It is pertinent to note that the general allocation provisions in 10 CFR Part 211, Subpart A, do affirmatively impose an obligation on "[e]ach supplier of an allocated product" to continue to supply that product to the base period purchaser (§ 211.9(a)). However, the definition of "allocated product" in § 211.51 includes only "residual fuel and refined petroleum products" and thus excludes crude oil. Therefore, 10 CFR Part 211, Subpart A, cannot be interpreted as imposing a "personal" supply obligation on the December 1, 1973, supplier of crude oil in the circumstances addressed by this Interpretation.

When the language of specific regulations under consideration does not itself provide a sufficient basis for resolving an interpretive question arising under those regulations, it is usually necessary to consider the underlying purposes of the regulations in order to resolve the question at issue. The purposes intended to be served by adoption of the crude oil supplier/purchaser rule in § 211.63 were: (1) To preserve the nation's crude oil distribution system from disintegration during periods of embargo or other shortage, (2) to establish a supply floor upon which supply estimates could be furnished in order to

[7] The position taken in this Interpretation is further confirmed by the inclusion in the "acquisitions" provisions of the "new item and new market rule" of 10 CFR 212.111 of the following provision (§ 212.111(c)(2)):

If a legal entity or component of a legal entity determines pursuant to this part a base production control level for a property which produces domestic crude oil and the entity or component is subsequently acquired by another firm the domestic crude oil produced from that property does not become new crude oil. The base production control level for that property remains the base production control level determined for it by the acquired entity or component.

[8] Formerly § 211.63(a); currently § 211.63(b)(1).

[9] See fn. 1, above, concerning the amendment to the December 1 rule effective February 12, 1976, providing a more current base date for this purpose, and the effect thereof.

[10] These bases for termination of supplier/purchaser relationships, among others not applicable to the case at issue, survive under current regulations in § 211.63(d).

[11] See discussion of "owner" and cases cited, Blacks Law Dictionary.

[12] 10 CFR 212.72.

[13] 41 FR 16662, April 21, 1976; 41 FR 24338, June 16, 1976.

[14] 41 FR 2830, January 20, 1976; 41 FR 7386, February 18, 1976.

[15] Transcript of public hearings, May 6, 1976, p. 1-96.

implement the buy-sell program to allocate crude oil at the refinery level, and (3) to preserve access by small and independent refiners to lower-priced domestic crude oil.[36]

It can be seen from the foregoing that the crude oil supplier/purchaser rule was intended, in particular, to maintain the sources of supply of crude oil purchasers (especially small and independent refiners), and through this and other means to preserve the crude oil distribution system in general. One means of doing this was to provide in § 211.63 for the maintenance of "supplier/purchaser relationships" and termination thereof only by mutual consent of both parties. When the facts in the present case are reviewed in light of the foregoing purposes, it is evident that (1) attainment of both the general objective of preservation of the crude oil distribution system and the more specific objective of preservation of crude oil purchasers' sources of supply were impaired when Texaco was cut off from the particular supply of crude oil under discussion without its consent, and (2) attainment of these objectives in this case depends, in the last analysis, upon selection of the alternative which will best preserve Texaco's supply rights.

We believe that the supply guarantee afforded to the refiner by § 211.63 is better preserved and implemented by assuring continued access by the refiner to the same crude oil through the successor supplier-lessee. The former supplier-lessee in a given case may not have any alternative sources available with which to supply the purchaser, or if such crude oil is available to the former supplier-lessee it may not have physical characteristics suitable for processing by the refinery served under the supply contract. In addition, the price of crude oil from alternative sources may well be higher pursuant to the stripper well lease exemption, the rules permitting "new" crude oil to be priced at upper tier price levels, or because of price variations within the same price tier.

In addition to being more consistent with the purpose of § 211.63, we believe the foregoing approach is more consistent with relevant goals of the Emergency Petroleum Allocation Act of 1973, as amended, which include, in section 4(b)(1) thereof (emphasis added):

(E) The allocation of *suitable types, grades and quality* of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) *equitable distribution* of crude oil * * * *at equitable prices* among all * * * sectors of the petroleum industry. * * *

The approach taken in this Interpretation would appear better to assure equitable distribution of suitable grades of crude oil at equitable prices to refiner-purchasers. The preferability of this approach was echoed in comments received by FEA in support of § 211.63(c)(4) prior to its adoption, indicating that the proposed amendment "serves to maintain established lines of supply to a particular facility (i.e., refinery) regardless of the identity of the titleholder."[37]

In Interpretation 1977-15, FEA took a somewhat different approach with respect to the question of maintenance of supplier/purchaser relationships between a producer and a reseller of crude oil, on the one hand, and the same reseller and a refiner, on the other. There, the reseller terminated its supply relationship with the producer by mutual consent without, however, obtaining the approval of the refiner. Interpretation 1977-15 notes that this had the indirect effect of terminating the corresponding relationship between the reseller and the refiner without the latter's consent, the "very result which 10 CFR 211.63 was designed to prevent."

As requested by the refiner, FEA ruled in Interpretation 1977-15 that the reseller could not terminate its supply relationship with the producer without obtaining the refiner's consent. The reseller was therefore required to re-enter the supply chain and resume its supply obligation to the refiner.

Interpretation 1977-15 and the present Interpretation are similar in that they both seek to preserve the purchaser-refiner's supply rights. The fact that they achieve this through somewhat different approaches can be explained by the fact that (1) the refiner's supplier in Interpretation 1977-15 was a reseller, and somewhat different allocation rules apply to crude oil resellers, whereas the supplier here is a lessee-producer; and (2) unlike the present case, no substitute supplier at the same level of supply was present in Interpretation 1977-15 (the producer there began to sell crude oil from the property concerned directly to another refiner after the withdrawal of the reseller). Under these circumstances, it was necessary and appropriate to call upon the reseller to resume supply in order to preserve the original refiner's supply rights. In the present Interpretation, it is not necessary to recall Mobil to supply Texaco from other sources or to interfere with present lease ownership because Travelers is in position as current lessee-producer to restore the original "lines of supply." It is less appropriate to require Mobile to supply Texaco from other sources than to require Travelers to supply from the original production source primarily because of actual or potential crude oil price and quality variations from alternative sources as discussed above.

2. The fourth footnote in Interpretation 1977-44, designated footnote 4 as issued and footnote 21 as published in the FEDERAL REGISTER at 42 FR 61278, contains a cross-reference to "fn. 3, above." In order to harmonize this cross-reference with the different system of footnoting employed in this case by the FEDERAL REGISTER, it is changed to read "fn. 20, above."

WILLIAM S. HEFFELFINGER,
Director of Administration.

DECEMBER 16, 1977.

[FR Doc.77-36453 Filed 12-19-77;4:36 pm]

[36] *Condor Operating Co.* v. *Sawhill*, 514 F. 2d. 351, 358-9 (1975); 41 FR 2830 (January 20, 1976).

[37] Written comment submitted by Skelly Oil Co., May 6, 1976, p. 1.

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0133 through FC-0138]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

EFFECTIVE DATE: December 20, 1977.

FOR FURTHER INFORMATION CONTACT:

Anne Geary, Chief Staff Attorney, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3946).

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

(2) Official staff interpretations may be reconsidered upon request of interested parties and in accordance with 12 CFR 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(3) 15 U.S.C. 1640(f).

§ 226.4(a)—5 percent discount off cash price of lot given to all customers (cash or credit) who complete construction of home on lot within 6 months is not finance charge and is subsequent occurrence requiring no disclosure.

§ 226.6(g)—5 percent discount off cash price of lot given to all customers (cash or credit) who complete construction of home on lot within 6 months is not finance charge and is subsequent occurrence requiring no disclosure.

NOVEMBER 16, 1977.

This is in response to your letter of * * *, requesting an official staff interpretation of Regulation Z with regard to the disclosures required in connection with the type of transaction described below.

You state that your client sells vacant land under instalment sale contracts and retains title to the land until such contracts are paid in full. Your client intends to give a five per cent discount off the cash price of a lot to each purchaser who substantially complete construction of a home on the lot within six months after the consummation of the instalment sale. The same discount will be given to any cash customer who substantially completes construction of a home within six months after purchasing a lot from your client. The five per cent discount option will be made known to each purchaser at the time the sale transaction is entered into. The purpose of the discount, according to your letter, is not to induce prepayments, but rather to enhance the value of the entire development by encouraging construction. You ask staff to confirm your conclusion either that the five per cent discount does not constitute a discount as that term is used in § 226.4 of Regulation Z (Determination of Finance Charge) or that giving the discount constitutes a subsequent event under § 226.6(g) of the regulation.

In staff's view, inasmuch as the five per cent discount offered by your client is equally available to all purchasers who substantially