rules and regulations

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Title 7—Agriculture

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

[Valencia Orange Rég. 567, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period August 5–11, 1977. The amendment recognizes that demand for Valencia oranges that may be shipped to regulation was issued. This action will increase the supply of oranges available to consumers.

DATES: Weekly regulation period August 5–11, 1977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: *Findings*. (1) Pursuant to the amended marketing agreement and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the Valencia Orange Administrative Committee, established under the marketing agreement, and order, and other available information, it is found that the limitation of handling of Valencia oranges as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the Valencia orange markets has improved since the regulation was issued. Amendment of the regulation is necessary to permit orange handlers to ship a larger quantity of Valencia oranges to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 50,000 cartons, in the interest of producers and consumers.

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

(a) *Order as amended*. The provisions in paragraph (b)(1), (i) and (ii) of § 908.867 Valencia Orange Regulation 567 (42 FR 39359) are hereby amended to read as follows:

§ 908.867 Valencia Orange Regulation 567.

* * * * *

(a) * * *

(1) * * *

(i) District 1: 280,000 cartons;

(ii) District 2: 420,000 cartons.

* * * * *

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

Dated: August 10, 1977.

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

[FR Doc.77-23482 Filed 8-12-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

1977 Price and Allocation Interpretations

AGENCY: Federal Energy Administration.

ACTION: Notice of interpretations.

SUMMARY: Attached are the interpretations issued by the General Counsel of the Federal Energy Administration (FEA) during the period July 12 through August 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Kathleen Williams, Federal Building, 12th and Pennsylvania Avenue NW., Room 7132, Washington, D.C. 20461 (202–566–2454).

SUPPLEMENTARY INFORMATION: FEA interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER from time to time in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977.

FEA interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, interpretations are subject to appeal. The interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the FEA notice cited above.

Issued in Washington, D.C., August 10, 1977.

ERIC J. FYGI,
Acting General Counsel, Federal Energy Administration.

APPENDIX

No.	To	Date	Category
1977-22	Sea Horse Marine, Inc.	July 20	Allocation.
1977-23	Beacon Oil Co.	July 27	Price.
1977-24	do.	July 27	Do.
1977-25	Clark Oil & Refining Corp.	July 28	Do.
1977-26	Navajo Refining Co.	July 28	Do.
1977-27	J. M. Owsley	July 28	Allocation.

INTERPRETATION 1977-22

To: Sea Horse Marine, Inc.

Date: July 20, 1977.

Rules Interpreted: §§ 211.51, 211.62, 211.67.

Code: GCW—AI—Crude Oil, def.; Entitlements Program; Waste Crude Oil, Reclamation of.

This is in response to your letter dated August 6, 1976, as supplemented by your letters of November 18, 1976, and May 6, 1977, in which you requested a determination of whether certain material sold by Sea Horse Marine, Inc. ("Sea Horse"), to domestic refiners may be regarded as non-domestic crude oil for purposes of the domestic crude oil allocation program (the "entitlements program") set forth at 10 CFR 211.67.

FACTS

Sea Horse recovers from the tanks of ships which transport crude oil from foreign countries to the United States residual material which adheres to the inside of the tanks when the crude oil is removed from the ships. The tanks are cleaned with water and some detergent, which is used to dislodge the petroleum, leaving a residue of the cleaning process called petroleum slops. In addition to crude oil, the slops contain water, detergent, and small quantities of other substances such as rust particles. Petroleum slops are classified as waste for purposes of the United States customs service regulations.

Petroleum slops acquired by Sea Horse were formerly sold directly to refiners, which then had to process the material before it could be used as a refinery feedstock. Sea Horse has recently established a facility for removing salt water and heavy non-soluble impurities from the petroleum slops.

After processing, the recovered material is sold to refiners and can then be used as a refinery input in the same manner as crude oil.

ISSUE

The issue presented for interpretation is whether the material recovered from petroleum slops by Sea Horse is properly treated as non-domestic crude oil for purposes of calculating the volume of refiners' crude oil runs to stills and crude oil receipts under 10 CFR 211.51, 211.62, and 211.67.

INTERPRETATION

It is our opinion that the material recovered from petroleum slops by Sea Horse constitutes crude oil for purposes of § 211.51 and is therefore properly included in the volume of a refiner's crude oil runs to stills under § 211.62 for purposes of § 211.67. Further, to the extent that this material is reclaimed from the tanks of ships which have transported crude oil to the United States from foreign sources, the material would not constitute domestic crude oil, and thus would not give rise to any entitlement obligation under § 211.67(b) by virtue of its inclusion in a refiner's crude oil receipts under § 211.62.

Crude oil is defined in § 211.51 as:

* * * 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.

The petroleum slops, at the time of their acquisition by Sea Horse, have large quantities of water and other materials included therein, and are thus classified as waste pursuant to item 793.000 of the Tariff Schedules of the United States (19 U.S.C. Ch. 4, Subtitle 1). However, the presence of these additional quantities of water and other materials would not prevent the petroleum slops from being considered as crude oil under § 211.51, since in many instances crude oil produced at a lease also contains large quantities of these materials.

In your request, you indicated that Sea Horse has established a facility for removing salt water and heavy non-soluble impurities from the petroleum slops. This processing does not involve any operations similar to those performed by a refinery. By the time of delivery to a refinery, the petroleum slops are sufficiently free of water and other impurities that they can be used directly as feedstock in the same manner as other crude oil.

Because the petroleum slops are obtained from ships which transport foreign crude oil, we believe that the crude oil can properly be characterized as non-domestic crude oil. FEA has previously considered the status of crude oil recovered other than from customary production activities, e.g., separated from contaminated or waste crude oil mixtures, in reference to the FEA Mandatory Petroleum Price Regulations.[1] In the interpretations cited, the source of the waste or reclaimed crude oil was either clearly domestic or unascertainable.

It was concluded in these interpretations that firms which recover crude oil from contaminated waste crude oil mixtures are involved in activities analogous to the production of crude oil, even though the production results from reclamation processes. However, it is our opinion that regardless how the crude oil is actually recovered, it can be characterized according to its origin, as domestic or non-domestic, if the origin is clearly ascertainable.

INTERPRETATION 1977-23

To: Beacon Oil Co.

Date: July 27, 1977.

Rules Interpreted: § 212.83(c)(2).

Code: GCW—PI—Refiner Price Formula "H" Factor.

This is in response to your letter of November 5, 1975, on behalf of Beacon Oil Co. (Beacon) requesting an interpretation of 10 CFR 212.83 with respect to the reallocation of increased product costs among categories of covered products.

The issue raised by Beacon in its request for interpretation was previously considered by Federal Energy Administration (FEA) compliance personnel in FEA Region 9, during the course of an audit of Beacon. FEA regional personnel suggested that Beacon had incorrectly construed 10 CFR 212.83; for this reason Beacon seeks this interpretation. The interpretation sought by Beacon will therefore have an effect upon the conduct and outcome of FEA's audit.

FACTS

Beacon is a refiner subject to the refiner price rules, 10 CFR Part 212, Subpart E. In the period August 1973 to March 1975, Beacon recovered, in sales of No. 2 oils and general refinery products, more than its increased product costs attributable to those product categories. Beacon reallocated these overrecoveries of increased product costs from No. 2 oils and general refinery products to gasoline and maintains that this reallocation is proper under applicable FEA regulations. Beacon had recovered less than its increased product costs attributable to gasoline during this period. Reallocation was accomplished through the use of the "H" factor of the refiner formula. The "H" factor allows a refiner, in certain instances, to transfer available amounts of increased product costs from certain types of covered products to certain different types of covered products. Beacon "offset" and eliminated the overrecoveries in sales of No. 2 oils and general refinery products by attributing the excess recovery for No. 2 oils and general refinery products to its deficient recovery for gasoline. Beacon seeks a determination that its actions were in accordance with FEA price regulations.

ISSUE

May Beacon reallocate overrecoveries of increased product costs resulting from sales of No. 2 oils and general refinery products to underrecoveries of increased product costs resulting from sales of gasoline, through the use of the "H" factor in the refiner formula?

INTERPRETATION

The transfer of increased product costs among covered products is accomplished through the operation of the "H" factor in the refiner formula. During most of the time covered by FEA's audit of Beacon, FEA regulations and the prior Cost of Living Council (CLC) regulations defined the "H" factor as follows:

H^u—The sum of the dollar amounts available in the period "u" (the current month) for inclusion in price adjustments to specific [sic, special] products which pursuant to pargaraph (c)(1)(ii) of this section the refiner elects to include in calculating the base prices of covered products other than special products for the period "u" (the current month).

H_i^u=The portion of the total dollar amount available in the period "u" (the current month) for inclusion in price adjustments to special products of the type "i" which pursuant to paragraph (c)(1)(ii) of this section the refiner elects to include in prices of covered products other than special products for the period "u" (the current month). (10 CFR 212.83(c); 6 CFR 150.356 (c))

NOTE.—No. 2 oils (i=1) and gasoline (i=2) were treated as "special products" during this period.

In November 1974, the definitions of the "H" factors were amended and the following definitions prevailed until March 1975:

H_i^u=*Where* H_i^u is negative, the portion of the total dollar amount available in the period "u" (the current month) for inclusion in price adjustments to special products of the type "i" which pursuant to paragraph (c)(1)(ii) of this section the refiner elects to include in prices of covered products other than special products and crude petroleum (i=3) for the period "u" (the current month); or, where H_i^u is positive (for special products i=2), the portion of the total dollar amount available in the period "u" (the current month) for inclusion in price adjustments to covered products other than special products and crude petroleum (i=3) which pursuant to paragraph (c)(1)(iv) of this section, the refiner elects to include in prices of special product (i=2) for the period "u" (the current month).

H^u=Where H^u is positive, the sum of the dollar amounts available in the period "u" (the current month) for inclusion in price adjustments to special products which pursuant to paragraph (c)(1)(ii) of this section the refiner elects to include in calculating the base prices of covered products other than special products and crude petroleum for the period "u" (the current month); or, where H^u is negative, the portion of the dollar amounts available in the period "u" (the current month) for inclusion in price adjustments to covered products other than special products and crude petroleum (i=3) which pursuant to paragraph (c)(1)(iv) of this section the refiner elects to include in calculating the base prices of special products (i=2) for the period "u" (the current month). (10 CFR 212.83(c))

From the above definitions of the "H" factor, three details relevant to this discussion are evident: (1) the "H" factor only operates where there are 'dollar amounts available for inclusion' in any price adjustments, (2) no costs were permitted to be transferred to gasoline (i=2), by the use of the "H" factor, prior to November 1974; and (3) between November 1974 and March 1975, costs could not be directly transferred from No 2 heating oil and No. 2-D diesel fuel (i=1) to gasoline (i=2), by the use of the "H" factor.

The measurement of those costs that are "available" to a firm begins with that firm's "increased product costs." During the time period in question, August 1973 to March 1975, FEA and CLC regulations defined increased product costs as:

the sum of (1) the difference between the total cost of the crude petroleum during the month of measurement and the total cost of crude petroleum during the month of May, 1973 plus (2) the difference between the total cost of petroleum product during the month of measurement and the total

[1] Liquid Waste Disposal Co., Interpretation No. 74-11, July 17, 1974; Petro U.S., Inc., Interpretation No. 74-20, November 4, 1974.

cost of petroleum product during the month of May, 1973. (10 CFR 212.83; 6 CFR 150.356)

The sum of the two cost differentials identified in the quoted definition constitutes the "available" increased product costs referred to in the descriptions of the "H" factors. These two cost differentials are the "A" and "B" factors found in § 212.83, and, to the extent that these costs are not recovered in a month's sales, they may be carried forward for application in a subsequent month. When so carried forward, these costs are reflected in the "G" factor of § 212.83, but consist, nevertheless, of the two fundamental cost elements set forth in the definition. The "H" factor, by itself, has no value unless, and only to the extent that, the refiner "elects" to distribute these "available" increased product costs in accordance with the conditions applicable to the "H" factor.

Where the "H" factor allows the transference of "available" increased product costs, those costs are the increased cost of crude petroleum (the "A" factor in the refiner formulae), the increased cost of purchased petroleum products (the "B" factor) and such amounts of these two cost increases as were not previously recovered (the "G" factor).

Beacon's interpretation request reveals that Beacon did not experience unrecouped increased product costs to reflect in its "G" factor for No. 2 oils and general refinery products. Instead, Beacon experienced excessive recoveries for these products, which are involved in Beacon's purported use of the "H" factor to transfer a negative value from one product category to another. Beacon apparently perceived these overrecoveries as "available" for inclusion in price adjustments.

Between August 1973 and March 1975, CLC and FEA regulations generally provided that

* * * [i]f in any month beginning with October 1973, a firm charges prices for a [covered product] which result in the recoupment of more total revenues than the entire month of increased product costs calculated for that product pursuant to the general formula and allowable under paragraph (c)(1)(i) of this section, the amount of excess product costs recouped must be subtracted from the May 15, 1973 selling prices to compute the base price for that [covered product] for the subsequent month. (10 CFR 212.83(d)(1))

According to this provision, the overrecoveries of increased product costs (reflected in the "G" factor), resulting from Beacon's sales of No. 2 oils or general refinery products must be eliminated from the succeeding month's cost computations for that particular respective product type and are not, therefore, "available" for inclusion in price adjustments. This required disposition of the overrecoveries which appear in the "G" factor precludes the reallocation of those overrecoveries under the "H" factor because it removes these amounts from the formulae and because it must be made exclusively for the particular covered product type in which the overrecoveries occurred.

The terms and functions of the "H" factor are simple and direct. They do not allow a refiner to reallocate overrecoveries in sales of a certain type of covered product to underrecoveries in sales of a different type of covered product.

Two additional details pertinent to the proper use of the "H" factor were noted earlier. These pertain to the direction and timing of reallocation of "available" costs. We must note in this regard that, under the description of the "H" factor, even if Beacon had available increased product costs in No. 2 oils and in general refinery products, those costs could not be transferred to gasoline prior to November 1974. After November 1974, increased product costs available in No. 2 oils could have been transferred to gasoline only in months subsequent to the month in which those costs were transferred to general refinery products.

In its Request for Interpretation, Beacon presents an argument that overrecoveries are actually negative increased product costs. Beacon asserts that the transference of increased product costs is not restricted solely to positive amounts and that therefore the transference of negative amounts is permitted. This argument is based upon an incorrect view of FEA regulations. Those regulations give precise instructions on the disposition of overrecoveries, viz., that overrecoveries are to be subtracted from the May 15, 1973 selling prices of the covered product involved to compute base prices for that same covered product for the subsequent month (10 CFR 212.83(d), supra). "Negative" increased product costs are a theoretical construct advanced here by Beacon in a manner that conflicts with the requirements of FEA regulations. To do so would frustrate the purpose of the prohibition against the transfer of increased costs to, for example, No. 2 oils. This is because the transfer of a negative value from No. 2 oils to gasoline obviously would have the same impact as the transfer of a positive value from gasoline to No. 2 oils.

It is our interpretation that the "H" factor of the formulae set forth in § 212.83 does not authorize the reallocation undertaken by Beacon as described herein.

INTERPRETATION 1977-24

To: Beacon Oil Co.

Date: July 27, 1977.

Rules Interpreted: §§ 210.91, 212.91

Code: GCW-PI—Five Percent Rule; Reporting Requirements, Refiner

This is in response to your letter of November 17, 1975 on behalf of Beacon Oil Company (Beacon) requesting an interpretation of 10 CFR 212.91 with respect to those entities of a refiner which may be treated as resellers under the Federal Energy Administration (FEA) Mandatory Petroleum Price Regulations.

The issue raised by Beacon in its request for interpretation was previously considered by FEA compliance personnel in FEA Region 9, during the course of an audit of Beacon. FEA regional personnel suggested that Beacon had incorrectly construed § 212.91; for this reason Beacon seeks this interpretation. The interpretation sought by Beacon will therefore have an effect upon the conduct and outcome of FEA's audit.

FACTS

Beacon is a refiner subject to the refiner price rules, 10 CFR Part 212, Subpart E. In addition to its refining operations, Beacon engages in the purchase and resale of covered products at various terminal facilities owned by it.

Beacon maintains its refinery in Hanford, California from which it sells the covered products that it refines. In addition to the refinery, Beacon owns and operates six separate terminals, at locations other than Hanford, from which it resells covered products that it has purchased from other refiners located outside of Hanford. Beacon states, in its request, that these terminals serve different customers than those served at Hanford and that the terminals have historically maintained different prices from those in effect at Hanford. In addition, Beacon asserts that none of the products sold at the terminals is purchased from the Hanford refinery.

Since August 1973 when petroleum price controls were imposed by the Cost of Living Council, Beacon has treated these six terminals as a separate operation from its refining operation, and has established prices for terminal sales as if those sales were subject to Subpart F of Part 212, Title 10 CFR, the reseller price rules, and not Subpart E, the refiner price rules.

ISSUE

May Beacon treat all of its terminal facility operations together as a single reseller "entity" under 10 CFR Part 212, Subpart F, instead of as part of the Beacon refiner "firm," subject to Subpart E? If it may treat the terminals as a reseller entity, may Beacon nevertheless include the cost of products purchased by its reseller entity as part of the total cost of products purchased by the Beacon refiner "firm" for purposes of Part 212 and in its refiner cost allocation reports (Form FEO-96 and Form-FEA-P110-M-1)?

INTERPRETATION

Beacon, as a refiner, is subject to the refiner price regulations of 10 CFR Part 212, Subpart E. 10 CFR 212.81 provides that Subpart E applies to each sale of a covered product which is purchased or refined by a refiner except as provided in Subparts F and K. Subpart F, FEA Reseller and Retailer regulations, applies:

to each sale of a covered product (other than the first sale of crude oil) by resellers, reseller-retailers, and retailers, and to each sale of crude oil (other than the first sale) by a refiner. For purposes of this subpart, "reseller" includes any entity of a refiner (other than an entity that operates in Puerto Rico) that is engaged in the business of purchasing and reselling covered products, provided that the entity does not purchase more than 5 percent of such covered products from the refiner including any entities that it directly or indirectly controls and provided further that the entity has consistently and historically exercised the exclusive price authority with respect to sales by the entity. (10 CFR 212.91)

Beacon maintains that its six terminal operations qualify for treatment as a reseller "entity" of Beacon, in accordance with the language quoted from § 212.91, because the terminals are properly considered as an "entity of a refiner [Beacon * * *" that does not purchase from that refiner [Beacon] more than 5 percent of the covered products that it resells, and because the terminal facilities have consistently and historically exercised exclusive price authority with respect to their sales. If, as Beacon maintains, the terminals are a separate "entity," cognizable under the quoted language of § 212.91, then Beacon may treat its terminals as a reseller subject to Subpart F, provided that the specific requirements of § 212.91 are met. If the terminals are not an "entity" as so described, then the terminal operations are subject to Subpart E. Thus, the threshold question is whether the six separate terminal facilities can be recognized as an "entity of a refiner" under § 212.91.

Before an "entity of a refiner" can be identified, the "refiner" must be described. FEA regulations define the term "refiner," in part, as follows:

"Refiner" means a firm * * * which refines covered products * * * and sells those products to resellers, retailers, reseller-retailers or ultimate consumers * * *. (10 CFR 212.31)

In determining what the "firm" is, the FEA may:

Treat as a firm: (1) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, * * * (10 CFR 212.31, definition of "Firm")

FEA has chosen to treat as a refiner "firm" for purposes of Subpart E, the "parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls." (10 CFR 212.82).

Having established the refiner "firm" in Subpart E, FEA regulations provide that an entity of a "refiner" (as so defined in Subpart E) may nevertheless be a "reseller" under Subpart F, § 212.91.

The term "entity" is not separately defined in FEA regulations. That term, however, is used in two contexts relevant to this interpretation. First, it appears in the definition of the "firm," which is described in part, as:

Any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized * * * (10 CFR 212.31)

The definition treats corporations, partnerships, sole proprietorships and other business forms as "entities." It also, however, recognizes the existence of separate, unspecified "entities" that may exist irrespective of the manner of organization ("however organized"). Thus a particular type of organization or structure does not per se preclude "entity" status.

In its broad context, therefore, an "entity" can be a business organization structured in a manner different from those business organizations specified in § 212.31. Although the context noted is broad, it is not without limitation. To qualify as an entity, the organization must have the characteristics of being an "entity," i.e., independent of and distinguishable from other operations of the firm. See, e.g., FEA Interpretation 1976-4 (42 FR 7923, February 8, 1977).

To identify necessary characteristics of the entity cognizable under § 212.91, we turn to the second relevant context in which the term "entity" appears: the language of that section. For the purposes of the reseller rule, FEA has determined that an "entity of a refiner" has the requisite characteristics of a reseller where: (1) the entity is engaged in the business of purchase and resale of covered products; (2) it does not purchase more than 5 percent of such covered products from the refiner; and (3) it has consistently and historically exercised exclusive price authority in its sales. If the entity does not meet all of these criteria, its operation cannot be independently recognized under Subpart F. Beacon asserts in its submission that:

The resale operations of Beacon Oil Company are subject to Subpart F since they are entities of a refiner engaged in the business of purchasing and reselling covered products who have consistently and historically exercised the exclusive price authority with respect to their sales, but who do not purchase more than 5 percent of their covered products from the Beacon refinery.

Assuming that Beacon's assertions that its terminal facility operations meet the standards of 10 CFR 212.91 are correct, those operations appear to be an "entity of a refiner" and qualify as a reseller. The burden of proving that reseller status, however, rests with Beacon and this interpretation does not constitute a finding that those operations either meet or fail to meet those standards. Our interpretation states only that if Beacon's terminal operations, taken together, exhibit the necessary characteristics specified in § 212.91, then those operations may be considered a reseller entity of Beacon, subject to Subpart F.

Since Beacon's terminals may, upon a proper showing, be recognized as a "reseller," it is appropriate to consider the second part of Beacon's November 17 request. That request seeks the concurrence of FEA regarding the manner in which Beacon, "[resolved] the apparent conflicts between § 212.93 and (1) the reporting requirements specified in § 212.91 [sic, should be § 210.91] as exercised by FEA in FEO/FEA-96 Forms, and (2) the class of purchaser concept as specified in Rulings 1975-2 and 1974-17."

There are no facts in Beacon's submission which delineates the apparent conflicts that Beacon contends exist in the regulations and rulings it cites. With respect to the "reporting requirements," however, Beacon states that it,

Has reported all sales of covered products on the Form 96, and due to the calculations therein, has applied cost increases equally between the refiner sales and the reseller sales. . . . In performing the calculations pursuant to the instructions [to Form FEO-96], increased costs are rolled-in for both entities.

Beacon claims that this was done pursuant to the instructions to Form FEO-96, which require such data from the parent and all consolidated entities of the refiner be "taken together." Thus, it would appear that although Beacon seeks separate recognition of its terminals under Subpart F, it has, for certain calculations and reports, treated those terminals as an undifferentiated part of the "refiner," subject to Subpart E. This is, indeed, an "apparent inconsistency" between rules and reports, and is addressed in this portion of the interpretation. No other aspect of Beacon's November 17 request is addressed herein, because Beacon's request fails to provide sufficient information upon which any interpretation could be rendered.

The procedure followed by Beacon in preparing "FEO/FEA-96 Forms" is incorrect under FEA regulations, assuming that the terminals are a reseller as discussed above. FEA provides different regulatory structures for refiners and for resellers. The allocation and recovery of increased product costs and increased non-product costs and the determination of other price and cost data are computed differently for refiners than for resellers. It is, therefore, inconsistent to treat an entity as a reseller for some purposes and as a refiner for others. Both Forms FEO-96 and FEA-P110-M-1, its current replacement, are monthly cost allocation reports for "refiners" together with the consolidated and unconsolidated entities of the refiner "firm." Only those consolidated and unconsolidated entities which are part of the refiner "firm" and which are appropriate for inclusion when determining the refiner's product costs and recovery may be used in the refiner's calculations and reported upon those forms. If any entity has been excluded from the refiner "firm" for purposes of FEA regulations, it has been excluded for purposes of reports filed under those regulations. It would be inappropriate to include a reseller in those computations since a reseller is subject to Subpart F for all its calculations and by definition is not a refiner.

Thus, if the terminals are a reseller, its operations are not properly included on Beacon's Forms FEO-96. We, therefore, cannot concur in Beacon's inclusion of any data regarding the resale business of the terminals on its Forms FEO-96.

INTERPRETATION 1977-25

To: Clark Oil & Refining Corp.

Date: July 28, 1977

Rules Interpreted: § 212.85 (c)

Code: GCW-PI—Transportation Costs, Refiner

This is in response to your letter of March 3, 1977, as supplemented by further explanatory data submitted March 10, 1977, requesting on behalf of Clark Oil & Refining Corporation (Clark) an interpretation of the application of 10 CFR 212.85(c)(1) [1] with respect to four factual situations. Upon consideration of all of the information contained in the request, as supplemented, and upon consideration of all the relevant authorities, the Federal Energy Administration ("FEA") has determined that the appropriate interpretation is as follows. The items listed in Question 4 of the March 3, 1977 letter are, in accordance with discussions of March 10, 1977, deemed to be superseded by the items listed in the further supplementary data submitted by Clark on that date.

FACTS

1. Clark Martime Corp. (CMC) is a wholly-owned subsidiary of Clark, whose marine transportation of crude oil to the United States through CMC is, in accordance with §212.85(a),[2] subject to the accounting procedures specified in § 212.85.

2. Clark has historically accounted for crude oil transportation costs predominantly on the basis of actual costs incurred, and therefore is required by § 212.85(b)(1) [3] to

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[1] 10 CFR 212.85(c)(1) provides: "A firm using the Net-Cost Method for determination of its transportation costs shall establish its net transportation cost by (i) determining its allowed transportation costs, as specified in subparagraph (2), and (ii) subtracting therefrom, the sum of: (A) Any income received by the firm from unaffiliated entities for the use of vessels (other than 'equity' status vessels where transportation costs are calculated in accordance with paragraph (c)(2)(ii)(A)) whose costs are included in the total allowed transportation costs, plus (B) the product of that firm's cost per ton mile for the fiscal year, determined according to subparagraph (3) of this paragraph, times the total ton-miles of shipping during the fiscal year which does not produce income from unaffiliated companies, does not involve crude oil imported into the United States, and uses vessels (other than 'equity' status vessels where transportation costs are calculated in accordance with paragraph (c)(2)(ii)(A)) whose costs are included in its allowed transportation costs. Transportation costs not otherwise allocated to particular shipments shall be allocated according to subparagraph (3) of this paragraph. The cost of general overhead may not be included, except that a firm may include the salaries of land-based personnel directly and solely engaged in marine transportation of crude oil from foreign ports to the United States."

[2] 10 CFR 212.85(a) provides, in pertinent part: "This section prescribes the standards which refiners shall use to establish the cost of transportation by sea to the United States of imported crude oil, for the purpose of determining the landed cost of that crude oil. For purposes of this section 'firm' means a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls. * * *"

[3] 10 CFR 212.85(b)(1) provides, in pertinent part: "For the purpose of this section, a firm shall utilize either the Net-Cost Method specified in paragraph (c) of this section, or the AFRA Method specified in paragraph (d) of this section, depending on that firm's historical accounting procedures, for the determination of its crude-oil transportation costs. A firm shall utilize the net-cost method if those procedures, have been based predominantly on actual costs; it shall utilize the AFRA method if they have been based predominantly on a nominal-cost approach such as AFRA-Worldscale."

utilize the net cost method specified in § 212.85(c) for determination of its crude oil transportation costs.

3. CMC has term charter agreements for the use of two Very Large Crude Carriers (VLCCs), which were chartered for the primary purpose of transporting purchased foreign crude oil for processing in Clark's domestic refineries. In applying the net cost method, Clark is therefore required to calculate allowed transportation costs in accordance with § 212.85(c)(2)(iii)[4] applicable to charter status vessels.

4. At certain times Clark ships only a small quantity of its own crude oil on the chartered VLCCs, and subcharters some or all of the remaining capacity to other shippers.

5. Clark utilizes transshipment facilities in the Caribbean to offload the VLCCs onto smaller vessels capable of entering U.S. coastal ports, and owns the oil shipped to its own refineries throughout both legs of the trip.

ISSUES

1. Will shipment of a minimum quantity of crude oil owned by Clark for processing in its domestic refinery qualify the costs of a VLCC chartered by Clark for inclusion in "allowed transportation costs" as defined in § 212.85(c)(2)(iii)(A)?

2. Assuming that a chartered VLCC is used primarily in subcharter service to other shippers, would the shipment of a single barrel of crude oil for Clark's own account qualify the costs of the VLCC for inclusion in "allowed transportation costs"?

3. Does the shipment of crude oil by VLCC from a port in the Persian Gulf to a Caribbean port for offloading and transshipment to the United States constitute use of the VLCC in part for shipment of crude oil to the United States?

4. Do the following transshipment expenses qualify as allowed transportation costs under § 212.85(c)(2)(iii)(A): (a) *VLCC leg*—½ percent fee paid in-kind for use of terminal; rental of tanks at terminal; bunkers; cargo, liability, and war risk insurance; port costs, and inspection fees paid on unloading to local authorities; (b) *Transshipment leg*—vessel hire; cargo and liability insurance; inspection fees paid to United States authorities?

INTERPRETATION

1. *Shipment of minimal quantity.* Section 212.85 applies to transportation to the United States of "imported crude oil" (§ 212.85(a)), without any limitation as to threshold quantity. Accordingly, shipments of any amount require that subject firms, historically using accounting methods based predominantly on actual costs, shall calculate allowed transportation costs as provided in § 212.85(c).

2. *Use of Vessel for Subcharter.* In general terms, § 212.85(c)(1) allows the cost of subchartering a vessel to be reflected in the firm's total cost of marine transportation if the subcharter is connected with the use of that vessel for transporting the firm's own crude oil to the United States. It should, however, be noted that shipments of relatively small quantities will be carefully audited by FEA to determine whether such shipments are for the purpose of bona fide crude oil transportation to which subchartering is only incidental, or whether the shipments are designed to facilitate the passthrough of costs (through an increase in costs per ton mile) under § 212.85(c)(1) for shipping not incidental to the importation of a firm's own crude, by nominally incurring "allowed transportation costs" under § 212.85(c)(2). By the latter course, the firm will not be considered to have incurred allowable costs under § 212.85(c)(2), and may possibly raise compliance issues under 10 CFR 210.62 (c), which provides that "any practice which constitutes a means to obtain a price higher than is permitted by the regulations in this chapter * * * is a violation of these regulations." In general, FEA will impose certain conditions of reasonableness on subchartering, to avoid abuse through the passthrough of costs not strictly incidental to bona fide crude oil transportation.

Where income is received by Clark from an unaffiliated subcharterer, it must be subtracted from allowed transportation costs, since § 212.85(c)(1) provides that a firm's "net transportation costs" shall be established by subtracting from its allowed costs "any income received by the firm from unaffiliated entities for the use of vessels * * * whose costs are included in the total allowed costs." The expense of the vessel becomes part of the overall pool of net costs for purposes of § 212.85(c)(3),[5] and results in an increase in costs per ton mile distributable as the cost of marine transportation of the crude oil imported by Clark.

For single voyage charters, § 212.85(c)(3) provides that voyage costs incurred under § 212.85(c)(2)(iii)(A), i.e., "payments made by the firm to unaffiliated entities incurred in connection with the use and operation of the vessel plus the cost of any bunker fuel * * *," are not to be allocated on a cost per ton mile basis. Rather, the actual costs are to be reported to FEA in the firm's monthly submission. However, income received from subchartering a portion of the capacity of a single voyage charter is to be treated as "income received by the firm from unaffiliated entities for the use of [the vessel]" under § 212.85(c)(1). The income received will thus serve to decrease the firm's total cost of importing its crude oil.

3. *Shipment in part by VLCC.* Pursuant to § 212.85(c)(2)(i), the calculation of allowed transportation costs applies with regard to "all vessels used in whole or in part by the firm for shipment of its crude oil to the United States." Accordingly, § 212.85 contemplates that vessel costs associated with a particular leg of a trip, which is ultimately completed by other vessels, can be included in allowed transportation costs. Since Clark owns the oil throughout the entire trip, and not merely on the VLCC leg, Clark satisfies the provision in § 212.85(c)(2)(i) that costs (on any leg) will be allowed where a firm ships "its" crude oil to the United States.

4. *Transshipment Costs*.—(a) *VLCC leg*. (i) Under § 212.85(c)(2)(iii)(A), fees paid for use of the terminal and rental of tanks are "payments made by the firm to unaffiliated entities incurred in connection with the use and operation of the vessel," and are therefore allowable costs, since use of the terminal facilities the VLCC leg of the trip. Moreover, such fees are allowable costs under the AFRA method (§ 212.85(d)(1)(iv)), and in the interests of symmetry will be deemed to be payments to unaffiliated entities for the purposes of § 212.85(c)(2)(iii)(A). Fees paid in-kind are allowable based on the f.o.b. purchase price.

(ii) Section 212.85(c)(2)(iii)(A) states specifically that allowed transportation costs include "bunker fuel which is supplied by the firm to the vessel for the purpose of transporting crude oil to the United States, priced at the current market price at the location where supplied." The cost of bunker fuel supplied by Clark to its chartered vessels will be allowed on this basis.

(iii) Cargo, liability, and war risk insurance, vessel hire, port costs, and inspection fees are all considered to be costs "incurred in connection with the use and operation of the vessel," and are therefore allowable under § 212.85(c)(2)(iii)(A).

(b) *Transshipment leg.* Vessel hire, cargo and liability insurance, and inspection fees are allowable on the same basis applicable to the VLCC leg.

INTERPRETATION 1977-26

To: Navajo Refining Co.

Date: July 28, 1977.

Rules Interpreted: § 210.62, 212.31, Ruling 1977-1.

Code: GCW-PI—Posted Price, def., Normal Business Practices.

This is in response to your November 8, 1976 request for interpretation on behalf of Navajo Refining Company ("Navajo") and Holly Corporation seeking an Interpretation of 10 CFR 212.31 (Definition of "Posted Price"). On May 17, 1977, the Regional Administrator of Federal Energy Administration ("FEA") Region VI issued a Notice of Probable Violation ("NOPV") to Navajo based upon prices paid by Navajo in first sales of domestic crude oil. On April 28, 1977, Navajo supplemented its original request for interpretation with additional documents to be used in conjunction with the information previously submitted in order to provide a more complete basis on which FEA could base its response. On May 27, 1977, Navajo submitted its written response to the NOPV, a copy of which was submitted by Navajo in conjunction with the present request for interpretation.

The Interpretation that follows is based upon all the information available to this office at this time and is intended to address only the issue set forth herein. To the extent that other issues may have arisen, or may arise, in the context of the pending compli-

[4] 10 CFR 212.85(c)(2)(iii)(A) provides: "Allowed transportation costs for a charter-status vessel shall be the sum of all payments made by the firm to unaffiliated entities incurred in connection with the use and operation of the vessel, plus the cost of any bunker fuel which is supplied by the firm to the vessel for the purpose of transporting crude oil to the United States, priced at the current market price at the location where supplied."

[5] 10 CFR 212.85(c)(3) provides: "Nonmonthly charges shall be adjusted to a monthly basis. Except for single voyage charters, or when costs for equity status vessels are calculated as provided in 2(ii)(A), allocation of transportation costs to a shipment of crude oil shall be determined as the product of the number of cargo ton-miles of crude oil transported in that shipment times that firm's 'cost per ton mile' (CTM) estimate for that month. The CTM estimate of a firm for a given month shall be the ratio of:

(i) The firm's best estimate of its net transportation cost for the fiscal year, minus the transportation costs the firm has allocated to shipping for all previous months of the fiscal year to:

(ii) The firm's best estimate of its total shipping quantity in ton-miles for the fiscal year using vessels whose costs are included in that firm's gross transportation costs, minus the number of ton-miles of such shipping for which the firm has allocated costs in all previous months of the fiscal year. Upon determination of its actual net transportation cost for a fiscal year, but not later than 60 days beyond the end of that fiscal year, each firm shall report as an adjustment to its cost the difference between the actual value of its net transportation cost for that fiscal year and the total transportation costs allocated by the firm for the fiscal year. The ratio of the firm's net transportation costs for a fiscal year to the total amount of that firm's shipping in ton-miles for that fiscal year, is that firm's CTM for that fiscal year."

ance action, the resolution of such issues is not governed by this Interpretation.

FACTS

As we understand the facts, Navajo is a small refiner which acquires crude oil primarily in the West Texas/New Mexico field. Beginning on February 1, 1973 and continuing to the present time, Navajo has maintained a "flat" price system whereby crude oil purchased by it is paid for at a single price with no adjustments for differences in gravity. (Prior to February 1 Navajo had used a system of gravity differential adjustments whereby the first sale price was adjusted downward to reflect a penalty for crude oil gravities below 40°.) To illustrate, under a pricing system based upon adjustments for gravity differentials, a specified price (e.g., $12.60 per barrel) is set for crude oil of a specified gravity (often 40° API), and the specified price is adjusted downward by a specified increment (often 2 cents per API degree). Under this example, 40° crude oil would be priced at $12.60 per barrel and 36° crude oil would be priced at $12.52 per barrel (i.e., $12.60 − (4)(.02) = $12.52). Under a "flat" price system, however, all crude oil regardless of gravity is subject to the same price.

Although your request might be construed to urge that FEA make the determination that Navajo's use of run tickets and solicitation letters constituted a "posted price" on September 30, 1975, that construction is unnecessary in light of (and would be inconsistent with) Navajo's admission that the Permian Corporation posting of $12.60 per barrel for upper tier sour grade crude oil constituted the highest posted price for that grade crude oil on September 30, 1975. Accordingly, and inasmuch as determinations such as what constituted the highest posted price on September 30, 1975 are more appropriately reached in the first instance in the context of the pending compliance action, we assume for purposes of this request that the Permian Corporation posting of $12.60 per barrel for upper tier sour grade crude oil constituted the "highest posted price" for that grade crude oil on September 30, 1975.

Navajo states that although the Permian Corporation posting of $12.60 per barrel is one which requires adjustments for crude oil gravities below 40° API, Navajo has determined ceiling prices in first sales of upper tier domestic crude oil on the basis of its historic "flat" pricing system with no adjustments for gravity differentials. The result, as we understand the facts, is that in determining ceiling prices for upper tier crude oil, Navajo has used the Permian Corporation price of $12.60 per barrel for 40° crude oil, which it has then applied to all crude oil purchases with no adjustment for gravity.

ISSUE

The issue addressed by this Interpretation is whether § 212.74 requires upper tier ceiling price determinations to be made with regard to gravity price differential adjustments, where the reference highest posted price on September 30, 1975 utilized such gravity price differential adjustments, but where a particular purchaser in the field has traditionally utilized a system of flat prices, without regard to gravity price differential adjustments.

INTERPRETATION

Assuming for purposes of this Interpretation that the Permian Corporation posting of $12.60 per barrel, which required gravity price differential adjustments, was the highest posted price in the field on September 30, 1975, upper tier ceiling prices based upon that posting are required also to reflect those gravity price differential adjustments.

Section 212.74 provides: (b) Upper tier ceiling price determination. The upper tier ceiling price for a particular grade of domestic crude oil in a particular field is (1) the highest posted price on September 30, 1975, for transactions in that grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of crude oil which is most similar in kind and quality in the nearest field for which prices were posted; less (2) $1.32 per barrel.

"Posted Price" is defined at § 212.31 as: A written statement of crude oil prices circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field.

As FEA stated in Ruling 1977-1 (42 FR 3628, January 19, 1977). The posted price concept was selected [by the Cost of Living Council] because the ready availability of price bulletins (which were understood to be in normal circulation in May 1973) provided a mechanism whereby producers and purchasers alike could be able to determine the ceiling price for any grade crude oil in any particular field. Moreover, the use of price bulletins avoided the enormous administrative complexity of having to establish ceiling prices that would maintain traditional gravity and quality price differentials.

In adopting the two tier price system on February 1, 1976, applicable to all first sales of domestic crude oil, FEA made it clear that with respect to the lower tier ceiling prices, the CLC rule was being continued:

So as to avoid the many complications that might be involved were the FEA to prescribe a ceiling price without regard to historical prices, including the necessity of having to prescribe adjustments to reflect price differentials for location and quality. *Existing price differentials for old crude oil will, therefore be maintained as of May 15, 1973.* (Emphasis added, 41 FR 4931 at 4935, February 3, 1976.)

For the same reason, FEA adopted an upper tier ceiling price rule that is also based upon posted prices (which were understood to be prevalent in September 1975). The reference in Ruling 1977-1 to "having to establish ceiling prices that would maintain traditional gravity and quality price differentials" does not mean, as you suggest, that the purpose of selecting the posted price mechanism was to eliminate traditional gravity price differentials. Rather, the purpose was to maintain them without administratively having to establish a complex system of ceiling prices which incorporated those differentials where necessary.

Accordingly, when CLC adopted the two tier pricing system in August 1973, it established the ceiling price rule based on the posted price concept. This concept was chosen because posted price bulletins were easily available, were in normal circulation in May 1973, and provided the means for producers and purchasers to determine the ceiling price for any grade of crude oil in any field, without disturbing the price differentials that had been previously determined. Postings in effect on September 30, 1975 were selected as references for upper tier ceiling prices for the same reasons.

FEA recognizes that the use of posted prices as references may result in ceiling prices in particular fields which are based upon gravity differentials, or which are based upon a flat price or which are based upon both. For example, where (on September 30, 1975) two purchasers posted prices for the same field, one a flat price of $12.40, and one a price of $12.40 with price adjustments of 2 cents per degree for each gravity below 40° API, the highest posted price for all crude oil in the field, regardless of gravity, would be $12.40. This is because for any gravity crude oil produced and sold from that field, a posted price of $12.40 was applicable on September 30, 1975. However, where (on September 30, 1975) one purchaser posted a flat price of $12.30, and a different purchaser posted a price of $12.40 with price adjustments of 2 cents per degree for each gravity below 40° API, the $12.40 posting (adjusted downward) would govern for crude oil with a gravity of 35° and above; the flat price of $12.30 would govern for crude oil with a gravity below 35° API. The result is more clearly shown in the following chart:

Posting "A"	°API	Posting "B"
$12.40	40	$12.30
12.38	39	12.30
12.36	38	12.30
12.34	37	12.30
12.32	36	12.30
12.30	35	12.30
12.28	34	12.30
12.26	33	12.30

Contrary to Navajo's interpretation, 10 CFR 210.62 does not require a different result. That section, which deals with "normal business practices" requires suppliers to deal with purchasers of an allocated product according to normal business practices. References in the definition of "posted price" to written statements of crude oil prices circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices, refer to the requirement that for a document to qualify as a posted price, it must have been circulated in accordance with historic practices. Section 210.62, on the other hand, cannot be interpreted to suggest that ceiling prices are to be determined in accordance with historic practices, where such practices would result in prices in excess of those determined under §§ 212.73 and 212.74. This view was considered and specifically rejected by FEA in the first stage rulemaking to implement the Energy Policy and Conservation Act. (See 41 FR 4931 at 4935–36, February 3, 1976.)

INTERPRETATION 1977-27

To: J. M. Owsley.

Date: July 28, 1977.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCW—AI—Wholesale Purchaser-Reseller, def.; Commission Agents or Consignees.

This is in response to your letter of July 12, 1976, requesting an interpretation of the Federal Energy Administration's (FEA) Mandatory Petroleum Allocation Regulations (10 CFR Part 211), concerning your status as a wholesale purchaser-reseller.

FACTS

According to your letter, you are a Union Oil Co. of California ("Union") commissioned distributor in Pomona, Calif., under the terms of a form contract entitled "Commercial Consignment Agreement," Form 795-CA (Rev. 8-67), (the "Consignment Agreement"). The Consignment Agreement establishes a relationship whereby the distributor receives a commission for selling and delivering products to customers that he selects and title to the products remains with Union until sold. The distributor is prohibited from mixing Union's products for sale with other products. The agreement authorizes the distributor to make credit sales for his own account or for the account of Union when authorized in writing, but provides that sales for his own account, or credit sales made in violation of the written authorization by Union, are made at the distributor's risk. The distributor is fully responsible for Union products and sales revenues in his possession, and Union retains the right to check inventories and inspect and audit the distributor's records and accounts.

Control of the distributor's independent business of selling and distributing Union's products is retained by the distributor. He is required to furnish and bear all expenses connected with necessary facilities and equipment (including his bulk plant and trucks) involved in the storage, handling, and sale of Union's products, and to make provision for, and assume the responsibilities and expenses connected with, all necessary labor. Thus, all expenses incident to the conduct of the distributor's business of selling Union's products are to be paid for by the distributor.

The Consignment Agreement expressly provides that the distributor shall exercise full direction, control, and responsibility over all employees required for the operation of his business, and the distributor is required by the terms of the Consignment Agreement to provide all appropriate employer's liability, workmen's compensation, and public liability insurance for such employees and to indemnify and hold Union harmless for any claims against Union arising therefrom.

ISSUE

The issue presented for interpretation is whether a Union distributor operating pursuant to this agreement qualifies as a wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION

A wholesale purchaser-reseller is defined in § 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form."

Ruling 1975-8 explains that the phrase "as by consignment" is included in the definition of a wholesale purchaser-reseller to make it clear that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition solely on the ground that they fail to take legal title to the product. This phrase explicitly recognizes the fact that consignment relationships, under which the consignees perform essentially the same functions as jobbers, have long existed in the petroleum industry and that such consignees should be treated under the allocation regulations in the same manner as jobbers. Therefore, those consignees which have a substantial degree of operational independence in the conduct of their business of transfer and sale of a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers and are subject to the same benefits and obligations of the allocation program which apply to jobbers.

Ruling 1975-8 notes that there are at least three different situations in the petroleum industry in which firms take possession of allocated products without taking title to the product. Only in those situations where a firm receives product through consignment and is engaged in marketing that product to the consignee's customers, acting generally like a jobber, will the firm qualify as a wholesale purchaser-reseller.

Thus, according to the ruling, a consignee which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-reseller, will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's products; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing product solely to customers designated by the supplier.

According to the terms of the Consignment Agreement, you retain a substantial measure of functional autonomy in distributing and selling Union products. Although you must account fully to Union for all products and sales revenues received, and such products must be sold at prices authorized by Union, you are fully responsible for conduct of your business and are expected to exercise independent judgment and discretion in its operation. While Union requires you to sell the products under Union's brands and trademarks, it bears no expenses under the Consignment Agreement for the costs of facilities, equipment, labor, employee benefits, or necessary insurance, and implicitly recognizes your distributorship as an independent business. Accordingly, it is our opinion that you are a wholesale purchaser-reseller as defined in 10 CFR § 211.51, and as clarified in Ruling 1975-8.

[FR Doc.77-23501 Filed 8-12-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 14160; Amdts. 1-27 and 45-9]

PART 1—DEFINITIONS AND ABBREVIATIONS

PART 45—IDENTIFICATION AND REGISTRATION MARKING

Nationality and Registration Marks on Fixed-Wing Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment allows a reduction in the size of the required nationality and registration marks on certain fixed-wing aircraft and requires that each suffix letter used in the marks be a Roman capital letter. It is intended to provide relief requested by operators of the aircraft and to ensure needed uniformity of marks.

EFFECTIVE DATE: September 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Ramakis, Flight Standards Service, Safety Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-755-8716.

SUPPLEMENTARY INFORMATION: Interested persons have been afforded an opportunity to participate in the making of this amendment by a notice of proposed rule making (Notice No. 74-36) issued on November 12, 1974, and published in the FEDERAL REGISTER on November 21, 1974 (39 FR 40862). Due consideration has been given to all comments received in response to the notice. Except as otherwise discussed in this amendment, the amendment and the reasons for it are identical to the proposal and the reasons set forth in the notice.

Notice 74-36 was issued partly in response to two petitions. The Experimental Aircraft Association (EAA) petitioned for an amendment of § 45.29(b)(1) to allow display of the required nationality and registration marks no more than three inches high either in a horizontal or vertical manner on both sides of the vertical tail surface of fixed-wing small aircraft and 18-inch marks on the underside of the left wing. The Citizens Task Force on Noise Control of Seattle, Wash., petitioned the FAA to provide for under-wing markings, distinguishable by persons with normal vision for a distance of 1,000 feet.

Over 3,000 public comments were received in response to the notice. Almost all of the commentators on the proposed under-wing marks opposed them. The majority of the commentators were concerned about the cost of the under-wing marks. The FAA estimates the minimum total cost to be over 18 million dollars. This cost could be higher due to inflation, since the proposal would allow five years for compliance with the rule.

A number of opposing commentators were of the opinion that the proposed under-wing marks would not be an effective means of positive ground-to-air identification. After further consideration, the FAA agrees with these commentators. In proposing this requirement, the FAA relied on a number of cases in which violators of the Federal Aviation Regulations have been identified by under-wing marks alone or by those marks together with side or tail marks. However, after review of the comments received and all the information available on under-wing marks, it is clear that these marks are useful for identification purposes only under ideal conditions.

For these reasons, the proposed requirement for 18 inch marks on the lower surface of the left wing of fixed-wing aircraft is withdrawn, and the petition of the Citizens Task Force on Noise Control of Seattle, Wash., is denied.

In response to the EAA petition, Notice 74-36 proposed to allow 3 inch marks on the vertical tail surfaces or the sides of the fuselage on small aircraft which cannot exceed 180 knots when using 70 percent of maximum cruising power, if the proposed under-wing marks were displayed. This proposal was consistent with the current position of the Department of Defense that it no longer considers 12 inch marks as necessary for the air-to-air identification of these aircraft when they penetrate or operate in an Air Defense Identification Zone (ADIZ) or Distant Early Warning Identification Zone (DEWIZ).

Over 1,500 comments were directed to this prosopal. The majority of these commentators favored using 3 inch marks without the under-wing marks. In view of the fact that 12 inch marks on the tail or fuselage have proved only minimally successful in ground-to-air identification, the 3 inch marks provision is being adopted without the proposed under-wing requirement.

However, the FAA has determined that the reference to "maximum cruising power" may be confusing, and that it would be more appropriate to use terms used in type certificate data sheets for most small aircraft. Accordingly, the provision, as adopted, references design cruising speed (V_C), maximum structural cruising speed (V_{NO}), and maximum operating limit speed (V_{MO}). When none of these speeds exceeds 180 knots, 3 inch marks may be used on the aircraft. Three inch marks may be used on an aircraft that does not have a V_C, V_{NO}, or V_{MO}, when the maximum cruising speed has been shown to the satisfaction of the Administrator to not exceed 180 knots.

Finally, Notice 74-36 proposed to insert the words "at each location" in the lead-in portion of § 45.29(b), in order to require that the character marks be the same height, width, thickness, and spacing on both sides of the aircraft. For clarity this proposal has been adopted as a new paragraph (g) in § 45.29.

DRAFTING INFORMATION

The principal authors of this document are J. F. Zahringer, Flight Standards Service, and Joseph Dorsey, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, Parts 1 and 45 of the Federal Aviation Regulations (14 CFR Parts 1 and 45) are amended, effective September 14, 1977, as follows:

1. By amending § 1.2 by inserting the following symbol after "V_{NE}" and before "V_R":

§ 1.2 Abbreviations and symbols.

* * * * *

V_{NO} means maximum structural cruising speed.

* * * * *

2. By amending § 45.23(a) to read as follows:

§ 45.23 Display of marks; general.

(a) Each operator of an aircraft shall display on that aircraft marks consisting of the Roman capital letter "N" (denoting United States registration) followed by the registration number of the aircraft. Each suffix letter used in the marks displayed must also be a Roman capital letter.

* * * * *

3. By amending § 45.25 to read as follows:

§ 45.25 Location of marks on fixed-wing aircraft.

(a) The operator of a fixed-wing aircraft shall display the required marks on either the vertical tail surfaces or the sides of the fuselage, except as provided in § 45.29(f).

(b) The marks required by paragraph (a) of this section shall be displayed as follows:

(1) If displayed on the vertical tail surfaces, horizontally on both surfaces of a single vertical tail or ón the outer surfaces of a multivertical tail. However, on aircraft on which marks at least 3 inches high may be displayed in accordance with § 45.29(b)(1), the marks may be displayed vertically on the vertical tail surfaces.

(2) If displayed on the fuselage surfaces, horizontally on both sides of the fuselage between the trailing edge of the wing and the leading edge of the horizontal stabilizer. However, if engine pods or other appurtenances are located in this area and are an integral part of the fuselage side surfaces, the operator may place the marks on those pods or appurtenances.

4. By amending § 45.29(b)(1) and adding a new § 45.29(g) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) *Height.* The character marks must be of equal height and on—

(1) Fixed-wing aircraft must be at least 12 inches high, except that marks at least 3 inches high may be displayed on small aircraft when none of the following exceeds 180 knots TAS:

(i) V_C;

(ii) V_{MO};

(iii) V_{NO}; and

(iv) If V_C, V_{MO}, or V_{NO} has not been determined for the aircraft, the speed shown to be the maximum cruising speed of the aircraft;

* * * * *

(g) *Uniformity.* The marks required by this part for fixed-wing aircraft must have the same height, width, thickness, and spacing on both sides of the aircraft.

(Sections 307(c), 313(a), and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1348(c), 1354(a), 1421); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on August 5, 1977.

LANGHORNE BOND,
Administrator.

[FR Doc.77-23308 Filed 8-12-77;8:45 am]

[Docket No. 75-LA-86; Amdt. 39-3007]

PART 39—AIRWORTHINESS DIRECTIVES

Canadair Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Canadair CL-44D4 and CL-44J airplanes. It requires an inspection for cracks and replacement where necessary of the nose landing gear upper radius rods. The inspection is the result of a reported history of fatigue cracks which if left uncorrected could result in a failure of the radius rod, which may cause a collapse of the nose landing gear.

EFFECTIVE DATE: August 18, 1977. Compliance is in accordance with the schedule set forth in the airworthiness directive.

ADDRESSES: Canadair Service Information Circular No. 151-CL44, Issue 3, of October 26, 1976, may be obtained from the manufacturer at P.O. Box 6087, Montreal, Canada.

FOR FURTHER INFORMATION CONTACT:

L. Lipsius, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, telephone 212-995-2875.

SUPPLEMENTARY INFORMATION: There have been reports of damaged nose landing gear left hand upper radius rods due to fatigue cracks on aircraft with over 7,000 landings. The rule provides for rework of cracked radius rods within certain limits. A rework to the maximum limit will permit operation for only 3,000 landings or until cracks are detected, whichever occurs first. In view of the effect on air safety, notice or public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

DRAFTING INFORMATION

The principal authors of this document are L. Lipsius, Flight Standards Division, and Thomas C. Halloran, Esq., Office of the Regional Counsel.

It has been determined that the expected impact of the proposed regulation is so minimal that the proposal does not warrant an evaluation.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Canadair: Applies to all CL-44D4 and CL-44J airplanes, certificated in all categories, that have not been altered in accordance with Canadair Service Information Circular No. 151-CL44, Issue 3, dated October 26, 1976, or with an FAA-approved equivalent alteration.

Compliance required as indicated.

(a) To ensure the structural integrity and prevent failure of the following nose landing gear upper radius rods, accomplish the inspection in (1).

	Upper Radius Rod Subassembly	*Upper Radius Rod*
Item:		
1.	44-85045 LH assembly employs.	44-85084 LH Rod.
2.	44-85045-1 RH assembly employs.	44-85084-1 RH Rod.
3.	44-85045-1000 LH assembly employs.	44-85084-2 LH Rod.

(1) For parts which have accumulated 1,175 or more landings on the effective date of this airworthiness directive, inspect Items 1, 2, and 3 within the next 75 landings by a dye penetrant, eddy current, or ultrasonic method in accordance with the "Inspection Data" and "Inspection Procedure" sections of Canadair Service Information Circular No. 151-CL44, Issue 3, dated October 26, 1976, or with an FAA-approved equivalent inspection.

(2) For parts which have not accumulated 1175 landings on the effective date of this airworthiness directive, accomplish the inspection in (a) (1) before attaining 1250 landings.

(b) Repeat inspections in (a) (1) at intervals not to exceed:

(1) 60 landings for non-reworked parts Item 1 and 3;

(2) 200 landings for non-reworked part Item 2;

(3) 30 landings for reworked parts Item 1, 2, and 3.

(c) Replace cracked parts with new parts of the same part number or with approved equivalent parts, or rework cracked parts to the limitations specified in "Rework Instruction" in Canadair Service Information Circular No. 151-CL44, Issue 3, dated October 26, 1976, or with an approved equivalent procedure.

(d) Replace parts reworked to the maximum limits, specified in "Rework Instruction" in the above Service Information Circular, that have attained an additional 3,000 landings from the time of such rework, or when cracks are again detected, whichever occurs first, with new pats of the same part number or with approved equivalent parts.

(e) Equivalent inspections/procedures and parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(f) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the inspection times specified in this AD.

Effective date: This amendment is effective August 18, 1977.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Jamaica, New York, on August 4, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.77-23305 Filed 8-12-77;8:45 am]

[Docket No. 77-NE-11; Amdt. 39-3008]

PART 39—AIRWORTHINESS DIRECTIVES

Pratt and Whitney JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, and -17 Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive requiring removal of certain number 4½ bearings, P/N 707007, from Pratt and Whitney Aircraft JT8D turbofan engines. Early failure of these bearings has caused serious engine damage.

DATES: Effective date—August 31, 1977. Compliance date—March 31, 1978.

ADDRESSES: Persons affected by this directive desiring copies of Pratt and Whitney Aircraft Alert Service Bulletin Number 4639, titled "Engine-Bearing, Number 4½—removal from service of", may obtain copies upon request to Pratt and Whitney Aircraft, Division of United Technologies Corporation, 400 Main Street, East Hartford, Connecticut 06108. This document may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:

Jay J. Pardee, Propulsion Section, ANE-214, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone 617-273-7337.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making appeared in the FEDERAL REGISTER on June 9, 1977 (42 FR 29513). The NPRM proposed removal of certain Serial Number 4-1/2 bearing, P/N 707007, by March 31, 1978.

This A.D. is being issued because there have been 23 failures of the JT8D Number 4-1/2 bearing, P/N 707007, of which four permitted contact between the concentric low and high speed shafting with resultant machining action and failure of the low turbine shaft. Three of these shaft failures have resulted in turbine blade and vane debris penetration of the engine casing and cowlings. These bearing failures have been limited to bearing Serial Numbers 800 through 999, and 100A through 214A. Since this condition is likely to exist or develop in other JT8D engines incorporating these suspect bearings, the Airworthiness Directive would require removal of Number 4-1/2 bearings, P/N 707007, Serial Numbers 800 through 999, and Serial Numbers 100A through 214A.

The bearing failures have occurred randomly with respect to operating time, and no specific time interval can be specified for bearing removal. The compliance date of March 31, 1978, is therefore based on availability of replacement bearings and the earliest possible operator removal schedule.

Comments were received from the manufacturer and the Air Transport Association concurring with the NPRM. The final rule is therefore identical to the NPRM and requires removal of certain Serial Number 4-1/2 bearings, P/N 707007, by March 31, 1978.

DRAFTING INFORMATION

The principal authors of this document are Jay J. Pardee, Engineering and Manufacturing Branch, and George L. Thompson, Regional Counsel Office.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

PRATT AND WHITNEY AIRCRAFT. Applies to Pratt and Whitney Aircraft JT8D-1, -1A, -1B, -7, -7B, -9, -9A, -11, -15, and -17 turbofan engine models containing Number 4-1/2 bearing, P/N707007, bearing Serial Numbers 800 through 999, and Serial Numbers 100A through 214A.

Compliance required as indicated. To preclude possible low turbine shaft failure, resulting from failure of the Number 4-1/2 bearing, remove from service, prior to March 31, 1978, Number 4-1/2 bearings, P/N 707007, Serial Numbers 800 through 999, and Serial Numbers 100A through 214A. Replace with an FAA approved, serviceable 4-1/2 bearing.

Affected bearings shipped in engines and shipped as spares are identified by serial number in Tables I and II of Pratt and Whitney Aircraft Alert Service Bulletin Number 4639, dated August 12, 1976, or later revision approved by the Chief, Engineering and Manufacturing Branch, New England Region.

Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA, New England Region, may adjust the compliance date specified in this A.D. to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

The manufacturer's service bulletin identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 522(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt and Whitney Aircraft, Division of United Technologies Corporation, 400 Main Street, East Hartford, Connecticut 06108. These documents may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C.

A historical file on this A.D. which includes the incorporated material in full is maintained by the FAA at its Headquarters in Washington, D.C., and at New England Region.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423) and of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)) and 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular 107.

Issued in Burlington, Massachusetts, on August 4, 1977.

WILLIAM E. CROSBY,
Acting Director, New England Region.

NOTE.—The incorporation by reference provisions of this document was approved by the Director of the Federal Register on June 16, 1967.

[FR Doc.77-23306 Filed 8-12-77;8:45 am]