presidential documents

[3195-01]

Title 3—The President

Memorandum of January 18, 1978

Waiver of the Limitation on the Aggregate of Military Assistance Granted Under the Foreign Assistance Act of 1961, and of Credits Extended and Loans Guaranteed Under the Arms Export Control Act for African Countries in Fiscal Year 1978

[Presidential Determination No. 78-2]

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, January 18, 1978.

Pursuant to the authority vested in me by Section 33(b) of the Arms Export Control Act, as amended, I hereby determine that the waiver of the limitations of Section 33(a) of the Arms Export Control Act, as amended, for fiscal year 1978 is important to the security of the United States.

You are requested, on my behalf, to report this determination promptly to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, as required by law.

This determination shall be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-4168 Filed 2-10-78; 4:13 pm]

rules and regulations

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

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

[1505-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 330—RECRUITMENT, SELECTION AND PLACEMENT (GENERAL)

Employment in the Excepted Service; Recruitment, Selection, and Placement; Restoration to Duty; Appeals to the Commission

Correction

In FR Doc. 78-1308, appearing at page 2378 in the issue of Tuesday, January 17, 1978, the last section heading in column three should read, "§ 330.201 Priority in filling vacancies."

[3410-01]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

Service of Process

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document designates the General Counsel as the official to accept legal process in actions brought to enforce a Department of Agriculture employee's obligation to provide child support or make alimony payments. The rule is necessary to implement recent legislation.

FOR FURTHER INFORMATION CONTACT:

Robert L. Siegler, Deputy Director, Research and Operations Division, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6035.

SUPPLEMENTARY INFORMATION: Section 459 of the Social Security Act, 42 U.S.C. 659, provides that the United States shall be subject to legal process brought for the enforcement of legal obligations of employees to provide child support or make alimony payments. Section 501 of Pub. L. 95-30 amended section 459 of the Social Security Act to provide that service of legal process shall be accomplished by certified or registered mail, or by personal service upon the appropriate agent designated for receipt of such service, or if no agent has been designated, then upon the head of the governmental entity. The purpose of this document is to designate the General Counsel as the agent of the Secretary upon whom legal process for the enforcement of child support or alimony payments owed by employees of the Department of Agriculture shall be made.

Accordingly, § 1.41 of Title 7, Code of Federal Regulations is amended as follows:

Subpart C—Judicial Proceedings

Section 1.41 is amended by adding at the end thereof a new sentence to read as follows:

§ 1.41 Service of process.

* * * Service of process shall be made upon the General Counsel to enforce child support or alimony payments owned by employees of the Department either personally or by certified or registered mail, return receipt requested.

Done this 8th day of February, 1978.

Bob Bergland,
Secretary of Agriculture.

[FR Doc. 78-4069 Filed 2-13-78; 8:45 am]

[3410-05]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Notice of Referendums

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Referendums.

SUMMARY: This notice announces that two separate referendums will be conducted by mail during the period February 21-24, 1978 for producers of cigar-binder (types 51 and 52) and cigar-filler and binder (types 42-44 and 53-55) tobaccos. The law requires that these referendums be held before March 2, 1978. This notice is intended to inform producers of the time and method of referendums.

DATES: Referendums will be held February 21-24, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Tarczy, 202-447-7601.

SUPPLEMENTARY INFORMATION: Notice was given (42 FR 65202) that consideration would be given to data, views, and recommendations on establishing the date or period for holding the referendums for cigar-binder (types 51 and 52) and cigar-filler and binder (types 42-44 and 53-55) tobaccos and whether the referendums should be conducted at polling places rather than by mail ballot. No comments were received from outside the agency concerning these items.

NOTICE OF REFERENDUMS

Referendums will be held by mail ballot during the period February 21-24, 1978, inclusive, to determine whether cigar-binder (types 51 and 52) tobacco and cigar-filler and binder (types 42-44 and 53-55) tobacco farmers are in favor of or opposed to national marketing quotas for the 1978-79, 1979-80, and 1980-81 marketing years. The referendums will be conducted in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1312(c)) and the regulations contained in 7 CFR Part 717.

The Agricultural Stabilization and Conservation Service 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.

Signed at Washington, D.C. on: February 9, 1978.

Ray Fitzgerald,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-4152; Filed 2-13-78; 8:45am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION[1]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

PART 214—MANDATORY CANADIAN CRUDE OIL ALLOCATION REGULATIONS

Amendments to Canadian Allocation Program and Crude Oil Buy/Sell Program

AGENCY: Economic Regulatory Administration, Department of Energy.

[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.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") is adopting amendments to its Mandatory Canadian Crude Oil Allocation Regulations ("Canadian Allocation Program") and its Mandatory Crude Oil Allocation Program ("Buy/Sell Program") to assist refineries serving the Northern Tier in obtaining additional supplies of crude oil to offset reductions in Canadian exports. The amendments to the Canadian Allocation Program will permit first priority refineries dependent upon the diminishing supply of Canadian light crude oil to develop alternate supply sources for non-Canadian light crude oil through exchanges of Canadian heavy crude oil. To mitigate the potentially adverse impact of this amendment on priority refineries that historically processed Canadian heavy crude oil, such refineries will be accorded a preference with respect to the allocation of such crude oil. The amendments to the Buy/Sell Program eliminate the base period ceiling on purchases with respect to any first priority refinery owned by a refiner-buyer, so that purchases may be made on the same basis as for other refineries. Refiner-sellers will be required to deliver the additional volume of crude oil to such refiner-buyer's refinery or, if that is not practical, to a point in the United States acceptable to both the refiner-seller and refiner-buyer for exchange by the refiner-buyer for Canadian crude oil.

DATES: Effective April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Deanna Williams (DOE Reading Room), Department of Energy, 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9161.

Ed Vilade (Media Relations), Department of Energy, 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833.

Robert G. Bidwell, Jr. (Canadian Allocation Program and Buy/Sell Program), Economic Regulatory Administration, 2000 M Street NW., Room 6128-P, Washington, D.C. 20461, 202-254-9707.

Robert J. Kane (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-7477.

Samuel M. Bradley or Jack Kendall (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On December 8, 1977, the ERA issued a notice of proposed rulemaking and public hearing (42 FR 62493, December 13, 1977) to revise the Canadian Allocation Program (10 CFR Part 214) and the crude oil Buy/Sell Program (10 CFR 211.65). The proposed amendments to the Canadian Allocation Program regulations would have modified § 214.31(g)(1) to permit barrel-for-barrel exchanges (and matching purchase and sale transactions which have the same effect as an exchange) of Canadian heavy crude oil for non-Canadian source crude oil by first priority refineries, provided the crude oil received by the first priority refinery making such an exchange was processed in that refinery. As is the case under the current regulations, the proposed amendment would have permitted only quality and location differentials to be given effect in the calculation of the exchange ratio. The rationale for modifying the exchange provision in this regard was that some first priority refineries would be able to obtain additional supplies of crude oil through exchanges of Canadian heavy crude oil for domestic crude oil, which otherwise would be unavailable due to the supplier/purchaser rule set forth in § 211.63.

The ERA recognized the possibility that under the proposed amendment some first priority refineries that did not use or used only a small volume of Canadian heavy crude oil in the base period might nominate for a substantial volume of Canadian heavy crude oil solely for the purposes of exchanges, thereby resulting in a reduced allocation for heavy crude oil for first priority refineries that are dependent thereupon. To ensure that first priority refineries that processed Canadian heavy crude oil in the base period would continue to receive an equitable share of allocable Canadian heavy crude oil, the ERA also proposed to amend the allocation method for Canadian heavy crude oil set forth in § 214.31(a)(3) to accord such refineries a preference with respect to the allocation of this crude oil. Under the proposed amendment, the base period volume entitlement for Canadian heavy crude oil of such first priority refineries would have been satisfied before any rights for Canadian heavy crude oil were issued to first priority refineries that did not process Canadian heavy crude oil in the base period. As is the case under the current regulations, all first priority refineries, irrespective whether they processed Canadian heavy crude oil in the base period, would have been permitted to fill out their total base period volume of Canadian crude oil with Canadian heavy crude oil before any rights for Canadian heavy crude oil would be issued for any second priority refinery.

The proposed amendments to the Buy/Sell Program would have eliminated the base period "ceiling" in § 211.65(b)(4) which limits purchases of domestic crude oil by a refiner-buyer for processing in any first priority refinery owned by the refiner-buyer to the average volumes thereof purchased by that refiner-buyer for that refinery in the period September 1, 1976 through August 31, 1977. The proposal to eliminate the ceiling was predicated on the ERA's determination that refiners affected by the ceiling may not have the ability to offset the substantial reductions in exports of Canadian crude oil and that for such refiners the Buy/Sell Program may be the only viable supply source. Since most refiner-sellers might have difficulty delivering additional domestic crude oil into the Northern Tier, the proposed amendment provided that if the additional volume of crude oil was not practical for delivery to a refiner-buyer's refinery, a refiner-seller could deliver the additional crude oil to a location in the United States at which it would be practical for the refiner-buyer to exchange the crude oil for Canadian crude oil.

II. DISCUSSION OF COMMENTS

Written comments were invited on the proposed amendments to the Buy/Sell and Canadian Allocation Programs through January 13, 1978. Two hundred and fifty-eight written comments were received, including two hundred and twenty written comments on behalf of Murphy Oil Corporation. The comments submitted on Murphy's behalf uniformly urged regulatory action favorable to Murphy's refinery at Superior, Wisconsin, but generally did not offer substantive comments on the proposed amendments. In addition, thirteen persons testified at the public hearing held in Washington, D.C. on January 10, 1978. The commenters included trade associations, a labor union, State and local governments, members of Congress, and major, large independent, and small refiners.

A. CANADIAN ALLOCATION PROGRAM

The comments were divided with respect to the proposed amendment to the Canadian Allocation Program to provide first priority refineries greater flexibility in exchanging Canadian crude oil. Refiners which did not process or processed only small volumes of Canadian heavy crude oil in the base period generally contended that the proposal would permit first priority refineries that are largely dependent upon the diminishing supply of Canadian light crude oil to develop alternate supply sources for non-Canadian light crude oil through exchanges. These commenters also expressed agreement with the ERA's determination that the current allocation method for Canadian heavy crude oil should be modified to ensure that refineries that processed Canadian heavy crude oil in the base period continue to receive an equitable share of the available Canadian heavy crude oil.

Firms owning first priority refineries that processed Canadian heavy crude oil in the base period were generally critical of the proposed amendments to the Canadian Allocation Program. These firms argued that it is inconsistent with the program's underlying rationale of allocating "wet barrels"—crude oil which can be processed in the recipient refinery—to permit first priority refineries which do not have the capability to process or receive Canadian heavy crude oil to exchange such crude oil for non-Canadian crude oil. It was contended that permitting such first priority refineries to nominate for Canadian heavy crude oil solely for the purposes of exchanges would result in reduced allocations for heavy crude oil for both first and second priority refineries that are dependent thereupon. In this connection, several first priority refineries contended that the proposed modification of the allocation method for Canadian heavy crude oil would not ensure allocations of Canadian heavy crude oil sufficient to meet their current operating requirements for such crude oil. These commenters recommended that if the amendment to provide greater exchange flexibility for first priority refineries is adopted as proposed, the allocation method be modified to ensure that the nominations for Canadian heavy crude oil of first priority refineries that have the capability to receive and process such crude oil are satisfied before any heavy crude oil is allocated to other first priority refineries.

A number of the commenters contended that permitting first priority refineries to exchange Canadian heavy crude oil for non-Canadian crude oil might further burden the mid-continent pipeline system, which is currently operating at near capacity, thereby depriving refineries outside the Northern Tier, particularly second priority refineries, of pipeline space upon which they are dependent for their crude oil supplies. Some of the comments which addressed the proposed amendment to the Buy/Sell Program expressed similar concerns. The ERA is not persuaded by the evidence presented in this proceeding that the amendments will in fact result in an increase in demand for shipments through the mid-continent pipeline system. However, even if this does occur, the ERA believes the amendments are nevertheless justified to facilitate the distribution into the Northern Tier of additional crude oil.

It is the ERA's conclusion from the record in this proceeding that the amendments to the Canadian Allocation Program should be adopted substantially as proposed. Permitting first priority refineries to exchange Canadian heavy crude oil for non-Canadian crude oil should assist such refineries dependent upon the declining exports of Canadian light feedstocks in obtaining additional supplies of light crude oil. To the extent this occurs, the amendment will further the purpose of the Canadian Allocation Program, stated in 10 CFR 214.1, which is "* * * to mitigate the adverse effects on dependent firms of the scheduled reductions in export levels of Canadian crude oil". Although the amendment may result in reduced allocations for Canadian heavy crude oil for refineries which have historically processed such crude oil, this potential hardship clearly is outweighed by the benefits which may accrue to first priority refineries dependent upon Canadian light crude oil. However, on the basis of the comments, the ERA is modifying the proposed method for allocating Canadian heavy crude oil in two respects. First, the amendments adopted will accord first priority refineries a greater preference by satisfying the requirements for heavy crude oil of such refineries before any second priority refinery is allocated heavy crude oil in excess of its base period use thereof. Second, the allocation method will accord second priority refineries that historically processed Canadian heavy crude oil a preference over other second priority refineries. The ERA believes that these modifications will ensure that all first and second priority refineries that processed Canadian heavy crude oil in the base period will receive an equitable share of the available supply of such crude oil.

B. BUY/SELL PROGRAM

The majority of the commenters supported the ERA's proposal to eliminate the base period ceiling on purchases with respect to any first priority refinery owned by a refiner-buyer, so that purchases could be made on the same basis as for other refineries. These commenters generally contended that the ceiling on purchase opportunities of such refiner-buyers is no longer justified in light of the substantial reduction in exports of Canadian crude oil. Only three of the refiner-sellers commenting opposed the proposed amendment, principally on the ground that it would reduce the incentives of such refiner-buyers to secure alternate crude oil supplies. It was also contended that few, if any, refiner-sellers have access to supplies of domestic crude oil in the Northern Tier area for sale under the Buy/Sell Program or the capability to deliver additional domestic crude oil into the Northern Tier. On the other hand, several refiner-sellers expressed the view that the proposed flexibility for delivering additional allocated crude oil to the refiner-buyers affected by the elimination of the ceiling should provide sufficient protection to most refiner-sellers. However, inasmuch as the mid-continent pipeline system is currently operating at near capacity, the ERA has determined to modify the proposed delivery provision to emphasize the refiner-buyers' responsibility in actively assisting the refiner-sellers in arranging the delivery to a mutually acceptable location in the United States for exchange for Canadian crude oil.

A number of the commenters in this proceeding urged the ERA to amend the current "re-entry" provision in § 211.65(a)(5) of the Buy/Sell Program regulations to permit small refiners that currently are ineligible for an allocation to re-enter the Buy/Sell Program in the event they incur a twenty-five percent reduction in their total supply of domestic and Canadian crude oil. The provision presently permits re-entry only if a refiner can demonstrate a twenty-five percent reduction in its supply of domestic crude oil. While the ERA appreciates the rationale of this regulatory amendment and believes it would assist a number of small refiners in obtaining non-Canadian crude oil to offset the reductions in Canadian exports, the amendment is beyond the scope of the notice of proposed rulemaking upon which this final rule is predicated. However, the ERA intends to propose the amendment in the near future.

III. AMENDMENTS ADOPTED

Based on its analysis of the material submitted in the public hearing and in the written comments, and upon all other information available to it, the ERA has determined to adopt the amendments to the Buy/Sell Program and the Canadian Allocation Program essentially as proposed, with the modifications discussed above.

A. CANADIAN ALLOCATION PROGRAM

Under the amendments adopted today, first priority refineries will be permitted to make barrel-for-barrel exchanges (and matching purchase and sale transactions which have the same effect as an exchange) of Canadian heavy crude oil for non-Canadian source crude oil, provided the crude oil received by the first priority refinery making such an exchange is processed in that refinery. As is the case under the current regulations, only quality and location differentials are to be given effect in the calculation of the exchange ratio.

The ERA is adopting the allocation method for Canadian heavy crude oil as proposed with the modifications explained above. The amendments adopted today establish a six-step procedure for the allocation of Canadian heavy crude oil. First, as proposed, the ERA will issue a number of rights for heavy crude oil to first priority refineries that processed Canadian heavy crude oil in the base period equal to their respective base period volumes of such crude oil. Second, ERA will issue a number of rights for heavy crude oil to all first priority refineries equal to their respective total base period volumes of Canadian light and heavy crude oil, less any rights previously issued for Canadian light and heavy crude oil for that allocation period. The third through the sixth steps reflect modifications to the proposal. Thus, in the third step, rights for heavy crude oil will be issued to second priority refineries that processed Canadian heavy crude oil in the base period with reference to their respective base period volumes of such crude oil. In the fourth step, additional rights for heavy crude oil will be issued to all first priority refineries with reference to their respective nominations or their refining capabilities, whichever is less. Fifth, rights for heavy crude oil will be issued to all second priority refineries with reference to their respective total base period volumes of Canadian light and heavy crude oil, less any rights issued for Canadian light and heavy crude oil for that allocation period. Sixth, rights for heavy crude oil will be issued to all second priority refineries with reference to their respective nominations or their refining capabilities, whichever is less.

B. BUY/SELL PROGRAM

The amendments adopted today will eliminate the ceiling set forth in § 211.65(b)(4) on purchase opportunities of refiner-buyers that own first priority refineries, thereby permitting such refiner-buyers to purchase their full allocation for such refineries under the Buy/Sell Program. The ERA also is adopting essentially as proposed the amendment governing delivery by refiner-sellers of volumes of crude oil required to be sold as a result of elimination of the ceiling. Under this amendment, if the additional volume of crude oil is not practical for delivery to a refiner-buyer's refinery, a refiner-seller will be required to deliver such additional volume of crude oil to a location in the United States which is practical for the refiner-buyer to exchange the crude oil for Canadian crude oil. As discussed above, the exchange point must be acceptable to both the refiner-buyer and refiner-seller. Further, as a precondition to such a sale, the refiner-buyer concerned will be required to obtain approval of the exchange of the allocated crude oil for Canadian crude oil from the Director, Oil Imports, pursuant to § 213.28(b)(1) of the Oil Import Regulations and an export license from the Department of Commerce.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70 and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; EO 11790, 39 FR 23185; EO 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 211 and 214 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective April 1, 1978.

Issued in Washington, D.C., February 8, 1978.

HAZEL R. ROLLINS,
Deputy Administrator, Economic Regulatory Administration.

1. Section 211.65 is amended by revising subparagraph (4) of paragraph (b) and subparagraph (3) of paragraph (i) to read as follows:

§ 211.65 Method of Allocation.

* * * * *

(b) *Purchase opportunities of refiner-buyers.*

* * * * *

(4) No refiner-buyer shall purchase under this section crude oil imported from Canada for processing in any first priority refinery (as defined in Part 214 of this chapter) owned by that refiner-buyer.

* * * * *

(i) *Conditions of sale.*

* * * * *

(3) The crude oil offered for sale by a refiner-seller must be practical for delivery to and physically capable of being delivered to the refiner-buyer's refinery. The refiner-seller is responsible for arranging delivery of allocated crude oil to the refiner-buyer's refinery; *Provided,* That in the event that a refiner-seller offers for sale or is directed to sell pursuant to paragraph (j) of this section crude oil to a refiner-buyer for processing in any first priority refinery (as defined in Part 214 of this chapter) owned by that refiner-buyer in excess of the average volume of domestic crude oil purchased by that refiner-buyer for that refinery in the period September 1, 1976 through August 31, 1977, and if such excess volume of crude oil is not practical for delivery to such refiner-buyer's refinery, such refiner-seller shall deliver such excess volume of crude oil to a location within the United States to which the refiner-seller can arrange delivery and at which the refiner-buyer can arrange for the exchange of the crude oil for Canadian crude oil; and *Further provided,* That in the event of an exchange the refiner-seller may require the refiner-buyer to demonstrate that it has obtained approval of the exchange from the Director, Oil Imports, pursuant to Part 213 of this chapter and has been issued an export license by the Department of Commerce for the volume of crude oil involved.

2. Section 214.31 is amended by revising subparagraph (3) of paragraph (a) and by revising subparagraph (1) of paragraph (g) to read as follows:

§ 214.31 Allocation of Canadian light and heavy crude oil.

* * * * *

(a) *Basis for issuance of Canadian crude oil rights.*

* * * * *

(3) *Canadian crude oil rights for heavy crude oil.*

(i) FEA shall first issue a number of rights for Canadian heavy crude oil for first priority refineries on a prorata basis with reference to (but not to exceed) one-fourth of their respective base period volumes of Canadian heavy crude oil (as adjusted under the provisions of paragraphs (c) and (d) of this section).

(ii) In the event that the allocable supply of Canadian heavy crude oil for a particular allocation period is greater than the total number of rights calculated under subparagraph (3)(i) above, FEA shall issue a number of rights for Canadian heavy crude oil for first priority refineries on a prorata basis with reference to (but not to exceed) one-fourth of their respective base period volumes of Canadian light and heavy crude oil (as adjusted under the provisions of paragraphs (c) and

(d) of this section), less the number of rights for Canadian light and/or heavy crude oil issued under subparagraphs (2) and (3)(i) of this paragraph.

(iii) In the event that the allocable supply of Canadian heavy crude oil for a particular allocation period is greater that the total number of rights calculated under subparagraphs (3) (i) and (ii) above, FEA shall issue a number of rights for Canadian heavy crude oil for second priority refineries on a pro-rata basis with reference to (but not to exceed) one-fourth of their respective base period volumes of Canadian heavy crude oil (as adjusted under the provisions of paragraphs (c) and (d) of this section).

(iv) In the event that the allocable supply of Canadian heavy crude oil for a particular allocation period is greater than the total number of rights calculated under subparagraphs (3) (i) through (iii) above, FEA shall issue a number of additional rights for Canadian heavy crude oil for first priority refineries on a pro-rata basis with reference to (but not to exceed) the lesser of their respective nominations for Canadian heavy crude oil to FEA for that allocation period pursuant to paragraph (h) of this section or their respective refining capacities as certified by FEA multiplied by the number of days in the allocation period (as reduced by the volume of non-Canadian crude oil processed in the preceding allocation period), less the number of rights for Canadian light and heavy crude oil issued under subparagraphs (2), (3)(i) and (3)(ii) of this paragraph.

(v) In the event that the allocable supply of Canadian heavy crude oil for a particular allocation period of greater than the total number of rights calculated under subparagraphs (3)(i) through (iv) above, FEA shall issue a number of rights for Canadian heavy crude oil for second priority refineries on a pro-rata basis with reference to (but not to exceed) one-fourth of their respective base period volumes of Canadian light and heavy crude oil (as adjusted under the provisions of paragraphs (c) and (d) of this section), less the number of rights for Canadian light and/or heavy crude oil issued under subparagraphs (2) and (3)(iii) of this paragraph.

(vi) In the event that the allocable supply of Canadian heavy crude oil for a particular allocation period is greater than the total number of rights calculated under subparagraphs (3) (i) through (v) above, FEA shall issue a number of additional rights for Canadian heavy crude oil for second priority refineries on a pro-rata basis with reference to (but not to exceed) the lesser of their respective nominations for Canadian heavy crude oil to FEA for that allocation period pursuant to paragraph (h) of this section or their respective refining capacities as certified by FEA multiplied by the number of days in the allocation period (as reduced by the volume of non-Canadian crude oil processed in the preceding allocation period), less the number of rights for Canadian light and heavy crude oil issued under subparagraphs (2), (3)(iii) and (3)(v) of this paragraph.

* * * * *

(g) *Permitted exchanges and sales of Canadian crude oil.* (1) No volumes of Canadian crude oil subject to this part shall be sold or otherwise disposed of by refiners or other firms with respect to first priority refineries that they own or control except pursuant to (i) crude oil exchanges which involve only (directly or indirectly) Canadian crude oil and in which only quality and location differentials are given effect in the calculation of the exchange ratio, or (ii) matching purchase and sale transactions which involve only (directly or indirectly) Canadian crude oil and which have the same effect as an exchange described in clause (i) of this subparagraph (1); or (iii) exchanges of Canadian heavy crude oil for non-Canadian crude oil in which only quality and location differentials are given effect in the calculation of the exchange ratio and matching purchase and sale transactions having the same effect as such exchanges, *Provided,* That the volume of non-Canadian crude oil received by a first priority refinery pursuant to such a transaction is processed by that refinery.

* * * * *

[FR Doc. 78-3963 Filed 2-9-78; 10:13 am]

[3128-01]

PART 216—MATERIALS ALLOCATION AND PRIORITY PERFORMANCE UNDER CONTRACTS OR ORDERS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES [1]

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: This Final Rule provides a procedure for implementing Department of Energy (DOE) functions with regard to the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to maximize domestic energy supplies.

Several changes have been made in the proposed regulations. First, a provision has been added to the effect that if DOE determines at any time that previously made findings are no longer valid, it will provide affected applicant(s) an opportunity to show cause why such findings should not be withdrawn (Part 216.5(a)). Second, a provision has been added to allow the affected applicant(s) to petition for reconsideration of DOE's withdrawal of previously made findings (Part 216.6). Third, an amendment has been adopted to make clear that denial of a petition for reconsideration is final agency action (Part 216.6). Finally, changes have been made regarding violations of the regulations (Part 216.9).

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Robert M. Grubenmann, Financial Planning and Materials Allocation, Office of Resource Applications, Department of Energy, Room 3516, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-7575.

James G. Beste, Office of the General Counsel, Department of Energy, Room 6144, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9296.

SUPPLEMENTARY INFORMATION:

I. Background

On July 13, 1977, the Federal Energy Administration (FEA) issued a notice of proposed rulemaking and public hearing (42 FR 35979) in which FEA proposed regulations providing a procedure for implementing FEA functions with regard to the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to maximize domestic energy supplies. Seven written comments were received in response to the notice of proposed rulemaking, and oral presentations were made by two persons at the public hearing held on August 26, 1977. On October 1, 1977, pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91), all of the functions of FEA and all of the functions of the FEA Administrator were transferred to the Secretary of Energy. Consideration has been given to the views of industry representatives in that all of the comments and presentations were considered by DOE, as well as other information available to DOE, in arriving at the Final Rule adopted today.

The regulations are the result of section 104 of the Energy Policy and Conservation Act (EPCA). This section added a new subsection (c) to section 101 of the Defense Production Act of 1950, as amended (DPA), 50 U.S.C. App. 2071(c). DPA section 101(c)(1) authorizes the President to require the allocation of, or the priority performance under contracts or orders relat-

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

ing to, supplies of materials and equipment in order to maximize domestic energy supplies. It should be emphasized that DPA section 101(c)(1) concerns the authorization of allocations and priorities with regard to materials and equipment, not energy sources. It should be further emphasized that Congress wished to avoid liberal use of the allocation and priorities system and, for that reason, required findings prior to use of the authority.

The ideal time for promulgating these regulations is in a noncrisis atmosphere. Promulgation at this time will provide all potentially affected parties ample time to become familiar with the program before a crisis situation exists.

This authority may be used only if the President finds, as stated in DPA section 101(c)(3), that:

(A) Such supplies are scarce, critical, and essential to maintain or further (i) exploration, production, refining, transportation, or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities; and

(B) Maintenance or furtherance of exploration, production, refining, transportation or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

Section 7 of Executive Order 11912 of April 13, 1976, designates and empowers the Administrator of General Services to perform the functions vested in the President by DPA section 101(c) with a requirement for a redelegation of such functions by the Administrator of General Services to the Secretary of Commerce. The Secretary of Commerce, as required by the Executive Order, redelegated to the Administrator of the FEA the function of finding that specific supplies of materials and equipment are critical and essential to maintain or further exploration, production, refining, transportation or conservation of energy supplies or for the construction and maintenance of energy facilities. Defense Mobilization Order 13 assigns to the FEA the authority to determine whether a program or project maximizes domestic energy supplies. As stated earlier, all of the functions of FEA and the Administrator of the FEA have been transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act. The Secretary of Commerce retains the function of finding whether the supplies of materials and equipment are scarce and whether the purposes specified in DPA section 101(c)(3) cannot reasonably be accomplished without exercising the authority contained in DPA section 101(c)(1). The Administrator of General Services provides for the overall coordination and direction of DPA section 101(c) functions.

It should be emphasized that these regulations implementing DPA section 101(c) do not create a priority and allocation system for energy programs and projects separate from the systems designed to promote the national defense created under DPA section 101(a). The intention is to avoid duplication of existing procedures implementing DPA section 101(a) authority. These regulations prescribe procedures antecedent to use of the Defense Materials System (DMS) Regulation 1 and the Defense Priorities System (DPS) Regulation 1, described in Volume 32A of the Code of Federal Regulations. The authority to use the DMS and DPS can be granted only after the required determination is made by DOE and the required findings are made by both DOE and the Department of Commerce.

II. Purpose and Description of the Regulations

The purpose of the regulations is to describe how DOE will discharge the DPA section 101(c) functions delegated to it. Where findings are made, with respect to eligible energy programs or projects, DOE will report them to the Department of Commerce for further action. Where findings are not made, DOE will notify the applicant with suitable explanation. If the Department of Commerce, following receipt of the DOE determination and findings, finds that the described supplies of materials and equipment are scarce and that the purposes described in DPA section 101(c)(3) cannot reasonably be accomplished without exercising the authority contained in DPA section 101(c)(1), the Department of Commerce will so notify DOE. DOE will authorize the applicant to place "rated orders" and/or "authorized controlled material orders" as defined in and pursuant to the provisions of DMS Regulation 1 and DPS Regulation 1, as promulgated by the Department of Commerce. DOE will perform such duties related to its role as a "claimant agency" as the Department of Commerce shall direct in consultation with DOE.

III. Processing an Application for Use of DPA Section 101(c) Authority

Persons who consider work they are performing appropriate for use of the authority contained in DPA section 101(c) may submit an application to DOE. Part 216.3(a) describes the minimum contents of such an application.

Upon receipt of a completed application, DOE will determine whether or not the program or project in connection with which the request for assistance is submitted maximizes domestic energy supplies and is therefore an appropriate program or project for considering the use of DPA section 101(c) authority. If a determination is made, the program or project will be designated an "eligible energy program or project." In making this determination DOE will consider the impact of such program or project on the national energy situation. Consideration will also be given to the quantity of energy involved, the benefits of timely completion of the program or project, the socioeconomic impact of the program or project, the need for the end product for which the materials and equipment are allegedly required, established national energy policies and such other factors as DOE deems appropriate. Once DOE has determined that a particular program or project is an "eligible energy program or project" this determination will be deemed made with regard to subsequent applications involving the same program or project unless and until DOE announces otherwise.

Second, DOE will find whether or not the supplies of materials and equipment for which assistance is requested are critical and essential to the "eligible energy program or project." In making this finding, DOE will consider the availability and utility of substitute materials or equipment, the impact of the nonavailability of the specified materials or equipment on the timely fulfillment or completion of the program or project and such other factors as DOE deems appropriate.

It was suggested during the public hearings on the proposed regulations that a maximization determination be made on various types of energy programs and projects prior to the receipt of specific applications and that a list of "eligible" projects be published. This suggestion has been rejected because of the difficulties inherent in making such a maximization determination. Such a determination of eligible projects made without regard to specific applications would run the clear risk of being either too broad, and therefore subject to future downward revision, or too restrictive, thereby unfairly excluding certain projects. For these reasons the determination as to whether a program or project maximizes domestic energy supplies will be made only after receipt of an application, and each application will be evaluated individually in accordance with the stated criteria. However, under § 216.4(e), once a program or project is determined to maximize domestic energy supplies and is therefore "eligible" within the context of these regulations, subsequent applications relating to the same program or project will be subject only to the critical and essential findings procedure.

It was suggested that § 216.4(e) be amended to provide for affected parties to participate in DOE's review of a program or project prior to withdrawal of its designation as an eligible energy program or project. It was also suggested that affected parties should be allowed to appeal a withdrawal determination. It was further suggested that withdrawal of an "eligible" designation not become effective until 90 days after a final ruling. DOE has determined that withdrawal of the "eligible" designation should not be subject to appeal because such withdrawal does not affect existing authorizations to applicants to obtain materials and equipment; withdrawal of an "eligible" designation would only affect future applications for use of section 101(c) authority. The "eligible" designation would remain in effect with regard to priorities and allocations previously authorized for the program or project in question. In cases where the "eligible" status of a program or project has been withdrawn, another application for allocation or priority authority can be made at which time the project's "eligibility" status will be reexamined. If such application is denied, the applicant can then petition for reconsideration. There is no need, therefore, to amend the proposed regulations to provide for a 90 day delay of the effective date of DOE's decision to withdraw a project's "eligible" status simply because a project loses nothing as a result of such a withdrawal.

One of the comments received suggested that the criteria established as the basis of the DOE's maximization determination be weighted according to their relative importance and that the "need for the end product" should be the most heavily weighted criterion. DOE has determined that the "need for the end product" should not be given greater weight than the other enumerated criteria. It is our intention to accord equal weight to all of the enumerated criteria.

In cases where DOE finds that the supplies of materials or equipment are critical and essential for the furtherance or timely completion of an eligible energy program or project, DOE will so indicate and transmit the application to the Department of Commerce for further action. If the Department of Commerce then finds (1) that the specific supplies of materials or equipment for which priorities/allocation authority has been requested are scarce and (2) that the eligible energy program or project cannot reasonably be accomplished without exercising the authority specified in DPA section 101(c)(1), the Department of Commerce will notify DOE. DOE will authorize the applicant to place "rated orders" and/or "authorized controlled material orders" as defined in and pursuant to the provisions of DMS Regulation 1 and DPS Regulation 1, as promulgated by the Department of Commerce.

If DOE does not determine that the energy program or project maximizes domestic energy supplies, the applicant will be so informed and may petition for reconsideration. In addition, if DOE does not find that the materials and equipment described in the application are critical and essential to an eligible energy program or project, the applicant will be so informed and may petition for reconsideration.

DOE has concluded that if it should determine at any time that findings previously made are no longer valid, the affected applicant(s) should be afforded the opportunity to show cause why such findings should not be withdrawn. Section 216.5(a) of the proposed regulations has been amended to provide the affected applicant(s) such an opportunity. In addition, DOE has concluded that the affected applicant(s) should be allowed to petition for reconsideration of DOE's determination that findings be withdrawn. Accordingly, § 216.6 has been amended to provide the affected applicant(s) with the opportunity to file such a petition for reconsideration.

It was suggested that the findings procedure be reversed, that the Department of Commerce make its findings prior to those of DOE. This proposed change in the regulations has been rejected because the threshold determination, whether the program or project in question maximizes domestic energy supplies, is to be made by DOE. That determination goes to the very essence of DPA section 101(c) because the purpose of the allocation and priority process described in that section is to maximize domestic energy supplies. In cases where DOE does not determine that a particular program or project maximizes domestic energy supplies, the findings delegated to the Department of Commerce are not relevant and need not be made. Thus, only in cases where DOE makes the required determination and findings is there a need for action by the Department of Commerce.

Recognizing the importance of timely responses, DOE will expeditiously process applications and petitions for reconsideration. However, because of the complexity of the determination and findings to be made, DOE cannot always respond within a specified time period. DOE has determined, therefore, that the proposed regulations should not be amended to provide that DOE act on applications and petitions for reconsideration within a specified time period. In addition, the suggestion that the proposed regulations be amended to require the applicant to provide information within a specified period of time is not meritorious. There is sufficient incentive for the applicant to act expeditiously without such a requirement.

The proposal was made that criteria be established to govern DOE action on petitions for reconsideration. This proposal ignores the purpose of such petitions. The basic purpose of a petition for reconsideration is to allow the petitioner to present material new facts or circumstances affecting the application or to point out material errors in DOE's denial of the application. In either event DOE would evaluate the petition according to the same criteria established for DOE consideration of the original application.

It was further suggested that the last sentence of § 216.6 seems to imply that there may be administrative review available in addition to the process provided by Part 216. In order to make clear that denial of relief requested in a petition for reconsideration is final agency action and not subject to further administrative review, the final regulations amend the proposed regulations by eliminating the last sentence of § 216.6.

Comments were received expressing the view that the proposed regulations would have various deleterious effects, such as allowing an applicant to regain time lost through deficient planning and management, allowing disreputable operators to benefit at the expense of established businesses and permitting a successful applicant to resell equipment or materials obtained through the program. It is not the intent of the regulations to allow an applicant that practices faulty management and planning to compensate for these deficiencies by obtaining equipment or materials under this program. The regulations are not designed to favor established businesses over newer businesses. The criteria established by the regulations are unrelated to the length of time that a business has been in operation. A successful applicant will not be able to obtain equipment or materials through the program in excess of the specific needs of such applicant. Information required by § 216.3(a)(8) to be included in an application and the criteria established by § 216.4(c) are designed to determine the applicant's specific need for the requested supplies of equipment or materials, and any approval for use of section 101(c) authorities will be limited to the specific demonstrated needs.

The further suggestion was made that the proposed regulations be amended to require anyone seeking materials or equipment through the program to notify all parties affected by the application and to require DOE to hear all affected parties and take into account their interests before taking action on an application. Such an amendment is unnecessary because the essence of this proposal is accomplished by section 3(a)(2) of Defense Mobilization Order No. 13 which describes the function of the Department of Commerce under DPA section 101(c). This section provides:

The Secretary of Commerce shall retain the functions of finding that supplies of materials and equipment are scarce, and that the purposes described in subsection 101(c)(3)(B) of the Act cannot reasonably be accomplished without exercising the authority specified in subsection 101(c)(1). This finding will include, to the extent practicable, an assessment of the effects of using the authority for the project in question on other significantly impacted projects.

A late filed comment suggested that anyone receiving a priority rating should be required to enter into a contract with the Government that would (1) make Federal procurement regulations applicable as to definitions and general rules of business conduct, and (2) make a Government contract appeal body the final arbiter in disputes. We have not included such a provision in the regulations. If a Government agency is a party to a contract which is authorized to use section 101(c) authorities, Federal procurement regulations would be applicable and appropriate appeals procedures would be available. However, if nongovernmental persons are parties to a contract subject to 101(c) authorities, we believe that DOE has no authority under the DPA to require that such parties be subject to Federal procurement regulations and appeals procedures. Moreover, we believe that such a requirement would be an unwarranted governmental intrusion into private business arrangements. Of course, private parties are free to bind themselves by contract to specified rules of business conduct and arbitration procedures.

DOE has determined that the violations section, § 216.9, should be amended in recognition of the fact that this is a procedural regulation and that it can be violated only by willfully furnishing false information in the course of the application process or in a petition for reconsideration. Willfully furnishing false information to the Federal Government or concealing a material fact is a crime under the Federal criminal code punishable by fine or imprisonment or both. Paragraph (b) has, therefore, been eliminated in its entirety.

IV. MISCELLANEOUS

The regulations have been reviewed in accordance with Executive Order 11821, issued November 24, 1974, and have been determined not to be of a nature that requires an evaluation of their inflationary impact pursuant to Executive Order 11821. The regulations have also been reviewed in accordance with 10 CFR Part 208 and the National Environmental Policy Act of 1969 and have been determined not to be of a nature that requires the preparation of an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969. Also, as required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of these regulations has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of these regulations on the quality of the environment. The Administrator had no comments.

In consideration of the foregoing, Part 216, Chapter II of Title 10, Code of Federal Regulations, is hereby established, as set forth below, effective immediately.

Issued at Washington, D.C., February 6, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration, Department of Energy.

AUTHORITY: Sec. 104, Energy Policy and Conservation Act (EPCA); sec. 101(c), Defense Production Act of 1950, as amended (DPA) (50 U.S.C. App. 2071(c)); sec. 7, E.O. 11912, April 13, 1976; Defense Mobilization Order No. 13, September 22, 1976, 41 FR 43720; Department of Commerce, Bureau of Domestic Commerce, Delegation No. 4, 41 FR 52331.

§ 216.1 Introduction.

(a) This part describes and establishes the procedures to be used by the Department of Energy ("DOE") in considering and making certain findings required by section 101(c)(3) of the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2071(c)(3) ("DPA"). Section 101(c) authorizes the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment in order to maximize domestic energy supplies if the findings described in section 101(c)(3) are made. Among these findings are that such supplies of materials and equipment are critical and essential to maintain or further exploration, production, refining, transportation or the conservation of energy supplies or for the construction and maintenance of energy facilities. The function of finding if such supplies are critical and essential was delegated to the Administrator of the Federal Energy Administration ("FEA") pursuant to Executive Order 11912 of April 13, 1976, Defense Mobilization Order ("DMO") No. 13 dated September 22, 1976, 41 FR 43720, and Department of Commerce, Bureau of Domestic Commerce, Delegation No. 4, effective date December 1, 1976, 41 FR 52331. On October 1, 1977, pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91), all of the functions of FEA and all of the functions of the FEA Administrator were transferred to the Secretary of Energy.

(b) The purpose of these regulations is to establish the procedures and the criteria to be used by DOE in determining whether programs or projects maximize domestic energy supplies and finding whether or not supplies of material and equipment are critical and essential, as required by DPA section 101(c)(3). The critical and essential finding will be made only for supplies of materials and equipment related to those programs or projects determined by DOE to maximize domestic energy supplies. These regulations do not require or imply that the findings, on which the exercise of such authority is conditioned, will be made in any particular case.

(c) If DOE determines that a program or project maximizes domestic energy supplies and finds that supplies of materials and equipment are critical and essential to maintain or further the exploration, production, refining, transportation or conservation of energy supplies or for the construction and maintenance of energy facilities, such determination and finding will be communicated to the Department of Commerce. If not, the applicant will be so informed. If the determination and finding described above are made, the Department of Commerce, pursuant to DPA section 101(c), Executive Order 11912 and DMO No. 13, will find whether or not (1) the supplies of materials and equipment in question are scarce and (2) maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot be reasonably accomplished without exercising the authority specified in section 101(c). If these additional two findings are made, the Department of Commerce will notify DOE, and DOE will inform the applicant that it has been granted the right to use priority ratings under the Defense Materials System ("DMS") and the Defense Priorities System ("DPS") established by the Department of Commerce.

§ 216.2 Definitions.

As used in these regulations:

(a) "Secretary" means the Secretary of the Department of Energy.

(b) "Applicant" means a person requesting priorities or allocation assistance in connection with an energy program or project.

(c) "Application" means the written request of an applicant for assistance.

(d) "Assistance" means use of the authority vested in the President by DPA section 101(c) to implement priorities and allocation support.

(e) "BDC" means the Bureau of Domestic Commerce within the Domestic and International Business Administration of the United States Department of Commerce.

(f) "DOE" means the Department of Energy, acting through the Secretary or the delegate of the Secretary.

(g) "Eligible energy program or project" means a designated activity which maximizes domestic energy supplies by furthering the domestic exploration, production, refining, transportation or conservation of energy supplies or construction and maintenance of energy facilities within the meaning of DPA section 101(c), as determined by DOE.

(h) "FPA" means the Federal Preparedness Agency of the General Services Administration.

(i) "Materials and equipment" means any raw, in-process, or manufactured commodity, equipment, component, accessory, part, assembly or product of any kind.

(j) "Person" means an individual, corporation, partnership, association, or any other organized group of persons (or legal successor or representative thereof), and includes the United States or any other government and any political subdivisions (or any agency) thereof.

§ 216.3 Requests for assistance.

(a) Persons who believe that they perform work associated with a program or project which may qualify as an eligible energy program or project and wishing to receive assistance as authorized by DPA section 101(c)(1) may submit an application to DOE requesting DOE to determine whether a program or project maximizes domestic energy supplies and to find whether or not specific supplies of materials or equipment identified in the application are critical and essential for a purpose identified in section 101(c). The application should be sent to: Department of Energy, Office of Financial Planning and Materials Allocation, Office of Resource Applications, Room 3516, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. The application shall contain the following information:

(1) The name and address of the applicant and of its duly authorized representative.

(2) A description of the energy program or project for which assistance is requested and an assessment of its impact on the maximization of domestic energy supplies.

(3) The amount of energy to be produced by the program or project which is directly affected by the supplies of the materials or equipment in question.

(4) A statement explaining why the materials or equipment for which assistance is requested are critical and essential to the construction or operation of the energy project or program.

(5) A detailed description of the specific supplies of materials and equipment in connection with which assistance is requested, including: Components, performance data (capacity, life duration, etc.), standards, acceptable tolerances in dimensions and specifications, current inventory, present and expected rates of use, anticipated deliveries and substitution possibilities (feasibility of using other materials or equipment).

(6) A detailed description of the sources of supply, including: Name of the regular supplying company or companies, other companies capable of supplying the materials and equipment, location of supplying plants or plants capable of supplying the needed materials and equipment, possible suppliers for identical or substitutable materials and equipment and possible foreign sources of supply.

(7) A detailed description of the delivery stituation, including: Normal delivery times, promised delivery time without priorities assistance, and delivery time required for expeditious fulfillment or completion of the program or project.

(8) Evidence of the applicant's unsuccessful efforts to obtain on a timely basis the materials and equipment in question through normal business channels from current or other known suppliers.

(9) A detailed estimate of the delay in fulfilling or completing the energy program or project which will be caused by inability to obtain the specified materials and equipment in the usual course of business.

(10) Any known conflicts with rated or authorized controlled material orders already issued pursuant to the DPA for supplies of the described materials and equipment.

(11) Quarterly estimates of requirements for controlled materials, if applicable, by shapes and forms as prescribed by DMS Regulation 1.

(b) DOE, in consultation with the BDC, may prescribe standard forms of application or letters of instruction for use by all persons seeking assistance.

(c) In addition to the information described above, DOE may from time to time request whatever additional information it reasonably believes is relevant to the discharge of its functions pursuant to DPA section 101(c).

§ 216.4 Evaluation by DOE of applications.

(a) Based on the information provided by the applicant and other available information, DOE will assess the application and (1) determine whether or not the energy program or project in connection with which the application is made maximizes domestic energy supplies and should be designated an eligible energy program or project and (2) find whether the described supplies of materials and equipment are critical and essential to the eligible energy program or project.

(b) In determining whether the program or project referred to in the application should be designated an eligible energy program or project, DOE will consider all factors which it considers relevant including, but not limited to, the following:

(1) Quantity of energy involved;

(2) Benefits of timely energy program furtherance or project completion;

(3) Socioeconomic impact;

(4) The need for the end product for which the materials and equipment are allegedly required; and

(5) Established national energy policies.

(c) In findings whether the supplies of materials or equipment described in the application are critical and essential to an eligible energy program or project, DOE will consider all factors which it considers relevant including, but not limited to, the following:

(1) Availability and utility of substitute materials or equipment; and

(2) Impact of the nonavailability of the specific supplies of materials and equipment on the furtherance or timely completion of the approved energy program or project.

(d) Increased costs which may be associated with obtaining materials or equipment without assistance shall not be considered a valid reason for finding the materials and equipment to be critical and essential.

(e) After DOE has determined a program or project to be an eligible energy program or project, this determination shall be deemed made with regard to subsequent applications involving the same program or project unless and until DOE announces otherwise.

§ 216.5 Notification of findings.

(a) DOE will notify the BDC if it finds that supplies of materials and equipment, for which an applicant requested assistance, are critical and essential to an eligible energy program or project, and in such cases will forward to the BDC the application and whatever information or comments DOE believes appropriate. If DOE believes at any time that findings previously made may no longer be valid, it will immediately notify the BDC and the affected applicant(s) and afford such applicant(s) an opportunity to show cause why such findings should not be withdrawn.

(b) If BDC notifies DOE that BDC has found that supplies of materials and equipment, for which the applicant requested assistance, are scarce and that the related eligible energy program or project cannot reasonably be accomplished without exercising the authority specified in DPA section 101(c)(1), DOE will notify the applicant that the applicant is authorized to place rated orders and/or authorized controlled material orders for specific supplies of materials and equipment pursuant to the provisions of DMS Regulation 1 and DPS Regulation 1, as promulgated by the Department of Commerce.

§ 216.6 Petition for reconsideration.

If DOE, after evaluating an application in accordance with § 216.4, does not determine that the energy program or project maximizes domestic energy supplies or does not find that the supplies of materials and equipment described in the application are critical and essential to an eligible energy program or project, it will so notify the applicant and the applicant may petition DOE for reconsideration. If DOE concludes at any time that findings previously made are no longer valid and should be withdrawn, DOE will so notify the affected applicant(s), and such applicant(s) may petition DOE for reconsideration of the withdrawal decision. Such a petition is deemed accepted when received by DOE at the address stated in § 216.9. DOE will consider the petition for reconsideration and either grant or deny the relief requested. Written notice of the decision and of the reasons for the decision will be provided to the applicant. There has not been an exhaustion of administrative remedies until a petition for reconsideration has been submitted and the review procedure completed by grant or denial of the relief requested. The denial of relief requested in a petition for reconsideration is a final administrative decision.

§ 216.7 Conflict in priority orders.

If it appears that the use of assistance pursuant to DPA section 101(c) creates or threatens to create a conflict with priorities and allocation support provided in connection with the national defense pursuant to DPA section 101(a), DOE will work with the BDC and other claimant agencies affected by such conflict in an attempt to reschedule deliveries or otherwise accommodate such competing demands. If acceptable solutions cannot be agreed upon by the claimant agencies the FPA will resolve such conflicts.

§ 216.8 Communications.

All written communications concerning these regulations shall be addressed to:

Department of Energy, Financial Planning and Materials Allocation, Office of Resource Applications, Room 3516, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

§ 216.9 Violations.

Any person who willfully furnishes false information or conceals any material fact in the course of the application process or in a petition for reconsideration is guilty of a crime, and upon conviction may be punished by fine or imprisonment or both.

[FR Doc. 78-3776 Filed 2-7-78; 12:32 pm]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y; Docket No. R-0083]

PART 225—BANK HOLDING COMPANIES

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation and withdrawal of proposed rulemaking.

SUMMARY: In order to more effectively administer section 2(g)(3) of the Bank Holding Company Act, the Board of Governors has issued an interpretation of its Regulation Y. The interpretation codifies certain previous rulings of the Board on the scope of section 2(g)(3). This interpretation is issued in lieu of an amendment to Regulation Y proposed in February 1977 (42 FR 9679), and that proposal is withdrawn.

EFFECTIVE DATE: January 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate General Counsel, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3274.

SUPPLEMENTARY INFORMATION: The Bank Holding Company Act provides that if a bank holding company transfers shares that it owns to a company or other transferee that is (a) indebted to the bank holding company, or (b) has an officer or director interlock with the bank holding company, control of the shares is presumed not to have changed unless the Board determines otherwise.

The Board has in effect interpreted this section of the Act—2(g)(3)—in previous decisions on specific cases. This interpretation:

1. Codifies these past rulings by the Board to the effect that (a) the presumption of continued control arises where the shares or other assets are transferred to a person who is an officer or director of the company making the transfer and (b) the terms "transferor" and "transferee" include parent or subsidiary companies of each (including a transferred company itself).

2. Interprets section 2(g)(3) as being applicable where (a) all or substantially all of the assets of a company or subsidiary are being transferred, or (b) the asset being transferred is of such significant size or value as to constitute the transfer of an "activity" of a bank holding company; also, that transfers of partnership interests are covered.

3. Interprets the terms "officer" and "director" as including not only persons with such titles but also those with comparable functions, and those holding such offices in honorary or advisory capacities.

4. Provides that in the interests of expediting proceedings under this provision of the Bank Holding Company Act no future FEDERAL REGISTER notice will be published upon receipt of an application under this section, but that no application under section 2(g)(3) will be denied by the Board without affording the applicant company an opportunity for a hearing. The Board will continue to publish final decisions under this section in the FEDERAL REGISTER.

Pursuant to its authority under sections 2(g)(3) and 5(b) of the Bank Holding Company Act, the Board has issued the following interpretation of section 2(g)(3) of the Act:

§ 225.139 Presumption of continued control under section 2(g)(3) of the Bank Holding Company Act.

(a) Section 2(g)(3) of the Bank Holding Company Act (the "Act") establishes a statutory presumption that where certain specified relationships exist between a transferor and transferee of shares, the transferor (if it is a bank holding company, or a company that would be such but for the transfer) continues to own or control indirectly the transferred shares.[1] This presumption arises by operation of law, as of the date of the transfer, without the need for any order or determination by the Board. Operation of the presumption may be terminated only by the issuance of a Board determination, after opportunity for hearing, "that the transferor is not in fact capable of controlling the transferee."[2]

(b) The purpose of section 2(g)(3) is to provide the Board an opportunity to assess the effectiveness of divesti-

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[1] The presumption arises where the transferee "is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor."

[2] The Board has delegated to its General Counsel the authority to issue such determinations, 12 CFR 265.2(b)(1).