§ 301.48(b) if: (a) The regulated article has been treated in accordance with the Treatment Manual, or (b) if the inspector, upon visual inspection, determines that the regulated article does not present a threat to spread the Japanese beetle because adult beetle populations are not present with regard to the particular regulated article, or (c) if the regulated article arrives and leaves the regulated airport during the same non-daylight period.

§ 301.48-5 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles and Japanese beetles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) in accordance with instructions issued by the Deputy Administrator.

§ 301.48-6 Movement of live Japanese beetles.

Regulations requiring a permit for and otherwise governing the movement of live Japanese beetles in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in Part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

§ 301.48-7 Nonliability of the Department.

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart other than for the services of the inspector.

(Secs. 8 and 9; 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; (7 U.S.C. 161, 162, 150ee); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions heretofore imposed, and should be made effective promptly in order to be of maximum benefit to the persons subject to the restrictions that are being relieved. Also, it does not appear that additional relevant information would be made available to the Department by further public participation in rulemaking proceedings on the amendment.

Accordingly, it is found, under the administrative procedure provisions of 5 U.S.C. 553, that further notice and other public procedure with respect to this amendment are unnecessary, and good cause is found for making it effective less than 30 days after publication in the **Federal Register**.

Done at Washington, D.C., this 20th day of April 1979.

This rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations," and has been designated "significant." A Draft Impact Analysis Statement has been prepared and is available from Plant Protection and Quarantine Programs, APHIS, Room 633, Federal Building, Hyattsville, MD 20782.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-12752 Filed 4-23-79; 8:45 am]

BILLING CODE 3410-10-M

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7 CFR Part 331

Emergency Plant Pest Regulations Governing Interstate Movement of Certain Products and Articles; West Indian Sugarcane Root Borer

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document gives notice of the existence of an emergency situation and regulations related thereto due to the discovery of the West Indian sugarcane root borer in shipments of plants to noninfested areas of the United States from Puerto Rico and the Virgin Islands of the United States (U.S. Virgin Islands). The emergency regulations regulate the movement from Puerto Rico and the U.S. Virgin Islands of plants and plant parts and plant products capable of propagation, and cut flowers. These emergency regulations are needed in order to prevent the spread of the West Indian sugarcane root borer.

EFFECTIVE DATE: April 24, 1979.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301-436-8247.

SUPPLEMENTARY INFORMATION: Infestations of the West Indian sugarcane root borer occur in Puerto Rico and the U.S. Virgin Islands. The pest is native to the West Indies, causing serious damage to agricultural crops, chiefly sugarcane. It also attacks citrus and other commercial crops including seed corn, sweetpotatoes, cotton, and peppers. The first infestation in the continental United States was found in Florida in 1968. The pest has been confined to a small portion of Florida in parts of Broward, Orange, and Seminole Counties. The State of Florida has promulgated regulations against this pest, and the Animal and Plant Health Inspection Service cooperates with Florida in its program to prevent artificial spread of the pest. Puerto Rico has regulations governing the growing and movement of nursery grown plants, but in spite of the inspection procedures in Puerto Rico, the West Indian sugarcane root borer continues to be found in shipments of nursery grown plants coming into the mainland U.S. Shipments of infested plants arriving in mainland ports of entry pose a threat of spreading the pest in the United States. Although at present there is minimal movement of plants and plant parts and plant products capable of propagation, and cut flowers directly from the U.S. Virgin Islands into other areas of the United States, there are frequent movements of these articles from the U.S. Virgin Islands into Puerto Rico. This presents opportunity for exposure to infestation and also for transshipments of infested plants and plant parts and plant products capable of propagation, and cut flowers to those other areas of the United States. Consequently, it is necessary to quarantine the U.S. Virgin Islands as well as Puerto Rico because of the risk of spreading the pest. Therefore, Federal regulations are needed to prevent the spread of the West Indian sugarcane root borer with nursery grown plants and plant parts and plant products capable of propagation, and cut flowers from Puerto Rico and the U.S. Virgin Islands to other areas of the United States.

Based on the above information, Mr. James O. Lee, Jr., Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, has determined that, in order to prevent the possibility of artificially spreading the West Indian sugarcane root borer with plants and plant parts and plant products capable of propagation, and cut flowers to noninfested areas of the United States, emergency regulations restricting the movement of such regulated articles from Puerto Rico and the U.S. Virgin Islands to other areas of the United States must be promulgated immediately. The emergency exists because there is a possibility that those articles listed as regulated articles can carry the West Indian sugarcane root borer to other areas of the United States, unless they have been treated or have not been exposed to the infestation.

Therefore, Chapter III, Title 7 of the Code of Federal Regulations, is hereby amended by adding to Part 331, a new § 331.7 and a subpart heading preceding said section, as follows:

Subpart—West Indian Sugarcane Root Borer

§ 331.7 Notice of existence of emergency and regulations related thereto.

(a) *Definitions.* For the purposes of the regulations in this subpart, the following terms shall be contrued, respectively, to mean:

Certificate. A document issued by an inspector to allow the movement to any destination of regulated articles that have been treated, or inspected by an inspector and appear to be free from the West Indian sugarcane root borer, or originate in an area found by an inspector to be free of West Indian sugarcane root borer.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of the Service, to whom authority to act in his stead has been or may hereafter be delegated.

Inspector. An employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the regulations in this subpart.

Limited permit. A document issued by the inspector to allow the movement of regulated articles from Puerto Rico and U.S. Virgin Islands to a specified destination.

Move. "Move" means ship, deposit for transmission in the mail, otherwise offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move or allow to be moved, by mail, or otherwise. "Moved" and "Movement" shall be construed accordingly.

Plants. Plants for or capable of propagation including annuals, biennials, both herbaceous and woody perennials, and also all plant parts and plant products thereof capable of propagation including nursery stock, cuttings, grafts, scions, and understocks.

Regulated Article. Any articles as described in § 331.7(c).

Treatment. Procedures prescribed by the Deputy Administrator to destroy infestation as authorized in the Plant Protection and Quarantine Treatment Manual[1,2] and West Indian Sugarcane Root Borer Program Manual.[1,3] "Treat" and "Treated" shall be construed accordingly.

Under the direction of. Monitoring treatments to assure compliance with the requirements in this subpart.

United States. The States, the District of Columbia, Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands of the United States.

(b) Infestations of the West Indian sugarcane root borer (*Diaprepes abbreviatus* (L.)), a dangerous plant pest not widely prevalent or distributed within and throughout the United States, have been found in Puerto Rico and the Virgin Islands of the United States (U.S. Virgin Islands) and in shipments of plants and plant parts and plant products capable of propagation, and cut flowers from Puerto Rico. Therefore, as an emergency measure to prevent the interstate spread of West Indian sugarcane root borer, the following rule, which imposes restrictions upon the movement of certain products and articles from Puerto Rico and the U.S. Virgin Islands into other areas of the United States, is adopted. The products and articles specified in paragraph (c) of this section shall not be moved from Puerto Rico and the U.S. Virgin Islands into other areas of the United States unless—

(1) Such regulated articles have been subjected to treatment to destroy West Indian sugarcane root borer under the direction of an inspector and the regulated articles are accompanied by a certificate; or

(2) Such regulated articles are accompanied by a certificate and originate from an area in Puerto Rico or the U.S. Virgin Islands that has been inspected by the inspector and has been found to be free from West Indian sugarcane root borer; or

(3) Such regulated articles originate from Puerto Rico or U.S. Virgin Islands and, upon inspection, the inspector determines such regulated articles to be free of West Indian sugarcane root borer and the regulated articles are accompanied by a certificate; or

(4) Such regulated articles are moved under a limited permit to a destination where the movement will not result in the spread of West Indian sugarcane root borer and the movement will not violate any other applicable Federal domestic quarantine, as determined by the Deputy Administrator and destination State officials.

(c) The following products and articles are subject to the emergency measures imposed under this section:

(1) All plants and plant parts and plant products capable of propagation:

(2) Cut flowers.

[1] Pamphlets containing such provisions are available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, APHIS, U.S. Department of Agriculture, Washington, D.C. 20250, or from an inspector.

[2] Note: Incorporation by reference of the Plant Protection and Quarantine Treatment Manual approved by the Director, Office of the Federal Register on June 15, 1978, and copies of the manual are on file at the Federal Register.

[3] The West Indian Sugarcane Root Borer Program Manual is published as an appendix to these regulations.

Appendix.—United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, December 1978

West Indian Sugarcane Root Borer Program Manual

Contents—Authorization and Notice

Authorization

This manual contains instructions for program activities concerning the West Indian Sugarcane Root Borer (*Diaprepes abbreviatus*).

The Federal regulations as they apply to West Indian sugarcane root borer set forth the conditions governing the movement of regulated articles.

One of the provisions for issuing certificates is the treatment of articles under the direction of an authorized officer in accordance with administratively approved procedures.

Procedures outlined in Section III of this manual are administratively authorized for the treatment of the listed articles. Other articles which may require treatment to prevent spread of the West Indian sugarcane root borer, as determined by an officer, likewise may be treated in accordance with procedures contained herein.

These treatment procedures are based on information developed by both State and Federal agencies.

Notice

Recommendations in this manual which involve the use of pesticides concern products which have been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Precautions on the pesticide label and all instructions in this manual must be carefully followed.

Plant Protection and Quarantine Programs personnel may not make any warranty or representations, expressed or implied, concerning the use of these pesticides and shall not be responsible for any loss, damage, or injury sustained as a result of the use of any pesticide as specified in this manual.

The use of trade names in this manual does not imply an endorsement of those products or of the manufacturers thereof by Federal/State pest control programs.

Dated: January 25, 1979.

James O. Lee, Jr.

Deputy Administrator, Plant Protection and Quarantine Programs.

500 West Indian Sugarcane Root Borer (*Diaprepes Abbreviatus.*) Program Manual

I. General Information

A. *Economic Importance.*—The West Indian sugarcane root borer, a member of the family Curculionidae (snout beetles or weevils), has been a serious pest primarily of citrus and sugarcane. Damage is caused by both the adult and larval forms. The larval forms can cause more severe damage than the adults. Larval damage to citrus roots is in the form of girdling and channeling through the cambium. Frequently the tap root is the intial target and is girdled causing the root to die. The lateral roots are also attacked. This type of root feeding causes a general decline in the condition of the tree and during prolonged droughts can kill the tree. A secondary effect of this type of feeding is that it leaves the roots vulnerable to fungus diseases such as Phytophthora root rot. This has been observed in citrus nursery plantings and commercial groves in the Florida infested area. If control measures are not used, the trees become unproductive to the point where they are of little commercial value and should be removed. Adult feeding is usually in the form of typical weevil notching around the edges of leaves, primarily on new growth. This also can be of economic importance if allowed to go uncontrolled. Prior to the beginning of the foliage spray program in Florida, heavy infestations completely stripped citrus trees of new growth. Certain species of native trees in Puerto Rico are occasionally defoliated.

In 1964 a single adult specimen of *Diaprepes abbreviatus* was collected in a citrus nursery at Apopka, Florida. This area was kept under surveillance; however, no additional specimens were collected until September 1968 when an adult and several larvae were collected at the original site. Additional surveys were begun immediately, and approximately 5,000 acres of citrus in the Apopka and Plymouth, Florida, areas have been found infested.

B. *Distribution.*—The insect occurs in Puerto Rico, Haiti, Dominican Republic, Mona Island, Guadeloupe, Martinique, St Lucia, Monserrat, St. Vincent, Barbados, Tortola, St. Thomas, and St. Croix. Two separate infestations have been found in Florida, mostly in Orange and Seminole Counties and a small infestation in Broward County.

C. *Hosts.*—The adults are general feeders. Economic loss occurs to citrus and sugarcane. Among numerous secondary hosts are: avocado, cotton, beans, rose, mombin, coffee, vegetables, various live roots or tubers, mango, various trees, potato, tobacco, celery, pineapple, yam, cut flowers, and prickly pear.

The name West Indian sugarcane root borer was probably given because it was first found on sugarcane. Citrus is the primary host in Florida.

D. *Life History.*— The exact life history has not been determined for the Florida infested area.

In the Florida area, adults begin to emerge from the soil in great numbers during early May through October. They are found in considerably fewer numbers in November through April. Oviposition occurs from three to seven days after emergence and often continues daily for several months. The number of eggs per cluster averages about 75 under Florida field conditions, and a single female may lay more than 5,000 eggs during her life. The eggs are usually in a single layer, often with the cluster irregularly shaped. They are laid beween leaves stuck together with an adhesive produced by the female. Often the female has used so much adhesive in holding the leaves together that the larvae cannot get out immediately and must wait until others have hatched and escaped at points where the adhesive is less abundant. In Florida, dead larvae have been found sealed between the leaves. Apparently, they were unable to break the seal and died. Egg clusters may be found by looking for two leaves stuck together in an unnatural manner.

The eggs hatch almost uniformly in seven days. The newly hatched grubs move across the leaf surface and fall to the ground. Normally they do not burrow into the soil immediately but continue to move over the surface for several days. Then they burrow into the ground and find suitable roots for food. As they increase in size, they travel considerable distances through the soil. The larger grubs are seldom concentrated at points near where the eggs are laid.

According to Wolcott, the number of molts is extremely variable, from six to sixteen, with eight being the average. Wolcott described a diapause period before the mature larva pupates which may last from two to thirteen months. However, he states that this does not appear to be a true diapause because of grub movement in the soil. Prior to pupation, a vertical chamber is formed in the soil in which the larva in a head-up position compacts the soil by spinning on its caudal end. Pupation occurs within two or three weeks after the chamber is formed. The pupal period lasts from two to three weeks. The newly formed adults remain in the pupal chamber for a minimum of 11 days and a maximum of 126 days. Considerable variation also occurs in the length of time from larval hatch to pupation. This contributes to a total life cycle of less than 1 year to more than 2 years. Due to this variable, adults have been observed to be active during all months of the year.

(Wolcott, G. N., 1936. The Life History of *Diaprepes abbreviatus* at Rio Piedras, Puerto Rico. Journal Agr. Univ. Puerto Rico 20(4):883–914)

The following is a diagram of the life cycle from observations in Puerto Rico: Egg—— Larva——(7 days) (6 to 16 instars + diapause)——pupae——(less than 1 year or over 2 years) adult (2–3 weeks).

E. *Description.*—The adult weevils are highly variable in color pattern and size. Rarely are two identical specimens found. Specimens sometimes show a pale green reflection, especially on the pronotum. The weevils are really black, but thickly covered with minute white or bright-colored scales on the elytra or wing covers. These round or oval scales on the ridges of the elytra are often rubbed off, greatly changing the appearance of the weevils by forming a pattern of denuded black bands on a white or light-colored background. The color of the scales varies from white to bright orange, red, or yellow. The length of the adult varies from 9.5 to 19mm (⅜ to ¾ inches), the females averaging larger than the males. The sexes can be distinguished externally by an examination of the last segment of the ventral surface of the abdomen. In the female the sides of this segment are straight and converge to a distinct point at the tip, while in the male the sides are somewhat curved, curving in towards the rounded tip of the segment.

The eggs, laid in clusters, are oblong-oval, smooth, glistening, and about 1.2mm long by 0.4mm in diameter. Those about to hatch have a brownish tinge at one end, and the mouthparts of the larva contained within are visible through the walls of the egg.

The larvae are white, legless grubs about 13mm (½ inch) long in the last molt. The head has a variable pattern of light and dark areas. They are similar in general appearance to the citrus root weevil.

II. Survey Procedures

A. *General.*—Survey for the West Indian sugarcane root borer is dependent upon visual inspection of the citrus trees and examination of the flush or new growth for feeding signs. The adult weevil is easily identified, but the feeding signs very closely resemble that of native pests of citrus.

Survey for adult weevils is most effective from early May to late October. The greatest buildup of adults occurs during the months of September and October. The adults feed primarily on the tender new growth. They are capable of flight but rarely do so and then for only a short distance. They are easily shaken off the leaves but attach themselves firmly to the next object that they contact. When the adults fall to the ground, they hide quickly and are difficult to find. The weevils are social in nature and usually two or more are found on the terminal leaves of infested trees.

The adult weevil begins feeding on the leaf margin and in light to medium infestations the damage consists of a series of circular or oblong cuts around the leaf margin. The cuts are always smooth and never serrated. Fecal smears may be present on the leaf, but this is not a constant characteristic. Adult weevils may be found feeding on new (tender) foliage anywhere on the tree, but they seem to prefer the upper portion of the trees.

Larval surveys are not recommended for detection or delimiting but, if digging for larvae is necessary, it is most effectively done during the months of February, March, and April. The larvae are usually found from depths of 15–122 cm (6 inches to 48 inches), but the greater number are usually found under the crown roots of the tree at a depth of 15–30cm (6 to 12 inches).

B. *Survey in Regulated Areas.*—1. Adult weevil surveys in citrus to determine the need for control is carried out by three-man crews utilizing a survey platform and shaking sticks. The survey platform is approximately 2.5 meters (8 feet) high when mounted on a 4-wheel drive vehicle. The platform is fitted with a railing for safety purposes. The crew consists of two officers on the platform who are equipped with 2 meter (6-foot) long sticks with hooks for shaking the foliage. The vehicle proceeds through every third middle of the grove between two rows of trees at a slow rate of speed, and the men on the platform observe the trees on either side for feeding signs on the flush growth. If suspicious feeding signs or an adult weevil is found, the vehicle stops and the foliage is shaken. The driver stands where he can observe any falling weevils and collects them. Light colored sheeting may used as a ground cover to collect falling adults.

A population level at which control should be implemented will be established prior to survey. When this level is reached, survey should be discontinued.

2. Larval surveys should be based on past adult history. Trees with old feeding signs are also good indicators. Trees in a decline condition may also mean heavy larval feeding damage. A shovel is used to dig under the tree, usually the area around and under the crown roots is most productive. The soil is placed into a mechanical shaker equipped with a ⅛ inch mesh screen. As the soil passes through the screen, the larvae are readily visible. If a mechanical shaker is not available, a screen can be utilized with a hand cradle.

C. *Delimiting Surveys.*—A delimiting survey is conducted using the same procedure as adult surveys in the regulated area. When one weevil is found the entire grove should be considered infested and survey crews should move to the adjacent property. Surveys should extend one mile beyond known or discovered infestations.

D. *Detection Surveys.*—Detection survey is based on biometrical concepts and a grid sampling design. The area to be surveyed must be precisely defined. Survey points are plotted on U.S. Geological Survey topographic maps (1:24000) using a plastic template with holes 25 mm (1 inch) apart. Approximately seven locations per section (259 hectares or 640 acres) are marked and are surveyed if they fall within a citrus grove. To assure a 95 percent probability of detecting a 0.10 percent infestation rate, not less than 3000 of these points must be inspected.

In Citrus: A three-man crew equipped with an elevated platform mounted on a 4-wheel drive vehicle (IHC Scout) and shaking sticks locates the survey point in the field and inspects .5 kilometer (one-third linear mile) of citrus row. This represents a 0.4 hectare (1-acre) survey at each location. If the grid survey mark should fall within a city, then the area is located and dooryard citrus and other possible host plants are inspected on a city block.

E. *Tools.—Survey Platform.* An elevated platform mounted on a 4-wheel drive vehicle allows the survey crews to observe feeding signs at a much greater height. Since the weevil prefers the higher levels of the tree, this increases the chances of finding an infestation.

Shaking Stick. A 2 meter (6-foot) long stick similar to a hoe or shovel handle with a hook attached is used to shake the higher limbs that could not be reached otherwise. A white plastic sheet may be placed under the tree to catch falling insects.

Mechanical or Hand Shaker. A mechanical shaker equipped with a 3.2 mm (⅛ inch) mesh screen has worked well and is more reliable and much faster than hand sifting the soil in detecting larval infestations.

F. *Maps.*—Aerial photographs (scale 8 inches to 1 mile) are very useful for survey maps in infested areas. Each infested area is divided into 259 hectare (640-acre) sections containing the infested properties. The area is designated by a Roman numeral, the section by a letter of the alphabet, and the properties by Arabic numerals (i.e., II B–10). An accurate history of each property can be kept by use of this identification code.

A drawing of each section containing outlines of commercial citrus and roads can be made with tracing paper. Copies of these tracings are better utilized for survey by the field crews because of their smaller size. U.S. Geological Survey topographic maps are utilized for detection survey. These maps show types of terrain and vegetation and the survey points can be plotted on the areas containing citrus. A county highway map (scale ½ inch to 1 mile) can be used as a master map in the office showing general areas covered.

All maps should be kept current to accurately reflect host growing areas, infestated and regulated areas, etc.

III. Regulatory Procedures

A. *Instructions to Officers.*—Officers must know and follow instructions in this manual as a basis for the treatment or other procedures to be followed in authorizing the movement of regulated articles. This manual will serve as a basis for explaining such procedures to persons interested in moving articles affected by quarantine regulations. Only the treatments or other procedures authorized herein shall be utilized.

Officers will furnish complete information to anyone interested in moving regulated articles. The shipper may select the procedure which appears to be most practical from his standpoint. Officers may guide shippers in the selection of authorized procedures.

The shipper should be advised to apply selected treatments to small quantities of material prior to treating larger quantities to assure that there will be no injury. Shippers should be advised to provide treating material in reasonable excess of calculated amounts to provide for unavoidable losses.

Monitoring inspection will be conducted to assure correct application of treatments and procedures.

B. *Authorized Chemicals.*—The following chemicals are authorized for treatment of regulated articles for West Indian sugarcane root borer:

Chemicals: acephate, carbaryl, heptachlor, Abate®, Dursban®.

C. *Approved Treatments.*—Articles will be certified for movement based on the following treatments or procedures:

1. Potting and Bench Soil.

Material: Heptachlor 5G.

Dosage: 4 ounces per cubic yard (0.2 ounce AI/cubic yard).

Certification Period: Three years or as long as protected from contamination.

BILLING CODE 3410-34-M

Special Information: Heptachlor is restricted for use as a soil treatment for bedded nonbearing citrus nursery stock which is at least 2 years from commercial fruit production and for potted ornamentals.

2. UNROOTED CUTTINGS WITHOUT FOLIAGE.

Cuttings must be completely free of foliage prior to moving to packing area, packed in approved packing area in containers free of any life stages of Diaprepes and protected from contamination until leaving regulated area.

3. UNROOTED CUTTINGS WITH FOLIAGE.

MATERIAL AND DOSAGE

Material	Mixing Instructions			Application	Insecticide Actual
		U.S.	Metric		
carbaryl	80WP Sticker* Water	1.56 lbs. 4 oz. 100 gal.	0.7 kg 118 ml 378.5 L	Apply as a spray to point of runoff or dip foliage.	1.25 lbs. per 100 gallons
acephate	75 S Sticker* Water	0.67 lb. 4 oz. 100 gal.	030 kg 118 ml 378.5 L	Apply as a spray to point of runoff or dip foliage.	0.5 lb. per 100 gallons

*such as Nu-Film 17

Special Information. The pH of water used in mixing pesticides must be checked and adjusted within a range of pH 6.0-7.0 prior to mixing. The pH should be adjusted with commercially available phosphoric acid (85 percent). Generally, 31 ml. (one ounce) of phosphoric acid will adjust 1900 liters (500 gallons) of water from a pH of 9.0 to the acceptable level.

(1) Move (within 24 hours) after treatment to approved storage and hold therein for at least 10 days, and

(2) Pack in pest-free containers in approved packing area, and protect from contamination until leaving regulated area.

Caution: Plants treated with acephate must have all edible fruit, green or mature, removed prior to treatment.

4. ROOTED CUTTINGS AND POTTED OR BALLED ORNAMENTAL PLANTS WITH FOLIAGE.

a. Grown in approved enclosure, in sterile media, on benches at least 18 inches above ground level or on approved floors.

Or

BILLING CODE 3410-34-C

b. Treated as follows: (1) Foliage sprayed or dipped with carbaryl or acephate as in 3 above, *and*

(2) Moved to approved enclosure within 24 hours and held for at least 10 days, *and*

(3) Dip treated with Dursban or Abate as follows:

Abate: Dosage: 2.69 pounds AI/100 gallons Abate-water mixture.

Exposure Period: To the saturation point.

Dursban: Dosage: 2.0 pounds AI/100 gallons Dursban-water mixture.

Exposure Period: To the saturation point, and

(4) Packed in pest-free containers in approved packing area and protected from contamination until leaving regulated area.

Note.—Plants shipped from Puerto Rico and the U.S. Virgin Islands are not permitted in soil. (7 CFR 318.60)

BILLING CODE 3410-34-M

IV. CONTROL

A. PURPOSE

To provide population suppression of adults to minimize spread, or as a supplemental treatment for regulatory purposes. (See section III of this manual.)

B. AUTHORIZED CHEMICALS

acephate
carbaryl

C. TREATMENTS

Commercial citrus groves.

1. Using Hydraulic sprayers

MATERIAL AND DOSAGE

Material	Mixing Instructions			Application	Actual Insecticide
		U.S.	Metric		
carbaryl	80 WP Sticker* Water	1.56 lbs. 4 oz. 100 gal.	0.7 kg 118 ml 378.5 L	Apply to point of run off	1.25 lbs. per 100 gallons
acephate	75 S Water Sticker*	0.67 lb. 100 gal. 4 oz.	0.30 kg 378.5 L 118 ml	Apply to point of run off	0.5 lb. per 100 gallons

*such as Nu-Film 17

Special Information. The pH of water used in mixing pesticides must be checked and adjusted within a range of pH 6.0-7.0 prior to mixing. The pH should be adjusted with commercially available phosphoric acid (85 percent). Generally, 31 ml. (one ounce) of phosphoric acid will adjust 1900 liters (500 gallons) of water from a pH of 9.0 to the acceptable level.

2. Aerial application by helicopters or fixed wing aircraft.

MATERIAL AND DOSAGE

Material	Mixing Instructions			Application	Actual Insecticide
		U.S.	Metric		
acephate	75 S Sticker* Water	1.25 lbs. 0.2 oz. 5 gal.	0.6 kg 6 ml 20 L	5 gal.(18.925L) per acre 46.76 L per hectare	1.0 lb./acre or 1.12 kg/hectare

*such as Nu-Film 17

Caution: Fruit treated as a result of treatments with acephate shall not be harvested for a minimum of 21 days following treatment.

V. SAFETY PRECAUTIONS

Pesticides, if improperly used, may injure people, wildlife, bees, etc., or damage regulated articles.

Officers must follow safety precautions on the pesticide label. A list of poison control centers is located in each PPQ vehicle.

FIRST AID SUGGESTIONS

In case of accidental poisoning or as soon as any person shows symptoms of having been affected by any pesticides:

1. Remove the victim to a place where he will be safe from any further contact with the pesticide.

2. Cause the victim to lie down and remain quiet.

3. CALL A PHYSICIAN and inform him/her as to the name and formulation of the pesticide in use and as to any first aid given.

4. If needed, the local poison control center telephone number may be found on the inside front cover of the local telephone directory.

BILLING CODE 3410-34-C

(Sec. 105, 71 Stat. 32, sec. 106, 71 Stat. 33, sec. 107, 71 Stat. 34 (7 U.S.C. 150aa–150jj); 37 FR 28464, 28477, as amended; 38 FR 19141)

Due to the possibility that West Indian sugarcane root borer could be spread artificially to other areas of the United States, an emergency situation exists requiring immediate action to control the spread of this pest, a dangerous plant pest which is not widely prevalent or distributed within and throughout the United States.

Therefore, it is found upon good cause under the administrative procedure provisions of 5 U.S.C. 553, that further notice and public participation regarding this regulation are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making said regulation effective less than 30 days after publication in the **Federal Register.**

Done at Washington, D.C., this 18th day of April 1979.

Note: This final rulemaking is being published under emergency procedures as authorized by E.O. 12044. It has been determined by James O. Lee, Jr., Deputy Administrator, Plant Protection and Quarantine Programs, APHIS, that the possibility of the spreading of the West Indian sugarcane root borer into the United States from Puerto Rico and the U.S. Virgin Islands through plant and plant parts and plant products capable of propagation, and cut flowers is severe enough to warrant the publication of this amendment without waiting for public comment. An impact analysis statement will be prepared and will be available from Plant Protection and Quarantine Programs, APHIS, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8249. In addition the regulations covering West Indian sugarcane root borer will be scheduled for review under provisions of E.O. 12044.

J. F. Spears,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79–12500 Filed 4–23–79; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1822

Rural Rental Housing Loan Policies, Procedures, and Authorizations; Amendment

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule with comments requested.

SUMMARY: The Farmers Home Administration amends its regulations regarding the terms of Rental Assistance Agreements. The intended effect of this action is to eliminate confusion concerning present definitions and to permit five year terms to be used on some new construction projects. This change will also clarify the modification of Rental Assistance Agreements.

DATES: Effective April 24, 1979. However comments must be received on or before June 25, 1979.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Russell Gibler, Phone: 202–447–7207.

SUPPLEMENTARY INFORMATION: Paragraph IX B of Exhibit R, Subpart D, Part 1822, Chapter XVIII, Title 7 in the Code of Federal Regulations is amended so that the term "For New Construction" is changed to read "Twenty (20) Year Agreement" and the term "For Existing" is changed to read "Five (5) Year Agreement." This will provide for a more descriptive definition of the terms. Added to the definitions is a provision for modification of a Rental Assistance Agreement.

It is the policy of this Department that rules relating to public property loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules.

This amendment however, is being published effective immediately but with comments requested. This action is being taken since this change helps to ensure that no low income person or family will be denied the benefits of rental assistance by allowing for the use of 5 year agreements when 20 year agreements are available for new projects. Therefore this form is used to eliminate any delay in the development of additional housing for low income persons and at the same time permit public participation in the rulemaking process. Comments made pursuant to this notice will be considered. This determination has been made by Russell Gibler.

Therefore, Exhibit R paragraphs IX B 1 and 2 are revised and IX B 3 is added and read as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

EXHIBIT R [AMENDED]

IX. *Terms of the Rental Assistance Agreement.*

* * * * *

B. *Terms*

1. Twenty (20) Year Agreement. The term of an agreement shall be for a period of twenty (20) years from the effective date of the agreement for new construction projects in which no unit has been occupied. This agreement may be superseded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. Upon expiration of the twenty (20) year period, a new agreement may be executed. If a new agreement is considered, it will be made for a period not to exceed five (5) years.

2. *Five (5) Years Agreement.* The term of an agreement shall be for a period of five (5) years from the effective date of the agreement for existing projects when twenty (20) year agreements are not available. This agreement may be superseded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. Prior to the termination date of any agreement, a new Form FmHA 444–25, "Request for Rental Assistance," may be submitted. If a new agreement is consummated, it will be made for a period not to exceed five (5) years. A project will be considered existing if one or more units have been occupied.

3. *Modifications.* To modify the number of units assigned to any project, units of the same term as the original agreement will be used. Mixing of agreement terms in any given project is prohibited.

* * * * *

Note.—This regulation has not been determined significant under USDA criteria implementing Executive Order 12044.

Note.—This document has been received in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Authorities: Delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

Dated: April 5, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FmHA Instruction 444.5]

[FR Doc. 79–12616 Filed 4–23–79; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments

Correction

In FR Doc. 79-10853, appearing at page 20632, in the issue of Friday, April 6, 1979, on page 20633, make the following corrections:

(1) In the first column in paragraph 15, in the second line, correct "Article III" to read "Article II".

(2) In paragraph 17, in the first line, correct "Appendix G" to read "Appendix H".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

10 CFR Part 205

Administrative Procedures and Sanctions; 1979 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached is the Interpretation issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period March 1, 1979, through March 31, 1979.

Appendix B identifies those Requests for Interpretation which have been dismissed during the same period.

FOR FURTHER INFORMATION CONTACT: Diane Stubbs, Office of General Counsel, Department of Energy, 12th & Pennsylvania Avenue NW., Room 1121, Washington, D.C. 20461 (202) 633-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the **Federal Register** in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These 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)). The Interpretations published below are not subject to appeal.

Issued in Washington, D.C., April 10, 1979.

Everard A. Marseglia, Jr.,

Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

Appendix A—Interpretations

No.	To	Date	Category	File No.
1979-03	Sinclair Oil Corporation	March 5	Price	A-349

Interpretation 1979-5

To: Sinclair Oil Corporation

Regulation Interpreted: 10 CFR 210.62(a)

Code: GCW—PI—Normal business practices

Facts

The Sinclair Oil Corporation, a small and independent refiner subject to 10 CFR Part 212, Subpart E, markets petroleum products through its subsidiary, Sinclair Marketing, Inc. (Sinclair). Since May 1973, Sinclair's standard contracts with jobbers and dealers for the sale of motor gasoline have required payment in full within 30 days. Payment in full within 10 days has entitled a purchaser to a 1 percent discount on the purchase price. Sinclair has considered an account outstanding for more than 30 days to be in default and subject to suit. In that instance, collection costs would be assignable to the account. At the present time, Sinclair desires to modify its standard contracts for the sale of motor gasoline to require a finance charge of one and one-half (1½) percent monthly on the balance of all accounts not paid within 30 days. No other credit terms are to be changed.

Issue

Does Sinclair's proposal to assess a finance charge on all delinquent accounts constitute the imposition of a more stringent credit term than the credit terms in effect on May 15, 1973, within the meaning of 10 CFR 210.62(a)?

Interpretation

For the reasons set forth below, the Department of Energy (DOE) has determined that Sinclair's inclusion of a 1½ percent monthly finance charge on all accounts not paid within 30 days in its standard contracts for the sale of motor gasoline would constitute the imposition of a more stringent credit term than the credit terms in effect on May 15, 1973, in violation of § 210.62(a).

The General Allocation and Price Rules, set forth at 10 CFR Part 210 and adopted on January 14, 1974, 39 FR 1924 (January 15, 1974), were intended to set forth the provisions applicable to both the Mandatory Petroleum Allocation Regulations (10 CFR Part 211) and the Mandatory Petroleum Price Regulations (10 CFR Part 212). The allocation and price regulations were adopted to implement the statutory mandate of Section 4(a) of the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, Pub. L. No. 93-159 (November 27, 1973).[1]

Section 210.62(a) regulates credit terms as a function of price in recognition of the varying roles that credit and other conditions of sale play in the flow of product.[2] Section 210.62(a) provides in relevant part:

"Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product, and no supplier may modify any normal business practice so as to result in the circumvention of any provision of this chapter . . . . Credit terms other than those associated with seasonal credit programs are included as a part of the May 15, 1973 price charged to a class of purchaser under Part 212 of this Chapter. Nothing in this paragraph shall be construed to require suppliers to sell to purchasers who do not arrange proper credit or payment for allocated products, as customarily associated with that class of purchaser . . . on May 15, 1973 . . . . However, no supplier may require or impose more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser . . . on May 15, 1973. . . ."

According to the facts presented by Sinclair, neither at the present time nor on

[1] 15 U.S.C. 751 *et seq.* (1976).

[2] Since the decision by the Temporary Emergency Court of Appeals in *Marathon Oil Co.* v. *FEA*, 547 F.2d 1140 (TECA 1976), there can be no doubt concerning the authority of the Federal Energy Administration (FEA) and its successor, the DOE, to regulate credit terms incident to the mandatory petroleum price regulations. In addition, the DOE has resolved issues similar to the one presented by Sinclair, concerning whether changes in credit terms are permissible in view of the provisions of § 210.62(a). *See Exxon Company, U.S.A.*, 2 DOE ¶80,150 (October 28, 1978); *Crystal Oil Co.*, 1 FEA ¶20,161 (October 8, 1974). In *Oil Transit Corp.*, Interpretation 1977-35, 42 FR 54269 (October 5, 1977), the DOE found that requiring purchasers of motor gasoline to incur for the first time the additional cost of obtaining letters of credit guaranteeing payment to Oil Transit would have the effect of imposing a more stringent credit term than the credit terms in effect on May 15, 1973, in violation of § 210.62(a). However, the DOE has not previously considered a case such as the present one where the proposed change in credit terms would apply only after the purchase price is due in full.

May 15, 1973, has the firm's payment schedule included any type of finance charge. Rather, under the terms of the Sinclair contracts, a purchaser who has failed to pay within 30 days is in default and is subject to suit for recovery of the purchase price. Additionally, the contracts provide that collection costs are assignable to the purchaser's account. Under these circumstances, Sinclair's proposed credit term constitutes a change in its normal business practices toward its base period customers. Under the proposed terms, a purchaser would be subject to suit not only for the amount due and any costs of collection but also for the 1½ percent interest charge being assessed monthly on his overdue account. That type of change in Sinclair's contracts would result in the imposition of a more stringent credit term than that in effect on May 15, 1973, since on that date Sinclair's purchasers were not required to incur the additional cost of a 1½ percent finance charge on any unpaid balance of the purchase price. Section 210.62(a) of the DOE regulations does not permit a firm to unilaterally impose a payment term of this type where none had existed on May 15, 1973.

This conclusion is also consistent with and furthers the underlying policy of § 210.62(a). In Section 4(b)(1)(B) of the EPAA, the Congress expressly directed that petroleum regulations be promulgated which, to the maximum extent practicable, provide for the maintenance of all public services, including services which serve the public at large. The threat of a new finance charge could inhibit the jobbers and dealers who have purchased motor gasoline from Sinclair from continuing to do so and thus frustrate or even interrupt the flow of Sinclair's product to the public.

The fact that § 210.62(a) does not require that a supplier sell to a purchaser who does not arrange proper credit or payment does not give Sinclair the authority to impose a finance charge on overdue accounts, nor does it give Sinclair the right to terminate a purchaser as soon as his account becomes overdue. In *Mack C. Colt, Inc.*, Interpretation 1978-56, 43 FR 40209 (September 11, 1978), a similar case involving a supplier/purchaser relationship, the DOE determined that § 210.62(a) permits termination of sales to a purchaser only where justified as to that individual purchaser by a substantial alteration of customary credit or payment terms by the purchaser to the disadvantage of the supplier. As the *Colt* Interpretation indicated, termination is permitted in most cases only where prior approval is obtained from the DOE. Therefore, under § 210.62(a), Sinclair's remedy would be to seek DOE approval to terminate sales to an individual purchaser.

An additional remedy available to Sinclair is to apply, under 10 CFR Part 205, Subpart D, for exception from the application of § 210.62(a) as interpreted. In a case where hardship results to a supplier from the application of § 210.62(a), he may apply for exception relief. Thus, Sinclair simply cannot impose new credit terms on all its purchasers alike.

Based on the considerations discussed above, we have concluded that Sinclair's proposed change in contracts with jobbers and dealers for the sale of motor gasoline would impose a more stringent credit term than the credit terms in existence on May 15, 1973, in violation of § 210.62(a).

Issued in Washington, D.C. on March 5, 1979.

Everard A. Marseglia, Jr.,
Acting Assistant General Counsel for Interpretations and Rulings.

Appendix B—Cases Dismissed

File No.	Requestor	Category	Date dismissed
A-350	National Association of Texaco Wholesalers, Inc	Price	March 27.
A-364	Red Triangle Oil Company	Price	March 29.
A-371	Main Lafrentz & Company	Conservation	March 1.
A-393	Texas City Refining, Inc	Enforcement/ Procedural.	March 23.
A-394	Magnolia Towing Company	Allocation	March 15.

[FR Doc. 79-12610 Filed 4-23-79; 8:45 am]

BILLING CODE 6450-01-M

10 CFR Part 205

Application of "Transaction" Definition to Variable-Price Contracts

AGENCY: Department of Energy.

ACTION: Ruling.

SUMMARY: The appended Ruling is issued by the Department of Energy (DOE) Office of General Counsel pursuant to 10 CFR 205.150 to set forth DOE's determination as to certain issues that have arisen with respect to the application of the term "transaction" (as defined in 10 CFR 212.31) to written variable-price contracts. A written comment of objection to the appended Ruling may be filed at any time with the DOE Office of General Counsel pursuant to the provisions of 10 CFR Part 205.153.

EFFECTIVE DATE: April 13, 1979.

FOR FURTHER INFORMATION CONTACT: Alex P. Haig, Department of Energy, Office of General Counsel, 12th & Pennsylvania Avenue, NW., Room 1115, Washington, D.C. 20461, (202) 633-8965.

Issued in Washington, D.C.

Dated: April 13, 1979.

Everard A. Marseglia, Jr.,
Assistant General Counsel for Interpretations and Rulings.

10 CFR is amended to the Rulings by adding appearing at the end of Chapter II the following Ruling 1979-1 to read as follows:

Ruling 1979-1

Modification of Ruling 1977-5: Application of the Definition of "Transaction" to Variable-Price Contracts for Purposes of Computing Lawful Weighted Average May 15, 1973 Prices

I. Introduction

On March 15, 1977, the Federal Energy Administration, ("FEA") a predecessor agency of the Department of Energy ("DOE"), issued Ruling 1977-5, 42 FR 15302 (March 21, 1977), which interpreted the term "transaction" as it is used in the Mandatory Petroleum Price Regulations applicable to refiners (Subpart E), resellers and retailers (Subpart F), and natural gas processors (Subpart K). The Ruling addressed the application of the definition of transaction to sales of covered products made pursuant to written fixed-price contracts, written variable-price contracts, or no written contract.

The Office of General Counsel of the Department of Energy (DOE) has reexamined Ruling 1977-5 with respect to the treatment of written variable-price contracts under the DOE price regulations. It has determined that the portion of Ruling 1977-5 applying the definition of transaction to such contracts is erroneous. Accordingly, this Ruling rescinds the portion of Ruling 1977-5 which addresses the treatment of variable-price contracts and clarifies the proper treatment of variable-price contracts under the price regulations. This action does not affect any of the other conclusions reached in Ruling 1977-5, or any formal Interpretations issued by FEA or DOE that are consistent with those conclusions.

As more fully explained below, with respect to sales of covered products made pursuant to a written variable-price contract, DOE is of the view that a transaction must be deemed to have occurred for purposes of the price regulations on the date when a binding contract was entered into between the parties. The transaction price is the price lawfully charged pursuant to the terms of such contract in deliveries occurring on May 15, 1973 or on the most recent day preceding May 15, 1973. If no such deliveries occurred, the transaction price is the price that would have been charged under the terms of the contract had a sale occurred on the day the contract was entered into. Sellers that have determined their prices to classes of purchaser in a manner consistent with this interpretation are considered to have complied with this aspect of the Mandatory Petroleum Price Regulations and should continue to determine lawful selling prices in that manner. However, for the period prior to the date on which this Ruling 1979-1 is issued, the DOE will not charge a firm with violations of the price regulations based on that firm's determinations of prices in accordance with the interpretation set forth in Ruling 1977-5.

II. Discussion of the Regulatory Language

A. Determining When a Transaction Occurred.

Under the Mandatory Petroleum Price Regulations, sellers of covered products (excluding first sales of crude oil, to which ceiling price rules may apply) may not charge a price in sales of covered products (as defined in 10 CFR 212.31) to a particular class of purchaser that exceeds the weighted average price at which the product was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, plus increased product costs and allowable non-product costs.

For example, for refiners, 10 CFR 212.82 and 212.83(a)(1) state:

"Maximum allowable price" means the weighted average price at which the covered product was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, computed in accordance with the provisions of § 212.83(a), plus increased product costs and increased non-product costs incurred between the month of measurement and the month of May 1973. * * *

A refiner may not charge to any class of purchaser a price for a covered product in excess of the maximum allowable price. * * *

Thus, in order to establish the maximum price that may lawfully be charged for a covered product, the seller must establish a weighted average price for each class of purchaser for transactions occurring on May 15, 1973. Where no transaction occurred on that day with respect to a particular class of purchaser, imputed price rules are used to determine a transaction price for that class of purchaser. For refiners, 10 CFR 212.83(a)(3) states:

"If no transaction occurred with respect to a particular product on May 15, 1973, the most recent day preceding May 15, 1973 when a transaction occurred shall be used for purposes of computing the maximum allowable price. * * *"

Therefore, the date on which a transaction occurred is significant under the price regulations because that date determines whether the price charged in that transaction will be used in computing the actual or imputed transaction price for the class of purchaser concerned. So long as a single transaction ocurred with respect to a particular class of purchaser on May 15, 1973, transactions with that class which occurred prior to May 15, 1973 will not be included in the computation of the weighted average price for such class of purchaser. Where no transaction occurred on May 15, 1973, with respect to a particular class of purchaser, transactions that occurred with that class on the most recent day preceding May 15, 1973 will be used. Thus, in determining its maximum lawful selling prices, a seller must first look to its lawful prices in transactions on May 15, 1973, or, if no transaction occurred on that date, to the most recent day preceding May 15, 1973 when a transaction occurred.

The definition of transaction in 10 CFR 212.31 is as follows:

"Transaction" means an arm's-length sale between unrelated persons which are not members of a controlled group (as defined in 26 U.S.C. 1563(a)) and *is considered to occur at the time and place when a binding contract is entered into between the parties.*" (Emphasis added.)

In Ruling 1977-5, FEA stated that written variable-price contracts did not become legally binding for purposes of the transaction definition until a delivery had been made pursuant to the contract. The FEA therefore concluded that no transaction occurred on or before May 15, 1973 under a variable-price contract unless there had been a delivery pursuant to the contract on or before May 15, 1973. We believe that this conclusion cannot be sustained in light of the express language of the transaction definition. We therefore conclude that the interpretation set forth in Ruling 1977-5 must be modified accordingly.

B. Determining a Price in Transactions Based Upon Written Variable-Price Contracts.

The definition in § 212.31 states, " 'Transaction' means an arm's-length sale. * * * " In the case of transactions based upon written fixed-price contracts, a price certain is specified in the contract and is used in every sale under the contract. Determining a transaction price pursuant to variable-price contracts entered into on or before May 15, 1973 poses an interpretative problem, however, because a variable-price contract does not contain any fixed price, but only a mechanism for establishing prices through time, and because sales made pursuant to a variable-price contract may be made at many different prices.

There are two key elements in the transaction definition which appears in § 212.31—an arm's-length sale and the existence of a binding contract between the parties pursuant to which the sale was made. The latter component of the definition is used for purposes of establishing the transaction date. The arm's-length sale requirement indicates that where possible, the transaction price is the price charged under a variable-price contract in actual sales occurring on May 15, 1973 or on the most recent day preceding May 15, 1973. This result is consistent with the rule as it applies to fixed-price contracts.

The transaction definition and the imputed price rules indicate that the sale occurring on May 15, 1973, or the most recent day preceding that date, must be used to determine the transaction price for a variable-price contract. Such a price would accurately reflect actual market conditions leading up to May 15, 1973 as anticipated by sellers and buyers in binding contracts, and would relate to the use of May 15, 1973 as a base for the entire price control system. Such sales also provide actual volumes to be used, where appropriate, for weight-averaging purposes.

If no sale occurred on or before May 15, 1973, DOE believes that the language of the regulations fixes the transaction price at the price that would have been charged had a sale been made on the day the contract was entered into. In order to determine a price when no contract with any member of the class of purchaser concerned was entered into on May 15, 1973, the imputed price rules provide that "the most recent day preceding May 15, 1973 when a transaction occurred," shall be used for purposes of computing the maximum allowable price and applying the price rules. Accordingly, under the language of the transaction definition, where there was no delivery, and thus no sale, on or before May 15, 1973 under the contract, the date when a binding contract was entered into is to be used to establish the transaction price. Thus, under a variable-price contract, such price should be determined as if a sale occurred on the day the contract was entered into.

III. Enforcement Considerations

The conclusions reached in this Ruling 1979–1 modify any contrary conclusions reached in Ruling 1977–5 and will apply to the computations of transaction prices for the period from August 19, 1973, forward. Price computations that were made before the issuance of this Ruling 1979–1 in accordance with the interpretation set forth in this Ruling are and shall continue to be in compliance with the requirements of the Mandatory Petroleum Price Regulations.

Prices that conform to the erroneous interpretation set forth in Ruling 1977–5, *i.e.*, where a variable-price contract was entered into on or before May 15, 1973, and where the transaction date and price were determined by the most recent delivery to May 15, 1973 pursuant to such contracts, will be considered as proper in limited circumstances. Principles of equity and administrative fairness (as well as procedural constraints on the imposition of sanctions or penalties for actions that comport with a formal Ruling that is subsequently modified by DOE) dictate that such computations be considered as proper under the Mandatory Petroleum Price Regulations for the period prior to the date this Ruling 1979–1 is issued. Accordingly, we have concluded in consultation with the appropriate DOE enforcement officials that for the period prior to the issuance of this Ruling 1979–1, prices in transactions based on variable-price contracts entered into on or before May 15, 1973 and determined in accordance with the interpretation in Ruling 1977–5 will also not be subject to enforcement action. As of the date this Ruling 1979–1 is issued, however, sellers must determine their transaction prices based on variable-price contracts entered into on or before May 15, 1973 according to the interpretation in this Ruling 1979–1.

Issued in Washington, D.C., April 13, 1979.

Lynn R. Coleman,

General Counsel.

[FR Doc. 79–12370 Filed 4–19–79; 11:52 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

10 CFR Part 213

Oil Import Regulations; Amendments To Conform Oil Import Regulations to Proclamation No. 4655

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this final rule to implement the terms of Presidential Proclamation 4655, which further amended Proclamation 3279. Proclamation 3279, as amended, provides for the long-term control of imports of petroleum and petroleum products through a system of licenses subject to fees.

On April 6, 1979, the President amended the Proclamation, effective April 1, 1979, in order to temporarily suspend both license fees and tariffs. The President's action was prompted by the continuing instability and shortages in international oil markets resulting from the reduction in Iranian oil exports. Under these market conditions, fees and tariffs serve no useful purpose and they were therefore suspended. Fees and tariffs will automatically be reimposed on July 1, 1979 unless the Secretary of Energy exercises the authority delegated to him to defer re-imposition of the fees and tariffs for a maximum of two six month periods.

Because the terms of the Proclamation are already in effect, these regulations are effective immediately in order to avoid the confusion which would result if DOE's superseded regulations were not also amended. A hearing will be held, and public comments received, after the effective date of these regulations in order to provide opportunity for public comment.

DATES: This final rule is effective upon issuance. A hearing on this rule will be held on May 22, 1979, in Washington, D.C., as more fully described in section IV below. Requests to speak at that hearing must be received by May 10, 1979. Written comments on the rule may be submitted until May 22, 1979.

ADDRESSES: Comments and requests to speak should be addressed to: Department of Energy, Public Hearing Management, Room 2313 (Docket No. ERA–R–79–20), 2000 M Street, N.W., Washington, D.C. 20461.

The hearing will be held at the following location: Department of Energy, Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert D. R. de Sugny, Department of Energy, Office of General Counsel, Room 5116, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–9380.

Robert R. Moore, Department of Energy, Economic Regulatory Administration, Office of Oil Imports, Room 6114, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–8620.

William L. Webb, Department of Energy, Economic Regulatory Administration, Office of Public Information, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.

Robert C. Gillette, Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Amendments to the Regulations.
III. Waivers of Rulemaking Requirements.
IV. Comment Procedure.

I. Background

Proclamation 3279, as amended, provides for the long-term control of imports of petroleum and petroleum products. Since 1973 the Proclamation has discouraged such imports by a system of licenses subject to the payment of fees. In light of the current international shortages of petroleum and petroleum product supplies engendered by the reduction in Iranian oil exports, continued imposition of the fees would be burdensome to consumers and detrimental to the domestic economy. In view of these circumstances the President on April 6, 1979, temporarily suspended imposition of both tariffs and license fees effective April 1, 1979. On July 1, 1979, fees and tariffs will be automatically re-imposed unless the Secretary exercises the authority delegated to him by Proclamation 4655 to continue the suspension. The Secretary may defer the re-imposition of fees for a maximum of two six month periods upon a finding that re-imposition of the fees and tariffs would not be in accordance with the purposes of Proclamation 3279, as amended. The Secretary may make such a finding with respect to "any type of crude oil, unfinished oil, or finished product."

It should be noted that although fees and tariffs have been temporarily suspended, a license is still required before anyone may enter crude oil, unfinished oils, or petroleum products into the United States. Licenses which have been issued prior to this amendment, regardless of whether or not they were of a type subject to the payment of a fee, may continue to be used according to their terms. Entries made pursuant to a prepaid license during any period that the $0.00 fee is in effect for the entry are not subject to the payment of fees. Persons holding such licenses may apply for a refund, under § 213.35(d)(2)(ii) of the regulations, as additional entries are made against the license, or the person may apply for a refund for all amounts prepaid in excess of any obligations incurred prior to April