

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY
ADMINISTRATION¹

[Docket No. ERA-R-77-5]

PART 212—MANDATORY
PETROLEUM PRICE REGULATIONS"Transfer" or "Plant Gate" Pricing of
Natural Gas Liquids by Gas Processors
and Refiners

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Suspension of effective date of amendment; notice of public hearing concerning certain rulemaking petitions.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby suspends until further notice the effective date of that portion of amendment No. 1 to subpart K of the Mandatory Petroleum Price Regulations (10 CFR 212.161 et seq.), issued on September 14, 1978 (43 FR 42984, Sept. 21, 1978), which would delete the phrase, "including transfers between affiliated entities," from the provisions of 10 CFR 212.161(a). All other amendments to subpart K set forth in the above-cited notice become effective as scheduled on November 1, 1978.

The ERA also hereby gives notice of a public hearing to receive comments upon certain matters raised in recent petitions for rulemaking concerning the subject of "transfer" or "plant gate" pricing of natural gas liquids under subpart K, namely, whether the prohibition on "transfer pricing" under subpart K should be eliminated or modified, and allegations of procedural deficiencies in deleting the phrase in question. In addition to gas processors, ERA hopes to hear from independent marketers of natural gas liquid products and consumer groups and other members of the public.

Nothing in this notice or in the issuance of this notice is to be construed as a revision or modification of the agency's previously stated position that "transfer" pricing is not permitted under the current provisions of subpart K.

DATES: Hearing dates: Washington, D.C. hearing: December 7, 1978, 9:30 a.m., and continued if necessary at 9:30 a.m., at the same location of the next day or days.

Requests to speak by November 24, 1978, 4:30 p.m.

ADDRESSES: Requests to speak to. Public Hearing Management, Docket

¹Chapter II will be renamed at a later date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

No. ERA-R-77-5, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Washington, D.C. hearing: 2000 M Street NW., Room 2105, Washington, D.C. 20461

FOR FURTHER INFORMATION
CONTACT:

Robert C. Gillette (Comment Procedures) Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

Rue Dann (Media Relations), Department of Energy, 2000 M Street NW., Room 6308E Washington, D.C. 20461, 202-254-8690.

Nancy E. Williams (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 8222, Washington, D.C. 20461, 202-632-8494.

Cliff G. Russell or Kristina Clark, (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9567.

SUPPLEMENTARY INFORMATION:

- I. Background and general purpose of this proceeding.
- II. Hearing procedures.

I. BACKGROUND AND GENERAL PURPOSE
OF THIS PROCEEDING

On September 14, 1978 (43 FR 42984, September 21, 1978), we issued a final rule amending portions of subpart K of the mandatory Petroleum Price Regulations (10 CFR 212.161 et seq.). Subpart K generally governs the pricing of natural gas liquids (NGLs) and natural gas liquid products (NGL products) produced in natural gas processing plants. The principal purpose of the final rule was to provide specific rules for the calculation and pass-through of allowable processing and marketing costs in NGL and NGL product prices.

As part of the final rule, we adopted an amendment to 10 CFR 212.161 which, among other things, deleted the phrase, "including transfers between affiliated entities," from the provisions of §212.161(a). This was done, for the reasons generally set forth in 43 FR 42984, at 42994-42996, primarily to clarify the application of the existing regulations. We recognized the possibility that there might be some policy reasons for making a prospective change to the regulations to permit "transfer" or "plant gate" pricing, but we did not believe that we had adequate information upon which to assess the reasons pro and con or the impact of such a change.

Since the issuance of the September 14 notice, we have received several pe-

titions for rulemaking concerning the "transfer price" issue. These petitions in effect request us to stay the effective date of the deletion of the phrase, "including transfers between affiliated entities," and to initiate further rulemaking proceedings to adopt a "transfer" or "plant gate" price approach.

The petitions assert various reasons for their requests. Some assert that the interpretation embodied in the September 14 notice is erroneous, or that in any event the issue should be decided in the context of pending formal requests for interpretation. Some also allege that they were unaware that the "transfer pricing" issue was under consideration in this proceeding, and that they therefore did not have adequate opportunity to comment on the subject. They also allege that the use of a "transfer price" is pervasive throughout the industry, and that a failure to permit transfer or plant gate pricing would have a number of undesirable effects, including aggravation of price disparities in the NGL industry, reduction in NGL supplies, and disruption of royalty or "net-back" arrangements, among other things.

You may inspect and copy the pertinent petitions at the ERA Office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C. 20461 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. We have received petitions from the following parties to date: Gulf Oil Corp., dated October 20, 1978; Standard Oil Co. (Indiana), dated October 24, 1978; MAPCO Inc., et al., dated October 24, 1978; and Exxon Co., U.S.A., dated October 26, 1978.

These matters deserve public discussion. We are therefore scheduling a hearing for the receipt of public comment upon certain matters raised in these petitions, in order to assess what if any further action on our part may be appropriate. In addition to gas processors, we specifically invite independent NGL product marketers and consumer groups to participate.

In connection with our decision to conduct a hearing on these matters, we have determined to, and do hereby, suspend until further notice the effective date of that portion of the September 14 amendments that would delete the phrase, "including transfers between affiliated entities," from §212.161(a). All other provisions adopted in the September 14 notice become effective as scheduled on November 1, 1978.

Our purpose in suspending the effective date of the particular language change discussed above is merely to assure gas processors, who have alleged that substantial confusion and uncertainty within the industry will result in the absence of this action,

that we did not, and did not intend to, establish a new substantive rule concerning transfer pricing in our September 14 notice. We adhere to the position that the prior regulations did not permit transfer pricing, and we are therefore of the view that the particular language change was unnecessary. Accordingly, neither the amendment deleting this phrase nor the suspension of the effective date of this amendment represents a substantive change. However, because it has been represented to us that the action we took has caused confusion and uncertainty, we have decided to suspend the effective date of this amendment until we have had adequate opportunity to evaluate the petitioners' assertions of the desirability of a change in Subpart K to permit "transfer pricing" and their allegations of procedural deficiencies in deleting the phrase in question.

II. HEARING PROCEDURES

A. PROCEDURE FOR REQUESTS TO MAKE ORAL PRESENTATIONS

The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" section of this notice. If necessary to present all testimony, hearings will be continued at 9:30 a.m. of the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The request should contain a phone number where you may be contacted through the day before the hearing. Since it may be necessary to limit the number of persons making such presentations, you should be prepared to describe your interest in this proceeding, and why you are a proper representative of a

group or class or persons that has such an interest, and to give a concise summary of your proposed oral presentation.

We will notify each person selected to be heard before 4:30 p.m., November 29, 1978. Persons scheduled to speak at the hearings must bring 100 copies of their statement to the appropriate address indicated in the "ADDRESSES" section of this notice before December 6, 4:30 p.m., for the Washington, D.C. hearing.

B. CONDUCT OF THE HEARINGS

We reserve the right to select the persons to be heard at these hearings; to limit, consistent with this notice, the subjects on which they may be heard; to schedule their respective presentations; and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

We will designate a DOE official to preside at the hearings, which will not be judicial or evidentiary-type in nature. Questions may be asked only by those conducting the hearings. We will base our decisions on all information available to the DOE. At the conclusion of all initial oral statements, each person who has made an oral statement may make a rebuttal statement. The rebuttal statements will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearings. Such questions must be submitted to the address indicated above for requests to speak, for the location concerned, three days before the hearings. If you wish to ask a question at the hearings, you may submit it, in writing, to the presiding officer. We will determine whether the question is relevant, and whether the

time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

We will have transcripts of the hearings made and we will retain the entire record of the hearings, including the transcripts, and make them available for inspection at the ERA office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

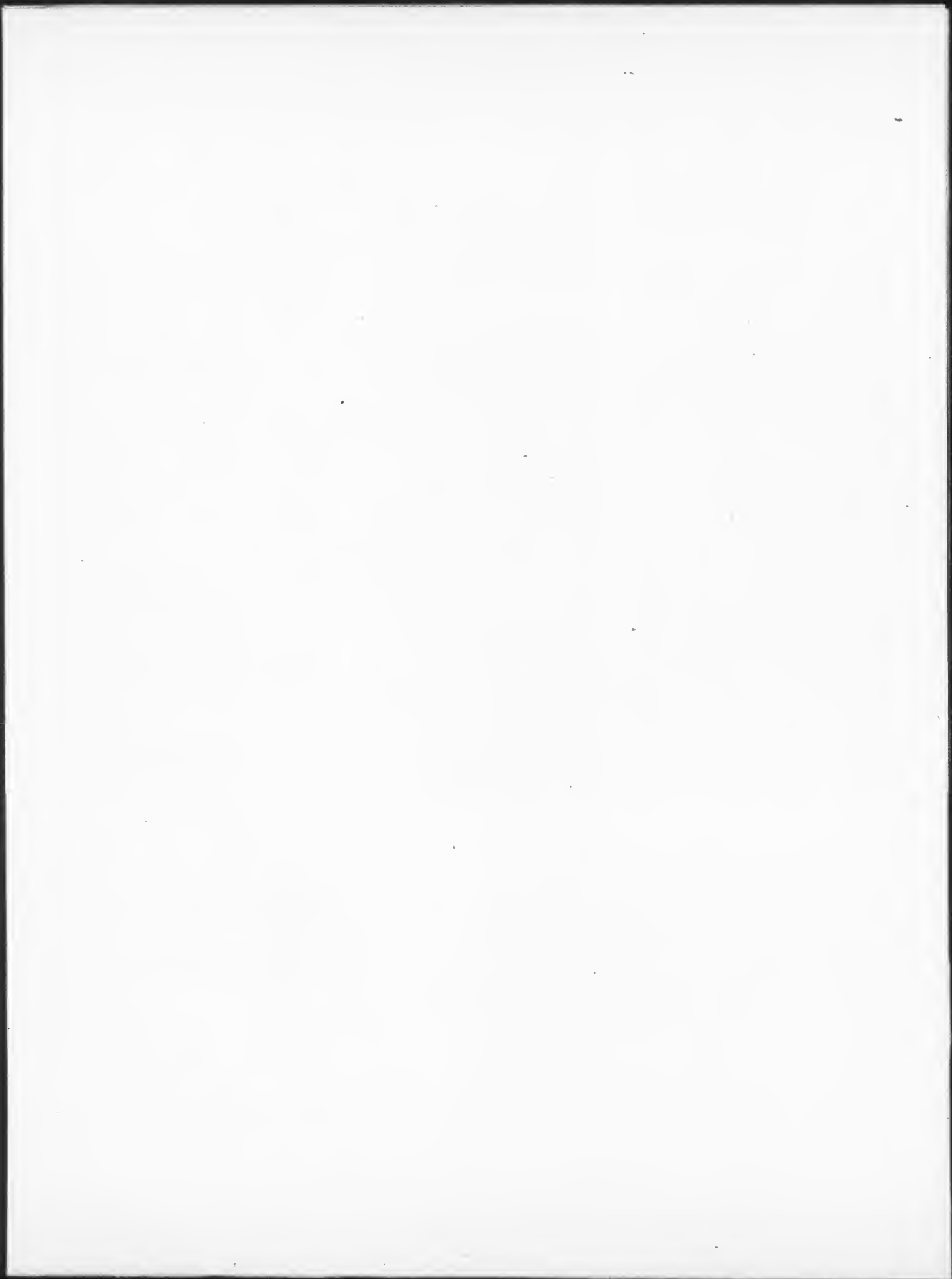
In the event that it becomes necessary for us to cancel or postpone the hearing, we will make every effort to publish advance notice in the FEDERAL REGISTER of such cancellation or postponement. Moreover, we will notify all persons scheduled to testify at the hearings. However, it is not possible to give actual notice of cancellations or schedule changes to persons not identified to us as participants. Accordingly, persons desiring to attend a hearing are advised to contact us on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

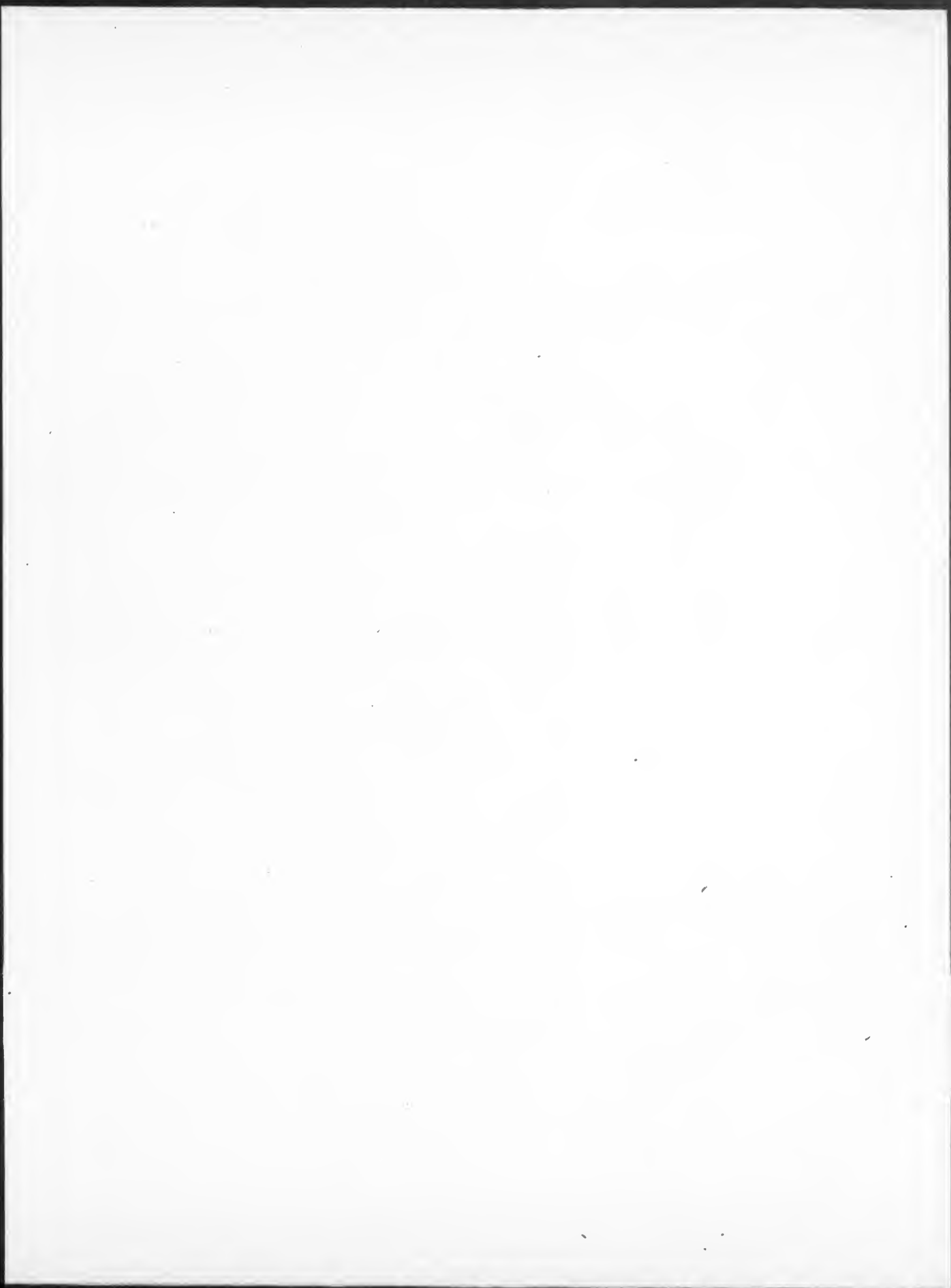
(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended,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

Issued in Washington, D.C., October 30, 1978.

DAVID J. BARDIN,
*Administrator, Economic
Regulatory Administration.*

[FR Doc. 78-30951 Filed 10-30-78; 11:28 am]







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