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# EXECUTIVE COMPENSATION RULES

## HEARING

BEFORE THE

## SUBCOMMITTEE ON PRIORITIES AND ECONOMY IN GOVERNMENT

OF THE

## JOINT ECONOMIC COMMITTEE

## CONGRESS OF THE UNITED STATES

NINETY-THIRD CONGRESS

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## WITNESSES AND STATEMENTS

TUESDAY, JUNE 5, 1973



## SUBMISSIONS FOR THE RECORD

TUESDAY, JUNE 5, 1973

AFTERNOON SESSION

# EXECUTIVE COMPENSATION RULES

TUESDAY, JUNE 5, 1973

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON PRIORITIES AND
ECONOMY IN GOVERNMENT OF THE
JOINT ECONOMIC COMMITTEE,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 3302, Dirksen Senate Office Building, Hon. William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire and Humphrey.

Also present: Loughlin F. McHugh, senior economist; Richard F. Kaufman, professional staff member; and Michael J. Runde, administrative assistant.

## OPENING STATEMENT OF CHAIRMAN PROXMIRE

Chairman PROXMIRE. The subcommittee will come to order.

In August of 1971, the administration suddenly shifted to a controlled economy, first, phase I, and then a more or less general approach to the wage and price controls; phase II, aimed at moderating inflationary pressures while searching for fuller utilization of manpower and other resources.

In my view, given the circumstances, phase 1 was a success, phase 2 was unsatisfactory but at least it was aimed in the right direction. But phase II was dropped at the start of 1973 just when it might have proved its worth.

Mr. Dunlop, yesterday at a Democratic caucus a proposal was adopted finding phase III a total failure and calling for the enactment by the Congress of a more effective wage and price control system. As a first step in that direction, the caucus approved a 90-day freeze on wages, prices, profits, consumer interest and rents.

Now as one of the authors of this proposal, I can tell you there is nothing that would please us more than to have you in the administration steal our idea. We not only have no pride of authorship, we aren't stuck with any of the details—what we want is a more decisive, effective anti-inflation program; a program that will mean business—a program with bite and with teeth behind the bite.

It is my understanding you in the administration have been considering a phase IV, that the administration had tentatively planned to announce it this weekend, that the announcement was postponed but could come at any time. I hope and pray this is true, because I see nothing to indicate that the administration has taken any steps to get on top of this problem, and I see nothing in the economic statistics

that suggests the inflation problem is coming to an early solution through natural causes.

We need action. The country is calling for action. The Congress—both parties are ready, willing, and eager to support action. I hope you will give it to us.

You were brought in as a professional to develop guidelines and an acceptable approach to the phase 3 operations. You are the "Chief of Staff" for phase III. I understand that—maybe I am wrong, and correct me when you make your remarks—you are one of the principal architects of phase III. It is in this context I will welcome your testimony today.

Mr. Dunlop, today's discussion focuses on executive compensation and corporate disclosure provisions in phases II and III. To get down to specifics, I call your attention to some very spectacular increases. For example, Robert K. Heimann, president and chairman of American Brands, enjoyed an increase of over $100,000 in 1972, while phase II was in operation, while the guidelines of wages and salaries was 5.5 percent, an increase of 43.7 percent.

George Weyerhaeuser of Weyerhaeuser Co., the president, had an increase of 56 percent, to $305,000. Also, an increase in excess of $100,000.

Mr. Charles Sommer, chairman of Monsanto, had an income of $273,000, an increase of almost 100 percent, or $100,000.

Mr. Richard Gerstenberg of General Motors enjoyed an increase of 107 percent, to $874,000, an increase of $400,000 in 1 year. An astonishing increase during a period of wage and price controls. And the guidelines had workers on the assembly line averaging around 5.5 or 6 percent.

John J. Riccardo, president of Chrysler Corp., enjoyed an increase of 215 percent, to $551,000, an increase of $300,000.

Lynn Townsend enjoyed the biggest percentage increase of all, chairman of the board of Chrysler Corp., an increase of 219 percent, an increase of about $350,000, roughly calculated to $639,000.

These increases just seem, I think to almost anybody, to be shocking and grossly unfair.

I realize, and you have made it very clear, you make it clear in your prepared statement, that there is no attempt to prevent any individual from getting a sharp increase, but the men who make the decisions in our corporations for them to get this kind of increase and for the average increase for executive compensation, on the basis of the documentation I have seen—and maybe you can dispute this—is something like 13.5 percent, three times the guidelines. It seems to be so conspicuously and grossly inequitable and unfair that I just do not understand how, under a control system that holds down wages, this can be justified.

There are some people who seem to think the executive compensation issue is a relatively minor issue. I don't agree. If the top executives are not held at 5 or 10 percent wage increases, the heart of the control mechanism is ineffective. One could argue a much more important consideration is profit control, and I agree. But even this extremely vital consideration is being shunted aside. I understand the situation, the new phase III regulations permit more profit to be realized than was the case in phase II. I want to know what was the base used for the profit rule, and has your group made any study of profits to justify

the present treatment? If you don't get into this problem today, I hope you supply it for the record.

[The following information was subsequently supplied for the record by Mr. Dunlop:]

During Phase II and Phase III, the Cost of Living Council established a dual system in order to control the movement of prices. On the one hand, price increases must be fully justified on the basis of increased costs and, on the other, a firm or company must not exceed its base period profit margin, defined as the ratio of net income to sales, even if its costs have gone up.

Phase III changes in the profit margin rules were made in a fashion designed to recognize the expansion of the economy which was occurring as well as to provide an incentive for keeping prices down. After an intensive study of profit behavior during cyclical expansions, the base period was expanded from the best two of the three fiscal years ending prior to August 15, 1971, to the best two of the three fiscal years ending prior to August 15, 1971 and fiscal year ending after August 15, 1971. This option, designed to compensate for the fact that the economy was rapidly expanding and would be generating substantial increases in profits, turns out to be of little significance. The additional fiscal years available to firms include the period of the price controls program of Phase II. This limited the growth of profits for most firms, forcing them to remain with the base periods established during Phase II.

The other change in the profit margin rule was tied to the average price increase which the firm implemented. The firm was not required to stay within base period profit margin limits if its weighted average price increase was below 1.5 percent. This was a modification of the approach during Phase II in which the profit margin limit was not applied to firms keeping all prices to base period levels. The purpose of this change in the regulation was to provide an incentive for firms to keep prices down by allowing them to expand profit margins if they kept price increases within the 1.5 percent ceiling.

Thus the application of profit margin limits was changed to permit inclusion of more recent fiscal years in computing base period limits. It was also altered to create an incentive for firms to keep price increases below 1.5 percent on average, while assuring that firms unable to keep price increases to that level would not be permitted to use these price increases to expand profit margins beyond base period levels.

Chairman PROXMIRE. Some professionals have argued that big salary hikes are needed to insure productivity. It is hard to believe that. I remember when I was at Harvard Business School and you were one of the people I greatly admired, and one of the texts that we had was a study by Chester Barnard, a top executive of the New Jersey Bell Telephone Co., who argued that while compensation is important, it is far, far less important than many other elements that go into persuading people to be more productive.

This is especially true with executive recognition of obligation to their colleagues and their friends and associates in the business, these things are likely to be far more profound as motivating forces, than compensation.

At any rate, it seems very difficult to understand this kind of an immense increase in compensation which seems to run so deeply in the executive compensation sector.

Finally, on the question of corporate disclosure, I am equally ill at ease. I know you will say today you don't want to get into this issue at this moment. You will say public hearings are scheduled by the Cost of Living Council tomorrow, and, I am appearing to testify at that time, as is Senator Hathaway, the author of the measure in support of such disclosure.

But I want to tell you about the form you are now asking big corporations to report on, CLC2. I know your staff prepared a very tough reporting form, and it went to the Office of Management and Budget.

My staff tells me an advisory group met with OMB, and somehow CLA Form 2 was gutted and ended up with a pussycat instead of a tiger.

With that, I would be delighted to hear from you, Mr. Dunlop. You go right ahead in your own way, and Senator Hathaway and I will ask questions.

By the way, Senator Hathaway is a committee guest of ours today.

## STATEMENT OF HON. JOHN T. DUNLOP, DIRECTOR, COST OF LIVING COUNCIL, ACCOMPANIED BY HERBERT MESSER, DEPUTY DIRECTOR, CONTROLLED INDUSTRIES DIVISION, OFFICE OF WAGE STABILIZATION

Mr. DUNLOP. Mr. Chairman, it is a pleasure to appear again before you. That is a rather large menu of items you referred to.

I would rather, if I may, start on the executive compensation matter; and when I finish what I have to say there, you, Senator Hathaway, or others, may wish to ask about other matters, and I will try to respond.

I presented to the committee, on time, Mr. Chairman, yesterday, a prepared statement on executive compensation; however, I would rather just speak, if I may, informally, without reading the prepared statement, making three or four points.

Chairman PROXMIRE. The prepared statement will be placed in the record at the end of your oral statement.

Mr. DUNLOP. Thank you. The first point I would like to stress on the subject of executive compensation is that the Pay Board followed—and I have reviewed them rather carefully—procedures that had real integrity to them in developing their regulations. They set up, as the testimony makes clear, a tripartite committee with labor, management, and public representatives. They studied the matter. They reached a unanimous conclusion as to policy. They presented these policy recommendations to the Pay Board; the Pay Board discussed them, and adopted them with no dissenting votes.

The labor members at that time abstained from voting. The regulations were then formulated with a minor dissent from the continuing subcommittee. The regulations were promulgated.

Subsequently, in August of 1972, the Pay Board held hearings on all of its regulations. No one appeared to question these particular regulations except some from management and consultant groups who felt them unduly tight.

Adopted as one of the key elements of those regulations, and perhaps their central piece was the concept of the appropriate employee unit, which had been adopted previously for other purposes. It was not even the subject of serious discussion at the time these executive compensation regulations were established.

So the first point I am making is that those regulations were developed in that way. While I differed in the past, as you know, with some of the policies of the Pay Board, I do not in this respect regard their procedures as having been other than those of integrity.

The second point I want to stress this morning concerns the actions I have taken since I came to this office.

In response, perhaps, to your statement this morning, I want to stress that I came to be the Director after the decisions had been made,

as you have indicated. When I arrived in February, it was clear to me that executive compensation was an area I wished to get on top of. We promptly asked the Internal Revenue Service to make a survey of the matter. It required calling in the IRS and briefing them in this area because it represented a field in which they had not previously done significant work under the stabilization program. We selected a group of 94 companies for this survey by a system that is set forth in the report which I sent to you and made public by a letter of May 8.

The IRS, at our request, made a survey. We issued a partial report in April, and we issued a final report in May. The purpose of the study was to determine whether what was going on really reflected violations of the existing regulations or whether it reflected the carrying out of those regulations. That study, which I forwarded to you on May 8, and made public, persuaded me of two things:

First, there were very few violators. You may recall that that report, of May 8, said that 7 firms of the 94 "were being considered for further compliance." I am happy to tell you this morning that notice of violation has been filed in five of those cases, a formal challenge has been issued in one of the cases, and one of the seven is still under review.

So we followed up the enforcement aspect of that rather fully.

Second, the results of the survey show that it was really the regulations themselves that permitted the inequitable results rather than violation of those regulations. I was very much concerned about those results and thereafter resolved to do something about it; to proceed to change the regulation, as I wrote to you in the second paragraph of my covering letter on May 8.

I share the view that this is not a minor issue; it is an important issue. I am fully determined to change the regulations because of essentially two reasons: (1) The regulations have demonstrated that they have not produced on the whole equitable results; and (2) it seems to me important that the top managements of companies demonstrate more restraint than the regulations have required.

Now, having said that, and having expressed the firm view that what has resulted from the regulations is inappropriate, I wish to make a couple of final points in this initial statement.

The first point is that our study has suggested to me that there are three or four areas where changes in the regulations need to be explored. Those areas are these:

The first, and perhaps most important area relates to the question of the appropriate executive unit. Some companies have used very large units, corresponding to their benefit plan units, which have been much larger than anyone's ordinary perception of the concept of "executive." You can see examples of this in table 1 attached to the report of May 8.

So first we should see whether we cannot establish a definition of executive which is more appropriate and more limited than the one people were free to elect under the current regulations.

The second area that we need to examine relates to the question of the base years. The fact is that our present regulations limit the pool of money to be distributed as executive compensation to dollar amounts based on previous base years. But the current levels of profit have permitted a very large extension and most of those figures on executive

compensation that one reads would show that these large increases are derived from that fact. So the question of the appropriate base years is really a matter, I think, that we need to look at.

There are also some technical questions of spillover from salary to bonus that I think we ought to also take a good healthy look at.

What I am trying to suggest to you, then, Mr. Chairman, are some of the principal areas. We perhaps ought to also look at in the executive compensation reporting requirement. This is an area I am determined to make some changes in. Those are the areas of principal change which it seems to me appropriate at this stage of our review to undertake.

Now, let me make a final observation about the matter. While attention appropriately has been focused upon some top salaries, executive compensation plans cover a wide range of middle management and lower management as well, and I believe that one ought to be a little cautious and explore carefully the repercussions of any particular changes in the regulations to see how they affect the whole situation.

Moreover, three-quarters or more of the companies of the country operate these bonus plans and executive compensation plans on calendar years and therefore in order to affect the results of 1973, there is no need to complete the operation by tomorrow morning or next week. I don't by that imply that I intend to drag it on, but I am saying to you that what we are talking about, essentially, aside from compliance questions, is a change in the regulation that would be applicable for plan years which for most companies is 1973.

Well, I think, Mr. Chairman, that expresses in my own words the sort of view I have of how the regulations were developed in the past and what I have tried to do since February when I came into this situation. It expresses my view that this is not a minor issue; it is a matter which requires a change in the regulations.

I have indicated some of the principal areas in which changes need to be made.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Dunlop follows:]

PREPARED STATEMENT OF HON. JOHN T. DUNLOP

I. DEVELOPMENT OF THE CURRENT EXECUTIVE AND VARIABLE COMPENSATION REGULATIONS

Recognizing that a substantial portion of the compensation package of most executives and other management employees consists, in addition to salaries and fringe benefits, of payments or awards made under a wide variety of so-called Executive Compensation Plans, the Pay Board decided that it was necessary to develop special regulations to provide rules governing the operations of such plans for stabilization purposes.

In view of the complexities and variety of such plans, the Pay Board authorized the Chairman of the Pay Board, on November 30, 1971, to appoint an *ad hoc* tripartite committee to make recommendations in the area of Executive Compensation to the Pay Board. This committee was appointed on December 7, 1971.

Following consultations with experts in the field, this tripartite Executive Compensation Committee unanimously recommended a policy on Executive Compensation to the Pay Board, which was adopted by the Board by a 9–0 vote (with Labor members abstaining) on December 16, 1971. This Policy Statement was published as PB–27 on December 17, 1971. On December 27, 1971, a revised policy statement was published as PB–31 to conform the original policy statement to the legislation extending the Economic Stabilization Act which had been enacted on December 22, 1971.

Following the Pay Board's action on the Executive Compensation policy statement, it authorized the tripartite Executive Compensation Committee to develop and recommend to the Chairman of the Pay Board proposed detailed regulations which would be consistent with the intent of the policy statement for publication.

On February 9, 1972, the Chairman of the Executive Compensation Committee transmitted recommended regulations to the Chairman of the Pay Board, noting that the Labor member dissented only with respect to the majority's decision to permit excess payments to be made under incentive compensation plans provided that such excess payments, together with all other forms if compensation increases, did not exceed the permissible amount for appropriate employee units and alternately, if the allowable amount of incentive compensation was not paid, the employer could apply the amount which was less than the allowable amount to other forms of compensation as a credit. With the exception of this dissent with respect to these "spillover" and "credit" provisions, the committee's recommendations were unanimous.

It is my understanding that following a consultation with the Labor members of the Committee, the Chairman of the Pay Board authorize the publication of the Executive and Variable Compensation Regulations in the February 15, 1972 Federal Register.

It should be noted that the definition of Appropriate Employee Units was never a part of the Executive and Variable Compensation Regulations. The concept of appropriate employee units was developed as a part of the Definitions (Section 201.2) which are applicable to increase in all forms of compensation and was adopted unanimously by the Pay Board in separate action prior to the publication of the Executive Compensation Regulations.

During August of 1972, the Pay Board held a series of four public hearings to receive comments, suggestions and criticisms of all of the Pay Board's regulations. During these public hearings, numerous complaints were received from management consultants and representatives of individual firms that the Executive Compensation Regulations were unduly restrictive and in some respects inequitable. No representatives of other organizations avail themselves of the opportunity to suggest specific changes in the Executive Compensation Regulations during these hearings.

On November 23, 1972, the Pay Board issued recodified regulations which included changes in the Executive Compensation Regulations which were adopted by the Pay Board on October 12, 1972 and November 1, 1972. These changes, as well as a description of how the Executive Compensation Regulations operate, are described in the following section of this statement.

## II. DESCRIPTION OF HOW THE EXECUTIVE AND VARIABLE COMPENSATION REGULATIONS OPERATE

As indicated earlier, the Pay Board's regulations separate executive and variable compensation from other forms of compensation. The term "executive" is not defined. However, the determination of whether the rules regarding executive and variable compensation apply to an item of compensation does not depend on the individual receiving the compensation, but to the type of compensation received. The regulations also do not affect any plans covered by the provisions of a collective bargaining agreement.

Increases in salaries and the cost of prerequisites awarded to employees or executives are chargeable to the 5.5% general wage and salary standard for the appropriate employee unit or units to which such employees were assigned by the employer. In addition, salary payments deferred to later years are charged as wages and salaries in the year earned.

*Incentive compensation plans and practices (excluding stock options)—sections 201.74 and 201.75*

A wide variety of plans are covered, including cash or stock bonus plans whether payable currently or where payments are deferred, stock bonus plans, stock purchase plans, and performance share plans. (These regulations do not cover qualified benefit plans, e.g., IRS qualified pension or profit sharing plans.)

The control concept underlying the regulations is that payments and awards made under such plans or practices during Phase II that are consistent with payments made under such plan or practices prior to Phase II, should not be deemed to be increases in wages and salaries. Accordingly, the computation provisions are the heart of these regulations on incentive compensation plans and

practices. In essence, the regulations provide that for plans or practices in existence on November 13, 1971, the allowable amount which might be paid as a bonus for the first plan or practice year under Phase II is the amount actually paid in the best of the last three plan years prior to November 14, 1971, plus 5.5%. Following the recodification hearings, the Pay Board amended the regulations to provide an additional 5.5% increase in the allowable amount in the second plan year and required that the allowable amount be adjusted upward or downward to reflect increases or decreases in plan participants from the base year who are now eligible to receive awards under such plan or practice.

The regulations also permit payments in "excess" of the allowable amount to be made, provided such "excess" payments are charged as increases in wages and salaries. Any excess payments must be distributed pro rata among the appropriate employee units to which plan participants have been assigned. The "credit" provisions formerly in the original regulations were removed in the recodified regulations.

During Phase II, the adoption of new incentive compensation plans and practices required prior Pay Board approval. In general, the Pay Board approved the adoption of such plans with the condition that payments made under a new plan during the first 12 months of operation are chargeable as increases in wages and salaries for the appropriate employee unit. (A relatively few exceptions were granted in cases involving gross inequities or hardships.) Modifications or replacements of plans in existence on November 13, 1971, also required Pay Board approval. In general, such changes were approved, subject to the condition that any increase in aggregate compensation resulting from the revision or replacement over that which would have been payable under the prior plan would also be a chargeable increase to wages and salaries. (Again, in a few cases, exceptions were granted on the basis of gross inequities or hardship.)

This standard treatment of new, modified or replacement plans continues in Phase III and have been published in Appendix B of Part 130 of the Cost of Living Council Regulations.

*Stock options—Section 201.76*

The Pay Board decided that no restrictions would be placed on the exercise of options which had been granted prior to the commencement of Phase II. It also decided that stock options that met certain Pay Board requirements—namely, that (1) the option plan must be approved by the stock holders, (2) that the plan must specify the maximum number of shares set aside for option grants and, (3) most importantly, that the plan required options to be granted at an exercise price of no less than 100% of the fair market value on date of grant—would not be deemed to be an increase in salaries since there is no cost to the company for such options either at the time of issuance or exercise of such options. However, since the grant of such options is obviously an inducement to employment, it was decided that a limitation be placed on the number of shares which could be awarded under stock options during each fiscal year of the employer, such number to be consistent with each employer's past practice in granting options prior to stabilization.

The original Pay Board regulations covering existing stock option plans which met the Pay Board's requirements established an aggregate share limitation for a fiscal year beginning prior to November 14, 1972, to the number of shares covered by options issued per year during the three fiscal years ending prior to November 14, 1971—divided by three. Special rules for computing the annual allowance were provided for plans less than three years old and for dormant plans.

As a result of a number of complaints received during recodification hearings, the Pay Board issued new regulations effective November 14, 1972, changing the computation of the annual stock option allowance. The aggregate share limitation applicable to fiscal years beginning on or after November 14, 1972, is now based on the annual average number of shares subject to options that were granted during the life of the plan and further provides that such allowance must be adjusted upward or downward for changes in the number of plan participants.

During Phase II, adoption of a new Pay Board qualified stock option plan required prior Pay Board approval. In general, such approval was granted with the condition that the allowable number of shares that could be granted under options be held to 25% of the aggregate shares authorized under the plan. Replacement or revised plans also required prior approval and in general,

the annual allowance for such plans was held to the annual allowance which could have been granted under the prior plan.

The standard treatment of new and modified or replacement plans adopted in Phase II has been published in Appendix B of Part 130 of the Cost of Living Council Regulations.

Stock options granted under plans which did not meet the requirements of the Pay Board (usually options which could be purchased at a discount from fair market value on date of grant) are deemed to be increases in wages and salaries. The charge made is an "option premium" equal to 25% of the fair market value of a share as of the date of grant plus the value of the discount from fair market value on that date. At the time of subsequent exercise of such option, a further amount chargeable is the difference (if any) between the fair market value at the time of exercise over the sum of the original 25% premium plus the fair market value at the time of grant. Such charges are apportioned to the appropriate employee unit or units for the plan participants.

*Sales commission and production incentive plans or practices—Section 201.77*

These plans, when directly related to the performance of the employees with respect to sales or production output that were established and in effect before November 14, 1971, may continue to operate in accordance with their provisions without reference to the 5.5% wage and salary standard. If a change is made in the plan or practice method of calculating the earnings of any employees covered by such plan or practice, the increase in the aggregate amount of compensation of the employees' practice plan or unit over that payable under the plan before revision is deemed an increase in wages and salaries in the year earned and is apportioned to the appropriate employee unit(s).

During Phase II, the adoption of new sales production or commission incentive plans required prior Pay Board approval. Such approval was generally granted provided, however, that payments under such plan be charged as an increase in wages and salaries.

Appendix B of Part 130 of the Cost of Living Council's Regulations provides guidelines for the replacement or modification and adoption of new sales commission and production incentive plans consistent with the standard treatment afforded such plans during Phase II.

*New organization—Section 201.79*

Any business or firm established on or after November 13, 1971, was permitted to establish executive or variable compensation plans or practices if within 90 days after the establishment of the business, a report was filed to demonstrate that the organization of the business entity and the plans or the practices adopted were not for the purpose of circumventing the intent of the wage and salary program and were not unreasonably inconsistent with the intent and purposes of the program or the policies of the Pay Board.

Section 201.79 also spelled out the rules applicable to changes in organization form resulting from mergers, acquisitions, or reorganizations. In general, the Pay Board took the position that a change in organizational form should not affect the appropriate employee units, plans or practice units or control years unless otherwise clearly required by the organizational change. Allowable amounts for established incentive compensation plans or stock option plans in predecessor organizations were generally allowed to be carried forward into the new organization.

*Summary*

The regulations covering Executive and Variable Compensation establish limitations as to the allowable amounts of payments or awards that can be made under executive and variable compensation plans that are not regarded as increased in wages and salaries. "Excess" payments (except in the case of Pay Board approved stock options) could be made if charged to the general wage and salary standard for the appropriate employee unit(s). Employers could adopt or modify or replace existing plans, but increases in aggregate compensation resulting from such actions are chargeable as wage and salary increases to the appropriate employee unit(s). The present regulations as developed by the Pay Board in no way attempt to limit the amount of any individual salary or incentive compensation award—but control only the aggregate payments made pursuant to plans and practices.

III. STATUS OF CURRENT REVIEW OF EXECUTIVE AND VARIABLE COMPENSATION REGULATIONS

On May 9, 1973, a report on Executive and Varaible Compensation, including the results of a recent survey of 94 firms conducted by the Internal Revenue Service, was made public and a copy transmitted to Senator Proxmire.

In the cover letter accompanying that report, I indicated that in light of the results of the survey. "I have decided to review the concept of the appropriate employee unit with respect to executive compensation, as well as the choice of base periods and other rules that have been in effect from the outset of the wage and salary stabilization program under the Pay Board to determine if there are more suitable methods of control of executive compensation."

At that time, I directed the staff of the Cost of Living Council to review the Executive and Variable Compensation Regulations and recommend for my consideration, changes which would more effectively control executive compensation, eliminate any loopholes that would be subject to potential abuse, but changes which also would not destroy or render inoperable, variable compensation plans that are presently an important element of the widespread system of incentives for key management employees to take risk actions which hopefully result in economic growth and improved productivity.

I am currently in the process of evaluating the feasibility of the various alternative proposals submitted by my staff. I also intend to consult with members of Labor-Management Advisory Committee during the next few days to secure their recommendations. Following such consultations, I will direct my staff to prepare proposed regulations reflecting those changes that I feel are necessary to control Executive Compensation more effectively. I will be pleased to provide this Committee with such regulations as soon as they have been developed.

Chairman PROXMIRE. Thank you very much, Mr. Dunlop. Let me first get into this area, at least for a minute or two, that concerns everybody in the country and concerned the Democratic caucus sufficiently yesterday so that we passed unanimously—we had a small caucus, only 33 of the 57 Democratic Senators were there, but it was unanimously approved—a proposal for a far more vigorous enforcement program, including a brief temporary freeze.

First, let me ask you, is this under consideration by the administration at the present time?

Mr. DUNLOP. Well, I would say to you, ever since I have come to this town, there have been explorations on repeated bases of what policy ought to be followed. So those discussions have gone on and continue to go on. Indeed, if I may say so, Mr. Chairman, the repeated discussions since January of the prospects of a freeze are themselves one of the most unstabilizing factors to our economy.

Chairman PROXMIRE. That may be correct, but the most unstabilizing element is what actually is happening in the economic world. We look at the appalling record of wholesale prices. Not only food prices, but industrial prices, especially recently. They seem to foreshadow a very, very big increase for months to come in the Consumer Price Index. Under those circumstances, I just don't know what you expect Congress to do. It is very hard, very unwise, it seems to me, for Congress with the responsibilities we have, just to ignore this, put our head in the sand and hope it will go away.

If we are going to get actions, we have to consider what we can do. I think every Member of the Senate realizes the administration can act much more effectively. It will be far better, if the freeze is going to be put into effect, if the President did it, as he did on August 15, when he put a freeze into effect immediately. We have to have hearings,

debates. As you say, you are absolutely right, if Congress discusses this it has a destabilizing effect.

But it seems to me the alternative of doing nothing is worse.

Mr. DUNLOP. Well, the point I would like to make about that is not to engage in extended debate, I think, but to suggest to you, as I have previously, that the conditions of 1973 are very different from those which existed in 1971. The level of the economy is very much higher. When I testified before another subcommittee recently with Mr. Stein, I tried to make the joint that 90 percent of the rise in wholesale prices since January is the result of activity in five areas—agriculture, lumber, oil, nonferrous metals, and textiles, all of which price rises are very closely, intimately, related to international economic development.

The notion that one should freeze those prices, which are at extremely high level now, is one I regard as highly simplistic, and likely to be adverse to the development of adequate supply. I have suggested to you earlier that the policies we pursued in the lumber area—concentrating on the lumber problem, working with parties, management, labor people, with Government agencies—have now begun to develop fruit.

The prices in that area have come down and it cannot be attributed to the current state of home building, because we have more home-building going on at this point in history than any time in our whole history in terms of the number of actual buildings in process.

So although I grant you that the anticipated future course of those developments affects current prices to some degree the decision to which you refer is obviously a matter of policy which is not within my province.

Chairman PROXMIRE. Mr. Dunlop, oil, lumber, textiles, food, and nonferrous metals, that is such a comprehensive and inclusive segment of the basic materials of our economy, almost everything is made out of those things when you add them up. It represents a very large proportion. It is not as if it is just a minor part of the economy that is a problem.

You are absolutely right about the international situation being of great significance and, of course, you are also right in indicating there is a supply problem when you freeze prices. What we are talking about is a temporary freeze, long enough to work out something that can really bite and have an effect. You did a magnificent job in the construction area. I think everybody agrees with that. It was under a situation of controls. It was under a situation of limiting compensation. It did not result in reducing the supply of labor that was available in construction, although it did very sharply reduce the increases in compensation.

So it is hard for me to understand why that kind of pattern can't be applied far more broadly. Why do you conclude that if we engage in a tougher, more effective anti-inflation program, that we are going to have very serious shortages?

Mr. DUNLOP. Well, Mr. Chairman, I enjoyed the process of discussing this with you publicly. I guess what I would say is I think the crucial question is, what do you do at the end of the time? A freeze is a temporary matter, I agree with you, and under some circumstances, in some economies, at some point, it may be helpful in order to gain

control of the situation and to effect expectations which are important. But in the end the question is, what do you do at the end of the month, or the end of 45 days, or the end of 60 days? A freeze is not going to produce any more food; it is not going to produce any more timber; it is not going to produce any more cotton textiles or synthetics.

And it seems to me that the economy ought to face up to those questions directly rather than by artificially, which, in my judgment, will not get at what you properly call the underlying fundamental question.

Chairman PROXMIRE. I guess there is one aspect of the underlying fundamental question and that is the inflationary expectation that is so very damaging. Furthermore, we had an experience—it is not a matter of theory, it is a matter of experience—with phase I and phase II. As I pointed out, phase I did work; phase II worked reasonably well, and phase III has not worked. I think that most business, as well as labor people and others, feel that the timing of phase III, early in January, right after the December wholesale price index was disclosed, was a disastrous mistake, that phase II should have been continued.

I know most experts outside of the administration feel something like a return to phase II should be what you do after 45 days or 60 days of a freeze. In other words, a comprehensive guidelines system of establishing controls until you move into a position where your supply and demand are in closer balance.

Mr. DUNLOP. Well, Mr. Chairman, as I say, it is a subject I have addressed many times before, but let me comment on that again, if I may. First of all, I want to stress again, the economy of 1973 is a very different economy from that of 1971. The economy of 1971 had all kinds of unused capacity. Throughout that period, meat prices were going down, meat prices at no time in the period of 1971 touched ceilings because of the seasonal situation. The usefulness of a freeze in an economy that at this time is pushing capacity is very different.

Second, and more important, in my judgment as both a student of these matters and as a practitioner over 30 years is the kind of public relations view that is generated by phase II. In many areas, it was doing this economy and labor relations enormous harm. Examples I have often used are these: The broiler situation is in a mess today because of the nature of controls in the fall of 1972. We kept the prices of chickens down. The result was, as I have said, that farmers not only did not produce, they went ahead and liquidated their breeder stocks and since then the prices have been going up, as it has been necessary to provide incentives to those farmers to expand their output and to rebuild their breeder stock.

The lumber situation is another case where it is clear to me the controls in the fall of 1972 were a major detriment to the performance of the economy and the output.

The collective bargaining side generally, constitutes another case. Mr. Chairman, the process was evolving by which parties were not paying attention to their responsible bargaining, but were simply saying, "Oh, well, we will let the Pay Board cut it out."

This is not the kind of development which breeds a sense of responsibility; rather, it is fundamentally deleterious to the proces of collective bargaining in this country and to its future.

Now, those are my own personal views about the situation. However, I wish to emphasize again the decision as to whether something should be done at this point or not, of the sort you are talking about is, of course, a decision only the President would make.

Chairman PROXMIRE. I have a lot of other things but I will yield to Senator Hathaway for just a minute. Before I do, I would like to point out we have had a period of far more stringent pressure or available facilities than we have now. We had it in World War II and the Korean war, in both of which periods we had controls and in both of which periods we didn't have anything like, it seems to me, the kind of problems that seem to be developing now.

In World War II we had a period of several years of controls, unemployment was down to 2 percent, we were operating at above 100 percent of capacity. We were operating on a very marginal capacity. The Korean war wasn't quite as tight, but far tighter than it is now, and unemployment was far lower. In spite of that, the controls didn't seem to have such a very damaging effect on supply, although controls were held on for a substantial period of time.

This is why it seemed to me that under present circumstances, a period of controls until we can move into a better suply situation seemed called for. I very much respect your views on this and you certainly state them with force.

Mr. DUNLOP. May I, if I might, add just one sentence? I am, as you know, a veteran of the control period of World War II and the Korean war, having participated in those control——

Chairman PROXMIRE. I know that.

Mr. DUNLOP [continuing]. Mechanisms at a policymaking and administrative level. I submit to you that the last 6 months is more akin to the period from June of 1950 to early 1951 than to any other period with which it may be compared. At that time we had an explosion, an even larger explosion. I forget the exact numbers, but we had a very significant explosion in food prices in the summer and fall of 1951 and raw material supplies in general, associated, there again, with a kind of worldwide scramble for raw materials and so forth.

The cost of living went up much more in that period than it has during the last 6 months. We then put controls on—Truman appointed me as one of the three public members of the Wage Stabilization Board at that time. As a matter of fact, those controls went on at a point, it is now widely perceived by many people and I share the view, after all the damage was done and thereafter prices and wages essentially floated below those controls.

Chairman PROXMIRE. Exactly. I think that is the best argument, far better argument than I have made, for controls now. Put them on now. We had fine results in the Korean war, not only controls worked but we had a period right after the Korean war where we had low unemployment and remarkable price stability. The year 1953 was one of our best years that way.

So I think under the circumstances we might have a very good analogy.

Senator Hathaway.

Senator HATHAWAY. Thank you very much, Senator Proxmire. Thank you very much for affording me the opportunity of sitting on the panel this morning to ask Mr. Dunlop a question or two in regard

to the amendment to the Economic Stabilization Act, requiring corporations with annual sales or revenues of $250 million or more to make certain disclosures under certain circumstances, under section 205 of the act, with which I am sure you are familiar.

Mr. DUNLOP. Yes, sir.

Senator HATHAWAY. I am assuming the Cost of Living Council's main purpose is to operate in the public interest and I was somewhat shocked, to put it mildly, to have Mr. Walker, the General Counsel, come to my office, as he did before the regulations were promulgated, and indicate to me there was going to be an extremely restrictive interpretation placed upon this section of the act, so strict in fact, that the only information the corporation would have to divulge would be information the public already knows, to wit, the prices they are charging.

It would seem to me that if the Cost of Living Council were operating in the public interest, it would have given the broadest interpretation possible to the amendment, which in my opinion would have required the corporation specified in the amendment to divulge everything with respect to cost and profit, as well as prices, except those matters specifically exempted at the end of the section, to wit, trade secrets, processes, operations, style of work or apparatus of the business enterprise.

I would like you to answer—I know there are hearings scheduled for tomorrow, at which Senator Proxmire and I both are going to testify—but I would like you, if you would, to respond to why such a restrictive interpretation was placed upon the language of that amendment?

Mr. DUNLOP. Well, Senator Hathaway, what I should like to do is describe simply the procedure that has been followed by the Cost of Living Council with respect to this matter. And as Senator Proxmire had said this morning, I am reticent to express a conclusion about a matter which is very much pending before the Council and on which, presumably, with others, some decision in the end will have to be made.

When a matter is pending, when all the evidence is not in, when the process of review has scarcely taken place at my level, I am rather understandably I hope, reticent to discuss the merits too much. Therefore, I would like to tell you the procedure.

As you know, I am not a lawyer. I am an economist by trade; a labor management specialist particularly. I have read a good bit of the Congressional Record of the discussion in Congress, the several amendments to this section as they have taken place during the course of the debate and actions in the Senate, and the other side as well. As is customary in administrative agencies on this sort of matter, our General Counsel's office prepared these draft regulations to effectuate the statute.

The only view which I have had from the beginning is that it was very clear that no matter what we did, we would wind up in court very shortly. There would be those who would say that we had presented a more narrow view of the intent of Congress than those individuals had in mind, and on the other side, we would have people say that we had taken too broad a view.

Therefore, what I was most anxious to do was to preserve the integrity of the process by which this decision is in the end made.

Our General Counsel proceeded, as you have stated, to consult the organizations and to study the matter. He wrote up these drafts. I said, so far as I am concerned, there are two essential elements. There must be extended opportunity for comment and there must be a public hearing. Those comments have now come in. Those comments are available for public review. Anyone may examine the comments that have come in. They are available in our agency for you or anyone else to review.

Then, as you have well stated, tomorrow morning, starting at 9:30 in the morning, we will be holding hearings on this matter. I am delighted that both you and Senator Proxmire are to testify before that group. When that record is complete, I intend to study the record myself and to consult further, of course, with my staff and members of the Council who may have a special interest in it, to see what should be the final resolution of the matter.

I assure you that these hearings and comments are not a pro forma matter, and that I intend to take seriously the comments and suggestions made both in those comments, which I personally have not taken the time to read—and the comments in the transcript of the record of tomorrow's hearing.

But I would suggest to you, regardless of how that comes out, I expect the matter to be very much the subject of extended litigation.

Senator HATHAWAY. The problem is that the way the regulation is drafted at the present time, the burden of proof is really on the public and the corporations are protected, if the version goes through that was——

Mr. DUNLOP. Drafted.

Senator HATHAWAY. Regulations as drafted. That is going to place the burden on the public and actually the burden should not be on the public in this instance, because our job, as I see it, and yours, as I see it, is to protect the public to the ultimate extent possible within the statutory framework. I would hope that in your position, as I understand it, your not being a lawyer but certainly a policymaker, that you would enjoin those who are going to come up with a final regulation to interpret the statute as broadly as possible in the public interest, which, according to my own interpretation, would restrict information only as specifically stated in the last sentence of the amendment.

Do I understand your testimony correctly, that what you have promulgated so far, the draft regulation, are simply a starting point, and you are not wedded to them in any way?

Mr. DUNLOP. I said, categorically, a moment ago that I have an open mind on the subject. I did not myself participate in the drafting of the regulations. I knew ahead of time the issue was bound to be one of enormous contention. I thought it important to develop the best possible procedures, which would permit all points of view to be presented to us, so that I could then, with other associates, review that information and the final promulgation could reflect the balancing of those considerations.

The definition of "public interest" here is complicated. There is public interest in wide disclosure. There is public interest in the per-

formance of companies. There is interest, also, in what will produce the most effective stabilization.

Senator HATHAWAY. I don't see that there is a compromise between public interest in anti-inflationary matters and the public interest in keeping matters of company organization and so forth not to be disclosed by the companies, because that is adequately protected in some other law. The purpose of the Economic Stabilization Act and limits thereto is to give the public the greatest protection possible within the statutory language. I wouldn't think there would be any consideration whatsoever as to how much the company should be protected, because it is adequately protected in other areas of the law.

I would hope you would agree with me that this language should be interpreted as broadly as possible in the public interest. Can you agree with me on that point?

Mr. DUNLOP. Well——

Senator HATHAWAY. There are so many publics.

Mr. DUNLOP. I am reticent to take a position on a matter pending before me and I would like to look at that record, including anything you wish specifically to say, before I make a decision.

Senator HATHAWAY. The policy isn't really pending before you? The policy has already been established?

Mr. DUNLOP. Yes.

Senator HATHAWAY. I would think not only this provision, but any other provision of the Economic Stabilization Act should be broadly interpreted in the consuming public's interest. That isn't really a matter that is now pending before you in the hearings that we are going to have tomorrow, and the statements that have already been submitted.

Mr. DUNLOP. I accept completely the notion the policy of this matter has been set by Congress. I have no hesitation about that. The only issue I take is, what does it mean?

Senator HATHAWAY. That is correct, and you agree the policy is to protect the consuming public as much as possible within the framework of the language; is that a correct statement?

Mr. DUNLOP. Within the framework of the language. The issue——

Senator HATHAWAY. That is all I am asking. I am not asking you for your opinion on the specific terms of the language.

Mr. DUNLOP. Within the framework of the language; yes.

Senator HATHAWAY. Thank you very much.

Chairman PROXMIRE. Mr. Dunlop, I would like to follow up on this because it is so important and I do realize we are going to have an opportunity to question you tomorrow, and I realize you have your mind to make on this and there is at least some kind of quasi-judicial function you have to perform here. But you said you would discuss the procedure, so let's get into that.

You didn't draft a proposed public disclosure regulation, you say. Who did?

Mr. DUNLOP. Our General Counsel's office, obviously.

Chairman PROXMIRE. What instructions were given to your General Counsel concerning these regulations? Was he instructed to adopt restrictive interpretation taken from the proposed regulation?

Mr. DUNLOP. He was told to draft the regulations required by the statute. We had a new statute which had a number of things in it, a number of amendments, and a number of them required appropriate

regulations, and so the idea was to develop regulations with respect to all of them.

Chairman PROXMIRE. Were you, or was he, or was any other official of the Cost of Living Council ever contacted about these proposed regulations prior to their publication by an official of the administration or by an official of the Committee to Reelect the President, or by representatives of large corporations?

Mr. DUNLOP. I have no knowledge.

Chairman PROXMIRE. Would you supply that for the record, if you can? You say you have no knowledge. Will you ask the General Counsel to supply that for the record?

Mr. DUNLOP. I have no objection to that.

[The following information was subsequently supplied for the record:]

COST OF LIVING COUNCIL,
OFFICE OF THE GENERAL COUNSEL,
*Washington, D.C., July 10, 1973.*

Hon. WILLIAM PROXMIRE,
*Chairman, Joint Economic Committee, Subcommittee on Priorities and Economy in the Government, U.S. Senate, Washington, D.C.*

DEAR SENATOR PROXMIRE: During the June 5 hearings before the Subcommittee on Priorities and Economy in the Government, you asked that I supply for the record information on whether or not I was "ever contacted about these proposed regulations [to implement the amendments to Section 205 of the Economic Stabilization Act] prior to their publication by an official of the Administration, by an official of the Committee to Reelect the President or by representatives of large corporations." I am pleased to furnish that information to you in this letter.

I have never been contacted by an official of the Committee to Reelect the President on this matter. The only contact on the matter that I have had with representatives of large corporations took place through the normal comment and hearings process. During the course of that process, a number of corporations submitted written views which I read and representatives of several corporations and business organizations testified at the hearings at which, as you know, I was the presiding officer. I did not, however, have any private or "ex parte" discussions with industry representatives on the matter.

My only discussions with officials in the Administration took place in the ordinary course of carrying out my responsibilities as General Counsel of the Cost of Living Council. These included discussions of the amendment, its effects and a description of the proposed regulations at meetings of the Cost of Living Council and at meetings with officials of the Office of Management and Budget charged with responsibility, under the Federal Reports Act, for approving publication of Form CLC–2, which is the subject of the amendment to Subsection 205(b).

I hope this is responsive to your inquiry. Please advise me if I can be of further assistance.

Sincerely,

WILLIAM N. WALKER, *General Counsel.*

Senator HATHAWAY. Would the chairman yield?

Chairman PROXMIRE. Yes.

Senator HATHAWAY. What you are saying, you personally were not contacted.

Mr. DUNLOP. No, I was not.

Senator HUMPHREY. Would the chairman yield?

Chairman PROXMIRE. Yes.

Senator HUMPHREY. Mr. Dunlop, you may recall, about 10 days ago, when Mr. Stein and yourself were before the Subcommittee on Consumer Economics, I asked your counsel then about the Hathaway amendment and whether or not it was being implemented and what, if any, rules and regulations had been drawn up. I have asked for the transcript of that testimony to be brought to me, but my memory tells

me that your counsel indicated that he had some doubts what the amendment meant. And I told him, why didn't he go talk to its authors, that generally the authors had a pretty good idea what the amendment meant.

At the time, he said they were in a state of some confusion as to what ought to be done under the terms of the disclosure amendment offered by Senator Hathaway. I pointed out to him, I thought the amendment was rather direct and specific, but to put it bluntly, he was dragging his feet.

Chairman PROXMIRE. If I could follow up a little more on that, I think the legislative history made on the floor is very clear. There wasn't any dispute as to what this amendment meant. Senator Hathaway made it clear, I made it clear, I think Senator Humphrey probably spoke on it, the opposition made it clear. Those who opposed the amendment made it very clear what they understood this amendment would mean. There was no dispute. It was an obvious situation in which we felt strongly that corporations, especially conglomerates, should disclose precisely what their competitors who were not conglomerate had to disclose to the Securities and Exchange Commission.

In other words, we felt that whatever in terms of cost justification was not covered by trade secrets, or other clearly proprietary information, should be disclosed as the basis for any price increase exceeding 1.5 percent.

I don't know why that should be complicated and why we should end up by just reporting the prices. Obviously, we don't get any cost disclosure when we are just told the name and address of the firm and the price. That is not cost disclosure at all.

Mr. DUNLOP. Well, as I said, I am in the position of wanting to examine the record before I get myself involved in making a decision.

Chairman PROXMIRE. Let me ask you, before I yield to Senator Humphrey, some questions on something of a principal issue here before us this morning.

You see, the problem is this. The employer acts as the enforcer for the Government in holding down wage increases. That is one of the reasons we have had an effective wage and price control program. The employer has a vested interest in holding down wage increases because that helps their profits. Wages are the biggest element in costs. But there is nobody except the Government to act to hold down executive compensation. That is why we have Business Week pointing out that in 1972 the overall compensation for executives rose by 13.5 percent in 1972, which was a much higher rise with controls, under phase II, than we had without controls in 1971, when the rise was only 9.3 percent.

We have the increases I have been through, with Lynn Townsend's 215 percent, $440,000 increase; Henry Ford, Weyerhaeuser, and so forth.

Will you explain to me, Mr. Dunlop, what possible equity there can be in permitting increases of this kind, recognizing, of course, controls are anathema to our system, we would like to get rid of them. But if you are going to have them, why shouldn't they be equitable?

Mr. DUNLOP. Senator Proxmire, I have said to you this morning in fairly strong language that the regulations were developed by a tri-

partite board. I have looked at their results; I don't like them, and I am here telling you I intend to change them.

Now, I would say two things, however, about the comparison that you just referred to. In the first place, there is, in part, the issue of which group of executives you pick out. Business Week or any one of these magazines has chosen to pick a particular group of executives. I share the view that top executives should be more moderate and restrained in a time like this. But under the regulations, the report which we made shows that for the large executive units that firms had put together, there were not violations of our rules.

The second point to be made in terms of what you just said is that the figures you gave refer to both salary and bonus.

Chairman PROXMIRE. Right.

Mr. DUNLOP. And as you are aware, all sorts of executive compensation is tied to profits within a company and profits go up and down. That is not the custom of wage rates in the modern world, by the way.

Chairman PROXMIRE. Let me interrupt at this point to say the Business Week study shows salaries alone jumped 10.1 percent, which is twice the guidelines for workers, and the remaining 3.5 percent increase in executive compensation was a result of increase in other compensation, including profit sharing.

Mr. DUNLOP. That is correct. That goes to this matter of the unit that I talked about, which I say I propose very seriously to review and to change. But those figures refer to a selective group of executives, clearly. They do not apply across the board and that is why one wants to revise the regulations in a way that does not adversely affect middle management, lower management, and so forth.

Chairman PROXMIRE. These are top executives. Business Week is not biased against the business community. They are not out to throw rocks or throw bombs or anything of the kind.

Business Week is a competent, I think objective, publication which does its best to give a fair picture and certainly not an overly critical picture of industry. So when they pick out the top executives and say top executive compensation, 13.5 percent increase, I think it is fair to say they just didn't pick out a few. Now I do pick out a few and point out there are examples where you have 100 percent and 200 percent increases. On the average, though, it seems the top people, not middle management people and foremen, but the top people did get increases that are two or three times what labor as a whole got.

You have indicated, however, that you recognize this is wrong. Is that right?

Mr. DUNLOP. I certainly do.

Chairman PROXMIRE. And you are going to do your best to correct that?

Mr. DUNLOP. Absolutely.

Chairman PROXMIRE. My only question I have, why did it take so long to get on top of this?

Mr. DUNLOP. Well, I thought I sketched to you that process correctly. Namely, first of all, we are dealing with calendar control year. I told you that when I first came in February, I asked the IRS then to make a survey. The purpose of the survey was to find out whether the salary picture which was emerging and the bonus picture which was

emerging resulted from violations of the regulations, or resulted from the normal working out of those regulations.

Chairman PROXMIRE. Was GM included in that survey? General Motors?

Mr. DUNLOP. The report says that we picked the 25 largest companies and then some additional firms. I assume it does include the 25 largest companies. Mr. Messer, who is sitting on my right, whom I introduced to you as the man in charge of this area, both in phase II and now, says that it was the 25 largest companies—then, clearly, General Motors would be included.

Chairman PROXMIRE. Just one other question before I yield to Senator Humphrey.

I just can't understand why bonuses should be included in the compensation. A dollar is a dollar is a dollar whether they get it from profit sharing or how they get it. It is a compensation increase. I realize it is attractive to tie an executive's compensation into the profit picture, but you have controls that cut across all kinds of things. I am sure some of the compensation that applies to wage earners also had to be modified because of the control system.

Mr. DUNLOP. Mr. Chairman, the salaries, stock options, and bonuses are all subject to special regulations and controls as I point out in the prepared statement I have given you. In the prepared statement I summarize the nature of those regulations.

Chairman PROXMIRE. Senator Humphrey.

Senator HUMPHREY. Mr. Dunlop, just to go back to this prenotification matter. I have here the copy of the hearings of Wednesday, May 23, before the Subcommittee on Consumer Economics. And in that testimony you and I were discussing the whole subject of section 207 (c), which I believe was the Hathaway, the prenotification requirement.

Mr. DUNLOP. That is the hearing section.

Senator HUMPHREY. The hearing section, and subsequently we looked at prenotification applications.

I said:

While you are looking at it, will you publicly release the data submitted in the prenotification applications, since I believe that the Hathaway amendment for the Economic Stabilization Act requires it?

Mr. DUNLOP. Well, that is a very contentious matter, Mr. Chairman.

Senator HUMPHREY. Well, I know it is contentious, but the law is there.

Mr. DUNLOP. Well, let me explain precisely what we have done. What we have done is to issue a rule and say we will invite comment on that rule from all interested parties. The due date on that, I believe, is at the end of the month.

Subsequent to those statements, we have said we will hold a hearing of comment of various people on that rule, and thereafter make our final decision as to what the rule will be.

Senator HUMPHREY. I appreciate that. I just wondered if the law did not supersede the rule.

Mr. DUNLOP. Well, the rule is supposed to be—and is, in our view—in accordance with the law.

Senator HUMPHREY. Well, I voted for the Hathaway amendment and I would like to believe that I knew what I was voting for. I believe that the Hathaway amendment required the release of the prenotification data, or the data in the prenotification application.

You said:

Well, that is a matter which we are proceeding with on these hearings. Anyone who has views about that is perfectly free to express them to us.

Senator HUMPHREY. Well, the Congressional Record has a substantial expression of view on that by the author of the amendment.

And I go on to say we ought to go back to paternity; the father of the amendment ought to at least know something about the child. Anyway, this is a practical suggestion.

Now, I have got the Congressional Record, and if anybody has any doubt what the Hathaway amendment meant, all you have to do is check what Senator Tower said about it, because you may recall Senator Tower in the debate on the Economic Stabilization Act had offered an amendment which weakened the committee's position, by striking out the proprietary information. The Hathaway amendment came about to place back into the Economic Stabilization Act proprietary information.

As a result of prolonged debate in the Senate, there was a vote held. Senator Tower moved to table the Hathaway amendment. That lost by 49 to 37. So the Senate knew exactly what it was doing, and there are pages after pages of debate on this.

Senator Tower, in his effort to defeat the Hathaway amendment, expressed, stated very clearly, what was required. He says here that the effect of this amendment would be to nullify the action of the Senate yesterday in exempting proprietary information from the scope of the amendment. It would effectively require disclosure of the same information which the Senate declined to be required be published when it adopted the Tower amendment yesterday. It would be incompatible with the existing law on confidentiality. The amendment would recommend a major change in Federal policy, requiring confidentiality of information, regarding confidentiality of information, and not a single day or even hour hearing was held on the subject before our committee or, so far as I know, before any committee.

We cannot act in such an uninformed manner in such an important subject. I think if we are not totally informed, we should not attempt to redefine the laws——

Mr. Hathaway says, "I do not know any other definition of proprietary. The definition of this is a problem we had in committee when" [reading] "because I do not know of any definition of proprietary information."

The result is they had a long debate and a considerable number of pages here, so you dont' have to really hire a lawyer. It is there, and it requires prenotification. It requires release of data on application for prenotification. It is all there. I think that is what we have been talking about.

I said at the time I was a little weary over young lawyers coming into Government trying to redefine the Congress and legislate it. It is a constant practice that takes place and vitiates the law; sometimes not only vitiates, does the other, puts new law where the established law is ignored.

So I just thought we ought to clear that up, Mr. Dunlop, and tell your lawyer to read the Congressional Record. He doesn't need to consult any kind of godlike presence, just read the Congressional Record. It will be all there.

Mr. DUNLOP. Thank you. I shall tell him.

Senator HUMPHREY. You tell him with my greetings.

Mr. Dunlop, I just spent a day in the city of Minneapolis holding hearings. We had 15 witnesses, plus a number of others who submitted statements representing the financial community, the petroleum refiners, petroleum retailers, farmers, labor organizations, filling station

operators, metropolitan transit, airports, municipalities, and school districts. The testimony at those hearings, Mr. Dunlop, makes a mockery out of price control.

Let me see if I can get a base of information here that will be helpful. I understand that the prices charged by major oil companies are under mandatory price controls; is that correct?

Mr. DUNLOP. They are under control with respect to the extent to which their prices of petroleum products as a whole can be increased.

Senator HUMPHREY. That is right.

Mr. DUNLOP. They are not with respect to any single product.

Senator HUMPHREY. That is correct. Permits increases of 1 percent on the average for the year ending January 11, 1974, unless formerly justified on the basis of cost passthroughs; is that correct?

Mr. DUNLOP. Yes.

Senator HUMPHREY. Furthermore, these companies are subject to profit guidelines for increases beyond 1.5 percent?

Mr. DUNLOP. Yes, sir.

Senator HUMPHREY. If that is the case, I want you or somebody from your office to go on out and talk to some rather respected people in my part of the country and let them know whether they are being misinformed or attempting to misinform the Government, or what is going on. Because, look here, I have the testimony here of the Metropolitan Transit Commission, public authority established by public law for the State of Minnesota, and the testimony indicates a 25-percent increase in diesel fuel cost.

Bids for petroleum products other than diesel fuel, motor oil, No. 30 HD motor oil, 60,000 gallons, 40-percent increase over last year. Hydraulic transmission fuel, 12,000 gallons, 23-percent increase. No. 2 lubricating grease, 10,000 pounds, 28-percent increase; 140 gear lubricant, 19,000 pounds, 13.1-percent increase.

This is the official testimony of that group. Here is the Minnesota Motor Transport Association, the price increases were almost 50 percent for diesel fuel and gasoline. That is their testimony from the truckers of our State.

Here is the American Automobile Association, how about price per gallon—they are talking about gasoline—our survey showed in general there has been an increase of 2 cents per gallon during the last month. In communities where supplies of gasoline have been decreased, the increase has been as much as 7 or 8 percent; namely, a 15- or 20-percent increase, 7 or 8 cents per gallon.

Here is Minnesota Farmers Union. Many grain truckers relate an increase in cost of fuel of approximately 3 percent within the past year, and the price is continuing to move upward.

Here is the president of a national car rental company, which is a national concern, with a survey of over 200 cities in which his company operates. The car rental cited 25- to 40-percent price increases from the majors, from the major oil companies, for all of their products. Everything that they are getting. That is depending on the community, not less than 25 percent up to 40 percent.

Here is the Sioux Line Railroad, president of the Sioux Line Railroad, which serves the Midwest. "We anticipate that our fuel costs will be increased 25 to 30 percent." It had already gone up over 20 percent.

Now, it is our best estimate that in the period of June 1, 1973, to May 31, 1974, we will need at least 37,000 gallons of No. 2 diesel oil, which is an increase of 7 percent over last year's usage, and the cost, we anticipate that our fuel cost may now increase by 25 to 30 percent.

Mr. Dunlop, how does that fit into a 1-percent price increase?

Mr. DUNLOP. Did you say those were all purchases from major producers?

Senator HUMPHREY. Yes.

Mr. DUNLOP. All?

Senator HUMPHREY. Most of them are. Sioux Line, Metropolitan Transit, purchase from Standard Oil.

Mr. DUNLOP. Well, perhaps I ought to take the testimony that you put in the hearing record and go into it. But the fact is, of course, that in our exploration of these matters, a good many of those price increases arise at independents, arise at the distributors, and other retail outlets, rather than from the major producers.

Senator HUMPHREY. The testimony here is since 1959, the Standard Oil Division of American Oil Co., that supplies diesel fuel to the Twin Cities Line, in 1970, when the Metropolitan Transit Commission acquired the private company, it continued to supply fuel by bid and contract arrangement. We had difficulty this year. They were willing to give a bid for only three-fourths of a supply. I intervened with the cooperation of the Office of Oil and Gas, and Mr. William Simon, who has been very helpful, I want to say again, and we were able to get Standard Oil to agree to fulfill all of the contract requirements, for which we are very grateful.

But my point is that all of this, all of these products that I listed here, this is the official testimony of the assistant general manager, Mr. Louis B. Olson of the Metropolitan Transit Commission—all of them have gone to the figures that I alluded to in my earlier remarks, running 25 to 40 percent above the previous year. And I would hope that you might—I will give you this testimony as our people asked me to contact you because they do feel this is a serious problem.

Independents, of course, you don't control them. The independents or the retailers.

Mr. DUNLOP. That is right.

Senator HUMPHREY. It is the majors on which the price control has guidelines.

Mr. DUNLOP. They are under normal profit margin rules. The 23 majors are under special rule No. 1 to which you refer, yes.

Senator HUMPHREY. Mr. Dunlop, do you monitor on a regular basis the prices of all oil dealers other than the 23 majors?

Mr. DUNLOP. No, I do not think so.

Senator HUMPHREY. Wouldn't it be well for your office, in light of the scarcity we now face, to monitor what is going on in this industry?

Mr. DUNLOP. May I understand—which group you had in mind? Monitoring whom?

Senator HUMPHREY. Other than the 23 majors. I am sure you must monitor the 23 majors, do you not?

Mr. DUNLOP. Are you talking about independent refineries?

Senator HUMPHREY. That is correct.

Mr. DUNLOP. Are you talking about the distributors, retail outlets—which?

Senator HUMPHREY. I am talking about independent refineries, distributors. Because the retailer, obviously, will relate his price to the product he purchases from his wholesaler or jobber.

Then, finally, would you please submit to this subcommittee a comprehensive account of what is going on in prices of oil by product category, by region of the country, and including information on nonmajors insofar as you have it? Because, truly, Mr. Dunlop, the hearings on Saturday were exceedingly disturbing. Everybody there, and this was from bankers down to the labor union, were complaining about price gouging.

In fact, there is all kinds of evidence that was prevalent in those hearings that there is a deliberate price gouging going on in the Midwest, at least in my State.

Mr. DUNLOP. All right. I will get that information for you.

Senator HUMPHREY. Thank you. We will submit the documentation to you.

Mr. DUNLOP. I will be in touch with your staff.

[The following information was subsequently supplied for the record:]

Senator Humphrey requested that Mr. Dunlop submit for the record a report on the Cost of Living Council's price monitoring of oil prices by product category and by region for the 24 companies under mandatory controls, and for independent oil refineries and distributors.

1. INDUSTRY MONITORING

The Cost of Living Council is continuing to closely monitor industry compliance, both through established reporting requirements (the CLC–2, CLC–8 and CLC–9 reporting forms) and through ongoing IRS investigative surveys. In conjunction with our public hearings in February, the Council directed an extensive IRS investigation of the major oil companies which had implemented price increases for heating oil, and IRS investigations are being continued on an ongoing basis since the reimposition of mandatory controls on March 6. However, our purpose in conducting such investigative activities is not to record all price movements within the industry, but to determine compliance with the regulations.

Under the reporting requirements of Phase III, all firms having annual revenues in excess of $250 million must file the CLC–2 forms with the Council on a quarterly basis. The form was published in the May 7 Federal Register, and the Cost of Living Council conducted a public hearing on June 6 on proposed rule-making for the CLC–2 public disclosure requirements. The Council issued final regulations on public disclosure of data contained in the CLC–2 reporting form on June 15 for companies which have increased prices of a substantial product by more than 1.5%. The changes require disclosure of information filed by companies reporting on Form CLC–2 showing 1) cost justification for price increases and 2) compliance with base period profit margin rules.

In addition to this quarterly reporting requirement, the oil companies covered by Special Rule No. 1 must further provide the Council on a monthly basis records of posted price movements, cost increases and supply conditions on CLC–9. This form was published in the Federal Register on June 19. The reports for March, April and May 1973 must be received by the Cost of Living Council no later than 30 days from the date of publication in the Federal Register, and subsequent forms must be submitted no later than 30 days after the close of each calendar month. Firms subject to Special Rule No. 1 must also submit Form CLC–8, "Petroleum Industry Special Report," which is a one-time report of price increases for crude petroleum and petroleum products. The form requires data on price increases put into effect from February 1, 1973 through March 31, 1973. This form was also published in the June 19 Federal Register and these reports are due to the Cost of Living Council within 30 days of publication. (These forms are attached as reference.)

Oil companies not included under the mandatory regulations have been required to comply with the general price standard set for the voluntary sectors of the economy in Phase III under Section 130.13 of the Cost of Living Council regulations. If annual revenues are $50 million or more, these companies have been required to maintain financial records of costs, prices and profits to be made available for inspection or audit if required. However, independent jobbers, wholesalers and retailers who were included in the Phase II Small Business Exemption have not been directly subject to these standards. Since the Freeze was announced on June 13, the Cost of Living Council has extended reporting requirements to firms treated as record-keeping companies (i.e., those firms with annual revenues between $50 million and $250 million) and these firms are to submit the CLC–2 form to the Cost of Living Council by June 30.

2. PRICE MOVEMENT IN THE OIL INDUSTRY

The Cost of Living Council depends upon Bureau of Labor statistical data, i.e., WPI and CPI figures, to indicate price movement in the economy for crude petroleum and petroleum products. We also receive reports of complaints from the IRS and complaints directly to the Council from the general public and business firms. We also periodically direct investigations and surveys and request spot checks by the IRS in specific localities. Data, especially for the Council's review, is obtained from the reports submitted to us by companies subject to controls, as outlined above. The Council's Energy Policy Committee is currently developing a more comprehensive program for monitoring crude oil and product price movement, but substantative data resulting from this effort will not be available until this fall. However, we have prepared a study of retail gasoline price trends, based upon government and industry statistical data, and this is enclosed as an attachment.

3. SIXTY-DAY FREEZE, EFFECTED JUNE 13

Since implementation of the Freeze on June 13, virtually all wholesale and retail gasoline and fuel prices, including propane, are frozen at the price at or above which the seller priced at least 10 percent of these products concerned in transactions during the first eight days of June. The only dollar pass-through for increased costs incurred subsequent to June 12 are for imports of crude petroleum or product so long as the commodity is neither physically transformed by the seller or becomes a component of another product. (See Section 140.14 of the Cost of Living Council Freeze Regulations, attached.)

During the freeze, the IRS is conducting intensified compliance checks for oil products. These efforts have resulted in nearly 1100 rollbacks across the nation thus far for gasoline prices which were above freeze prices. (Attached is a release on these rollbacks.)

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COST OF LIVING COUNCIL NEWS, JUNE 15, 1973

PUBLIC DISCLOSURE

The Cost of Living Council today issued final regulations on public disclosure of data contained in quarterly reports submitted to the Council on Form CLC–2 by companies which have increased prices of a substantial product by more than 1.5%.

The regulations implement one of the 1973 amendments to the Economic Stabilization Act and finalize proposed regulations issued on May 11, 1973. The Council invited written comments and on June 6 held public hearings on its proposals.

After receiving suggestions from Members of Congress, industry representatives and the general public, the Council has made two significant changes in the proposed regulations. The changes require disclosure of information filed by companies reporting on Form CLC–2 showing (1) cost justification for price increases and (2) compliance with base period profit margin rules.

William N. Walker, Acting Deputy Director and General Counsel of the Cost of Living Council stated: "These regulations recognize the intent of Congress to provide the public with data sufficient to tell when a price increase is supported by cost justification and whether or not a firm is within its base period profit margin. At the same time, the regulations accommodate the concerns of industry that disclosure of some of the data required by Form CLC–2 would be harmful in view of its availability to competitors."

COST OF LIVING COUNCIL NEWS, JUNE 19, 1973

OIL INDUSTRY REPORTING FORMS ISSUED

Forms CLC–8 and CLC–9, special reporting forms for companies covered by the Cost of Living Council's mandatory regulations for oil companies, were published today in the Federal Register.

Form CLC–8, Petroleum Industry Special Report, is a one-time report of price increases for crude petroleum and petroleum products. The form requires data on price increases put into effect from February 1, 1973, through March 31, 1973. The report is due in 30 days.

Form CLC–9, Petroleum Industry Monthly Report, is a monthly report of posted price movements, cost increases, and supply conditions. Reports for March, April and May are due 30 days from today.

The Council stressed that these forms are in addition to, not a substitute for, any other forms required by the Council.

WHAT HAS BEEN HAPPENING TO RETAIL PRICES OF GASOLINE IN THE UNITED STATES?

Retail prices of gasoline in the United States have been going up. They have risen by 8.4 percent in the last year. (See Table 1.) On other hand, most of this growth has been since the beginning of price controls in April 1971, gasoline prices have gone up by 5.5%, while the average of all prices has risen 7.0%.

It is important to bear in mind that the price increase since January reflects to a large extent the catching up by the industry after what had, in effect, been the prolongation of the freeze.

TABLE 1.—PRICE INCREASES APRIL 1972–73 WITH RELATIVE WEIGHTING

| | Percent of consumer dollar expended | Price increase in the last 12 months (percent) |
|---|---|---|
| Housing | 33.9 | 3.6 |
| Food | 27.5 | 11.5 |
| Health and recreation | 17.9 | 2.9 |
| Apparel and upkeep | 10.7 | 3.3 |
| Transportation (including gasoline) | 10.1 | 3.4 |
| Gasoline | (2.9) | (8.4) |
| National average | 100.0 | 5.1 |

As the chart shows, gasoline price increases in the last year exceeded the national average. Gasoline, however, is a minor part of consumer spending. The increases in gasoline prices are not sufficiently high to raise the total transportation increases as much as the national average.

In addition, much of our increased consumption of gasoline this year must be supplied by foreign sources. The price of foreign gasoline, over which we have no control, has been increasing far more rapidly than the price of U.S. gasoline. (See Table 2).

TABLE 2.—PRICE PER GALLON, WHOLESALE UNITED STATES AND ITALIAN 1973 PREMIUM GASOLINE PRICES

| | Italian gasoline | | | United States gasoline |
|---|---|---|---|---|
| | F.o.b. | Tanker | Total | |
| March | 15.15 | 1.61 | 16.79 | 17.15 |
| April | 19.56 | 1.76 | 21.32 | 17.77 |
| May | 27.34 | 2.16 | 29.50 | 21.07 |

COST OF LIVING COUNCIL NEWS, JUNE 24, 1973

John T. Dunlop, Director of the Cost of Living Council, said today that a profit check on all firms with annual sales in excess of $50 million was in full progress across the country. The Council, and the Internal Revenue Service, are conducting the review in response to President Nixon's directive when he announced the price freeze on June 13.

Cost, profits, and price data of some 3,100 firms are being looked at to assure compliance with Phase III Economic Stabilization Program requirements and to provide data for developing Phase IV policy and programs.

About 800 firms doing over $250 million a year in sales (Tier One) were required to submit detailed information to the Cost of Living Council by June 21. An additional 2,300 firms in the $50 to $250 million category (Tier Two) must submit their completed CLC–2 forms by June 30. .

Companies that exceed Phase III profit margins or which have increased prices without adequate cost justifications are subject to price rollbacks. Companies failing to file the required forms are subject to immediate prosecution.

Beginning this week. Cost of Living Council price monitors will conduct a preliminary audit of forms filed by Tier One firms. At the same time, IRS agents will conduct a preliminary audit of Tier Two firms. The IRS audits will contain the following elements:

This week, IRS agents will make telephone contact with all 2,300 Tier Two firms to apprise them of the reporting requirements and to offer assistance in meeting those requirements.

Between July 1 and July 15, about 1,000 IRS agents will visit each Tier Two company to review file copies of the reports and supporting documentation.

Beginning on July 15, for the next month, IRS agents will conduct detailed investigations of both Tier One and Tier Two firms in situations where possible violations appear. In addition, random detailed audits will also be conducted by the IRS during this period.

Firms unable to document their submissions will be the first targets of the second wave of investigations. Firms that have exceeded their base period profit margins or that have increased prices without adequate cost justification will also be given special attention. In addition, the Cost of Living Council may order sweeps in specific industries based upon the data received.

Data from the report is also expected to reveal price movements, price pressures within industry sectors, any particular geographical problems, and other information needed for planning Phase IV efforts.

Dr. Dunlop stated: "By identifying specific causes of increasing prices, be they costs, supply shortages, international prices, wages or other factors, the Council will obtain a valuable information base for purposes of planning Phase IV."

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COST OF LIVING COUNCIL—FREEZE GROUP NEWS, JUNE 25, 1973

The Cost of Living Council Special Freeze Group said today that 1,106 service stations across the nation have rolled back gasoline prices to freeze levels as the result of Internal Revenue Service checks of consumer complaints.

"The necessity of all businesses complying with the freeze regulations cannot be overstressed," Special Freeze Group Director James W. McLane stated. "Our IRS stabilization agents will continually be in the field to insure that prices above the freeze level are not being charged to the public."

The investigations showed 741 independent and 365 company-owned stations charging above freeze price levels. All the stations readily agreed to roll back prices when contacted by Economic Stabilization Program agents of the IRS. The average overcharge was 2 cents a gallon.

Under the regulations, the freeze base price is the highest price at or above which at least 10 percent of a product's sales were made during the June 1 through June 8 period.

The largest total overcharge so far discovered was based on a half-cent-a-gallon increase charged by a Connecticut gasoline wholesaler on 500,000 gallons. The wholesaler is refunding the $2,500 overcharge to the customers affected.

Freeze Group Compliance and Enforcement agents will continue checking service stations as well as all other types of businesses for compliance with the freeze.

Businesses found not in compliance, and who refuse to roll back prices, are subject to penalties of up to $2,500 for each instance of noncompliance.

federal register

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WASHINGTON, D.C.
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PART III

# COST OF LIVING COUNCIL

■

## Phase III Regulations

## REPORTING FORMS

Title 6—Economic Stabilization

## CHAPTER I—COST OF LIVING COUNCIL

## PART 130—COST OF LIVING COUNCIL

## PHASE III REGULATIONS

### Appendix C—Cost of Living Council Reporting Forms

The purpose of this amendment is to add a new Appendix C, Cost of Living Council Reporting Forms, to part 130 of the Cost of Living Council regulations. The appendix contains form CLC–2 which serves as a report or record of prices, cost and profits pursuant to subpart C of part 130, "Reporting and Recordkeeping," and as a prenotification form pursuant to subpart N of part 130, "Mandatory Prenotification Rules for Certain Firms."

The instructions to the CLC–2 form are generally self-explanatory. However, there are several modifications for preparation of the first form. The form CLC–2 instructions require that the form be prepared and retained or submitted 45 days after the last day of each fiscal quarter ending after January 10, 1973. However, the first form CLC–2, required for the fiscal quarter including January 11, 1973, will be due 45 days after publication of this form in the FEDERAL REGISTER. The CLC–2 form due for any subsequent fiscal quarter is due 45 days after the last day of the fiscal quarter as stated in the instructions to the form, or 45 days after publication of CLC–2, whichever is later.

The first form CLC–2 prepared and maintained or submitted for the fiscal quarter including January 11, 1973, must include, in addition to profit margin information for the fiscal quarter, cost and price information relating to all price increases put into effect after January 10, 1973, and before May 1, 1973. On the form CLC–2 prepared for the first fiscal quarter which does not include January 11, 1973, firms must include cost and price information relating to price increases made during the fiscal quarter being reported, even if certain of those increases were included on the first form CLC–2.

Some firms have been filing or retaining form PC–50 and form PC–51 in the interim period prior to publication of the CLC–2 form. The instructions to form CLC–2 require firms to prepare the form for the fiscal quarter including January 11, 1973 and for all subsequent fiscal quarters. Firms are no longer required to file or retain a form PC–50 or PC–51 for any fiscal quarter ending after January 10, 1973. Thus, if a firm prepared and retained or submitted a PC–50 or PC–51 for a fiscal quarter ending on or after January 11, 1973, the firm must now prepare and maintain or submit a form CLC–2 for the same fiscal quarter.

Publication of form CLC–2 does not change the requirement that the form PC–50 or PC–51 be filed for any fiscal period ending on or before January 10, 1973 where such a report was required by Price Commission regulations then in effect. Form CLC–2 now replaces reports or records required pursuant to subpart F of part 130.

A new subpart N, effective, 4 p.m. e.d.t., May 2, 1973, establishes mandatory prenotification requirements for price increases by certain firms with $250 million or more in annual sales or revenues. The form CLC–2 is to be used for making such prenotification filings.

(Economic Stabilization Act of 1970, Public Law 92–210, 85 Stat. 743, as amended, and Executive Order No. 11695, 38 FR 1473.)

In consideration of the foregoing, part 130 of title 6 of the Code of Federal Regulations is amended as set forth herein, effective May 2, 1973.

Issued in Washington, D.C., May 2, 1973.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

Part 130 of title 6 of the Code of Federal Regulations is amended by adding a new appendix C to read as follows:

APPENDIX C—COST OF LIVING COUNCIL REPORTING FORMS

| | | |
|---|---|---|
| Form CLC-2 (May 1973) Cost of Living Council | Prenotification Report or Record of Prices, Costs and Profits<br>Type of submission<br>(a) ☐ Prenotification (b) ☐ Quarterly report (c) ☐ Other ▶ | CLC Identification Number (Parent)<br>Unconsolidated Entity |
| Form applies to:<br>☐ Reporting Parent and consolidated entities<br>☐ Reporting unconsolidated entity. Parent name<br>☐ Recordkeeping parent and consolidated entities<br>☐ Recordkeeping unconsolidated entity. Parent name | | OMB Number: 172-R0001<br>Approval Expires April 1974<br>Reference Number<br>Batch Number<br>Time Stamp |
| Part I.—Identification Data | | Cost of Living Council Use Only |

1 (a) Name of parent or unconsolidated entity to which this form applies

(b) Address (Number and street)

(c) City or town, State and ZIP code

(d) Chief executive officer

2 Is this a resubmission? ☐ Yes ☐ No

3 Ending date of most recently completed fiscal year (Month, day, and year) ▶

4 Reporting period ending date (Month, day, and year) ▶

5 Annual sales or revenues (To be completed by Parent only) ▶ $

Part II.—Calculation of Base Period Profit Margin

| | | |
|---|---|---|
| 6 Base year 1 net sales — Fiscal year ended (Month, day, and year) _____ | $ | |
| 7 Base year 2 net sales — Fiscal year ended (Month, day, and year) _____ | $ | |
| 8 (Add Item 6 and 7) ▶ | | $ |
| 9 Base year 1 operating income | $ | |
| 10 Base year 2 operating income | $ | |
| 11 Total (Add Item 9 and 10) ▶ | | $ |
| 12 Base period profit margin (Divide Item 11 by Item 8) ▶ | | % |

Part III.—Calculation of Profit Variation

| | Current Period | Same Period Prior Year |
|---|---|---|
| 13 Net sales | $ | $ |
| 14 Base period profit margin (From Part II, Item 12) | % | |
| 15 Target current period profit (Item 13 times Item 14) | $ | |
| 16 Actual operating income | $ | $ |
| 17 Current profit under (over) target profit (Subtract Item 16 from Item 15) | $ | |

Part IV.—Additional Information

18 (a) Name and title of individual to be contracted for further information

(b) Address (Number and street)

(c) City or town, State and ZIP code | (d) Phone number (include area code)

19 You must maintain for possible inspection and audit, a record of all price changes subsequent to November 13, 1971. Give location of such records. ▶

Part V.—Certification

I certify that the information submitted on and with this Form is factually correct, complete, and in accordance with Economic Stabilization Regulations (Title 6, Code of Federal Regulations) and instructions to Form CLC-2.

Type name and title of the Chief Executive Officer of parent or other authorized Executive Officer and date of signing.

| | | |
|---|---|---|
| Name ▶<br>Title ▶ | Date ▶ | Signature ▶ |

Part VI.—Price/Cost Information

Name of parent or unconsolidated entity (From Part 1)

| Product or Service Line Description (a) | 4-Digit SIC (b) | Reporting Period From ▶ To ▶ Sales ($000 Omitted) (c) | Weighted Average % Price Adjustment Actual (d) | Weighted Average % Price Adjustment Authorized (e) | % Cost Justification (f) | Maximum Percentage Price Increase (g) | Cumulative Period From ▶ To ▶ Sales ($000 Omitted) (h) | Authorized Weighted Average % Price Adjustment (i) |
|---|---|---|---|---|---|---|---|---|
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| 17 | | | | | | | | |
| 18 | | | | | | | | |
| 19 | | | | | | | | |
| 20 Totals from Continuation Schedule | | | | | | | | |
| 21 Totals (lines 1 through 20) | | $ | | | | | $ | |
| 22 Weighted Average % Price Adjustment | | | % | % | % | | | % |
| 23 Sales of or from Foreign Operations | | $ | | | | | $ | |
| 24 Sales of Food | | | | | | | | |
| 25 Other Non-applicable Sales | | | | | | | | |
| 26 Net Sales | | $ | | | | | $ | |

INSTRUCTIONS FOR THE PREPARATION OF FORM CLC—2 PRENOTIFICATION, REPORT, OR RECORD OF PRICES, COSTS, AND PROFITS

GENERAL INSTRUCTIONS

A. *Purpose*

1. Form CLC–2 is designed to provide the data necessary for the Cost of Living Council to execute its role in monitoring the performance of the economy pursuant to Executive Order 11695. Attention has been given to the self-administered aspects of phase III and an effort has been made to reduce the public and private burden of the economic stabilization program.

2. Form CLC–2 provides the means by which the Cost of Living Council monitors on a quarterly basis the price adjustments and related costs and profits of those firms subject in whole or in part to the general price standard of subpart B and those firms subject in whole or in part to the mandatory rules applicable to the food industry in subpart F of the phase III regulations. In addition form CLC–2 provides the means by which an entity prenotifies the Cost of Living Council of certain price adjustments (see special instructions for prenotification of price adjustments).

B. *Who Must Use Form CLC–2*

1. *Price reporting firm.*—Each firm with $250 million or more of annual sales or revenues as defined in 6 CFR, part 130, subpart L must report quarterly to the Cost of Living Council on form CLC–2.

2. *Price recordkeeping firm.*—Each firm with $50 million or more but less than $250 million of annual sales or revenues as defined in 6 CFR, part 130, subpart L must place among its records on a quarterly basis a completed form CLC–2.

3. *Other CLC–2 users.*—Generally, firms with less than $50 million of annual sales or revenues as defined in 6 CFR, part 130, subpart L are not required to use form CLC–2 but are encouraged to do so to assist in complying with the General Price Standard (6 CFR 130.13). However, every firm which is subject to the mandatory rules applicable to the food industry (6 CFR, part 130, subpart F), and which is not a price reporting firm is subject to the price recordkeeping requirements regardless of the dollar amount of its annual sales or revenues and must therefore place among its records on a quarterly basis a completed form CLC–2.

4. *General rules.*—The following rules apply for the purpose of determining whether a firm is a price reporting firm or a price recordkeeping firm:

a. *Determination of "Firm".*—If a firm directly or indirectly controls another firm or firms, and is not itself directly or indirectly controlled by another firm, that firm is called a "parent" for the purposes of this form CLC–2. If a firm does not directly or indirectly control any other firm or firms, and is not itself directly or indirectly controlled by another firm, that firm is also called a "parent" for purposes of this form CLC–2. The parent and its consolidated and unconsolidated controlled firms (if any), taken all together, constitute the "firm" for the purposes of paragraphs B.1–B.3, above.

b. *Parent and consolidated entities.*—Once the price reporting or price recordkeeping status is determined, only the sales or revenues of the parent and the sales or revenues of the controlled entities (if any), consolidated with the parent in its financial statements prepared in accordance with generally accepted accounting principles are combined for purposes of preparation of the form CLC–2 applicable to the "Parent and Consolidated Entities." The form CLC–2 is prepared by the parent for and on behalf of the entire consolidated group and is either submitted to the Cost of Living Council or retained as a record depending upon the price reporting or price recordkeeping status of the "firm."

c. *Unconsolidated entity.*—In addition to preparing form CLC–2 for and on behalf of the entire consolidated group, the parent must prepare a separate form CLC–2 for and on behalf of each unconsolidated entity with annual sales or revenues of $10 million or more. An "unconsolidated entity" is any entity directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An "unconsolidated entity" includes any entity consolidated with that unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles. Whether the form CLC–2 must be submitted to the Cost of Living Council or retained as a record depends upon the price reporting or a price recordkeeping status of the "firm."

5. *Certificate in lieu of form CLC–2.*—Any firm with annual sales or revenues of $50 million or more and which has not charged any price above base price levels since November 13, 1971, or which has not charged any price above base price levels after complying fully with the Price Commission's Special Regulation No. 1, in effect on January 10, 1973, may, in lieu of retaining in its files or submitting to the Cost of Living Council a form CLC–2, submit within 30 days of the end of the firm's fiscal quarter the following "Certificate in Lieu of Form CLC–2":

I certify that as of (last day in firm's fiscal quarter), _____ (Name of firm) has not at any time since November 13, 1971, charged a price in excess of the base price established for a property or service of a covered activity under the regulations of the Price Commission in effect on January 10, 1973, or if such a price were charged, the firm has complied with all of the requirements of special regulation No. 1 of the Price Commission, and, since that time, has not charged a price in excess of such base price.

_____ (Chief Executive Officer (or other authorized executive officer))

C. *When To Submit or Prepare*

1. A price reporting firm must submit and a price recordkeeping firm must retain all CLC–2 forms which are required to be prepared for each fiscal quarter beginning with the first fiscal quarter which includes January 11, 1973. Form CLC–2 must be submitted or retained not later than 45 days after the end of each fiscal quarter or 90 days after the end of the fiscal year.

D. *What To Submit or Prepare*

1. This form and instructions only require basic information. However, the Cost of Living Council may request additional data in particular cases. Firms required to prepare form CLC–2 must attach all supporting schedules indicated in the instructions. Firms which submit forms CLC–2 which contain incomplete or incorrect information will be required to submit corrected forms CLC–2 and may be in violation of the reporting requirements if complete and correct forms are not submitted within the time periods prescribed.

2. Price adjustments and supporting cost justification must be recorded for each product line or service line categorized by four-digit Standard Industrial Classification (SIC) code if that is the entity's customary pricing unit (e.g., cost or profit center, for that product line or service line. If a customary pricing unit includes more than one four-digit SIC code, such pricing unit may be used provided that a listing of four-digit SIC codes included within the pricing unit is attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If a customary pricing unit is at a level of aggregation which is less than one four-digit SIC code, the entity may record price adjustments and supporting cost justification at that level.

3. For purposes of parts II and III of this form, price reporting firms which file forms 10–K and 10–Q with the Securities and Exchange Commission must attach to the form CLC–2 a copy of the form 10–Q for each fiscal quarter which ends on the date entered in item 4, Part I, form CLC–2. If the first submission of the form CLC–2 does not cover the first quarter of the firm's fiscal year, an additional form 10–Q must be submitted for the quarter immediately preceding the reported quarter. With the first submission, firms must file form 10–K for each of the 2 base years. Thereafter, the form 10–K must be filed at the end of each fiscal year as an attachment to the form CLC–2.

4. Firms which do not file forms 10–K and 10–Q with the Securities and Exchange Commission must prepare and attach to the form CLC–2, quarterly and annual financial statements (prepared in conformity with generally accepted

accounting principles consistently applied) in conformity with definitions in the Securities and Exchange Commission Regulation S–X in lieu of forms 10–Q and 10–K as specified in paragraph D.3 above.

In addition, such firms which do not file form 10–K with the Securities and Exchange Commission but which have annual financial statements audited by independent public accountants must attach a copy of such audited statements in conformance with the requirements for submitting form 10–K in paragraph 3 above. Such firms which do not have audited annual financial statements must attach a document explaining why such statements are not available.

*E. Where To Submit*

1. Price reporting firms must forward form CLC–2 and attachments to: Cost of Living Council, Form CLC–2 Submission, 2000 M Street NW., Washington, D.C. 20508.

2. Price recordkeeping firms must retain form CLC–2 at the address of the executive office of the parent.

*F. Confidentiality of Information*

1. Section 205 of the Economic Stabilization Act of 1970, as amended, provides as follows:

"(a) Except as provided in subsection (b), all information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purpose of carrying out this title or when relevant in any proceeding under this title.

"(b)(1) Any business enterprise subject to the reporting requirements under section 130.21(b) of the regulations of the Cost of Living Council in effect on January 11, 1973, shall make public any report (except for matter excluded in accordance with paragraph (2)) so required which covers a period during which that business enterprise charges a price for a substantial product which exceeds by more than 1.5 percent the price lawfully in effect for such product on January 10, 1973, or on the date 12 months preceding the end of such period, whichever is later. As used in this subsection, the term 'substantial product' means any single product or service which accounted for 5 percent or more of the gross sales or revenues of a business enterprise in its most recent full fiscal year.

"(2) A business enterprise may exclude from any report made public pursuant to paragraph (1) any information or data reported to the Cost of Living Council, proprietary in nature, which concerns or relates to the amount or sources of its income, profits, losses, costs, or expenditures but may not exclude from such report, data, or information, so reported, which concerns or relates to its prices for goods and services.

"(3) Immediately upon enactment of this subsection, the President or his delegate shall issue regulations defining for the purpose of this subsection what information or data are proprietary in nature and therefore excludable under paragraph (2), except that such regulations may not define as excludable any information or data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 by a business enterprise exclusively engaged in the manufacture or sale of a substantial product as defined in paragraph (1). Such regulations shall define as excludable any information or data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of the business enterprise."

2. The Council will issue regulations providing for implementation of this provision.

*G. Suggestions for Improvement*

The Cost of Living Council welcomes suggestions for improving this and other forms. The Council seeks ways of obtaining the information it needs to exercise its responsibilities under the phase III economc stabilization program with the minimum amount of reporting burden. Suggestions should be submitted to: Cost of Living Council, Office of Price Monitoring, Special Projects Division, 2000 M Street NW., Washington, D.C. 20508.

*H. Rounding*

For purposes of this form, all percentages must be expressed to the nearest two decimal places (such as 5.92 percent). All dollar entries must be rounded to the nearest $1,000 and the 000 should be omitted (such as $1,750,803 entered as $1.751).

*I. Sanctions*

The submission of CLC–2 forms by price reporting firms as a report or prenotification and the preparation and retention of CLC–2 forms by price recordkeeping firms are mandatory requirements under the phase III regulations. Failure to file, to keep records or otherwise to comply with these instructions may result in criminal fines, civil penalties, and other sanctions as provided by law including the Economic Stabilization Act of 1970, as amended, Executive Order 11695 and the economic stabilization regulations.

SPECIFIC INSTRUCTIONS

*Organization to Which Form Applies*

Check the one box which indicates the status of the organization to which this form applies. If either box (2) or (4) is checked, enter the legal name of the parent on the line provided.

*Type of Submission*

Check one box to indicate the reason for submission of the form to the Cost of Living Council.

Part I—*Identification Data*

ITEM 1. *Name, address, and chief executive officer of parent or unconsolidated entity.*—Enter the legal name of the parent or unconsolidated entity to which the form applies. Enter the address of its executive office. Enter the name and title of the chief executive officer.

NOTE.—Hereafter the parent or unconsolidated entity to which the form applies will be referred to as the "entity."

ITEM 2. *Is this a resubmission?*—Answer item 2 "yes" if you are supplying additional information or are resubmitting a report. In either case, the form must be completed in its entirety.

ITEM 3. *Ending date of most recently completed fiscal year.*—Enter the date of the last day of the most recently completed fiscal year of the entity. If the fiscal year ending date has changed, enter the word "change" and attach a letter explaining the change.

ITEM 4. *Reporting period ending date.*—Enter the date of the last day in the reporting period.

The reporting period must conform with the entity's most recently completed fiscal quarter. For purposes of the first preparation of this form, the reporting period is the fiscal quarter which includes January 11, 1973.

ITEM 5. *Annual sales or revenues* (to be completed by parent only)—Enter for the most recently completed fiscal year, the total of the annual sales or revenues (as defined in 6 CFR, part 130, subpart L) of the parent and its consolidated and unconsolidated controlled firms. The amount entered in this item is computed as follows:

Total annual gross receipts of the firm from whatever source derived, less gross receipts of or from foreign entities, branches or divisions (in accordance with the definition of "annual sales or revenues" provided in subpart L of the phase III regulations).

*Special Instructions Applicable to the Food Industry*

Subpart F of the phase III regulations provides that a firm which is subject to both the general standard for price adjustments (subpart B) and the mandatory rules applicable to the food industry (subpart F) is subject to two profit margin limitations: One for subpart B purposes and one for subpart F purposes. The subpart B profit margin can be based, at the option of the firm, on total sales or on nonfood sales only, but if the former option is chosen the 1.5 percent price increase alternative of the general price standard is not available. The profit margin for subpart F purposes is a food sales profit margin calculated according to the rules of subpart F.

When these two profit margins are required to be calculated pursuant to subpart F, parts II and III of the form CLC–2 are completed for the subpart B profit margin and an additional form CLC–2 must be attached with parts II and III completed for the subpart F profit margin. Type in "For Subpart F Purposes" following the headings for part II and part III of the attached form

CLC–2 and also complete part I of the attached form CLC–2.

In the event that the entity to which form CLC–2 applies is itself engaged in food sales only or in nonfood sales only, the entity need not complete two parts II and III but it must designate whether the part II and III it does complete is for subpart B or for subpart F purposes. Entities which are engaged in both food and nonfood sales must complete two parts II and III of the form CLC–2, as indicated above, according to whether the firm (as defined in the general instructions) is subject to subpart F of the phase III regulations in addition to subpart B, unless the sales used to compute the profit margin for purposes of subpart F are equal to the sales used to compute the profit margin for purposes of subpart B.

If the firm of which the entity is a part is subject only to subpart F (i.e., all of its sales are from food operations), the entity will, of course, prepare only one part II and III of the form CLC–2. Type in "Firm Subject to Subpart F Only" following the headings for part II and part III of the form CLC–2.

Part II—*Calculation of Base Period Profit Margin*

This part must be completed at the time the initial form CLC–2 is prepared. Thereafter, this part must be completed only if the base period profit margin is restated. The term "base period" means any two, at the option of the entity, of the following fiscal years: That entity's last 3 fiscal years ending before August 15, 1971, and any fiscal year, other than the fiscal year for which compliance is being measured, completed on or after that date. In determining a base period for the purpose of computing a base period profit margin a weighted average of profits during the 2 years chosen must be used. The entries made in items (6), (7), (9), and (10) must be reconciled with the corresponding entries reported on the supporting form 10–K or other financial statements required in the general instructions under "What to Submit or Prepare." Such reconciliation must be attached to the form CLC–2.

ITEMS 6 and 7. *Base years 1 and 2—net sales.*—Enter, for the first base year (item 6) and second base year (item 7), net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X except operating revenues of: (1) Public utilities (as defined in 6 CFR, Part 130, Subpart L); (2) foreign operations (as defined in the instructions to line 23, part VI of this form); (3) insurers; and (4) farming.

ITEM 8. *Total.*—Enter the sum of items 6 and 7.

ITEMS 9 and 10. *Base years 1 and 2—Operating income.*—Enter, for the first base year (item 9) and second base year (item 10), operating income computed as follows: Net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X except operating revenues of (1) Public utilities (as defined in 6 CFR, Part 130, Subpart L); (2) foreign operations (as defined in the instructions to line 23, part VI of this form); (3) insurers, and (4) farming; less (1) costs of tangible goods sold, (2) other operating costs and expenses, (3) selling, general and administrative expenses, (4) provision for doubtful accounts and notes, (5) interest expense and (6) other general expenses as defined in Securities and Exchange Commission Regulation S–X except operating costs and expenses of (1) public utilities (as defined in 6 CFR, Part 130, Subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers, and (4) farming. The following costs and expenses must not be included in the computation of operating income for Items 9 and 10: (1) Nonoperating items, (2) extraordinary items, and (3) taxes on income.

ITEM 11. *Total.*—Enter the sum of items 9 and 10.

ITEM 12. *Base period profit margin.*—The base period profit margin is calculated by dividing item 11 by item 8.

Part III—*Calculation of Profit Variation*

This part must be completed by all entities each time form CLC–2 is prepared. The entries made in items 13 and 16 must be reconciled with the corresponding entries reported on the supporting form 10–K, form 10–Q, or other financial statements required in the general instructions under "What to Submit or Prepare." Such reconciliation must be attached to the form CLC–2.

ITEM 13. *Net sales.*—Enter net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X, except operating revenues of: (1) Public utilities (as defined in 6 CFR, part 130, subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers, and (4) farming, for the "Current Period" and "Same Period Prior Year" in the applicable columns. Current period is defined as the portion of the fiscal year from the beginning of the fiscal year to the date in item 4, part I of this form.

ITEM 14. *Base period profit margin.*—Enter the base period profit margin from part II, item 12.

ITEM 15. *Target current period profit.*—Enter the target amount of current period profit determined by multiplying item 13 ("Current Period") by item 14.

ITEM 16. *Actual operating income.*—Enter for the "Current Period" and "Same Period Prior Year" in the applicable columns the operating income computed as follows: Net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X except operating revenues of: (1) Public utilities (as defined in 6 CFR part 130, subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers, and (4) farming; less (1) costs of tangible goods sold, (2) other operating costs and expenses, (3) selling, general and administrative expenses, (4) provision for doubtful accounts and notes, (5) interest expense and (6) other general expenses as defined in Securities and Exchange Commission Regulation S–X, except operating costs and expenses of: (1) Public utilities (as defined in 6 CFR, part 130, subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers and (4) farming. The following costs and expenses must not be included in the computation of actual operating income for item 16: (1) nonoperating items, (2) extraordinary items, and (3) taxes on income.

ITEM 17. *Current profit under (over) target profit.*—This entry is determined by subtracting item 16 from item 15.

Part IV—*Additional Information*—Self-explanatory

Part V—*Certification*

Type the name and title of the individual who has signed the certification and the date of signing. The individual who signs and certifies this form CLC–2 must be the chief executive officer of the parent or such other executive officer of the entity as authorized by the chief executive officer to sign for him for this purpose. Such authorization must be received by the Cost of Living Council (price reporting firm) or filed in the records of the entity (price recordkeeping firm) in the following format:

DELEGATION OF AUTHORITY TO SIGN AND CERTIFY

(Typed date of signing)

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(Name of parent)

I, _____ (Name), hereby certify that I am the _____ (Title) of the above-named parent; and that, as such, I am authorized to sign documents and to certify to the Cost of Living Council, on behalf of said parent, the accuracy and completeness of all the information in such documents. Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the persons listed below, who are executive officers of the above-named parent or entity of the firm.

This delegation is effective until it is revoked in writing, and in the case of a price reporting firm, the Cost of Living Council so notified.

---
(Date)

---
(Signature)

Authorized Individuals

| Name and Title (Alphabetical by surname) | Extent of Authorization (Consolidated parent or unconsolidated entity) |
|---|---|
| | |
| | |
| | |
| | |
| | |

*Introduction*

This part is used to report adjustments in the selling prices of products and services. For purposes of this form, every reference to product also applies to service and every reference to product line also applies to service line. Any price adjustments which have been made by means of changes in quantity, quality, specifications, or characteristics must be taken into account when reporting price adjustments. The price of an item in inventory may be increased only to reflect cost increases incurred in the production of that item.

*Separation of food and nonfood operations.*—In view of the fact that the general price standard of subpart B provides an alternative whereby prices may be increased by a weighted annual average of 1.5 percent to reflect increased costs without limitation as to profit margin, "nonfood" sales and related costs are reported on lines 1–19 of part VI of the form CLC–2 and a weighted average percentage price adjustment test is applied to total "nonfood" sales (line 22). "Food" sales are reported separately (line 24 and separate part VI) without application of the weighted average percentage price adjustment test to total "food" sales since the 1.5 percent alternative does not apply to sales subject to subpart F.

*Separation of wholesale/retail and other operations.*—An entity engaged in "nonfood" wholesale or retail operations may choose to complete lines 1–19 of this part for its "nonfood" operations including wholesale and retail operations, or it may separate its wholesale and retail operations from other operations and complete lines 1–19 for its other operations only. In the case where the entity separates its wholesale and retail operations from other operations, it must include the sales and revenues from wholesale and retail operations in lines 25 of this part (see paragraph (h) under "Non-Applicable Sales") and complete and attach a schedule T, "Report or Record of Retailing and Wholesaling Markups of Gross Margins." Only an entity of a firm subject to subpart B of the phase III regulations which chooses to complete lines 1–19 of this part for its combined "nonfood" operations, including wholesale and retail operations, may use the alternative in the general price standard pertaining to the 1.5-percent weighted annual average price increase. An entity which separates its wholesale and retail operations from its other operations has decided, in effect, that its price adjustments under subpart B will be such that the subpart B profit margin limitation will apply and that it is therefore not necessary to attempt to include its wholesale and retail operations in computing a weighted annual average price increase for subpart B sales.

All sales of the entity must be listed in lines 1–19 of this part by the appropriate SIC code except sales or revenues in the following industries or categories:

a. Foreign operations (as defined in the instructions for line 23, part VI of this form) (entered in line 23).

b. Food operations (which includes wholesale and retail operations); unless the firm of which the entity is a part derives less than 20 percent and less than $50 million of its annual sales or revenues from sales of food. If less than 20 percent and less than $50 million of the annual sales or revenues are from sales of food, food operations are to be recorded in lines 1–19 of part VI.

*Other Nonapplicable Sales* (entered in line 25)

c. Exempt items (set forth in 6 CFR, part 130, subpart D).

d. All insurance not set forth as exempt in 6 CFR, part 130, subpart D.

e. Providers of health services (covered in 6 CFR, part 130, subpart G).

f. Public utilities (covered in 6 CFR, part 130, subpart I).

g. Custom products (as defined in the Price Commission regulations in effect on January 10, 1973, including such products provided by entities in the construction industry).

h. Nonfood wholesale and retail operations if not included in part VI, lines 1–19.

*Abbreviated Reporting—Entities Under 1.5 Percent*

An entity of a price reporting firm subject to subpart B which has not increased its prices under subpart B to more than a 1.5 percent weighted average price increase above its authorized base prices need not complete lines 1–21 of part VI on any form CLC–2 submitted to the Cost of Living Council.

However, an entity which qualifies for abbreviated reporting must complete and retain in its records a part VI with lines 1–22 completed in accordance with the specific instructions, exclusive of the instructions for abbreviated reporting, for each form CLC–2 submitted to the Cost of Living Council.

On any form CLC–2 submitted to the Council, total price information and cost justification for an entity which qualifies for abbreviated reporting is recorded in line 22 and schedule C must be attached supporting this entity-wide cost justification. The entries in columns (d), (e), and (f), line 22 are calculated in accordance with the specific instructions for line 22. If the entry in line 22, column (f) is less than line 22, column (e), documentation must be furnished explaining why the price increase exceeds the cost justification. If the entry in line 22, column (e) is greater than 1.5 percent, the entity no longer qualifies for abbreviated reporting and must complete lines 1–22 in accordance with the specific instructions exclusive of these instructions for abbreviated reporting on any form CLC–2 submitted to the Cost of Living Council.

*Weighted Average Percentage Price Adjustments*

The calculation of the weighted average percentage price adjustment is required for purposes of completing this part. The following definitions and an example are provided to assist in this calculation:

(a) The base price period is the most recent fiscal quarter ending prior to January 11, 1973.

(b) The average price of a product for a period is determined by dividing the net sales by the quantity of the product sold for that period.

(c) The actual base price is the average price lawfully charged for transactions to a class of purchasers during the base price period. If no transaction took place for a product during the base price period, the entity should use the average price during the quarter most recently preceding the base price period in which a transaction was made for that product.

(d) The authorized base price is the price authorized or lawfully in effect on January 10, 1973. Prices "authorized or lawfully in effect on January 10, 1973" are the prices from which compliance is measured for price increases pursuant to the general price standard of phase III.

The basic starting point for measuring compliance with the general price standard is the set of base prices established at the beginning of the economic stabilization program on August 15, 1971. For items for which approval to increase prices was required and for which no authority to increase prices was granted throughout phase II, base prices as defined in subpart F of the Price Commission regulations for phase II may be used as the starting point. For items for which prior approval to increase prices was required, and authorization to increase prices was obtained, authorized prices as of January 10, 1973, may be used whether or not price increases had been implemented up to authorized levels. For items for which prior approval to increase prices was not required, prices charged may be used, provided that these prices were lawfully in effect under the phase II regulations.

For firms that received authority to increase prices under term limit pricing (TLP) authorizations, the starting point for measuring compliance with the general price standard is the limit on overall average price increases permitted under the TLP authorization. For example, for a firm granted authority for a weighted average price increase of 2 percent under a TLP authorization, price increases of up to an additional 1.5 percent can be placed into effect to reflect increased costs without limitation of its profit margin to the base period level. Thus, in this case the set of prices consistent with the general price standard must result in a weighted average that does not exceed 1.5 percent above prices authorized on January 10, 1973, or, alternatively, 3.5 percent above base levels for phase II. It should be noted that the authorized price on January 10, 1973, for any individual item under the TLP authorization depends on the magnitude of price increases for other items sold by the firm, and if prices for many items have been increased by more than the overall average authorized, authorized prices on

January 10, 1973, for other items may be below base prices for phase II.

With regard to base prices, whether authorized or actual, if the price of a product normally fluctuates in distinct seasonal patterns, its base price may be adjusted according to its seasonal pattern as supported by a history of this pattern for the most recently completed 3 years. (See 6 CFR 300.81 of the Price Commission regulations in effect on January 10, 1973.)

In establishing a base price for a new product, the entity should be guided by 6 CFR 300.409.

(e) Current revenues are the actual net sales of the product for the reporting period (average price times quantity sold).

(f) Base price revenues are the revenues that would have been derived during the reporting period if all prices had been at base price (actual or authorized) i.e. base price times quantity sold during the reporting period.

(g) The weighted average percentage price adjustment is the difference between current revenues and base price revenues all over base price revenues. The result is multiplied by 100 to convert to a percentage, i.e.:

$$\left[\frac{\text{(Current revenues)} - \text{(base price revenues)}}{\text{(Base price revenues)}}\right] \times 100 = \text{Weighted average percentage price adjustment}$$

The weighted average percentage price adjustment can be computed using this formula for any level of aggregation (group of products, product line, all products of the firm, etc.).

(h) The actual weighted average percentage price adjustment is calculated using the actual base price to compute base price revenues.

(i) The authorized weighted average percentage price adjustment is calculated using the authorized base price to compute the base price revenues.

*Computing the Weighted Average Percentage Price Adjustment*

Although the calculation of the weighted average percentage price adjustment requires determination of price changes at the item or individual product level, it may not be feasible to compute and record the percentage price changes at this level of detail. In such cases, it may be permissible to use a sampling, averaging, exceptions, or other valid technique. However, the weighted average percentage price adjustment resulting from such techniques must not be materially different from the weighted average percentage price adjustment computed using the method below. Where these techniques are used to calculate a weighted average percentage price adjustment, the entity must adhere to accepted standards with regard to materiality, sampling validity, and consistency.

The entity must maintain documentation which outlines the type of techniques used in its various divisions. The entity must weight its price changes according to the quantity sold during the reporting period (as shown below), but may weight its price changes according to the quantity sold during the most recent fiscal quarter ending prior to January 10, 1973, provided that it can demonstrate that there has been no material difference in product mix between the two periods. The factor for weighting price adjustments may be represented by the value of the sales to which a price change applies as a proportion of the total sales for which the weighted average is computed. Note that the method shown below takes into account price increases and decreases from base price. The base price in the example below may be the actual base price or the authorized base price depending on whether the actual or authorized weighted average percentage price adjustment is being computed.

METHOD OF COMPUTING THE WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT

The steps for computing the weighted average percentage price adjustment are:

1. Multiply the quantity of each item sold during the reporting period by its base price. The result is the base price revenues for each item.

2. Total the base price revenues (column 5) for the individual items to arrive at the total base price revenues (sum of column 5).

3. Divide the total base price revenues computed in step (2) above into the difference between total current revenues (sum of column 6) and total base price revenues and multiply the result by 100 to convert to a percentage.

SAMPLE CALCULATION OF WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT

| (1) Item | (2) Base price | (3) Average price reporting period column (6) ÷ column (4) | (4) Quantity sold during reporting period (000's) | (5) Base price revenues (000's) column (2) × column (4) | (6) Current revenues (000's) |
|---|---|---|---|---|---|
| A | $5 | $4.80 | 40 | $200 | $192 |
| B | 6 | 6.10 | 60 | 360 | 366 |
| C | 3 | 3.20 | 50 | 150 | 160 |
| D | 10 | 10.00 | 15 | 150 | 150 |
| E | 8 | 8.25 | 40 | 320 | 330 |
| Total | | | | 1,180 | 1,198 |

$$\text{Weighted average percentage price adjustment} = \left[\frac{1198 - 1180}{1180}\right] \times 100 = 1.53\%$$

*Lines 1–19* (and any continuation schedule) show applicable sales and price adjustment and cost information by four-digit SIC except as provided in paragraph D2 of the general instructions to form CLC–2. Where applicable sales for the reporting period in any pricing unit are less than $3 million, such sales may be classified in a miscellaneous category using 9999 as the SIC code. However, in no case may the combined sales in the miscellaneous category exceed 10 percent of the entity's total applicable sales as entered in line 21, column (c).

Column (a).—Enter the description of the product line or service line as it is customarily described by the entity, regardless of whether there was a price increase or decrease. (Limit description to space provided.)

NOTE.—For all remaining columns in this part, entries must be made if required, for each product line identified in column (a).

Column (b).—Enter the 1967 four-digit SIC code for the product line. (The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.)

*Reporting Period*

Enter the date of the first and last day of the reporting period (as explained in item 4) which applies to columns (c) through (g).

NOTE.—For purposes of the first preparation of part VI as a quarterly report or report or record, the reporting period will include the fiscal quarter which includes January 11, 1973, an the additional time period up to and including April 30, 1973. Therefore, the ending date of the reporting period entered in part VI for the first preparation of form CLC–2 as a report or record is April 30, 1973.

Column (c).—Enter the net sales for the reporting period.

Column (d).—Enter for the reporting period the actual weighted average percentage price adjustment. This column must be completed only at the time the initial form CLC–2 is prepared.

Column (e).—Enter for the reporting period the authorized weighted average percentage price adjustment, regardless of whether this amount is positive or negative.

Column (f).—For those product lines with amounts in column (e) that are greater than zero, enter the percentage cost justification from schedule C, line 11. Schedule C must be attached for each amount entered in this column. If the percentage cost justification in this column is less than the percentage entered in column (e) (part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification.

Column (g).—Enter the highest percentage price increase over the authorized base price which was made in the

reporting period for any transaction for any individual item in the product line.

*Cumulative Period*

Cumulative data (columns (h) and (i)) must be measured from the beginning of the reporting period used for the first submission to the date required to be entered in part I, item 4 (reporting period ending date), until completion of the fiscal year. Thereafter, cumulative data must be measured from the beginning of each new fiscal year.

Enter the date of the first and last day of the cumulative period.

Column (h).—Enter the net sales for the cumulative period.

Column (i).—Enter the cumulative authorized weighted average percentage price adjustment.

Line 20.—Enter the net sales, from columns (c) and (h), from any continuation schedule. Use additional copies of part VI, form CLC-2 for any continuation schedule.

Line 21.—Enter total of lines 1 through 20 for column (c) and for column (h).

Line 22.—For the first preparation only, in column (d) enter the actual weighted average percentage price adjustment for all products in lines 1 through 20 for the reporting period. In columns (e) and (i), enter the authorized weighted average percentage price adjustment for all products in lines 1 through 20 for the reporting period (column (e)) and cumulative period (column (i)). Each of the percentages entered in this line is a weighted average of all price adjustments for items whose sales are shown in line 21, and not a simple average of the percentages in columns (d), (e), and (i). The percentage entered in column (e), line 22 of part VI must be compared with 1.5 percent to determine whether the entity is limited with regard to its profit margin. If column (e), line 22 of part VI is greater than 1.5 percent and item 17 (part III) shows current profit over target profit, the entity is required to furnish documentation with its submission explaining why its does not appear to be conforming with the general price standard. If such documentation includes as justification the efficient allocation of resources or the maintenance of adequate levels of supply, a detailed explanation as to the economic justification for each such adjustment in excess of the general price standard must be attached to the form CLC-2. Each such explanation of economic justification must be signed solely by the chief executive officer, and not by any other delegated executive officer.

Line 23.—Enter for the reporting period in column (c) and cumulative period in column (h), the sales or revenues from foreign operations; that is, the gross receipts of or from a foreign branch, division, or wholly or partially owned foreign entity if the gross receipts are derived primarily from transactions with other foreign firms.

Line 24.—Enter the sales of the entity from food operations for the reporting period in column (c) and cumulative period in column (h) unless such sales are required to be entered in lines 1–19 (see subparagraph b of the third paragraph of the introduction to part VI). Where the amount in column (c) exceeds $10 million, attach a supporting part VI of this form providing the data required in columns (a) through (i) for lines 1 through 21 of this form. It is not necessary to fill in column (f), line 24, in those cases where the prenotification requirement has been met. For purposes of this supporting schedule, food wholesaling and retailing must be aggregated into one line with only columns (a), (b), (c), and (h) completed.

Line 25.—Enter the net sales for the reporting period in column (c) and cumulative period in column (h) for those operations of the entity which are listed in the introduction to part VI under "Other Nonapplicable Sales" and not provided for in lines 23 and 24. For each entry made on this line, attach a schedule listing the industries or categories of nonapplicable sales and the amount of net sales for each industry or category listed.

Line 26.—Enter the total of lines 21 through 25 in column (c) and the total of lines 21 through 25 in column (h).

SPECIAL INSTRUCTIONS FOR THE PREPARATION OF FORM CLC-2 AS A PRENOTIFICATION OF PRICE ADJUSTMENTS

A. *Purpose*

These special instructions are designed to prescribe the rules for furnishing the mandatory prenotification of price adjustments to the Cost of Living Council pursuant to 6 CFR 130.131.

B. *Who Must Prenotify*

Each entity of a price reporting firm which on or before April 30, 1973, has increased prices by a weighted average of 1.5 percent or more over prices authorized or lawfully in effect on January 10, 1973, must prenotify the Cost of Living Council on form CLC-2 of all price adjustments after April 30, 1973.

Any entity of a price reporting firm which increases a price after April 30, 1973, which, in conjunction with all other price adjustments after January 10, 1973, has the effect of increasing the entity's prices by a weighted average of 1.5 percent or more over prices authorized or lawfully in effect on January 10, 1973, must prenotify the Cost of Living Council on form CLC-2 of such price increase and any subequent price increase.

Prenotification rules apply only to price adjustments for a product or service sold by an entity as a manufacturer or service organization.

Prenotification rules do not apply to price adjustments which are subject to subpart F (food sales), subject to special rule No. 1 (petroleum products), or effected pursuant to volatile pricing authority.

C. *When To Prenotify*

The Cost of Living Council must receive a completed form CLC-2 from each entity subject to these special instructions not later than 30 days prior to the charging of the price adjustment described in "Who Must Prenotify."

D. *Where To Prenotify*

Prenotification on form CLC-2 must be forwarded to: Cost of Living Council, Form CLC-2 Prenotification, 2000 M Street NW., Washington, D.C. 20508.

E. *Preparation of Prenotification*

Organization to which form applies—Complete in accordance with the general and specific instructions to the form CLC-2.

Part I—*Identification Data*

Items 1–5.—Complete in accordance with the general and special instructions to the form CLC-2.

*Special Instruction Applicable to the Food Industry*

Subpart F of the phase III regulations provides that a firm which is subject to both the general standard for price adjustments (subpart B) and the mandatory rules applicable to the food industry (subpart F) is subject to two profit margin limitations: One for subpart B purposes and one for subpart F purposes. Such firms must enter in parts II and III the subpart B profit margin. The subpart B profit margin can be based, at the option of the firm, on total sales or nonfood sales only.

Part II—*Calculation of Base Period Profit Margin*

Complete in accordance with the general and specific instructions to form CLC-2 unless previously submitted to the Cost of Living Council.

Part III—*Calculation of Profit Variation*

Complete in accordance with the general and specific instructions to form CLC-2 unless previously submitted to the Cost Of Living Council for the most recently completed fiscal quarter.

Part IV—*Additional Information*

(Self-explanatory.)

Part V—*Certification*

Complete in accordance with the general and specific instructions to the form CLC-2.

Part VI—*Price/Cost Information*

*Introduction*

This part is used to prenotify the Cost of Living Council of adjustments in the selling prices of products and services. Prenotification must be made of any price increase by means of changes in quantity, quality, specifications, or characteristics.

*Lines 1–19* must be prepared for each price increase being prenotified in accordance with the instructions to form CLC-2 as modified herein below.

Column (a).—Enter the description of the product line or service line as it is customarily described by the entity. (Limit description to space provided.)

NOTE.—For all remaining columns in this part, entries, if required, must be made for each product line identified in column (a).

Column (b).—Enter the 1967 four-digit SIC code for the product line. (The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.)

*Reporting Period*

Strike out the word "Reporting" and enter the date of the first and last day of the four consecutive fiscal quarters ending on the date entered in item 4, part I. This is the "current price period."

Column (c).—Enter the net sales for the current price period.

Column (d).—Strike the word "Actual" and insert "Prenotified", then enter the weighted average price adjustment for which prenotification is being made, expressed as a percent above the authorized base prices.

Column (e).—Complete in accordance with the general and specific instructions for form CLC-2.

Column (f).—For those product lines with amounts in column (d) that are greater than zero, enter the percentage cost justification from schedule C, line 15. Schedule C must be attached for each amount entered in this column. If the percentage cost justification in this column is less than the percentage entered in column (d) (part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification.

Column (g).—Enter the highest percentage price increase over the authorized base price which will be made in any transaction for any individual item in the product line for the period entered above columns (h) and (i).

*Cumulative Period*

Strike the word "cumulative" and enter the first and last day of the four fiscal quarters following the date entered in item 4, part I.

Column (h).—Enter the net sales for the period entered above columns (h) and (i).

Schedule C
(Form CLC-2)
(May 1973)
Cost of Living Council

**Calculation of Cost Justification to Support Net Price Increases on Form CLC - 2**

CLC Identification Number (Parent)
Unconsolidated Entity
OMB Number: 172-R0001
Approval Expires April 1974
Reference Number

Product or service line description
(From Columns (a) and (b), Part VI on corresponding Form CLC-2)

4-digit SIC

Part I—Identification Data

1 (a) Name of parent or unconsolidated entity

(b) Address (Number and street)

(c) City or town, State and ZIP code

2 Reporting period ending date (Month, day, and year) . . . . . ▶

Part II.—Calculation of Cost Justification

| Cost Elements (Attach supporting schedules as required by instructions) | % of Cost element that is variable (a) | % Increase (Decrease) in current cost level vs. primary cost level (b) | % of Cost element to total costs at the primary cost level (c) | (b) x (c) expressed as a percent (d) |
|---|---|---|---|---|
| 3 Direct materials (a) Imported | | | | |
| (b) Other | | | | |
| 4 Direct labor | | | | |
| 5 Other manufacturing or service costs (a) Labor | | | | |
| (b) Other costs | | | | |
| 6 Other operating costs (a) Labor | | | | |
| (b) Marketing, General and Administrative | | | | |
| (c) All other costs | | | | |
| 7 Non-Allowable costs | | | | |
| 8 Subtotal | | | 100% | % |
| 9 Offset for productivity increase | | | | % |
| 10 Offset for volume increase | | | | % |
| 11 Weighted average percentage price increase justified by this Schedule C. (Subtract line 9 and 10 from 8) | | | | % |
| 12 Percent of total current costs to sales | | | | % |

INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE C TO FORM CLC–2

GENERAL INSTRUCTIONS

Schedule C sets forth the basis for calculating the cost justification for charging a net price increase as reported in column (e), or prenotified in column (d), of part VI, form CLC–2. This schedule must be prepared for each weighted average price increase in a 4-digit standard industrial classification (SIC) code, except as provided in paragraph D–2 of the general instructions to form CLC–2.

Price reporting firms must submit a schedule C for each cost justification percentage entered in column (f), part VI, lines 1–19, form CLC–2, whether the form CLC–2 is submitted as a quarterly report or as a prenotification of price adjustments.

Price recordkeeping firms must prepare a schedule C to support each weighted average percentage price increase recorded in part VI, column (e), lines 1–19, form CLC–2 and attach the schedule to their form CLC–2. The form with all schedules attached must be retained in the corporate records for inspection upon request.

SPECIFIC INSTRUCTIONS

Part I *Identification Data*

ITEM 1. *Name and address of parent or unconsolidated entity.*—Enter the legal name of the parent or unconsolidated entity, conforming with the name on the corresponding form CLC–2. Enter the address of its executive office.

ITEM 2. *Reporting period ending date.*—Enter the date of the last day in the reporting period conforming with the date in Part I, Item 4 on the corresponding Form CLC–2. However, on any Schedule C required to be attached to the first Form CLC–2 prepared as a quarterly report or record, enter the date April 30, 1973.

Part II *Calculation of Cost Justification*

The level of costs from which all cost increases are measured ("primary cost level") is that level incurred on the date the last price increase was lawfully placed into effect prior to January 11, 1973, for the product line or service line covered by this schedule. If no price increase has been placed into effect since January 1, 1971, the level of costs on that date is the level from which cost increases must be measured. All subsequent cost increases must be measured from the primary cost level. However, in no case may cost increases used to justify a price increase requested and approved prior to January 11, 1973, be used to justify any price increase after January 10, 1973, above authorized prices. The current cost level is the level of costs being incurred on the date the price increase to which this schedule applies is first charged and must be calculated using an estimated volume that is not less than the volume at the primary cost level.

In calculating the percentage increase in column (b), the measurement of cost increases must be made either by individual unit cost element (input basis) or, alternatively, by product or service unit cost (output basis), provided that all entries in column (b) are derived from the same basis.

Cost elements must be measured in a consistent manner when determining primary cost level and all subsequent period costs.

*Allowable Costs (Items 3 through 6)*

Only costs which are included in the determination of operating income (as defined in the instructions to form CLC–2) are allowable as justification for a price above the authorized base price. Furthermore, allowable costs under part II are costs that have been incurred, are continuing to be incurred, are necessary and reasonable, and have not been disallowed by the Cost of Living Council. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration must be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the firm's business;

2. The restraints or requirements imposed by such factors as sound business practice, arm's-length bargaining, and Federal and State laws and regulations;

3. The action that a prudent person would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, Federal and State Government, and the public at large; and

4. Significant deviations from the established practices of the firm.

Each column in part II must be filled out on this schedule for each cost element including those elements where there has been no change. If an element does not apply, enter NA. Entities which submit a schedule C which contains incomplete or incorrect information will be required to submit a corrected schedule C and may be in violation of the reporting requirements if complete and correct schedules are not submitted within the time periods prescribed.

ITEM 3. *Direct materials.* Include materials and material related costs in accordance with accounting procedures normally employed by the firm. Those costs should be further classified as indicated on lines (a) and (b) of this item.

Imported materials are materials produced outside of the United States where the form of the materials has not changed substantially between the date of its initial sale into U.S. commerce and the date of its purchase by the firm.

Supporting schedules must be attached to schedule C listing significant types of direct materials for which costs have changed, and the percentage change in each of these materials.

ITEM 4. *Direct Labor*

Include labor and labor-related costs in accordance with accounting procedures normally employed by the firm. For this, and for all other labor items for which a cost change is shown, provide supporting detail in an attachment.

If any portion of the labor cost increases shown in column (b) includes cost increases resulting from any adjustment exceeding 5.5 percent (excluding qualified fringe benefits) for an employee unit for any control year as determined under the applicable wage stabilization rules of the Economic Stabilization regulations, supporting documentation must be attached to the schedule C giving the following information:

1. Name of employee unit.

2. Number of employees in employee unit.

3. Percentage increase for the employee unit.

4. Basis for any exception.

ITEM 5. *Other manufacturing or service costs.*—Other manufacturing or service costs should be segregated as indicated on lines (a) and (b). Labor categories must include all labor and labor-related costs; and supporting detail as described for item 4 must be provided. Supporting schedules must be attached listing the cost elements or functional accounts included, and any basis for allocation.

ITEM 6. *Other operating costs*

Other operating costs must be segregated as indicated on lines (a), (b), and (c).

Other operating costs include expenses incurred directly and allocated expenses within the firm, if such allocations are consistent with those in prior periods.

Supporting schedules must be attached listing the cost elements or functional accounts covered, the basis for allocation, and volume assumptions.

Enter the data required by columns (a), (b), (c), and (d) for each cost element.

ITEM 7. *Nonallowable costs*

This item is used for costs deemed nonallowable by the Cost of Living Council.

ITEM 8. *Subtotal*

Enter in column (d) the total of the percentages in column (d), items 3–6. As indicated on the form, all cost percentages recorded in column (c) must total 100 percent.

ITEM 9. *Offset for productivity increase*

Increases in costs must be offset by reduction in costs due to improvements in productivity.

The rules and regulations of the Price Commission in effect on January 10, 1973, and instructions to form PC–1 contained therein, are recommended as guidelines (for subpart B purposes) and must be used (for subpart F purposes) for calculating the offset for productivity increase. Attach a supporting schedule indicating the manner in which the offset

for productivity increase was determined. In no instance may negative productivity be utilized to justify a price increase.

ITEM 10. *Offset for Volume Increase*

Nonvariable costs are normally reduced per unit with an increase in volume. This reduction is the result of a broader base for absorbing nonvariable costs.

The full extent of the reduction in unit fixed costs resulting from volume increases must be expressed as a percentage on this line.

Attach a supporting schedule indicating the manner in which the offset for volume increase was determined. In no instance may a negative volume offset be utilized to justify a price increase.

ITEM 11. *Weighted Average Percentage Price Increase Justified by This Schedule C*

This entry is determined by subtracting items 9 and 10 from item 8, column (d). The result represents the percentage above the authorized base price that prices may be increased. Enter this percentage on the appropriate line in part VI, column (f), form CLC-2 for the product line or service line for which this schedule C has been prepared.

ITEM. 12. *Percent of Total Current Costs to Sales*

"Total current costs" means the costs incurred during the reporting period. "Sales" means the amount entered on form CLC-2, part VI, column (c) for the product line or service line for which the schedule C has been prepared. Enter the figure obtained by dividing total current costs by "sales" and express the result as a percentage.

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PART I
(Part II begins on page 12493)
(Part III begins on page 12501)

## HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.



Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

Procedures and Remedies Applicable to Certain Phase II Matters

The purpose of this amendment is to clarify paragraph (c) of § 130.7, published on April 4, 1973, which permits phase II, category III, firms which experienced a profit-margin excess for a fiscal year which ended prior to January 11, 1973, to avoid a profit-margin penalty by voluntarily remitting revenues in a fashion similar to the remission of revenues authorized by the Price Commission's Special Regulation No. 1.

Certain questions have arisen due to the fact that special regulation No. 1 was designed for firms which wished to return to base price levels and remit all price-increase revenues before the close of their fiscal year, thereby avoiding the profit-margin limitation. It was not designed for use by firms which had a profit-margin violation at the end of a full fiscal year. It was the intent of the Cost of Living Council in promulgating § 130.7 (c) not only to recognize the fact that category III firms do not have the same capabilities of predicting full fiscal year profit-margin violations as larger firms but also to provide a simplified and equitable means for remedying the category III profit-margin violations. Since the revenue-remission rules and procedures of special regulation No. 1 are well-established, it was decided that special regulation No. 1 could be utilized (with certain modifications) as a convenient device for the voluntary remission of amounts sufficient to remedy the violation. It was not intended that the use of the rules and procedures of special regulation No. 1 would result in "repurification" in the normal sense, meaning restoration of the firm to the position of never having increased a price above base price and therefore not subject to any profit-margin constraint.

In order to make more explicit the foregoing intent, § 130.7(c) has been amended in several respects. It specifies, in conformity with § 300.54, that the amount required to be remitted is (a) the

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revenues derived from above-base charges in the fiscal year of violation, or (b) the dollar value of the profit-margin excess, whichever is less. In addition, the amendment expressly states that the requirement of special regulation No. 1 to return to base price levels in remitting revenues is not required under § 130.7(c) but that the firm is required to reduce prices to the extent necessary to assure compliance with any profit-margin limitation applicable to the current fiscal year before further reducing prices to remit revenues as required to remedy the profit-margin violation for the preceding completed fiscal year. The amendment also specifies that a firm which remits revenues under § 130.7(c) continues to be bound by applicable profit-margin limitations unless the firm elects actually to "repurify" under special regulation No. 1 by returning to base price levels and remitting all revenues derived from above-base charges both in the fiscal year of the profit-margin violation and in the subsequent fiscal year or years. Finally, the amendment extends the closing date for action under § 130.7(c) to June 10, 1973.

Because the purpose of this amendment is to provide immediate guidance and information with respect to the administration of the Economic Stabilization program, the Council finds that further notice and procedure thereon is impracticable and that good cause exists for making it effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Public Law 92-210, 85 Stat. 743; Executive Order 11695, 38 FR 1473; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, part 130 of chapter 1 of title 6 of the Code of Federal Regulations is amended as follows, effective April 4, 1973.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

Paragraph (c) of § 130.7 of title 6 of the Code of Federal Regulations is amended as follows:

**§ 130.7 Procedures and remedies applicable to certain phase II matters.**

* * * * *

(c) Notwithstanding the fact that a fiscal year in which a profit-margin violation occurred has ended, the provisions of special regulation No. 1 of the Price Commission remain in effect with respect to price category III firms subject to that regulation before January 11, 1973, with the following modifications:

(1) A firm which was a price category III firm under the phase II regulations and which exceeded its base period profit margin for a fiscal year which ended prior to January 11, 1973 (further referred to in this paragraph as a firm), may initiate action within 30 days of the date of publication of this section pursuant to numbered paragraph 1 of special regulation No. 1.

(2) A firm will not be subject to remedial action pursuant to § 300.54 of this title, or any other sanction or penalty available under this title, with respect to that violation if (i) by June 10, 1973, it submits for the prior approval of the District Director of Internal Revenue for the district in which the firm's executive offices are located a letter of intent to remit revenues and a revenue remission plan in accordance with the rules and procedures applicable to phase II prenotification and reporting firms provided in numbered paragraphs 1 and 2 of special regulation No. 1 as modified by this paragraph (c); and (ii) that firm carries out its revenue remission within 6 months of the date of submission of its letter of intent.

(3) For the purposes of paragraphs (c)(1) through (c)(4) of this section, the revenues required to be remitted shall be the lesser of:

(i) The revenues derived in the fiscal year of the profit-margin violation from charging a price or prices in excess of base prices; or

(ii) The dollar value of the profit-margin excess for that fiscal year.

A firm which proposes to carry out a revenue remission plan pursuant to (ii), above, and which has identifiable customers to whom refunds must be made pursuant to paragraph numbered 4 of special regulation No. 1, shall make those refunds on a pro rata basis.

(4) For the purposes of paragraphs (c)(1) through (c)(4) of this section, the requirement of special regulation No. 1 to rescind all price increases above base price levels does not apply. However, a firm which remits revenues pursuant to paragraphs (c)(1) through (c)(4) of this section shall first reduce prices to the extent necessary to assure that it will not exceed any profit-margin limitation which applies with respect to that firm's current fiscal year and then further reduce prices to the extent necessary to remit revenues pursuant to paragraphs (c)(1) through (c)(4) of this section.

(5) Applicable phase III profit-margin limitations continue to apply to a firm which remits revenues pursuant to paragraphs (c)(1) through (c)(4) of this section, unless that firm elects to satisfy the requirements of special regulation No. 1 as modified by this paragraph (c)(5). A firm which chooses this alternative shall submit for the prior approval of the Internal Revenue Service, within the time prescribed and otherwise in accordance with paragraph (c)(2) of this section, a letter of intent and revenue remission plan which calls for:

(i) Rescission of all price increases above base price levels; and

(ii) Refunds and/or further price reductions to the extent necessary to remit all the revenues derived from charging a price or prices in excess of base prices in the fiscal year of the profit-margin violation and in the ensuing fiscal year or fiscal years. The firm shall carry out such a plan within 6 months from the date of submission of its letter of intent, notwithstanding the time limitation specified in special regulation No. 1. A firm which completes action in accordance with this alternative is not subject to remedial action pursuant to § 300.54 of this title, or any other sanction or penalty available under this title, with respect to the profit-margin violation for the fiscal year which ended prior to January 11, 1973.

(6) A firm which does not submit a letter of intent under the terms and within the time prescribed by this section is not eligible for the procedures described in paragraphs (c)(1) through (c)(5) of this section and is subject to all sanctions and remedies which pertain to full fiscal year profit-margin violations.

(7) No financial loss or detriment sustained pursuant to paragraph (c) of this section shall be treated as a cost justifying a price increase. Except to the extent that price reductions or refunds are made for the purpose of assuring profit margin compliance during the current fiscal year pursuant to paragraph (c)(4) of this section, no financial loss or detriment sustained pursuant to paragraphs (c)(1) through (c)(4) of this section shall be treated as a loss, expense or cost in calculating the firm's profit margin.

[FR Doc.73-9458 Filed 5-9-73;3:01 pm]

## COST OF LIVING COUNCIL

**[ 6 CFR Part 102 ]**

**PUBLIC ACCESS TO RECORDS**

**Notice of Proposed Rulemaking**

**Section 6 of the Economic Stabilization Act Amendments of 1973 (Public Law 93-28), enacted into law on April 30, 1973, requires the President or his delegate to issue regulations defining what information or data are "proprietary" for the purposes of that section. The Cost of Living Council has begun consideration of a new regulation which would define what information or data are "proprietary" in accordance with this statutory mandate.**

Interested persons are invited to participate in making the proposed rule by submitting such written data, views, or comments as they desire. Communications should be identified with the designation "Proposed Rule 73–1" and be submitted with 10 copies to the Office of General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508. All communications received before May 30, 1973, will be considered by the Council before taking final action on the proposed regulation. The proposed regulation contained in this notice may be changed in the light of the comments received. All comments received will be available for examination by interested persons.

Prior to its amendment on April 30, 1973, section 205 of the Economic Stabilization Act of 1970, as amended, barred disclosure of confidential business information by those carrying out the economic stabilization program. It provided that:

> All information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purpose of carrying out this title or when relevant in any proceeding under this title.

The "other matter" referred to in section 1905 of title 18, United States Code, includes the following broad categories of information: "* * * the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm * * *." Section 1905 also makes disclosure of such information by any Federal officer or employee a crime, subject to fine or imprisonment or both, except where such disclosure is authorized by law. Since these provisions were enacted many years prior to the advent of the Economic Stabilization Act and apply to all Federal employees, it is clear that Congress in section 205 was deliberately and emphatically making all "other matter" in 18 U.S.C. 1905 confidential in connection with the administration of the economic stabilization program.

Because section 205 of the Economic Stabilization Act expressly made confidential, for the purposes of the economic stabilization program, all the "matters" referred to in section 1905 of title 18 of the United States Code; because those "matters" are broadly stated as relating to "income, profits, losses or expenditures"; and because violation of section 1905 is a criminal matter, the Cost of Living Council has consistently adhered to the view (as did the Price Commission throughout phase II) that all data or information required to be submitted by a firm concerning profits, costs or sales, not otherwise available to the public, must be considered confidential.

Another important reason for confidential treatment of this type of business information supplied to the government pursuant to law has had to do with the cooperative nature of the economic stabilization program. It has been acknowledged from the beginning of the program that the government must either depend upon the cooperation of all sectors of the economy in order to achieve the goals of the program or develop a large and costly enforcement system. The existing program, with its relatively small staff, is based upon a decision to rely as much as possible on a cooperative effort in which, for purposes of price stabilization, large firms bear the burden of preparing and submitting the price, cost and profit data which the government uses to monitor the performance of the economy and the compliance of individual firms with the economic stabilization regulations. Wholesale release to the public and to business competitors of the confidential information supplied by a firm would have been inconsistent with the fundamental administrative basis of the program and would have hindered attainment of its goals.

On April 30, 1973, section 205 of the Economic Stabilization Act was amended to provide an exception from confidential treatment, with respect to certain information, whenever a firm charges a price for a "substantial product" which is more than 1.5 percent above the lawful price in effect on January 10, 1973. As amended on April 30, 1973, section 205 reads as follows:

> Section 205. *Confidentiality of information.*
> (a) Except as provided in subsection (b), all information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purpose of carrying out this title or when relevant in any proceeding under this title.
> (b) (1) Any business enterprise subject to the reporting requirements under section 130.21(b) of the regulations of the Cost of Living Council in effect on January 11, 1973, shall make public any report (except for matter excluded in accordance with paragraph (2)) so required which covers a period during which that business enterprise charges a price for a substantial product which exceeds by more than 1.5 percent the price lawfully in effect for such product on January 10, 1973, or on the date 12 months preceding the end of such period, whichever is later. As used in this subsection, the term "substantial product" means any single product or service which accounted for 5 percent or more of the gross sales or revenues of a business enterprise in its most recent full fiscal year.
> (2) A business enterprise may exclude from any report made public pursuant to paragraph 1 any information or data reported to the Cost of Living Council, proprietary in nature, which concerns or relates to the amounts or sources of its income, profits, losses, costs, or expenditures but may not exclude from such report, data, or information, so reported, which concerns or relates to its prices for goods and services.
> (3) Immediately upon enactment of this subsection, the President or his delegate shall issue regulations defining for the purpose of this subsection what information or data are proprietary in nature and therefore excludable under paragraph (2), except that such regulations may not define as excludable any information or data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 by a business enterprise exclusively engaged in the manufacture or sale of a substantial product as defined in paragraph (1). Such regulations shall define as excludable any information or data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of the business enterprise.

The Cost of Living Council interprets the new section 205, taken in its entirety, to continue in effect for reporting firms the same confidentiality classifications for business information as set forth in 18 U.S.C. 1905, with the following clarifications and changes:

(1) *Prices.*—Section 205 now expressly states that data or information which concerns or relates to prices may not be defined as proprietary. 18 U.S.C. 1905 does not mention prices. By implication, therefore, price information was not and is not confidential information within the meaning of 18 U.S.C. 1905.

(2) *Trade secrets, et cetera.*—Section 205 now states that data or information which concerns or relates to "trade secrets, processes, operations, style of work, or apparatus" of the business enterprise must be defined as proprietary. The words quoted above are identical to the language of 18 U.S.C. 1905. The effect of section 205, as now amended, is both to confirm the prior practice of the Cost of Living Council and the Price Commission in treating such material as confidential in accordance with 18 U.S.C. 1905 and the old section 205, and to foreclose any change in that practice in the future.

(3) *"Other matter".*—Section 205, in its treatment of information or data which concerns or relates to "the amount or source of [a firm's] income, profits, losses, costs, expenditures", again employs language identical to that found in 18 U.S.C. 1905 (except for the insertion of the clarifying word "costs" before the word "expenditures"). With respect to this "other matter"—that is, financial data other than that which relates to prices or to trade secrets and the like—Section 205 states that it may not be defined as proprietary with respect to a reporting firm if it is data or information which would be required to be reported on SEC Form 10–K if the firm were engaged in the manufacture of only one "substantial product".

In light of the foregoing discussion, and particularly the similarity of language used in the section 205 compared with 18 U.S.C. 1905, the Cost of Living Council believes that no change was intended by the use of the term "proprietary" in the new section 205 and that "confidential" in 18 U.S.C. 1905 and "proprietary" in section 205 of the Economic Stabilization Act are to be understood as synonymous.

In carrying out its responsibility to define what is "proprietary" in accordance with the new section 205, the Cost

of Living Council, upon full consideration of the legislative history of the new section 205, concludes that it was the intent of Congress to alter the confidential status of only that information or data of a reporting firm which would be revealed on SEC Form 10–K if the firm reported thereon on a "substantial product" basis rather than on the basis of its total operations. Congress did not act to remove the shield of confidentiality to any further extent. Therefore it is the view of the Cost of Living Council that nothing in the new section 205 requires or suggests that the Council should by its own regulations go beyond what Congress has specifically required. The Council continues to believe that the success of the economic stabilization program depends, in large measure, upon the cooperation of the business community in freely revealing to the Council its sales, profits and cost data on a generally confidential basis.

Accordingly, the Council proposes to issue a regulation which defines as "proprietary", and therefore excluded from the requirement of public disclosure pursuant to the new section 205, all information or data reported to the Council pursuant to 6 CFR 130.21(b) which concerns or relates to the amount or sources of income, profits, losses, costs or expenditures except as otherwise required by paragraph (b) (3) of the new section 205 of the Economic Stabilization Act.

In view of the explicit statutory limitation confining the scope of section 205(b) (1) to firms subject to "the reporting requirements under § 130.21(b)", the Council's proposed regulation applies only to the form CLC–2 submitted as a quarterly report by price reporting firms pursuant to 6 CFR 130.21(b) and does not apply to information or forms retained by price recordkeeping firms pursuant to 6 CFR 130.22, to forms submitted as prenotification instruments pursuant to 6 CFR 130.131, or to any other CLC form or Price Commission form.

The Council is of the opinion that the new section 205 requires a detailed explanation by the Council of exactly what information or data submitted on each line of the form CLC–2 by reporting firms (pursuant to 6 CFR 300.21(b)) can be excluded from public disclosure on the ground that the information or data is not required to be reported on the SEC Form 10–K by a firm exclusively engaged in the manufacture of a single "substantial product." A line-by-line review of information required on the form CLC–2 compared with what is required on the SEC Form 10–K is contained in the proposed regulation set forth herein. Rather than repeat the detailed information here, the following summary of the information contained on the three main parts of the form CLC–2 is provided to indicate what may be excluded from public disclosure by a reporting firm which is required to make public its form CLC–2.

Part II of the schedule C to form CLC–2, entitled "Calculation of Cost Justification," calls for a breakdown of cost increases and other calculations for each product line on a cost per unit of input or output basis. To the extent that costs or expenses are broken down on the SEC Form 10–K (assuming a single product-line firm), they are reported in terms of aggregate dollar amounts which bear no relationship to the per-unit percentage cost increases shown on the schedule C to the CLC–2. Apart from any determination based solely on inclusion on the SEC Form 10–K on a "substantial product" basis, the information requested on the schedule C would usually be considered particularly "proprietary" or "confidential".

The information reported on net sales and operating income for the profit margin calculations made in parts II and III of the CLC–2 proper is reported on the basis of the Council's unique definitions used for the special requirements of the economic stabilization program's profit margin test which are in most cases substantially different from the customary definitions of "net sales" and "operating income" used in financial statements in accordance with the SEC Form 10–K instructions. The CLC–2 definitions of "net sales" and "operating income" for purposes of parts II and III exclude revenues of public utilities, foreign operations, insurance activities and farming activities.

Part VI of the form CLC–2 contains sales and price information. The breakdown of sales into sales from foreign operations, sales of food, and other "nonapplicable" sales, as required in part VI, is not required on the SEC Form 10–K. In addition, the definition of "sales", for purposes of the product line reporting in part VI of the form CLC–2, results in figures which do not in most cases coincide with the "sales" figures reported on the form SEC 10–K on a product line basis. The Council's special definition of "sales," for purposes of lines 1–19 of part VI of the form CLC–2, excludes sales from public utilities activities, foreign operations, insurance activities, farming, exempt items, health service activities, custom products, and food operations. Also, the percentage "cost justification" required in part VI of the form CLC–2 has no counterpart at all in the SEC Form 10–K.

In consideration of the foregoing, it is proposed to add a definition of "proprietary", for purposes of section 205 of the Economic Stabilization Act of 1970, as amended, in part 102 of title 6 of the Code of Federal Regulations as set forth herein.

(Economic Stabilization Act of 1970, as amended, Public Law 92–210, 85 Stat. 743; Public Law 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473; Cost of Living Council Order No. 14, 38 FR 1489.)

Issued in Washington, D.C., on May 8, 1973.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

A new subpart F is added to part 102 of title 6 of the Code of Federal Regulations as follows:

**Subpart F—Public Disclosure of CLC Reports**

Sec.
102.50 Purpose and scope.
102.51 General rule.
102.52 Definitions.
102.53 Form CLC–2 data.

AUTHORITY.—Economic Stabilization Act of 1970, as amended, Public Law 92–210, 85 Stat. 743; Public Law 93–28, 87 Stat. 27; Executive Order 11695, 38 FR 1473; Cost of Living Council Order No. 14, 38 FR 1489.

## Subpart F—Public Disclosure of CLC Reports

### § 102.50 Purpose and scope.

The purpose of this subpart is to define, pursuant to section 205(b) (3) of the Economic Stabilization Act of 1970, as amended, what information or data contained in quarterly reports submitted to the Cost of Living Council pursuant to § 130.21(b) of this title is proprietary in nature and therefore excludable from public disclosure and, conversely, what data contained in those quarterly reports is nonproprietary in nature and therefore available to the public. This subpart applies to any business enterprise subject to the quarterly requirements of § 130.21(b) of this title.

### § 102.51 General rule.

All CLC data determined by this subpart to be proprietary data is excludable from public disclosure. All CLC data determined by this subpart to be nonproprietary data is available to the public.

### § 102.52 Definitions.

For the purposes of this subpart—

"CLC data" means any information or data provided on or with a quarterly report submitted to the Cost of Living Council pursuant to §130.21(b) of this title when that report is subject to public disclosure pursuant to section 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

"General financial data" means any CLC data, other than trade data, which concerns or relates to the amount or sources of a firm's income, profits, losses, costs, or expenditures.

"Nonproprietary data" means
(a) Price data,
(b) SEC data, and
(c) Any other CLC data except
(1) Trade data, and
(2) General financial data which is not SEC data.

"Price data" means any CLC data which concerns or relates to a firm's prices for goods and services.

"Proprietary data" means
(a) Trade data, and
(b) General financial data other than SEC data.

"SEC data" means any general financial data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 by a firm exclusively engaged in the manufacture or sale of a substantial product as defined in section 205(b)(1) of the Economic Stabilization Act of 1970, as amended.



20-973 O - 73 - 4

"Trade data" means any CLC data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a firm.

§ 102.53 Form CLC-2 data.

(a) *Form CLC-2 Proper.*—(1) *Part I (Identification Information).*—All of the information called for in part I (and in the spaces provided above part I) serves to identify or describe the firm, the type of filing, the reporting or fiscal periods in question, and the total sales or revenues of the firm for the last fiscal year. All of the information required is nonproprietary data because it does not include either trade data or general financial data other than SEC data.

(2) *Parts II and III (Profit Margin Calculations).*—Except for the calendar entries in lines 6 and 7 (nonproprietary data), all general financial data furnished in parts II and III is based on base period and current period "net sales" and "operating income" as defined by the Cost of Living Council for purposes of parts II and III. These definitions are not the same as those used for SEC purposes because they exclude revenues from foreign operations, public utilities, farming activities, and insurance activities. Since such general financial data, thus more narrowly defined, is not required for SEC purposes, it can be excluded from the public annual reports to the SEC and is therefore proprietary data.

(3) *Parts IV and V (Other Information).*—Parts IV and V call for names, titles, addresses, and similar nonfinancial information, including signature and date. Everything required in these parts is nonproprietary data because it does not include either trade data or general financial data other than SEC data.

(4) *Part VI (Price/Cost Information).*—The information required at the top of the page—the name of the firm, the reporting period dates, and the cumulative period dates—is nonproprietary data because it does not include either trade data or general financial data other than SEC data.

(i) All of the information required in columns (a) and (b) on lines 1 and 19 and on any continuation schedule is nonproprietary data because only the names of product lines or service lines and related standard industrial classification codes is required, neither of which is trade data or general financial data other than SEC data.

(ii) The general financial data required in columns (c) and (h), lines 1 through 19 (and any continuation schedule) concerns sales by individual 4-digit SIC code or product or service line. Because the CLC definition of "sales" for these columns excludes sales from public utilities activities, foreign operations, insurance activities, farming, exempt items, health service activities, custom products, and food operations, the column (c) or (h) sales entry does not coincide with the equivalent information on the SEC Form 10–K prepared as though the firm were a single-product-line firm. Therefore the general financial data in columns (c) and (h) is proprietary data.

(iii) The general financial data required in columns (c) and (h), lines 20 and 21 are subtotals and totals of the individual sales entries on lines 1–19 and in any continuation schedule. This information has no counterpart on a SEC Form 10–K prepared as though the firm were a single-product-line firm and thus it is proprietary data.

(iv) The general financial data required in columns (c) and (h), lines 23–25, is a breakdown of total sales into sales of or from foreign operations, food sales, and "other nonapplicable sales." These entries have no counterparts on any SEC form and are therefore proprietary data.

(v) The "net sales" information required in columns (c) and (h), line 26, coincides with the data shown in part III, line 13 (net sales) as explained in the discussion for parts II and III, this information is proprietary data.

(vi) Columns (d), (e), (g) and (i) all call for price data. All information required is therefore nonproprietary data.

(vii) The general financial data required in column (f) is a percentage figure representing "cost justification" for each 4-digit SIC code or product line entered in lines 1–19 and any continuation schedule. The general financial data required in column (f), line 22, is the cost justification for the combined product lines on a weighted average basis. These are calculations unique to the CLC forms and find no counterpart on any SEC form. All the information required in column (f) is therefore proprietary data.

(b) *Schedule C (Cost Justification).*—(1) *Part I (Identification Information).*—All of the information called for in part I (and in the spaces provided above part I) serves to identify or describe the firm, the reporting period, and the product line or SIC code. All of the information is therefore nonproprietary data because it does not include either trade data or general financial data or general financial data other than SEC data.

(2) *Part II (Calculation of Cost Justification).*—(i) All of the general financial data called for in part II, lines 3 through 7, is calculated and entered on the basis of cost per unit of input or output. There are no counterparts for these figures on the SEC 10–K. None of the information required in lines 3 through 7 is SEC data and all of it, therefore, is proprietary data.

(ii) The general financial data required in lines 8 through 12 are special CLC calculations which have no counterpart in the SEC 10–K. Therefore none of the information required is SEC data and all of it is proprietary data.

(c) *Supporting Information.*—(1) Parts of the CLC–2 are required to be submitted as attachments to the CLC–2 proper. Determination of the proprietary nature of information or data shown on these attached parts is to be made on the same basis as the determination for the equivalent part on the CLC–2 proper.

(2) Supporting information prepared by the firm in textual or other form other than on a form provided by the Council must be reviewed on an ad hoc basis to determine whether or not it contains proprietary data. The rules contained in this subpart shall be used as guidelines for this purpose.

[FR Doc.73–9396 Filed 5–9–73;8:45 am]

# Presidential Documents

## Title 3—The President

PROCLAMATION 4216

# Proclamation Amending Part 3 of the Appendix to the Tariff Schedules of the United States With Respect to the Importation of Agricultural Commodities

*By the President of the United States of America*

## A Proclamation

WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), limitations have been imposed by Presidential proclamations on the quantities of certain dairy products which may be imported into the United States in any quota year; and

WHEREAS the import restrictions proclaimed pursuant to said section 22 are set forth in part 3 of the Appendix to the Tariff Schedules of the United States; and

WHEREAS the Secretary of Agriculture has reported to me that he believes that additional quantities of dried milk provided for in item 950.02 of the Tariff Schedules of the United States (hereinafter referred to as "nonfat dry milk") may be entered for a temporary period without rendering or tending to render ineffective, or materially interfering with, the price support program now conducted by the Department of Agriculture for milk or reducing substantially the amount of products processed in the United States from domestic milk; and

WHEREAS, under the authority of section 22, I have requested the United States Tariff Commission to make an investigation with respect to this matter; and

WHEREAS the Secretary of Agriculture has determined and reported to me that a condition exists with respect to nonfat dry milk which requires emergency treatment and that the quantitative limitation imposed on nonfat dry milk should be increased during the period ending June 30, 1973, without awaiting the recommendations of the United States Tariff Commission with respect to such action; and

WHEREAS I find and declare that the entry during the period ending June 30, 1973, of an additional quantity of 60,000,000 pounds of nonfat

dry milk will not render or tend to render ineffective, or materially interfere with, the price support program which is being undertaken by the Department of Agriculture for milk and will not reduce substantially the amount of products processed in the United States from domestic milk; and that a condition exists which requires emergency treatment and that the quantitative limitation imposed on nonfat dry milk should be increased during such period without awaiting the recommendations of the United States Tariff Commission with respect to such action;

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me as President, and in conformity with the provisions of section 22 of the Agricultural Adjustment Act, as amended, and the Tariff Classification Act of 1962, do hereby proclaim that subdivision (vi) of headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

(vi) Notwithstanding any other provision of this part, 25,000,000 pounds of dried milk described in item 115.50 may be entered during the period beginning December 30, 1972, and ending February 15, 1973, and 60,000,000 pounds of such milk may be entered during the period beginning the day after the date of issuance of this proclamation and ending June 30, 1973, in addition to the annual quota quantity specified for such article under item 950.02, and import licenses shall not be required for entering such additional quantities. No individual, partnership, firm, corporation, association, or other legal entity (including its affiliates or subsidiaries) may during such period enter pursuant to this provision quantities of such additional dried milk totaling in excess of 2,500,000 pounds.

The 60,000,000 pound additional quota quantity provided for herein shall continue in effect pending Presidential action upon receipt of the report and recommendations of the Tariff Commission with respect thereto.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred seventy-three, and of the Independence of the United States of America, the one hundred and ninety-seventh.

Richard Nixon

[FR Doc.73-9572 Filed 5-10-73;12:54 pm]

# EXECUTIVE ORDER 11717

## Transferring Certain Functions From the Office of Management and Budget to the General Services Administration and the Department of Commerce

By virtue of the authority vested in me as President by the Constitution and Statutes of the United States, particularly by section 301 of title 3 of the United States Code, the Federal Property and Administrative Services Act of 1949, as amended, the Budget and Accounting Act, 1921, as amended, the Budget and Accounting Procedures Act of 1950, as amended, and Reorganization Plan No. 2 of 1970, it is hereby ordered as follows:

Section 1. There are hereby transferred to the Administrator of General Services all functions that were being performed in the Office of Management and Budget on April 13, 1973 by:

(1) the Financial Management Branch, the Procurement and Property Management Branch, and the Management Systems Branch of the Organization and Management Systems Division; and

(2) the Management Information and Computer Systems Division with respect to policy control over automatic data processing (except those functions relating to the establishment of Government-wide automatic data-processing standards).

Sec. 2. There are hereby transferred to the Secretary of Commerce all functions being performed on the date of this order in the Office of Management and Budget relating to the establishment of Government-wide automatic data processing standards, including the function of approving standards on behalf of the President pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended.

Sec. 3. (a) The functions transferred to the Administrator of the General Services Administration and to the Secretary of Commerce by this order do not include those performed in connection with the general oversight responsibilities of the Director of the Office of Management and Budget, as the head of that agency and as Assistant to the President for executive management, and the functions transferred by this order shall be performed subject to such general oversight to the same extent that other functions of the General Services Administration and the Department of Commerce, respectively, are so performed.

(b) The functions vested in the President by the first sentence of section 111(g) of the Federal Property and Administrative Services Act of 1949, as amended, with respect to fiscal control of automatic data processing activities shall continue to be performed by the Director of the

Office of Management and Budget. No function vested by statute in the Director shall be deemed to be affected by the provisions of this order.

Sec. 4. So much of the personnel, property, records and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available, in connection with the functions transferred by this order as the Director of the Office of Management and Budget shall determine, shall be transferred to the Department of Commerce and the General Services Administration, respectively, at such times as the Director shall specify.

Sec. 5. Executive Order No. 11541 of July 1, 1970, is hereby superseded to the extent that it is inconsistent with this order.

Sec. 6. This order shall be effective as of April 15, 1973.

THE WHITE HOUSE,
*May 9, 1973.*

[FR Doc.73-9450 Filed 5-9-73;1:51 pm]

federal register

FRIDAY, JUNE 15, 1973
WASHINGTON, D.C.
Volume 38 ■ Number 115
PART II

# ECONOMIC STABILIZATION

■

## THE PRESIDENT

## COST OF LIVING COUNCIL

## DEPARTMENT OF COMMERCE

# Presidential Documents

## Title 3—The President

### EXECUTIVE ORDER 11723

**Further Providing for the Stabilization of the Economy**

On January 11, 1973 I issued Executive Order 11695 which provided for establishment of Phase III of the Economic Stabilization Program. On April 30, 1973 the Congress enacted, and I signed into law, amendments to the Economic Stabilization Act of 1970 which extended for one year, until April 30, 1974, the legislative authority for carrying out the Economic Stabilization Program.

During Phase III, labor and management have contributed to our stabilization efforts through responsible collective bargaining. The American people look to labor and management to continue their constructive and cooperative contributions. Price behavior under Phase III has not been satisfactory, however. I have therefore determined to impose a comprehensive freeze for a maximum period of 60 days on the prices of all commodities and services offered for sale except the prices charged for raw agricultural products. I have determined that this action is necessary to stabilize the economy, reduce inflation, minimize unemployment, improve the Nation's competitive position in world trade and protect the purchasing power of the dollar, all in the context of sound fiscal management and effective monetary policies.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, particularly the Economic Stabilization Act of 1970, as amended, it is hereby ordered as follows:

SECTION 1. Effective 9:00 p.m., e.s.t., June 13, 1973, no seller may charge to any class of purchaser and no purchaser may pay a price for any commodity or service which exceeds the freeze price charged for the same or a similar commodity or service in transactions with the same class of purchaser during the freeze base period. This order shall be effective for a maximum period of 60 days from the date hereof, until 11:59 p.m., e.s.t., August 12, 1973. It is not unlawful to charge or pay a price less than the freeze price and lower prices are encouraged.

SEC. 2. Each seller shall prepare a list of freeze prices for all commodities and services which he sells and shall maintain a copy of that list available for public inspection, during normal business hours, at each place of business where such commodities or services are offered for sale. In addition, the calculations and supporting data upon which the list is based shall be maintained by the seller at the location where the pricing decisions reflected on the list are ordinarily made and shall be made

available on-request to representatives of the Economic Stabilization Program.

SEC. 3. The provisions of this order shall not extend to the prices charged for raw agricultural products. The prices of processed agricultural products, however, are subject to the provisions of this order. For those agricultural products which are sold for ultimate consumption in their original unprocessed form, this provision applies after the first sale.

SEC. 4. The provisions of this order do not extend to (a) wages and salaries, which continue to be subject to the program established pursuant to Executive Order 11695 (b) interest and dividends, which continue to be subject to the program established by the Committee on Interest and Dividends and (c) rents which continue to be subject to controls only to the limited extent provided in Executive Order 11695.

SEC. 5. The Cost of Living Council shall develop and recommend to the President policies, mechanisms and procedures to achieve and maintain stability of prices and costs in a growing economy after the expiration of this freeze. To this end, it shall consult with representatives of agriculture, industry, labor, consumers and the public.

SEC. 6. (a) Executive Order 11695 continues to remain in full force and effect and the authority conferred by and pursuant to this order shall be in addition to the authority conferred by or pursuant to Executive Order 11695 including authority to grant exceptions and exemptions under appropriate standards issued pursuant to regulations.

(b) All powers and duties delegated to the Chairman of the Cost of Living Council by Executive Order 11695 for the purpose of carrying out the provisions of that order are hereby delegated to the Chairman of the Cost of Living Council for the purpose of carrying out the provisions of this order.

SEC. 7. Whoever willfully violates this order or any order or regulation continued or issued under authority of this order shall be subject to a fine of not more than $5,000 for each such violation. Whoever violates this order or any order or regulation continued or issued under authority of this order shall be subject to a civil penalty of not more than $2,500 for each such violation.

SEC. 8. For purposes of this Executive Order, the following definitions apply:

"Freeze price" means the highest price at or above which at least 10 percent of the commodities or services concerned were priced by the seller in transactions with the class of purchaser concerned during the freeze base period. In computing the freeze price, a seller may not exclude any temporary special sale, deal or allowance in effect during the freeze base period.

"Class of purchaser" means all those purchasers to whom a seller has charged a comparable price for comparable commodities or services

during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers.

"Freeze base period" means

(a) the period June 1 to June 8, 1973; or

(b) in the case of a seller who had no transactions during that period, the nearest preceding seven-day period in which he had a transaction.

"Transaction" means an arms length sale between unrelated persons and is considered to occur at the time of shipment in the case of commodities and the time of performance in the case of services.

THE WHITE HOUSE,
*June 13, 1973*

NOTE: For the text of Presidential remarks of June 13, 1973, in connection with EO 11723, above, see Weekly Comp. of Pres. Docs., Vol. 9, No. 24, issue of June 18, 1973.

[FR Doc.73-12102 Filed 6-14-73;9:01 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

**Issuance of Remedial Orders: Procedures Governing Requests for Modification or Rescission**

Part 140 is added to title 6, chapter 1, Code of Federal Regulations. This part sets forth price freeze regulations in accordance with the provisions of Executive Order No. 11723. In general, this part is in addition to the provisions of part 130 and chapter III (Price Commission Regulations) of this title with respect to prices charged or received for commodities and services beginning 9 p.m., e.s.t., June 13, 1973, for a maximum of 60 days. The provisions of this part do not extend to (i) wages and salaries, which continue to be subject to the program established pursuant to Executive Order 11695; (ii) interest and dividends, which continue to be subject to the program established by the Committee on Interest and Dividends and (iii) rents, which continue to be subject to controls only to the limited extent provided in Executive Order 11695.

This part does not apply to sales of meat subject to subpart M of part 130. In addition, this part does not affect the provisions regarding the filing of reports or the maintenance of records pursuant to part 130 or the renegotiation of construction contracts under subpart H of part 130.

Because the immediate implementation of Executive Order No. 11723 is required, and because the purpose of these regulations is to provide immediate guidance as to Cost of Living Council decisions, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these regulations effective in less than 30 days. Interested persons may submit comments regarding these regulations. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20507.

These regulations are effective as of 9 p.m., e.s.t., June 13, 1973.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

Subpart A—General



AUTHORITY.—Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; Public Law 93-28, 87 Stat 27; and Executive Order 11723.

## Subpart A—General

### § 140.1 Purpose and scope.

(a) The purpose of this part is to implement the provisions of Executive Order 11723 prescribing freeze prices for commodities and services. Except as provided in paragraph (b) of this section, the provisions of this part are in addition to the provisions of part 130 of this chapter with respect to prices charged or received for commodities and services beginning 9 p.m. e.s.t., June 13, 1973 for a maximum of 60 days and shall not operate to abrogate any requirements imposed under part 130. To the extent that the provisions of this part are in conflict with the provisions of part 130 of this chapter, the provisions of this part control, except that the provisions of this part shall not operate to permit prices higher than permitted under part 130 of this chapter. The provisions of this part do not extend to (1) wages and salaries, which continue to be subject to the program established pursuant to Executive Order 11695; (2) interest and dividends, which continue to be subject to the program established by the Committee on Interest and Dividends and (3) rents, which continue to be subject to controls only to the limited extent provided in Executive Order 11695.

(b) This part does not apply to sales of meat subject to subpart M of part 130 of this chapter.

(c) This part does not apply to economic transactions which are not prices within the meaning of the act as amended. Examples of transactions not within the meaning of the act are:

(1) State or local income, sales and real estate taxes;

(2) Workmen's compensation payments;

(3) Welfare payments;

(4) Child support payments; and

(5) Alimony payments.

(d) The Cost of Living Council may permit any exceptions or exemptions that it considers appropriate with respect to the requirements prescribed in this part. Requests for exceptions or exemptions from the requirements of this part shall be submitted in accordance with the provisions of part 105 of this chapter.

(e) This part applies to:

(i) Economic units and transactions in the several States and the District of Columbia; and

(ii) Sales of commodities and services by firms in the several States and the District of Columbia to firms in the Commonwealth of Puerto Rico.

### § 140.2 Definitions.

"Act" means the Economic Stabilization Act of 1970, as amended.

"Class of purchaser" means purchasers to whom a person has charged a comparable price for comparable property or service during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers.

"Commodity" means an item of tangible personal property offered for sale or lease to another person or real property offered for sale.

"Council" means the Chairman of the Cost of Living Council established by Executive Order 11615 (3 CFR, 1971 Comp., p. 199) and continued under the provisions of Executive Order 11695, or his delegate.

"Customary price differential" includes a price distinction based on a discount, allowance, add-on, premium, and an extra based on a difference in volume, grade, quality, or location or type of purchaser, or a term or condition of sale or delivery.

"Exception" means a waiver directed to an individual firm in a particular case which relieves it from the requirements of a rule, regulation, or order issued pursuant to the act.

"Exemption" means a general waiver of the requirements of all rules, regulations, and orders issued pursuant to the act.

"Freeze base period" means

(a) The period June 1 to June 8, 1973; or

(b) In the case of a seller who had no transactions during that period, the nearest preceding 7-day period in which he had a transaction.

"Freeze price" means the highest price at or above which at least 10 percent of the commodities or services concerned were priced by the seller in transactions with the class of purchaser concerned

during the freeze base period. In computing the freeze price, a seller may not exclude any temporary special sale, deal, or allowance in effect during the freeze base period.

"Manufacturer" means a person who carries on the trade or business of making, fabricating, or assembling a product or commodity by manual labor or machinery for sale to another person, and also includes the mining of natural deposits, the production of refining of oil from wells, and the refining of ores, and whenever the Council considers it appropriate, also includes any manufacturing subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by another person.

"Person" includes any individual, trust, estate, partnership, association, company, firm, or corporation, a government, and any agency or instrumentality of a government.

"Price" means any compensation for the sale or lease of a commodity or service or a decrease in the quality of substantially the same commodity or service, except that it does not mean rental pursuant to a lease of real property.

"Retailer" means a person who carries on the trade or business of purchasing a commodity and, without substantially changing the form of that commodity, reselling it to ultimate consumers, and, whenever the Council considers it appropriate, includes any retailing subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by, another person.

"Sale" means any exchange, transfer, or other disposition in return for valuable consideration.

"Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

"Service" includes any service performed by a person for another person, other than in an employment relationship, and also includes professional services of any kind and services performed by membership organizations for which dues are charged, and the leasing or licensing of a commodity to another person.

"Service organization" means a person who carries on the trade or business of selling or making available services, including nonprofit organizations, governments, and government agencies or instrumentalities which carry on those activities, and a person who provides professional services; and, whenever the Council considers it appropriate, also including any service organization subsidiary, division, affiliate, or similar entity that is part of, or is directly or indirectly controlled by, another person.

"Transaction" means an arms-length sale between unrelated persons and is considered to occur at the time of shipment in the case of commodities and the time of performance in the case of services.

"Wholesaler" means a person who carries on the trade or business of purchasing a commodity and, without substantially changing the form of that commodity, reselling it to retailers for resale or to industrial, commercial, institutional, or professional business users. It also includes, whenever the Council considers it appropriate, any wholesaling subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by, another person.

## Subpart B—Freeze Price Rules

### § 140.10 General rule.

Effective 9 p.m., e.s.t., June 13, 1973, no person may charge to any class of purchaser and no purchaser may pay a price for any commodity or service which exceeds the freeze price charged for the same or a similar commodity or service in transactions with the same class of purchaser during the freeze base period. The freeze price shall be determined in accordance with the definitions set forth in § 140.2 notwithstanding the fact that the freeze price so determined may be lower than the price prevailing on May 25, 1970.

### § 140.11 Sales of real property.

The freeze price for the sale of any interest in real property shall be:

(a) The sale price specified in a sales contract signed by both parties on or before June 12, 1973; or

(b) When there is no such sales contract, the fair market value of the property as of the freeze base period based on sales of like or similar property.

### § 140.12 New commodities and new services.

(a) *Freeze price determination.*—A person offering a new commodity or a new service shall determine its freeze price as follows:

(1) *Net operating profit markup—Manufacturer or service organization.*—A manufacturer or service organization shall apply the net operating profit markup it received on the most nearly similar commodity or service it sold or leased to the same market during the freeze base period to the total allowable unit costs of the new commodity or service. For the purposes of this subparagraph, "net operating profit markup" means the ratio which the selling price bears to the total allowable unit costs of the commodity or service.

(2) *Customary initial percentage markup—Retailer or wholesaler.*—A retailer or wholesaler shall apply the customary initial percentage markup it received on the most nearly similar commodity or service it sold to the same market during the freeze base period to the total allowable unit costs of the new commodity.

(3) *Average price of comparable commodities or services.*—If the person did not offer a similar commodity or service for sale or lease to a particular market during the freeze base period, the freeze price for sales or leases to that market shall be the average price received in a substantial number of current transactions in that market by other persons selling or leasing comparable commodities or services in the same marketing area.

(b) *Base prices determined by predecessor entities.*—If a legal entity or a component of a legal entity determines a base price for a commodity or service which it sells or leases to a particular market and the entity or component is acquired by another person after June 12, 1973, the commodity or service does not become a new commodity or new service with respect to the same market. The ceiling price of the commodity or service with respect to that market remains the ceiling price determined for it by the predecessor entity or component.

(c) *General—New item.*—(1) A commodity or service is a new commodity or new service if—

(i) The offering person did not sell or lease it in the same or substantially similar form at any time during the 1-year period immediately preceding the first date on which he offers it for sale or lease. (A change in appearance, arrangement, or combination does not create a new commodity or service. Ordinarily, a change in fashion, style, form, or packaging does not create a new commodity or service. In the case of personal property for lease, a permanent improvement or betterment made to the property, as a part thereof, to increase value or to restore it makes it a new commodity for purposes of a lease if the cost of the improvements or betterment is greater than $100 and at least as much as 3 month's rent for the property); and

(ii) It is substantially different in purpose, function, quality, or technology, or its use or service effects a substantially different result from any other commodity or service which the offering person currently sells or leases or sold or leased at any time during the 1-year period immediately preceding the first date on which he offers it for sale or lease.

(2) *New market.*—A commodity or service which the offering person has previously sold or leased is a new commodity or a new service with respect to its offer or sale to any market to which he did not sell or lease it at any time during the 1-year period immediately preceding the first date on which he offers it for sale or lease. For the purposes of this section, a "market" is one or more members of any one of the following groups: wholesalers; retailers; consumers; manufacturers; or service organizations.

(d) *In applicability.*—This section does not apply to sales of real property.

(e) *Burden of proof.*—Any seller seeking to utilize the provisions of this section to establish a freeze price has the burden of establishing the facts upon which the determination of a freeze price is made and demonstrating those facts upon request by a representative of the Council.

§ 140.13 Seasonal patterns.

(a) *General.*—Notwithstanding any other provision of this subpart, prices which normally fluctuate in distinct seasonal patterns may be adjusted as prescribed in this section.

(b) *Distinct fluctuation.*—Prices must show a large or otherwise distinct fluctuation at a specific, identifiable point in time. The distinct flucuation must be an established practice that has taken place in each of the 3 years before the date of the contemplated change. New persons may determine their qualifications from those generally prevailing with respect to persons similarly situated, selling or leasing in the same marketing area. If there are not similar persons in the immediate area, qualification may be established by reference to the nearest similar marketing area.

(c) *Time of price fluctuation.*—The price fluctuation referred to in paragraph (b) of this section may not take place at a time other than the time at which that fluctuation took place in the preceding year unless the date of the price fluctuation is tied to a specific event such as a previously planned introduction of new models.

(d) *Allowable price.*—Subject to paragraph (e) of this section, if the requirements of paragraphs (b) and (c) of this section are met, the maximum price which may be charged by the person concerned is the greater of the following:

(1) The freeze price determined under this part; or

(2) The price charged by that person during the first 30 days of the period following the nearest preceding seasonal price adjustment, or if the season was less than 30 days, during the period of that season.

For the purposes of paragraph (d) (2) of this section, the price charged during that 30-day period, or the period of the season if less than 30 days, is the weighted average of the prices charged on all transactions during that period.

(e) *Return to nonseasonal prices.*—Each person that increases a price under this section shall decrease that price at the same date or identifiable point in time as the price was deceased in the previous season.

(f) *Burden of proof.*—Any seller seeking to utilize the provisions of this section to establish a freeze price has the burden of establishing the facts upon which the determination of a freeze price is made and demonstrating those facts upon request by a representative of the Council.

§ 140.14 Imported commodity.

Notwithstanding the provisions of § 140.10, any person who imports and sells a commodity from outside the several States and the District of Columbia and each reseller of such a commodity may pass on price increases for such imported commodity incurred after June 12, 1973, on a dollar-for-dollar basis so long as the commodity is neither physically transformed by the seller nor becomes a component of another product. However, this section shall not apply to commodities which were originally purchased in the United States but exported and subsequently imported in any form.

## Subpart C—Recordkeeping

§ 140.20 General.

Each seller shall prepare a list of freeze prices for all commodities and services which he sells and shall maintain a copy of that list available for public inspection, during normal business hours, at each place of business where such commodities or services are offered for sale. In addition, the calculations and supporting data upon which the list is based shall be maintained by the seller at the location where the pricing decisions reflected on the list are ordinarily made and shall be made available on request to representatives of the Economic Stabilization program.

§ 140.21 Reporting and recordkeeping under part 130 of this chapter.

The reporting and recordkeeping requirements set forth in part 130 of this chapter with respect to prices, costs, and profits remain in full force and effect.

## Subpart D—Exemptions

§ 140.30 General.

Prices with regard to the commodities and services set forth in this subpart are exempt from the provisions of Executive Order 11723 and this part 140.

§ 140.31 Agricultural products and seafood products.

(a) *Raw agricultural products.*—(1) Subject to the special rule set forth below, the sale of agricultural products which retain their original physical form and have not been processed is exempt. Processed agricultural products are products which have been canned, frozen, slaughtered, milled, or otherwise changed in their physical form. Packaging is not considered a processing activity. Examples:

| *Exempt* | *Nonexempt* |
|---|---|
| Live cattle, calves, hogs, sheep, and lambs. | Carcasses and meat cuts. |
| Live poultry. | |
| Raw milk | Pasteurized milk and processed products such as butter, cheese, ice cream. |
| | Frozen, dried, or liquid eggs. |
| Sheared or pulled wool. | Wool products. |
| | Processed and blended honeybutter product. |
| Mohair. | |
| Hay: Bulk, pelleted, cubed, or baled. | Dehydrated alfalfa meal or alfalfa meal pellets. |
| Wheat | Flour. |
| Feed grains including: | |
| Corn | Mixed feed. |
| Sorghum | Cracked corn. |
| Barley | Rolled barley. |
| Oats | Rolled oats. |
| Soybean | Soybean meal and oil. |
| Leaf tobacco | Cigarettes and cigars. |
| Baled cotton, cottonseed, cotton lint. | Cotton yarn, cottonseed oil, cottonseed meal. |
| | Frozen french fries, dehydrated potatoes. |
| Unmilled rice | Milled rice. |
| | Roasted, salted, or otherwise processed nuts. |
| | Canned or freeze dried mushrooms. |
| Fresh hops. | |
| Sugar beets and sugarcane. | Refined sugar. |
| Maple sap. | |
| All seeds for planting. | Seeds processed for other uses. |
| Raw coffee bean | Roastedcoffee bean. |
| | Canned and frozen vegetables. |
| | Dill pickles. |
| | Package slaw. |
| | Popped popcorn. |
| Stumpage or trees cut from the stump. | Milled lumber. |
| | Canned fruit or juices. |
| | Glazed citrus peel. |
| | Canned grapes, wine. |
| | Applesauce. |
| | Canned prunes and prune juice. |
| | Canned olives. |
| | Floral wreath. |
| Garden plants. | |

(2) Special rule: Only the first sale by the producer or grower of those agricultural products which are of a type sold for ultimate consumption in their original physical form is exempt. Examples of these products are:

| | |
|---|---|
| Shell, eggs packaged or loose. | Tomatoes. |
| Raw honeycomb honey. | Lettuce. |
| Fresh potatoes, packaged or not. | Sweet corn. |
| All raw nuts—shelled and unshelled. | Brussels sprouts. |
| Fresh mushrooms. | Beets. |
| Fresh mint. | Unpopped popcorn. |
| Dried beans, peas, and lentils. | All fresh or naturally dried fruits, packaged or not, including: |
| All fresh vegetables and melons including: | Fresh oranges. |
| | Grapes and raisins. |
| | Apples. |
| | Peaches. |

| | |
|---|---|
| Strawberries. | Honeydews. |
| Grapefruit. | Escarole. |
| Pears. | Garlic. |
| Lemons. | Artichokes. |
| Plums and prunes. | Eggplant. |
| | Avocados. |
| Cherries. | Blueberries. |
| Cranberries. | Apricots. |
| Onions. | Tangerines. |
| Green beans. | Olives, uncured. |
| Cantaloupe. | Nectarines. |
| Cucumbers. | Raspberries. |
| Cabbage. | Blackberries. |
| Carrots. | Figs. |
| Watermelons. | Tangelos. |
| Green peas. | Limes. |
| Asparagus. | Dates. |
| Pepper. | Papayas. |
| Broccoli. | Bananas. |
| Cauliflower. | Pomegranates. |
| Spinach. | Currants. |
| Green lima beans. | Persimmons. |
| | Cut flowers. |

(b) Dressed broilers and turkeys and raw seafood products. The first sale by (1) a producer of broilers or turkeys or (2) a producer or fisherman of raw seafood products including those which have been shelled, shucked, iced, skinned, scaled, eviscerated, or decapitated is exempt.

(c) Raw sugar prices. Raw sugar price adjustments which are controlled under the Sugar Act of 1948, as amended, are exempt.

(d) The first sale of mint oil and maple syrup or sugar is exempt.

(e) The first sale of dehydrated fruits is exempt.

**§ 140.32 Securities.**

Prices charged for securities are exempt.

**§ 140.33 Exports.**

Prices charged for exports are exempt.

**§ 140.34 Commodity futures.**

The sale of commodity futures on an organized commodities exchange is exempt. However, delivery of a commodity pursuant to a futures contract must be made at the freeze price, unless the commodity itself is exempt.

### Subpart E—Sanctions

**§ 140.40 Violations.**

(a) Any practice which constitutes a means to obtain a price higher than is permitted by this regulation is a violation of this regulation. Such practices include, but are not limited to, devices making use of inducements, commissions, kickbacks; retroactive increases, transportation arrangements, premiums, discounts, special privileges, tie-in agreements, trade understandings, falsification of records, substitution of inferior commodities or failure to provide the same services and equipment previously sold.

**§ 140.41 Sanctions; criminal fine and civil penalty.**

(a) Whoever willfully violates any order or regulation under this title shall be subject to a fine of not more than $5,000 for each violation.

(b) Whoever violates any order or regulation under this title shall be subject to a civil penalty of not more than $2,500 for each violation.

**§ 140.42 Injunctions and other relief.**

Whenever it appears to the Council that any firm has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this title, the Council may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices. The relief sought may include a mandatory injunction commanding any person to comply with any such order or regulation and restitution of moneys received in violation of any such order or regulation.

### Subpart F—Administrative Sanctions—Issuance of Remedial Orders; Procedures Governing Requests for Modification or Rescission of Such Orders

**§ 140.50 Purpose and scope.**

This subpart establishes the procedures for determining the nature and extent of violations, the procedures for the issuance of remedial orders, and the procedures for requests for modification or rescission of remedial orders.

(a) Each District Director of Internal Revenue is authorized to take final action under this subpart with respect to matters arising in his district and may delegate the performance of any function under this subpart.

(b) A "remedial order" is an order requiring a person to cease a violation or to take action to eliminate or to compensate for the effects of a violation, or both, or which imposed other sanctions.

(c) The District Director will not consider that a person has exhausted his administrative remedies until he has filed a request for modification or rescission under §§ 140.56–140.59 and final action has been taken thereon by the District Director under § 140.55.

**§ 140.51 General.**

When any audit or investigation discloses, or the District Director otherwise discovers, that a person appears to be in violation of any provision of this part, the District Director may conduct proceedings to determine the nature and extent of the violations and issue remedial orders. The District Director may commence proceedings by serving a notice of probable violation or by issuing a remedial order.

**§ 140.52 Issuance of notice of probable violation to begin proceedings.**

The District Director may begin proceedings under this subpart F by issuing a notice of probable violation if the District Director has reason to believe that a violation has occurred or is about to occur.

**§ 140.53 Issuance of remedial orders to begin proceedings in unusual circumstances.**

Remedial orders may be issued to begin proceedings under this subpart F if the District Director finds on preliminary examination that the violations are patent or repetitive, that their immediate cessation is required to avoid irreparable injury to others or unjust enrichment to the person to whom the order is issued, or for any other unusual circumstance the District Director deems sufficient.

(a) When the District Director issues a remedial order to begin proceedings the person to whom the order is issued may request a stay of the order, or a suspension of the order if it has already become operative, whichever is appropriate, pending completion of the proceedings, which stay the District Director will grant as a matter of course unless the District Director finds that the order is needed to avoid irreparable injury to others or the unjust enrichment of the person to whom the order was issued.

(b) A request for stay, if any, should be sent to the District Director and should be appropriately identified on the envelope.

**§ 140.54 Reply.**

Within 5 days of receipt of a notice of probable violation issued under § 140.52 or a remedial order issued under § 140.53, the person to whom the notice or order is issued may file a reply. The reply must be in writing. He may also request an appointment for a personal appearance, which must be held within the 5-day period provided for reply. He may be represented or accompanied by counsel at the personal appearance. The District Director will extend the 5-day reply period for good cause shown.

(a) If a person has not requested a stay or suspension of a remedial order issued to begin proceedings, or if such a stay has been denied, the order will go into effect or remain in effect, in accordance with its terms, as the case may be.

(b) If a person does not reply within the time allowed by a notice of probable violation, the violation will be considered admitted as alleged and the District Director may issue whatever remedial order would be appropriate.

(c) An order which goes into effect or is permitted to remain in effect under paragraph (a) of this section or an order issued under paragraph (b) of this section is not subject to judicial or any other review with respect to any finding of fact or conclusion of law which could have been raised in the proceedings before the District Director by the filing of a reply.

§ 140.55 Decision.

(a) If the District Director finds, after the person has filed a reply under § 140.54 that no violation has occurred or is about to occur or that for any other reason the issuance of a remedial order would not be appropriate, it will issue a decision so stating, and, if necessary, an order revoking or modifying any remedial order which already may be outstanding.

(b) If the District Director finds that a violation has occurred or is about to occur and that a remedial order is appropriate, it will issue a decision so stating, specifying the nature and extent of the violation, and, if necessary, issue a remedial order implementing the decision, vacating the suspension of any outstanding remedial order, or modifying as appropriate, an outstanding remedial order. The decision will state the reasons upon which it is based.

(c) Remedial orders issued hereunder may include provisions for rollbacks and refunds or any other requirement which is reasonable and appropriate.

§ 140.56 Who may request modification or rescission of an order issued under § 140.55.

The person to whom an order is issued under § 140.55 may file a request for modification or rescission of that order.

§ 140.57 Where to file.

A request for modification or rescission shall be filed with the District Director who issued the order.

§ 140.58 When to file.

A request for modification or rescission must be filed within 5 days of receipt of the order issued under § 140.55.

§ 140.59 Contents of request.

A request for modification or rescission shall—

(a) Be in writing and signed by the applicant;

(b) Be designated clearly as a request for modification or rescission;

(c) Identify the order which is the subject of the request;

(d) Point out the alleged error in the order;

(e) Contain a concise statement of the grounds for the request for modification or rescission and the requested relief;

(f) Be accompanied by briefs, if any; and

(g) Be marked on the outside of the envelope "Request for Modification or Rescission."

§ 140.60 Preliminary processing by the District Director.

(a) A request for modification or rescission of an order issued under § 140.55 will be considered by the District Director only if it:

(1) Is made by a person to whom the order sought to be modified or rescinded was issued;

(2) Is timely; and

(3) Makes a prima facie showing of error.

(b) The District Director may summarily reject a request for modification or rescission which is not made by a person to whom the order was issued, or which is not timely filed, or which fails to make a prima facie showing of error.

(c) When the request for modification or rescission meets the requirements set forth in paragraph (a) of this section, the District Director on its own motion or for good cause shown may temporarily suspend the order appealed from and then proceed in accordance with § 140.55.

Subpart G—Compromise of Civil Penalties

§ 140.70 Purpose and scope.

Under section 208(b) of the Economic Stabilization Act of 1970, as amended, whoever violates an order or regulation issued by the council or its delegate under that act is subject to a civil penalty of not more than $2,500 for each violation. This subpart prescribes procedures governing the compromise and collection of those civil penalties which each District Director of Internal Revenue may utilize with respect to matters arising in his district under this part.

§ 140.71 Notice of possible compromise of civil penalties.

If the District Director considers it appropriate or advisable under the circumstances of a particular civil penalty case to settle it through compromise, the District Director sends a letter to the person charged with the violation advising him of the charges against him, the order or regulation that he is charged with violating, and the total amount of the penalty involved, and that the District Director is willing to consider an offer in compromise of the amount of the penalty.

§ 140.72 Response to notice.

(a) A person who receives a notice pursuant to § 140.71 may present to the District Director any information or material bearing on the charges that denies, explains, or mitigates the violation. The person charged with the violation may present the information or materials in writing or he may request an informal conference for the purpose of presenting them. Information or materials so presented will be considered in making a final determination as to the amount for which a civil penalty is to be compromised.

(b) A person who receives such a notice may offer to compromise the civil penalty for a specific amount by delivering to the District Director a certified check for that amount payable to the Treasury of the United States. An offer to compromise does not admit or deny the violation.

§ 140.73 Acceptance of offer to compromise.

(a) The District Director may accept or reject an offer to compromise a civil penalty. If he accepts it, he sends a letter to the person charged with the violation advising him of the acceptance.

(b) If the District Director accepts an offer to compromise, that acceptance is in full settlement on behalf of the United States of the civil penalty for the violation. It is not a determination as to the merits of the charges. A compromise settlement does not constitute an admission of violation by the person concerned.

§ 140.74 No compromise.

If a compromise settlement of a civil penalty cannot be reached, the District Director may refer the matter to the Attorney General for the initiation of proceedings in a U.S. district court to collect the full amount of the penalty, or take such other action as is necessary.

[FR Doc.73-12115 Filed 6-14-73;10:44 am]

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Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—EXPORT REGULATIONS

[13th Gen. Rev., Export Regulations, Amendment 55]

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

Agricultural Commodities Requiring Reports

Part 376 is amended by adding a new § 376.3 and supplement No. 1 to part 376 to read as set forth below.

(50 U.S.C. App. secs. 2402(2)(B), 2403(b) and 22 U.S.C. 287C.)

*Effective date.*—June 13, 1973.

RAUER H. MEYER,
*Director,*
*Office of Export Control.*

MONITORING EXPORTS AND ANTICIPATED EXPORTS OF CERTAIN GRAINS, OILSEEDS AND OILSEED PRODUCTS [1]

In order to assist the Department of Commerce in monitoring, on a current basis, the exports of and foreign demand for certain grains, oilseeds and oilseed products, as defined below, the Export Control Regulations are revised to require each U.S. exporter to file, no later than June 20, 1973, a report of all anticipated exports of more than $250 of each separate agricultural commodity set forth below. Such report will provide the tonnage (in metric tons) of such anticipated exports as of the close of business June 13, 1973. The commodities subject to the reporting requirement set forth herein shall be listed by the appropriate number in schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, U.S. Bureau of the Census, which are set forth below and in the case of wheat also by the separate classes of wheat set forth below; [2] by country of ultimate destination; and by month of scheduled or anticipated export.

For optional sales, the report shall include that portion of the sale expected to be exported from the United States or in

[1] The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

[2] Hard Red Winter, Soft Red Winter, Hard Red Spring, White, or Durum.

the case of optional class or kind of grain, the report shall include the particular class or kind of grain expected to be exported.

A separate report shall be filed on the appropriate form DIB–634P (a) through (i),[1] "anticipated exports" for each of the nine agricultural commodity groupings listed below. Form DIB–634P is promulgated in series (a) through (i) inclusive, so that each of the nine commodity groupings has its own particular form, designated by color coding.

*Subsequent reports.*—On June 25, 1973, and on the first business day of each week thereafter, each U.S. exporter shall file a report on the appropriate form DIB–634P setting forth as of the close of business the preceding Friday all anticipated exports of more than $250 for each separate commodity set forth below. Such report shall be made on the same basis as and shall contain all data required above for the June 20 report. Such report shall also have attached a reconciliation of all changes from the prior report which will show in aggregate form all new anticipated exports of more than $250; all cancellations of, or changes in, orders previously reported; a breakdown showing whether such cancelled orders were accepted on or before June 13, 1973, or accepted after June 13, 1973; all exports made since the closing date of the prior report, whether or not such exports were made against reported or accepted orders; a breakdown of exports showing whether they were against orders accepted on or before June 13, 1973, or against orders accepted after June 13, 1973; any changes in the quantities to be exported to particular countries; any changes in the month of scheduled or anticipated export; and in the case of optional sales any change in the particular class or kind of grain expected to be exported from the United States. Such reconciliation shall be filed on form DIB–635P[1] which is also promulgated in series (a) through (i) inclusive. If there are no changes on a line of information from the prior report, the information contained in the prior report shall not be repeated, but form DIB–634P shall nevertheless be submitted with the statement "no change" entered in its face; in such case, form DIB–635P need not be filed. If there are changes, even though these do not result in changes in the aggregates because they are offsetting, form DIB–635P shall be filed showing such changes.

*Manner of reporting.*—All reports must be filed in an original and one copy with the Office of Export Control (Attn: 547), U.S. Department of Commerce, Washington, D.C. 20230. Such reports shall be deemed filed when actually received by the Office of Export Control.

*Date of export.*—For purposes of this reporting requirement only, a commodity shall be considered as scheduled for export on the date the exporting carrier is expected to depart from the United States.

*Corrections.*—If, because of a carrier's earlier or delayed departure or for other reasons, data reported pursuant to the preceding paragraph are found to have been incorrect, such facts shall be set forth on form DIB–635P (a) through (i), and corrected data shall thereafter be set forth on the appropriate form DIB–634P (a) through (i).

*Who shall file reports.*—For purposes of this reporting requirement only, in order to prevent duplication as well as to insure complete and adequate coverage of pending orders and shipments, the exporter as the principal party in interest in the export transaction will have the sole responsibility for reporting any and all information even though there may also be a U.S. order party involved. The exporter will have the sole responsibility of reporting the anticipated exports whether the exporter employs a freight forwarder to handle the shipping of the material or delivers the material to a carrier for export out of the country.

The term "anticipated export(s)" as used herein and in the reporting forms means exports expected which are based upon accepted orders which are unfilled in whole or in part or upon other firm arrangements, such as exports for the exporter's own account. It does not include merely hoped-for sales for export or anticipated orders.

*Possibility of quota restrictions.*—U.S. exporters are advised that if controls are imposed on exports of any of the agricultural commodities defined in supplement No. 1 to part 376, orders accepted or arrangements for exports made after June 13, but unshipped at the time controls are imposed, may be fully subject to such controls. In addition exports made after June 13, 1973, based upon orders or arrangements made after June 13, 1973, may be included in whatever export quotas are established.

The agricultural commodities subject to these reporting requirements are set forth below in supplement No. 1 to part 376.

Accordingly, § 376.3 and supplement No. 1 to part 376 are added to read as set forth below:

**§ 376.3 Agricultural commodities requiring reports.**

(a) *Exports and anticipated exports of certain grains, oilseeds, and oilseed products.*—(1) *Initial report of unfilled orders.*—No later than June 20, 1973, each U.S. exporter shall file a report of all anticipated exports (as hereinafter defined) of more than $250 of each separate agricultural commodity listed in supplement No. 1 of this part 376. Such report will provide the tonnage (in metric tons) of such anticipated exports as of the close of business June 13, 1973. The commodities subject to the reporting requirement set forth herein, shall be listed by the appropriate number in schedule B, "Statistical Classification of Domestic and Foreign Commodities Exported From the United States, U.S. Bureau of the Census," as set forth in supplement No. 1, and in the case of wheat also by the separate classes of wheat set forth in supplement No. 1; by country of ultimate destination; and by month of scheduled or anticipated export. For optional sales, the report shall include that portion of the sale expected to be exported from the United States, or in the case of optional class or kind of grain, the report shall include the particular class or kind of grain expected to be exported. A separate report shall be filed on the appropriate form DIB–634P (a) through (i) "Anticipated Exports", for each of the nine agricultural commodity groupings listed in supplement No. 1. Form DIB–634P is promulgated in series (a) through (i) inclusive, so that each of the nine commodity groupings has its own particular form, designated by color coding.

(2) *Subsequent reports.*—On June 25, 1973, and on the first business day of each week thereafter, each U.S. exporter shall file a report on the appropriate form DIB–634P setting forth, as of the close of business the preceding Friday, all anticipated exports of more than $250 for each separate commodity set forth in supplement No. 1. Such report shall be made on the same basis as and shall contain all data required under subparagraph (1) of this paragraph. Such report shall also have attached a reconciliation of all changes from the prior report which will show in aggregate form all new anticipated exports of more than $250; all cancellations of, or changes in, orders previously reported; a breakdown showing whether such cancelled orders were accepted on or before June 13, 1973, or accepted after June 13, 1973; all exports made since the closing date of the prior report, whether or not such exports were made against reported or accepted orders; a breakdown of exports showing whether they were against orders accepted on or before June 13, 1973, or against orders accepted after June 13, 1973; any changes in the quantities to be exported to particular countries; any changes in the month of scheduled or anticipated export; and in the case of optional sales any change in the particular class or kind of grain expected to be exported from the United States. Such reconciliation shall be filed on form DIB–635P which is also promulgated in series (a) through (i) inclusive. If there are no changes on a line of information from the prior report, the information contained in the prior report shall not be repeated but form DIB–634P shall nevertheless be submitted with the statement, "no change" entered in its face; in such case, form DIB–635P need not be filed. If there are changes, even though these do not result in changes in the aggregates because they are offsetting, form DIB–635P shall be filed showing such changes.

(3) *Reporting requirements.*—(i) *Manner of reporting.*—All reports required under this part 376 must be filed in an original and one copy with the

[1] Copies of the forms may be obtained from all U.S. Department of Commerce district offices and from the Office of Export Control (Attn: 547), U.S. Department of Commerce, Washington, D.C. 20230.

Office of Export Control (Attention: 547), U.S. Department of Commerce, Washington, D.C. 20230. Such reports shall be deemed filed when actually received by the Office of Export Control.

(ii) *Date of export.*—For purposes of § 376.3 only, a commodity shall be considered as scheduled for export on the date the exporting carrier is expected to depart from the United States.

(iii) *Corrections.*—If, because of a carrier's earlier or delayed departure or for other reasons, data reported pursuant to (ii) above are found to have been incorrect, such facts shall be set forth on form DIB–635P (a) through (i) and corrected data shall thereafter be set forth on the appropriate form DIB–634P (a) through (i).

(iv) *Who shall file reports.*—For purposes of § 376.3 only, in order to prevent duplication as well as to insure complete and accurate coverage of pending orders and shipments, the exporter, as the principal party in interest in the export transaction, will have the sole responsibility of reporting any and all information even though there may also be a U.S. order party involved. The exporter will have the sole responsibility of reporting the anticipated exports whether the exporter employs a freight forwarder to handle the shipping of the material or delivers the material to a carrier for export out of the country.

(v) *Definition.*—The term "anticipated export(s)" as used herein and in the reporting forms means exports expected which are based upon accepted orders which are unfilled in whole or in part, or upon other firm arrangements, such as exports for the exporter's own account. It does not include merely hoped-for sales for export, or anticipated orders.

**Supplement No. 1—Agricultural Commodities Subject to Monitoring**

| *Schedule B number and commodity description* | |
|---|---|
| GROUP I—WHEAT | |
| 041.0020 | Wheat—Hard red winter. |
| 041.0020 | Wheat—Soft red winter. |
| 041.0020 | Wheat—Hard red spring. |
| 041.0020 | Wheat—White. |
| 041.0020 | Wheat—Durum. |
| GROUP II—RICE | |
| 042.1010 | Rice in the husk, unmilled. |
| 042.1030 | Rice, husked, long grain. |
| 042.1040 | Rice, husked, medium grain. |
| 042.1050 | Rice, husked, short grain. |
| 042.1060 | Rice, husked, mixed. |
| 042.2022 | Rice, parboiled, long grain. |
| 042.2024 | Rice, parboiled, medium grain. |
| 042.2026 | Rice, parboiled, short grain. |
| GROUP II—RICE—continued | |
| 042.2028 | Rice, parboiled, mixed grain. |
| 042.2030 | Rice, milled, containing 75 percent or more broken kernels. |
| 042.2050 | Rice, milled, long grain, containing less than 75 percent broken kernels. |
| 042.2060 | Rice, milled, medium grain, containing less than 75 percent broken kernels. |
| 042.2070 | Rice, milled, short grain, containing less than 75 percent broken kernels. |
| 042.2080 | Rice, milled, mixed grain, containing less than 75 percent broken kernels. |
| GROUP III—BARLEY | |
| 043.0000 | Barley, unmilled. |
| GROUP IV—CORN | |
| 044.0020 | Corn, except seed, unmilled. |
| GROUP V—RYE | |
| 045.1000 | Rye, unmilled. |
| GROUP VI—OATS | |
| 045.2000 | Oats, unmilled. |
| GROUP VII—GRAIN SORGHUMS | |
| 045.9015 | Grain sorghums, unmilled. |
| GROUP VIII—SOYBEAN AND SOYBEAN PRODUCTS | |
| 081.3030 | Soybean oil—cake and meal. |
| 221.4000 | Soybeans. |
| GROUP IX—COTTONSEEDS AND COTTONSEED PRODUCTS | |
| 081.3020 | Cottonseed oil—cake and meal. |
| 221.6000 | Cottonseed. |

[FR Doc.73–12154 Filed 6–14–73;2:32 pm]



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federal register

TUESDAY, JUNE 19, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 117

Pages 15923–16012

## HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

# 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.

## Title 6—Economic Stabilization

## CHAPTER I—COST OF LIVING COUNCIL

## PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

### Recordkeeping Firms Required to Submit CLC–2

The purpose of these amendments is to redesignate paragraph (b) of § 130.9 (appearing at 38 FR 12201) as paragraph (c) of that section and to add a new paragraph (b) to the section. The new paragraph (b) establishes a one-time reporting requirement for all recordkeeping firms, i.e., firms with annual sales or revenues in excess of $50 million who are subject in whole or in part to the general price standards of subpart B or who are subject in whole or in part to subpart F. These firms, which are currently required to maintain a completed form CLC–2 in their files, are required by the amendment to file a completed form CLC–2 with the Council by June 30, 1973.

This amendment also applies to those price reporting firms subject to subpart B who qualify, pursuant to the instructions to form CLC–2, for abbreviated reporting. Such firms, which are currently required to maintain a completed form CLC–2 in their records, are required by the amendment to submit a completed form CLC–2 to the Council by June 30, 1973.

The form CLC–2 required to be submitted by the amendment must be completed in accordance with the provisions of appendix C of this part which describes the matters to be included in preparing the first such form.

Because the purpose of this amendment is to provide immediate guidance and information with respect to the administration of the economic stabilization program, the Council finds that further notice and procedure thereon is impracticable and that good cause exists for making it effective in less than 30 days. (Economic Stabilization Act of 1970, as amended, Public Law 92–210, 85 Stat. 743; Public Law 93–28, 87 Stat. 27; Executive Order 11695, 38 FR 1473; Executive Order 11723, 38 FR 15765; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, part 130 of chapter I of title 6 of the Code of Federal Regulations is amended effective June 18, 1973.

Issued in Washington, D.C., on June 18, 1973.

WILLIAM N. WALKER,
*Acting Deputy Director,*
*Cost of Living Council.*

Section 130.9 is amended as follows:

1. Paragraph (b) is redesignated paragraph (c); and

2. A new paragraph (b) is added as follows:

**§ 130.9 Reports required by Cost of Living Council: Violations.**

(b) Each person required to maintain records pursuant to §§ 130.22, 130.53, or § 130.55 and each person required to file reports with the Council pursuant to § 130.21 who qualifies for abbreviated reporting pursuant to appendix C of this part, must also submit to the Council by June 30, 1973, the first form CLC–2 completed in accordance with the provisions of appendix C of this part.

* * * * *

[FR Doc.73–12409 Filed 6–18–73;12:01 pm.]

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## PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

### Appendix C—Cost of Living Council Reporting Forms

The purpose of this amendment is to add forms CLC–8 and CLC–9 to appendix C.

Form CLC–8, Petroleum Industry Special Report, is the one-time report of price increases for crude petroleum and petroleum products required by paragraph 6(a) of special rule No. 1 of appendix I of subpart K of part 130, title 6, Code of Federal Regulations.

It has been decided that a list of base prices should not be filed with the Cost of Living Council because of the numerous documents that would be involved. However, this information must be prepared and maintained by the firm, and must be available for inspection by the Council or its designated agent. In an effort to conform to customary accounting practices, the form requires information on price increases for the period February 1, 1973, through March 31, 1973, rather than for the period January 11, 1973, through March 6, 1973. The form is due July 19, 1973.

Form CLC–9, Petroleum Industry Monthly Report, is the report of posted price movements, cost increases, and supply conditions required by paragraphs 6(b) of special rule No. 1. Reports are required 30 days after the close of every month beginning with March 1973. Reports for the months of March, April, and May of 1973 are due July 19, 1973.

Filing of forms CLC–8 and CLC–9 does not relieve any firm from filing any other forms required by the Cost of Living Council.

(Economic Stabilization Act of 1970, as amended, Public Law 92–210, 85 Stat. 743; Public Law 93–28, 87 Stat. 27; Executive Order 11695, 38 FR 1473; Cost of Living Council Order No. 14, 38 FR 1489)

In consideration of the foregoing, appendix C of part 130 of title 6 of the Code of Federal Regulations is amended as set forth herein, effective June 14, 1973.

Issued in Washington, D.C., June 14, 1973.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

Appendix C of part 130 of title 6 of the Code of Federal Regulations is amended by adding forms CLC–8 and CLC–9 to read as follows:

# Cost of Living Council

2000 M Street, N.W.
Washington, D.C. 20508

Instructions for the Preparation of Form CLC-8

## General Instructions

**Form CLC-8 is a special one-time report that must be received by the Cost of Living Council no later than 30 days from the date of its publication in the Federal Register. The General Instructions applicable to Form CLC-9 also apply to the completion of Form CLC-8.**

## CLC-8 SPECIFIC INSTRUCTIONS

Section II, Column B—Base Price Revenues

For purposes of calculating the entry in this column:

"Base Price Revenues" for an individual product are computed by multiplying its base price (as defined in Special Rule No. 1 in the Appendix to subpart K of part 130 of Title 6, Code of Federal Regulations) times the number of units of the product sold during the months of February and March 1973. Total Base Price Revenues are calculated by adding all of the Base Price Revenues for the individual product for the category of products in Column A.

Column C—Weighted Average Per Cent Price Adjustment

The entry in Column C is calculated by subtracting the total base price revenues from the current revenues (actual revenues during February and March 1973) for each product in Column A, dividing the result by base price revenues, and multiplying the entire fraction by 100 to convert the entry to a percentage.

*For example:*

Base Price Revenues = (Base Price) × (Units sold in February and March 1973)

$$\left[\frac{\text{(Current Revenues)}-\text{(Base Price Revenues)}}{\text{Base Price Revenues}}\right] \times 100 = \text{Weighted Average \% Price Adjustment}$$

Line 20—The percentage entered in Column C is a weighted average of all price adjustments for all products where sales are shown in lines 1–19, Column B. For purposes of Section II, the following definitions will apply:

Aviation Gasoline
As defined in ASTM D910

Diesel Fuel
As defined in ASTM D975, grades 1-D and 2-D

Distillate Burner Fuels
As defined in ASTM D396, grades No. 1 and No. 2

Retail Gasoline—Premium
As defined in ASTM D439, gasoline antiknock designation 5

Retail Gasoline—Regular
As defined in ASTM D439, gasoline antiknock designation 3

Retail Gasoline—Unleaded
As defined in ASTM D439, unleaded fuel designation 2

Jobber Gasoline—Premium
As defined in ASTM D439, gasoline antiknock designation 5

Jobber Gasoline—Regular
As defined in ASTM D439, gasoline antiknock designation 3

Jobber Gasoline—Unleaded
As defined in ASTM D439, unleaded fuel designation 2

Commercial Gasoline—Premium
As defined in ASTM D439, gasoline antiknock designation 5

Commercial Gasoline—Regular
As defined in ASTM D439, gasoline antiknock designation 3

Commercial Gasoline—Unleaded
As defined in ASTM D439, unleaded fuel designation 2

Kerosene
Lighting or burning grade

Aviation Kerosene
As defined in ASTM D1655, types A and A1

Residual Fuel Oil
As defined in ASTM D396, numbers 5 & 6

Crude Petroleum
Includes all grades of crude petroleum

It is recognized that in some cases the aforementioned definitions may not be appropriate in terms of a petroleum firm's historical accounting practices. For example, if it is not possible to report separately for kerosene and aviation fuel these two products could be combined into a single reporting category. However, in the event that any deviation from the requested item description is necessary, an explanation must accompany the Form CLC-8 filing.

**Form CLC-8**
(MAY 1973)
Cost of Living Council
2000 M St. NW.
Washington D.C. 20508
OMB Number 172-S73001
Approval expires: April 1974

# Petroleum Industry Special Report

Cost of Living Council Use Only
CLC Identification Number
Parent
Unconsolidated Entity
Reference Number
Batch Number

## Section I Identification Data

Is This a Resubmission? A. ☐ Yes B. ☐ No
Report for Months Ending: Month C | Day D | Year E

1. Name of Petroleum Firm
2. Address (Street, City, State and Zip Code)
3. Name of Chief Executive Officer

## Section II Schedule of Petroleum Price Increases

| A Item | B Base Price Revenues | C Weighted Average Percent Price Adjustment |
|---|---|---|
| 1. Aviation Gasoline | | |
| 2. Diesel Fuel | | |
| 3. Distillate Burner Fuels | | |
| 4. Retail Gasoline—Premium | | |
| 5. Retail Gasoline—Regular | | |
| 6. Retail Gasoline—Unleaded | | |
| 7. Jobber Gasoline—Premium | | |
| 8. Jobber Gasoline—Regular | | |
| 9. Jobber Gasoline—Unleaded | | |
| 10. Commercial Gasoline—Premium | | |
| 11. Commercial Gasoline—Regular | | |
| 12. Commercial Gasoline—Unleaded | | |
| 13. Kerosene | | |
| 14. Aviation Kerosene | | |
| 15. Residual Fuel Oil | | |
| 16. Crude Petroleum | | |
| 17. Other Petroleum Products | | |
| 18. | | |
| 19. | | |
| 20. Total Sales | | |

## Section III Certification

I CERTIFY that the information submitted on and with this form is factually correct, complete, and in accordance with Economic Stabilization Regulations (*Title 6, Code of Federal Regulations*) and Instructions to this form.

Typed Name & Title of Chief Executive Officer of Parent (or other authorized Executive Officer) | Signature | Date Signed

**INDIVIDUAL TO BE CONTACTED FOR FURTHER INFORMATION**

Typed Name and Title | Address (Street, City, State and Zip Code) | Telephone No. (Include Area Code)

You must maintain for possible inspection and audit, a record of all price changes subsequent to January 10, 1973.

# Cost of Living Council

## 2000 M Street, N.W.
## Washington, D.C. 20508

### Instructions for the Preparation of Form CLC-9

### General Instructions

1. PURPOSE—In order to facilitate the timely analysis of price and cost data applicable to the petroleum industry during Phase III, it is necessary that certain reporting requirements be established. Form CLC-9 is designed to provide the data necessary for the Cost of Living Council to execute its role in monitoring the performance of the petroleum industry pursuant to the provisions of paragraph 6(b) of Special Rule No. 1. This report will contain the fundamental elements of analysis upon which the Cost of Living Council will rely in determining conformity with the established petroleum policy.

2. WHO MUST PREPARE FORM CLC-9—
This form is required to be submitted by each petroleum firm with annual sales and revenues in excess of $250 million in covered products as defined in Paragraph 2 of Special Rule No. 1. The following definitions are provided to clarify who must prepare Form CLC-9:

DETERMINATION OF "FIRM". If a firm directly or indirectly *controls* another firm or firms, and is not itself directly or indirectly controlled by another firm, that firm is called a "Parent" for the purpose of this form. If a firm does not directly or indirectly *control* any other firm or firms, and is not itself directly or indirectly controlled by another firm, that firm is also called a "Parent." The Parent and its consolidated and unconsolidated controlled firms (if any), taken all together, constitute the "Firm" for the purposes of this form.

"PETROLEUM FIRMS." This means any firm having annual sales or revenues in excess of $250 million in covered products as defined in Paragraph 2 of Special Rule No. 1.

3. WHEN TO SUBMIT—This form must be submitted no later than 30 days after the close of each calendar month. The reports for March, April and May 1973 must be received by the Cost of Living Council no later than 30 days from the date of publication in the Federal Register.

4. WHERE TO SUBMIT—Petroleum firms must forward this form and any attachments to:

Cost of Living Council
Form CLC-9 Submission
2000 M Street, N. W.
Washington, D. C. 20508

5. SUGGESTIONS FOR IMPROVEMENT—The Cost of Living Council welcomes suggestions for improving this and other forms. The Council seeks ways of obtaining the information it needs to exercise its responsibilities under the Phase III Economic Stabilization Program with the minimum amount of reporting burden. Suggestions should be submitted to:

Cost of Living Council
Office of Price Monitoring
Special Projects Division
2000 M Street, N. W.
Washington, D. C. 20508

6. CONFIDENTIALITY OF INFORMATION—

a. Section 205 of the Economic Stabilization Act of 1970, as amended, requires that all information reported to or otherwise obtained by the Cost of Living Council which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, United States Code, be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out the Act solely for the purpose of carrying out the Act or when relevant in any proceeding under the Act. Other information contained in or attached to Form CLC-9 which is filed with the Council may be made available to the public.

b. Requests for confidential treatment of any information supplied to the Council may be made by marking appropriate portions of Form CLC-9 or its attachments with the designation "confidential treatment requested." Each such request must be supported by a statement, to be attached to Form CLC-9, providing the reasons for confidential treatment. The Council reserves the authority to make the ultimate determination concerning confidentiality of information submitted.

7. ROUNDING—For the purposes of this form all percentages must be expressed to the nearest two decimal places (such as 1.48%). All dollar entries must be rounded to the nearest $1000 and the 000 should be omitted (such as $1,750,250,150 entered as $1,750,250).

8. SANCTIONS—The monthly submission of Form CLC-9 by "Petroleum Firms" is a mandatory requirement under Spe-

cial Rule No. 1. Failure to file, to keep records or otherwise to comply with these instructions may result in criminal fines and civil penalties and other sanctions as provided by law including the Economic Stabilization Act of 1970, as amended, by Executive Order 11695 and by the Economic Stabilization Regulations.

## Specific Instructions

### Section I—Identification Data

Item captioned "Is This A Resubmission?" If you are supplying additional information, or are resubmitting a report, check the "Yes" box. (In either case, the form must be completed in its entirety.)

Item captioned "Report For Month Ending"—Enter the date of the last day in the reporting month.

Item 1. Name of Petroleum Firm—Enter the legal name of the parent submitting the form for a petroleum firm.

Item 2. Address—Enter the address of the parent's executive office.

Item 3. Name of Chief Executive Officer—Enter the name and title of the Chief Executive Officer.

### Section II—Changes In Posted Prices

Line Item A. Selling Prices—Identify changes in posted prices for each product designated in column A. All prices shown in columns B and C are to be calculated on a weighted average basis.

Column B—Enter the average price (weighted by quantity sold) for the products in Column A for calendar year 1972. Enter this amount for subsequent Form CLC-9 reports. The following is an example of average price weighted by quantity.

| Posting Area | Posted Price | Quantity | Total |
|---|---|---|---|
| 1 | $5.00 | 12 | $60.00 |
| 1 | 4.85 | 8 | 38.80 |
| 2 | 3.00 | 30 | 90.00 |
| 3 | 4.25* | 20 | 85.00 |
| 3 | 4.25 | 10 | 42.50 |
| 4 | 4.00 | 20 | 80.00 |
| | | 100 | $396.30 |

$396.30 ÷ 100 = $3.96 (Weighted Average Price)

*REPRESENTS TRANSACTION OCCURRING OUTSIDE THE DEFINITION OF POSTED PRICE

In the above example, posting area 1 experienced a movement in its posted price during the reporting period. This movement is reflected by the inclusion of both the posted prices and the volumes which correspond to each of the two postings. The volume attributable to each of the postings is determined by the quantity of the particular product that was sold during the period for which the postings were effective. Additionally, posting Area 3 sold a quantity (20) of product A that could not be related to any specific posted price; this was a negotiated price which fell outside the parameters of the standard posting procedure. These sales must be included for purposes of both price and volume calculations. The price to be reported must be that which corresponds to the posted price within the posting area in which the sale was transacted at the time of the sale. In the above example, the actual or realized price may have been $3.75 but the prevailing posted price at the time of the sale was $4.25. Consequently, the price to be used for purposes of calculating the weighted average posted price must be $4.25.

Column C—For products in Column A enter the average price (weighted by quantity sold) during the reporting period. It should be specifically noted, that since there may be movements in the posted price for a specific product within a reporting period, these movements must be considered within the weighting calculation. The method for calculating the average price in this column must be consistent with the method for calculating the average price in Column B.

Column D—Calculate the percentage increase or decrease from previous posted price as follows:

$$\left[\frac{\text{(Column C} - \text{Column B}}{\text{Column B}}\right] \times 100 = \text{percentage increase or decrease from previous posted price}$$

Column E—Percent change quantity—Enter the percentage change in the quantity sold during the current reporting period as it would relate to the average monthly quantity sold, for the products listed in Column (A), during calendar year 1972. The method of calculating the percentage change in quantity is as follows:

$$\left[\frac{\text{quantity sold during reporting period} - \text{1972 average monthly quantity sold}}{\text{1972 average monthly quantity sold}}\right] \times 100 = \text{Percentage change quantity}$$

Line Item B—Buying Prices—This refers to the posted buying prices of the product(s) listed in Column A. Specific information to be included in Columns B, C, D, and E are to be reflected and calculated in a manner similar to that for the products listed in Line Item A, above.

Any negative amount entered in Section II should be shown in parenthesis.

For purposes of Form CLC-9, the following definitions will apply:

A. For petroleum product sales posted price means:

An offer to sell a specific petroleum product to a specific class of purchasers in a specific geographical area at a specific price. It is a posted or scheduled price at a given level (tank wagon, yard, tank car, transport truck, barge, bunkers or cargo) posted at a bulk plant, terminal, or a refinery, depending on level of sale. The term is inclusive of any other term which may be used in a manner which coincides with the above definition.

B. For crude petroleum purchases, posted price means:

A public offer to buy a specific grade of petroleum in a specific geographical area at a specific price.

2

C. Definitions for items in Section II, Column A of Form CLC-9:

Aviation Gasoline
As defined in ASTM D910

Diesel Fuel
As defined in ASTM D975, grades 1-D and 2-D

Distillate Burner Fuels
As defined in ASTM D396, grades No. 1 and No. 2

Retail Gasoline—Premium
As defined in ASTM D439, gasoline antiknock designation 5

Retail Gasoline—Regular
As defined in ASTM D439, gasoline antiknock designation 3

Retail Gasoline—Unleaded
As defined in ASTM D439, unleaded fuel designation 2

Jobber Gasoline—Premium
As defined in ASTM D439, gasoline antiknock designation 5

Jobber Gasoline—Regular
As defined in ASTM D439, gasoline antiknock designation 3

Jobber Gasoline—Unleaded
As defined in ASTM D439, unleaded fuel designation 2

Commercial Gasoline—Premium
As defined in ASTM D439, gasoline antiknock designation 5

Commercial Gasoline—Regular
As defined in ASTM D439, gasoline antiknock designation 3

Commercial Gasoline—Unleaded
As defined in ASTM D439, unleaded fuel designation 2

Kerosene
Lighting or burning grade

Aviation Kerosene
As defined in ASTM D1655, types A and A1

Residual Fuel Oil
As defined in ASTM D396, numbers 5 & 6

Crude Petroleum
Includes all grades of crude petroleum

It is recognized that in some cases the aforementioned definitions may not be appropriate in terms of a petroleum firm's historical accounting practices. For example, if it is not possible to report separately for kerosene and aviation fuel these two products could be combined into a single reporting category. However, in the event that any deviation from the requested item descriptions is necessary, an explanation must accompany the Form CLC-9 filing.

## Section III—Increased Costs

Significant data concerning increased costs, as for materials, labor, etc., should be reflected in narrative form in this Section.

## Section IV—Supply Conditions

Any significant problems associated with the supply of covered items should be described in this Section. This would include problems such as existing or anticipated short-falls (by product line) in specific geographical areas, as well as shortages that may be attributed to the lack of crude petroleum for domestic refining.

## Section V—Certification

Type the name and title of the individual who signs the certification and the date of signing. The individual who signs and certifies this form must be the Chief Executive Officer of the Parent or such other Executive Officer of the Parent as authorized by the Chief Executive Officer to sign for him for this purpose.

**Form CLC-9**

(May 1973)

Cost of Living Council
2000 M St. N.W.
Washington, D.C. 20508

OBM Number 172–R0002
Approval Expires April 1974

## Petroleum Industry Monthly Report

### Section I Identification Data

Is This A Resubmission? A. ☐ Yes B. ☐ No

Report For Month Ending — Month C | Day D | Year E

1. Name Of Petroleum Firm

2. Address (Street, City, State and Zip Code)

3. Name Of Chief Executive Officer

Cost of Living Council Use Only
CLC Identification Number
Parent
Unconsolidated Entity
Reference Number
Batch Number

### Section II Changes In Posted Prices

| A Item | B Previous Posted Price | C Current Posted Price | D Percent Change Price | Percent Change Quantity |
|---|---|---|---|---|
| A. Selling Prices | | | | |
| 1. Aviation Gasoline | | | | |
| 2. Diesel Fuel | | | | |
| 3. Distillate Burner Fuels | | | | |
| 4. Retail Gasoline—Premium | | | | |
| 5. Retail Gasoline—Regular | | | | |
| 6. Retail Gasoline—Unleaded | | | | |
| 7. Jobber Gasoline—Premium | | | | |
| 8. Jobber Gasoline—Regular | | | | |
| 9. Jobber Gasoline—Unleaded | | | | |
| 10. Commercial Gasoline—Premium | | | | |
| 11. Commercial Gasoline—Regular | | | | |
| 12. Commercial Gasoline—Unleaded | | | | |
| 13. Kerosene | | | | |
| 14. Aviation Kerosene | | | | |
| 15. Residual Fuel Oil | | | | |
| 16. Crude Petroleum | | | | |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| B. Buying Prices | | | | |
| 1. Crude Petroleum | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |

### Section III Significant Data Concerning Increased Costs

Brief Narrative Statement

| Section IV | Supply Conditions |
|---|---|
| Brief Narrative Statement | |

| Section V | Certification |
|---|---|

I CERTIFY that the information submitted on and with this form is factually correct, complete, and in accordance with Economic Stabilization Regulations (Title 6, Code of Federal Regulations) and instructions to this form.

| Typed Name & Title Of Chief Executive Officer Of Parent (or other authorized Executive Officer) | Signature | Date Signed |
|---|---|---|
| | | |

Individual To Be Contacted For Further Information

| Typed Name And Title | Address (Street, City, State and Zip Code) | Telephone No. (Include Area Code) |
|---|---|---|
| | | |

You must maintain for possible inspection and audit, a record of all price changes subsequent to January 10, 1973.

[FR Doc.73-12178 Filed 6-14-73;4:07 pm]

FEDERAL REGISTER, VOL. 38, NO. 117—TUESDAY, JUNE 19, 1973

# Rules and Regulations



Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3316 is amended to show that one position of Secretary to the Associate Manpower Administrator, Unemployment Insurance Service, is no longer excepted under schedule C.

Effective on June 20, 1973, § 213.3315 (c) is revoked.

(5 U.S.C. secs. 3301, 3302; Executive Order 10577, 3 CFR 1954–58 Comp., p. 218.)

U.S. CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.73-12256 Filed 6-19-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one additional position of Confidential Assistant to the Administrator, Social and Rehabilitation Service, is excepted under schedule C.

Effective on June 20, 1973, § 213.3316 (o) (3) is amended as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

• • • • •

(o) *Social and Rehabilitation Service.*
• • •

(3) Two Confidential Assistants to the Administrator.

• • • • •

(5 U.S.C. secs. 3301, 3302; Executive Order 10577, 3 CFR 1954–58 Comp., p. 218.)

U.S. CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.73-12254 Filed 6-19-73;8:45 am]

PART 213—EXCEPTED SERVICE

Veterans' Administration

Section 213.3327 is amended to show that one position of Confidential Assistant to the Chief Benefits Director, Department of Veterans' Benefits, is excepted under schedule C.

Effective on June 20, 1973, § 213.3327 (b) (2) is added as set out below.

§ 213.3327 Veterans' Administration.

• • • • •

(b) *Department of Veterans' Benefits.* • • •

(2) One Confidential Assistant to the Chief Benefits Director.

(5 U.S.C. secs. 3301, 3302; Executive Order 10577, 3 CFR 1954–58 Comp. p. 218.)

U.S. CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.73-12257 Filed 6-19-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to reflect the following title changes: from seven Senior Assistants for Congressional Relations to seven Senior Assistants for Legislative Affairs and from twelve Assistants for Congressional Relations to twelve Assistants for Legislative Affairs.

Effective on June 20, 1973, paragraphs (a) (26) and (a) (27) of § 213.3384 are amended as set out below.

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* • • •

(26) Seven Senior Assistants for Legislative Affairs.

(27) Twelve Assistants for Legislative Affairs.

• • • • •

(5 U.S.C. secs. 3301, 3302; Executive Order 10577, 3 CFR 1954–58 Comp. p. 218.)

U.S. CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.73-12255 Filed 6-19-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 102—COST OF LIVING COUNCIL PHASE III REGULATIONS

Public Disclosure of Form CLC–2 Data

On May 11, 1973, the Cost of Living Council published proposed rule 73–1, concerning public disclosure of information reported quarterly on the form CLC–2. The Council invited interested persons to submit written data, views, and comments on the proposed rule. A substantial number of written submissions were received and public hearings were held on the matter on June 6, 1973.

In promulgating proposed rule 73–1 the Council stated that comments timely received would be taken into consideration before taking final action on the proposed regulation, and that the regulation could be changed in the light of the comments received. The Council has in fact taken into consideration all written and oral comments received by the close of business on Friday, June 8, 1973, and has changed proposed rule 73–1 in several respects to reflect these comments and to give fuller effect to congressional intent.

The new section 205 of the Economic Stabilization Act provides for public disclosure of certain information in the CLC–2 quarterly report, but only when price increases of more than 1.5 percent have been charged since January 10, 1973, on a "substantial product"—i.e., an item which accounted for 5 percent or more of sales or revenues in the firm's most recent fiscal year. For purposes of defining what may be publicly disclosed in this event, section 205 essentially divides CLC–2 information into four categories:

(1) Price data, which is specifically made subject to public disclosure;

(2) Trade data (information regarding trade secrets, processes, operations, style of work, or apparatus), which is specifically required to be withheld from public disclosure;

(3) SEC data (information on income, profits, losses, costs, or expenditures and other information which would be required to be reported to the Securities and Exchange Commission if the business enterprise were engaged in the manufacture of only one substantial product), which is specifically made subject to public disclosure; and

(4) General financial data other than SEC data (information on income, profits, losses, costs, or expenditures), which may be disclosed to the public to the extent that such information is defined as nonproprietary by the Cost of Living Council and may not be disclosed to the public to the extent it is deemed proprietary by the Council.

In determining which data is SEC data (and therefore subject to public disclosure), the Council adhered to the language of section 205(b)(3), which provides that the Council may not define as excludable from public disclosure "any information or data (on form CLC-2) which cannot currently be excluded from public annual reports to the Securities and Exchange Commission" by a firm

exclusively engaged in the manufacture or sale of a substantial product. As explained in the preamble to proposed rule 73–1, the Council found that most of the data on income, profits, losses, costs, or expenditures reported on the form CLC–2 is not required to be reported on the SEC form 10–K and is not coincident with form 10–K information. By way of illustration, the preamble noted that, unlike the SEC's requirements for form 10–K, the Council's definition of "sales" for purposes of lines 1–19 of part VI of the form CLC–2 excludes sales from public utilities activities, foreign operations, insurance activities, farming, exempt items, health servce activities, custom products, and food operations. At other points, the form CLC–2 calls for data expressed as a percentage. This is significantly different from the data expressed in dollar amounts called for by SEC form 10–K.

However, the incongruence of the two types of data is more serious than a mere difference in mode of expression. For example, the 10–K reveals aggregate cost data. By contrast, form CLC–2 calls for cost data on a per unit basis. Thus, a typical 10–K account of costs might be as follows:

| Costs and expenses | Dec. 31, 1971 | Dec 31, 1972 |
|---|---|---|
| Manufacturing | $35,491,000 | $37,0[illegible],000 |
| Administrative and general | 5,625,000 | [illegible],000 |

The schedule C form CLC–2 for the same firm might show for any given cost element (e.g., direct materials), the following: (a) Percentage of cost element that is variable, 41 percent; (b) percentage increase (decrease) in current cost level versus primary cost level, 2 percent; (c) percentage of cost element to total costs at the primary cost level 5.5 percent; (d) the weighted value of the percentage cost increase, taking into account the percentage of the cost element to total costs, 1.1 percent. In this example, the increase in total dollar costs between 1971 and 1972, as shown in the 10–K illustration, bears no direct relationship to the cost increase or decrease per unit provided in the schedule C. The slight increase in total costs on the 10–K would not reveal a large increase in production matched by a corresponding decrease in costs per unit, or a substantial decline in production accompanied by an equivalent increase in per unit costs.

Furthermore, the increases on the schedule C are not measured by comparing the results of 1 fiscal year with another, as in the form 10–K. The schedule C calls for a comparison of costs at the primary level with those at the current level. These are ad hoc periods selected under Cost of Living Council regulations by the reporting firm depending upon the incidence or frequency of cost increases and price increases. The period for comparison purposes may be various combinations of months or weeks and do not relate to fiscal periods. Thus, even if the basis of cost data on the CLC–2 and the 10–K were otherwise identical the data would not be comparable, and comparable SEC data would not be ascertainable or inferable from the CLC–2 data.

The necessary conclusion is that since the data called for by the CLC–2 is not required or provided on the SEC form 10–K, it is therefore data which can currently be excluded therefrom and is not specifically made subject to disclosure by section 205(b)(3). Moreover, the difference between the two types of data is so substantial as to preclude any contrary conclusion by the Council based on possible legislative intent in conflict with the explicit language of section 205 (b)(3).

This information, therefore, falls into the fourth category referred to above—i.e., general financial data other than SEC data (information on income, profits, losses, costs, or expenditures which is not price data or trade data). This category of information need not be disclosed to the public to the extent it is defined as "proprietary" by the Council. In proposed rule 73–1, the Council defined all such information as proprietary. It did so on the basis of the language in section 205(b)(2) which indicates that the term "proprietary" is to have the same meaning as "confidential" in 18 U.S.C. 1905, except to the extent specifically provided in (b)(3). As explained in the preamble to proposed rule 73–1, the Council believes that "proprietary" in the new section 205 and confidential in 18 U.S.C. 1905 are to be understood as synonymous. The Council continues to believe that this is the most consistent reading of the statutory language. However, several persons commenting to the Council at the public hearing and in response to the proposed 73–1 pointed out that a literal implementation of this interpretation would virtually nullify the language of 205(b) and frustrate the intent of Congress in enacting the amendment.

The Council thus finds itself in the position of having to reconcile a direct conflict between a literal application of the language of the amendment and its apparent intent. In this situation the Council has determined that a mechanical reading of the amendment must give way sufficiently to accommodate the intent of the Congress, while still doing as little violence as possible to the definition of "proprietary" generally intended in (b)(2).

The evident purpose of Congress in adopting this amendment was to accord members of the public access to information on CLC–2 quarterly reports sufficient to permit them to determine whether price increases were justified. The sponsor and principal supporters of the amendment indicated that this would accomplish two objectives: It would give members of the public a basis for making independent judgments on reporting companies' compliances with the rules of the Economic Stabilization program, and it would put those companies on notice that price increases above 1.5 percent on any substantial product would subject them to public scrutiny.

In order to accommodate this objective, and in the exercise of its authority under section 205(b)(3) to define what is proprietary information, the Council in the final version of its new public disclosure regulation has made two significant changes. These changes will implement the general purpose of the new section 205 by permitting public access to sufficient information to monitor the two chief criteria of phase 3 performance: (1) Cost justification for price increases and (2) profit margin compliance.

Under the new subpart F to part 101 of the Economic Stabilization Regulations, the Council has now designated part III, line 17, of the form CLC–2 as providing nonproprietary information subject to public disclosure. Line 17 indicates the dollar amount by which a CLC–2 entity is currently over or under its base period profit margin. The Council has also designated as nonproprietary the entire column (f) of part VI of the form CLC–2. Column (f) provides the total weighted average cost justification for each product line or entity-wide, as the case may be, where price increases are shown.

From the information now made available to the public, compliance with general standards of the program can be determined. A comparison of column (f) with the price adjustment information in column (e) will indicate whether the price increases meet the general standard of the program that all price increases be cost justified. Whenever the weighted annual average price increase in line 22, column (e), exceeds 1.5 percent over prices authorized or lawfully in effect on January 10, 1973, and a positive figure appears in part III, line 17, it will also be apparent that the firm may not be in full compliance with the general price standard which provides, in this circumstance, that the profit margin should not exceed that which prevailed during the base period.

Concern was expressed by many persons commenting on proposed rule 73–1 that disclosure of the information called for on form CLC–2 could be harmful since it would be available to foreign and domestic competitors of reporting companies. The Council believes that the changes in the proposed regulations accommodate this concern as well as the need to give effect to Congressional intent. The information required to be disclosed in part III, line 17, shows the degree of current compliance with the base period profit margin rule. It is therefore of assistance in determining compliance with the Economic Stabilization program, but does not reveal actual firm profitability. The same is generally true with respect to the information required to be disclosed under part VI, column (f). That entry shows the extent to which cost justification is advanced in support of a price increase, thereby assisting in reviewing compliance with the Economic Stabilization program, but not revealing actual cost figures.

. It was brought to the Council's attention that the nonproprietary classification of information required in part I, line 5, of the CLC-2 proposed in proposed rule 73-1 was inconsistent with the proprietary treatment generally afforded similar information required in parts II, III, and VI [illegible] Council's special definition of annual sales or revenues in that it does not include sales or revenues from foreign operations. This type of information is not found on the SEC form 10-K. Disclosure of this information is not necessary to any purpose related to public review of cost justification and profit margin data. The Council has, therefore, now designated as proprietary part I, line 5, of the CLC-2 (annual sales or revenues of the total firm of which the entity filing the CLC-2 is a part).

It was suggested to the Council that trade data (trade secrets and the like) should be defined to include all general financial data (that which relates to income, profits, losses, costs, and expenditures). Evidence was cited from the Congressional Record in support of this view, but the Council did not find this evidence to be conclusive. Moreover, the Council disagrees with this interpretation on the ground that (1) trade data and general financial data have been treated as separate categories in both 18 U.S.C. 1905 and section 205 of the Economic Stabilization Act, (2) this interpretation would effectively nullify the authority granted to the Council in section 205(b)(3) to define what is proprietary, and (3) this interpretation would prevent the Council from giving any effect to the Council's interpretation of the general purpose of section 205 as indicated above.

Other changes have been made of an administrative nature, relating, among other things, to how public disclosure of the form CLC-2 is actually made when sufficient price increases have been effected to require public disclosure. Section 205 imposes the public disclosure requirement upon the business enterprise which files the CLC-2 quarterly report. However, the Council may also be required to make CLC-2 quarterly reports available to the public pursuant to the Freedom of Information Act. The Council in most cases will probably not be able to ascertain from the CLC-2 quarterly report whether sufficient price increases have been charged to require public disclosure unless further information from the business enterprise which files the CLC-2 quarterly report is provided. This is because:

(1) A "substantial product" is defined in section 205 as a product or service which accounted for 5 percent or more of the gross sales or revenues of the business enterprise's last full fiscal year. The CLC-2 does not require a breakdown by product or service of sales in the last fiscal year and the Council does not generally have this information available elsewhere.

(2) Section 205 measures the 1.5 percent price increase test from the price lawfully in effect on January 10, 1973, whereas the CLC-2 quarterly report principally measures price increases from the price level authorized on January 10, 1973. All firms required to submit the CLC-2 which raised prices in phase 2 did so pursuant to an authorization granted by the Price Commission, and in many cases the full authorization was not immediately implemented. Therefore, the authorized price on January 10, 1973 (which is the basic starting point for CLC-2 price increase measurement) for any given product or service may be above the level actually and lawfully in effect on that date.

(3) Business enterprises which have kept their weighted average price increases (overall basis) to 1.5 percent or less are entitled to submit the CLC-2 quarterly report on an abbreviated reporting basis. Under abbreviated reporting procedures, no breakdown of sales, prices or cost justification is provided on a product-by-product or service-by-service bases—only the overall weighted average price adjustment of 1.5 percent or less is reported on the CLC-2. Again, information as to whether an individual substantial product went over 1.5 percent will be available only to the business enterprise submitting the report.

Because of these difficulties, the Council's new public disclosure regulation requires all business enterprises which submit CLC-2 quarterly reports after the date of publication of the present regulation in the FEDERAL REGISTER to appropriately mark the face of the form CLC-2 if sufficient price increases have been charged to require public disclosure pursuant to the new section 205 of the act. This convenience will permit the Council to make the nonproprietary portions of the CLC-2 quarterly report available to the public on behalf of the business enterprise filing it and will assure prompt public disclosure in an orderly manner.

To avoid any question as to whether there is a difference between the term "business enterprise," as used in section 205 and the term "entity" as used in the CLC-2 instructions to identify the business entity to which the CLC-2 is filed applies, the Council has included a definition of business enterprise which makes it clear that a business enterprise is a CLC-2 entity.

Similarly, a definition of substantial product has been included which makes it clear that for purposes of public disclosure a substantial product is a product, product line, service, or service line as reported in lines 1-19 of part VI of the CLC-2 quarterly report, or on any continuation schedule, in accordance with CLC-2 instructions, which accounted for 5 percent or more of the business enterprise's annual sales or revenues as defined in part 130 of this title.

Finally, a more definitive statement as to the applicability of the public disclosure regulation has been included.

In consideration of the foregoing, part 102 of title 6 of the Code of Federal Regulations is amended as set forth herein, effective June 15, 1973.

Issued in Washington, D.C., on June 15, 1973.

WILLIAM N. WALKER,
*Acting Deputy Director,*
*Cost of Living Council.*

A new subpart F is added to part 102 of title 6 of the Code of Federal Regulations, to read as follows:

**Subpart F—Public Disclosure of CLC Reports**

Sec.
102.50 Purpose and scope.
102.51 General rule.
102.52 Definitions.
102.53 Form CLC-2 data.
102.54 Disclosure procedure.

AUTHORITY.—Economic Stabilization Act of 1970, as amended, Public Law 92-210, 85 Stat. 743; Public Law 93-28, 87 Stat. 27; EO 22695, 38 FR 1473; Cost of Living Council Order No. 14, 38 FR 1489.

### Subpart F—Public Disclosure of CLC Reports

#### § 102.50 Purpose and scope.

(a) The purpose of this subpart is to define, pursuant to section 205(b)(3) of the Economic Stabilization Act of 1970, as amended, what information or data contained in quarterly reports submitted to the Cost of Living Council pursuant to § 130.21(b) of this chapter is proprietary in nature and therefore excludable from public disclosure and, conversely, what information or data contained in those quarterly reports is nonproprietary in nature and therefore available to the public.

(b) This subpart applies only with respect to:

(1) A business enterprise which

(i) Is subject to the quarterly reporting requirements of § 130.21(b) of this chapter in effect on January 11, 1973; and

(ii) Charges a price for a substantial product which exceeds by more than 1.5 percent the price lawfully in effect for such product on January 10, 1973, or on the date 12 months preceding the end of such period, whichever is later; and

(2) The form CLC-2 as submitted pursuant to the quarterly reporting requirement of § 130.21(b) of this chapter, and any schedule or supporting information or document attached thereto in accordance with the instructions to the form CLC-2.

#### § 102.51 General rule.

All CLC data determined by this subpart to be proprietary data is excludable from public disclosure. All CLC data determined by this subpart to be nonproprietary data is available to the public.

§ 102.52 Definitions.

For the purpose of this subpart—

"Business enterprise" means an entity as defined in the instructions to the form CLC–2.

"CLC data" means any information or data provided on or with a quarterly report submitted to the Cost of Living Council pursuant to § 130.21(b) of this chapter when that report is subject to public disclosure pursuant to section 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

"General financial data" means any CLC data, other than trade data, which concerns or relates to the amount or sources of a firm's income, profits, losses, costs, or expenditures.

"Price data" means any CLC data which concerns or relates to a firm's prices for goods and services.

"SEC data" means any general financial data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities and Exchange Act of 1934 by a firm exclusively engaged in the manufacture or sale of a substantial product as defined in section 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

"Substantial product" means a product, product line, service, or service line, as called for in lines 1–19 of part VI of the form CLC–2, or any continuation schedule, in accordance with the instructions to the form CLC–2, which accounted for 5 percent or more of the business enterprise's annual sales or revenues as defined in part 130 of this title.

"Trade data" means any CLC data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a firm.

§ 102.53 Form CLC–2 data.

(a) *Form CLC–2 proper.*—(1) *Part I (identification information).*—The information called for in part I (and in the spaces provided above part I) serves to identify or describe the firm, the type of filing, the reporting or fiscal periods in question, and the total sales or revenues of the firm for the last fiscal year. All of the information required, other than the annual sales or revenues of the firm, is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere. The annual sales or revenues of the firm (line 5) is proprietary because the Council's special definition of annual sales or revenues results in a figure not disclosed in the SEC Form 10–K.

(2) *Parts II and III (profit margin calculations).*—Except for the calendar entries in lines 6 and 7 (nonproprietary data), all general financial data furnished in parts II and III is based on base period and current period net sales and operating income as defined by the Cost of Living Council for purposes of parts II and III. These definitions are not the same as those used for SEC purposes because they exclude revenues from foreign operations, public utilities, farming activities, and insurance activities. Since such general financial data, thus more narrowly defined, is not required for SEC purposes, it can be excluded from the public annual reports to the SEC and is, therefore, defined as proprietary data with the exception of the information in line 17. In order to fulfill the general purposes of section 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the information required in line 17 as nonproprietary CLC data.

(3) *Parts IV and V (other information).*—Parts IV and V call for names, titles addresses, and similar nonfinancial information, including signature and date. Everything required in these parts is nonproprietary data because it does not include either trade data or general financial data other then SEC data, and is generally available to the public elsewhere.

(4) *Part VI (price/cost information).*—The information required at the top of the page—the name of the firm, the reporting period dates and the cumulative period dates—is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

(i) All of the information required in columns (a) and (b) on lines 1 through 19 and on any continuation schedule is nonproprietary data because only the names of product lines or service lines and related standard industrial classification codes is required, which is neither trade data nor general financial data other than SEC data and is generally available to the public elsewhere.

(ii) The general financial data required in columns (c) and (h), lines 1 through 19 (and any continuation schedule) concerns sales by product or service line. Because the CLC definition of sales for these columns excludes sales from public utilities activities, foreign operations, insurance activities, farming, exempt items, health service activities, custom products, and food operations, the column (c) or (h) sales entry does not coincide with the equivalent information on the SEC Form 10–K prepared as though the firm were a single-product-line firm. Therefore, the general financial data in column (c) and (h) is defined as proprietary data.

(iii) The general financial data required in columns (c) and (h), lines 20 and 21, are subtotals and totals of the individual sales entries on lines 1–19 and in any continuation schedule. This information has no counterpart on a SEC Form 10–K prepared as though the firm were a single-product-line firm and thus it is defined as proprietary data.

(iv) The general financial data required in columns (c) and (h), lines 23–25, is a breakdown of total sales into sales of or from foreign operations, food sales, and other nonapplicable sales. These entries have no counterparts on any SEC form and are, therefore, defined as proprietary data.

(v) The net sales information required in columns (c) and (h), line 26 coincide in scope with the data shown in part III, line 13 (net sales). As explained in the discussion for parts II and III, this information is proprietary data.

(vi) Columns (d), (e), (g), and (i) all call for price data. All information required is, therefore, nonproprietary data.

(vii) The data required in column (f) is a percentage figure representing cost justification for each product or service line entered in lines 1–19 and on any continuation schedule for which a price increase is indicated in column (e). The general financial data required in column (f), line 22, is the cost justification supporting the weighted average price increase for the combined product or service lines. These are calculations unique to the form CLC–2 and find no counterpart on the SEC Form 10–K. However, in order to fulfill the general purposes of section 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the data required in column (f), lines 1–19, inclusive, line 22, and on any continuation schedule, as nonproprietary CLC data.

(b) *Schedule C (cost justification).*—(1) *Part I (identification information).*—All of the information called for in part I (and in the spaces provided above part I) serves to identify or describe the firm, the reporting period, and the product line or SIC code. All of the information is already defined as nonproprietary in part I of the form CLC–2. However, as an administrative convenience, to avoid unnecessary handling and cost of duplication of this portion of the schedule C which otherwise contains no financial data which is to be available to the public, information required by part I of schedule C is defined as proprietary.

(2) *Part II (calculation of cost justification).*—All of the general financial data called for in part II, lines 3 through 7, is calculated and entered on the basis of cost per unit of input or output. There are no counterparts for these figures on the SEC 10–K. None of the information required in lines 3 through 7 is SEC data and all of it, therefore, is defined as proprietary data.

(i) The general financial data required in lines 8 through 12 are special CLC calculations which have no counterpart in the SEC 10–K. Therefore, none of the information required is SEC data and all of it is defined as proprietary data.

(ii) The same figure that appears on line 11 of schedule C also appears in column (f) of part VI of the form CLC–2. As explained above, column (f) information is defined as nonproprietary even though it is general financial data which is not SEC data. Consistency would normally require that information required by line 11 of schedule C also be defined as nonproprietary. However, as an administrative convenience, to avoid unnecessary handling and cost of duplication of this portion of the schedule C

which otherwise contains no financial data which is to be available to the public, information required by line 11 of schedule C is defined as proprietary.

(c) *Supporting information.*—(1) Parts of the CLC–2 are required to be submitted as attachments to the CLC–2 proper. [illegible] nature of information or data shown on these attached parts is to be made on the same basis as the determination for the equivalent part on the CLC–2 proper.

(2) Supporting information prepared by the firm in textual or other form other than on a form provided by the Council must be reviewed on an ad hoc basis to determine whether or not it contains proprietary data. The rules contained in this subpart shall be used as guidelines for this purpose.

§ 102.54 Disclosure procedure.

(a) Each business enterprise submitting to the Cost of Living Council a form CLC–2 which is subject to public disclosure pursuant to section 205(b)(1) of the Economic Stabilization Act of 1970, as amended, shall:

(1) In addition to checking the box provided on the front page of the form CLC–2 under the heading "Type of Submission," to indicate the submission of a quarterly report, check the box provided for other purposes and, in the adjacent space provided, enter the words, "public disclosure required";

(2) Attach to the form CLC–2 a supporting schedule which identifies the substantial product or products which gave rise to the requirement of public disclosure and the weighted average percentage price increase or increases above the weighted average price or prices lawfully in effect on January 10, 1973, charged for those substantial products; and

(3) Attach three copies of the entire CLC–2 submission which omit all proprietary information or data in accordance with the definitions and rules provided in § 102.53.

(b) The instructions provided in paragraph (a) of this section are in addition to the instructions to the form CLC–2.

(c) Interested persons may examine nonproprietary information or data furnished on or with form CLC–2 reports subject to public disclosure at 2000 M Street NW., Washington, D.C. 20508, or may obtain a copy of that information or data by mail upon written request addressed to the Council.

[FR Doc.73–12347 Filed 6–15–73;4:44 pm]

## PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

### Determination of Ceiling Prices of Meat Items

Subpart M of Part 130 of the Cost of Living Council's regulations is amended to establish rules for the determination of ceiling prices of new meat items. The existing rules for the determination of ceiling prices of meat items other than new meat items are also amended to restrict their scope to transactions occurring within a limited time period prior to March 28, 1973.

Because of these amendments, a seller whose last transaction in a particular meat item occurred more than 6 months prior to March 28, 1973, will no longer be subject to the difficulty of abiding by a ceiling price which, at best, may be unreasonably low or, at worst, may be less than cost. The new rules for determining ceiling prices applicable to new meat items will now apply in this case. These new rules will also apply to a seller entering into a contract with a governmental agency which is a separate class of customer if the seller has not sold the same meat item to the agency during the 3-month period prior to March 28, 1973.

A "new meat item" is defined as a meat item which the offeror has sold or is offering for sale to a class of customer, but did not sell to that class of customer in the same or substantially similar form at any time during the meat ceiling base period. A substantial limitation is placed on what may be treated as a new meat item by the provision that a mere change in appearance, arrangement, combination of ingredients, form of meat cut or packaging does not create a new meat item. Thus, a new meat item is not created by a slight modification of the cut of a chuck roast accompanied by a redesignation such as "California roast".

As part of the definition of new meat item, "class of customer" is defined to mean those customers to whom an offering person has charged a comparable price for comparable meat items pursuant to customary price differentials between those customers and other customers. If no transactions have occurred in the past, "class of customer" means all of those prospective customers to whom an offering person would charge a comparable price for comparable meat items based on his historical practice of determining customary price differentials. If a transaction occurred during the meat ceiling base period, then the term class of customer would have the same meaning as class of purchaser.

The methods for determining ceiling prices for new meat items are established in a new § 130.125(b). The first method allows a manufacturer, retailer, or wholesaler to use ceiling prices received on the most nearly similar meat item sold in a substantial number of transactions to the most nearly similar class of customer during the 30-day period prior to March 28, 1973. The second method allows sellers to determine ceiling prices by reference to the sales of others if the seller did not offer a similar meat item for sale to a similar class of customer during the 30-day period prior to March 28, 1973. Because of the establishment of this different method of determining ceiling prices for new meat items, the definition of "ceiling price" in § 130.123 is also amended accordingly.

The procedures for determining ceiling prices for new meat items are fundamentally the same as the procedures for establishing base prices for new products in § 300.409 of the phase II regulations. However, since it is not always possible to determine total allowable unit costs, net operating profit markup or customary initial percentage markup for meat items, the basis used for establishing ceiling prices for new meat items is the price of the most nearly similar meat item. Because the rules for determining ceiling prices for new meat items are similar to § 300.409, rulings and interpretations issued to clarify § 300.409 can be used by analogy in interpreting the provisions of § 130.125.

A pricing rule for new meat items is created in § 130.125(a) because § 130.121 (a) applies only to charges to a class of purchaser. This rule provides that no seller of a new meat item may charge to any class of customer and no purchaser of a new meat item may pay, a price for any new meat item which exceeds the ceiling price as determined by paragraph (b) of § 130.125. To clarify application of the new meat item rules to ceiling prices determined by predecessor entities, § 130.125(c) is added which provides that once a ceiling price is established for a meat item it cannot be treated as a new meat item merely because of a change in ownership of the predecessor manufacturer, retailer or wholesaler.

The definition of "meat ceiling base period" in § 130.123 is revised to establish a time limitation for determining when a meat item will be considered new. The new definition in paragraph (b) allows sellers who have had no transactions with a class of customer on a particular meat item within a 6-month period prior to March 28, 1973, to treat the meat item as a new meat item. This provision is designed to give relief to sellers who have very infrequent or seasonal sales. It allows them to establish prices for their meat items which are more realistically in line with other ceiling prices. A seller entering into a contract with a governmental agency which constitutes a distinct class of customer may also treat a meat item as a new meat item if the seller has not sold the same meat item to the agency during the 3-month period prior to March 28, 1973. Contracting with governmental agencies by its very nature creates extended periods during which no transactions occur and therefore merits special treatment.

Finally, a new paragraph (e) is added to § 130.124 which requires the retailer of a new meat item to post the ceiling price for each new meat item prior to its first sale.

Because the purpose of this amendment is to provide guidance and information with respect to the administration of the economic stabilization program, the Council finds that further notice and procedure thereon is impracticable and that good cause exists for making it effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Public Law 92–210, 85 Stat. 743; Public Law 93–28, 87 Stat. 27; Executive Order 11695, 38 FR 1473, Cost of Living Council Order No. 14, 38 FR 1489.)

ECONOMIC
STABILIZATION
PROGRAM

june 18, 1973

# freeze and phase IV

cost of living council, washington d.c. 20508

For detailed information on the Economic Stabilization Regulations see the Federal Register of the Code of Federal Regulations, Title 6, available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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20-973 O - 73 - 6

June 13, 1973.

## THE WHITE HOUSE

### REMARKS OF THE PRESIDENT ON THE NATION'S ECONOMY ON NATIONWIDE RADIO AND TELEVISION

[The Oval Office—8:30 p.m., e.d.t.]

Good evening.

I want to talk to you tonight about some strong actions that I have ordered today with regard to the American economy—actions which will be important to you in terms of the wages you earn and the prices you pay.

But first, since we have been hearing so much about what is wrong with our economy over the past few months, let us look at some of the things that are right about the American economy. We can be proud that the American economy is by far the freest, the strongest, and the most productive economy in the world. It gives us the highest standard of living in the world. We are in the middle of one of the biggest, strongest booms in our history. More Americans have jobs today than ever before. The average worker is earning more today than ever before. Your income buys more today than ever before.

In August, 1971, I announced the New Economic Policy. Since then, the Nation's output has increased by a phenomenal 11½ percent—a more rapid growth than in any comparable period in the last 21 years. Four and a half million new civilian jobs have been created and that is more than in any comparable period in our whole history. At the same time, real per capita disposable income—that means what you have left to spend after taxes and after inflation—has risen by 7½ percent in that period. This means that, in terms of what your money will actually buy, in the past year and a half your annual income has increased by the equivalent of four weeks' pay. Now, when we consider these facts, we can see that in terms of jobs, of income, of growth, we are enjoying one of the best periods in our history.

We have every reason to be optimistic about the future. But there is one great problem that rightly concerns every one of us and that is, as you know, rising prices, and especially rising food prices. By the end of last year, we had brought the rate of inflation in the United States down to three and four-tenths percent. That gives us the best record in 1972 of any industrial country in the world. But now prices are going up at unacceptably high rates.

The greatest part of this increase is due to rising food prices. This has been caused in large measure by increased demand at home and abroad, by crop failures abroad and as many people in various areas of the country know, by some of the worst weather for crops and livestock that we have ever experienced. But whatever the reasons, every American family is confronted with a real and pressing problem of higher prices. And I have decided that the time has come to take strong and effective action to deal with that problem.

Effective immediately, therefore, I am ordering a freeze on prices. This freeze will hold prices at levels no higher than those charged during the first eight days of June. It will cover all prices paid by consumers. The only prices not covered will be those of unprocessed agricultural products at the farm levels, and rents.

Wages, interest and dividends will remain under their present control systems during the freeze. Now the reason I decided not to freeze wages is that the wage settlements reached under the rules of Phase III have not been a significant cause of the increase in prices. And as long as wage settlements continue to be responsible and non-inflationary, a wage freeze will not be imposed.

The freeze will last for a maximum of 60 days. This time will be used to develop and put into place a new and more effective system of controls which will follow the freeze. This new Phase IV of controls will be designed to contain the forces that have sent prices so rapidly upward in the past few months. It will involve tighter standards, more mandatory compliance procedures than under Phase III. It will recognize the need for wages and prices to be treated consistently with one another.

In addition to food prices, I have received reports from various parts of the country of many instances of sharp increases in the price of gasoline. And therefore, I have specifically directed the Cost of Living

Council to develop new Phase IV measures that will stabilize both the prices at the retail level of food and the price of gasoline at your service station.

In announcing these actions, there is one point I want to emphasize to every one of you listening tonight. The Phase IV that follows the freeze will not be designed to get us permanently into a controlled economy. On the contrary, it will be designed as a better way to get us out of a controlled economy, to return as quickly as possible to the free market system.

We are not going to put the American economy into a straitjacket. We are not going to control the boom in a way that would lead to abuse. We are not going to follow the advice of those who have proposed actions that would lead inevitably to a permanent system of price and wage controls, and also rationing.

Such actions would bring good headlines tomorrow, and bad headaches six months from now for every American family in terms of rationing, black markets, and eventually a recession that would mean more unemployment.

It is your prosperity that is at stake. It is your job that is at stake.

The actions I have directed today are designed to deal with the rise in the cost of living without jeopardizing your prosperity or your job.

Because the key to curbing food prices lies in increasing supplies, I am not freezing the price of unprocessed agricultural products at the farm level. This would reduce supplies instead of increasing them. It would eventually result in even higher prices for the foods you buy at the supermarket.

Beginning in 1972, we embarked on a comprehensive new program for increasing food supplies. Among many other measures, this has included opening up 40 million more acres for crop production. In the months ahead, as these new crops are harvested, they will help hold prices down. But unfortunately this is not yet helping in terms of the prices you pay at the supermarket today or the prices you will be paying tomorrow.

One of the major reasons for the rise in food prices at home is that there is now an unprecedented demand abroad for the products of America's farms. Over the long run, increased food exports will be a vital factor in raising farm income, in improving our balance of payments, in supporting America's position of leadership in the world. In the short term, however, when we have shortages and sharply rising prices of food here at home, I have made this basic decision: In allocating the products of America's farms between markets abroad and those in the United States, we must put the American consumer first.

Therefore, I have decided that a new system for export controls on food products is needed—a system designed to hold the price of animal feedstuffs and other grains in the American market to levels that will make it possible to produce meat and eggs and milk at prices you can afford.

I shall ask the Congress, on an urgent basis, to give me the new and more flexible authority needed to impose such a system. In exercising such authority, this will be my policy: We will keep the export commitments we have made as a nation. We shall also consult with other countries to seek their cooperation in resolving the worldwide problem of rising food prices. But we will not let foreign sales price meat and eggs off the American table.

I have also taken another action today to stop the rise in the cost of living. I have ordered the Internal Revenue Service to begin immediately a thoroughgoing audit of the books of companies that have raised their prices more than 1½ percent above the January ceiling.

The purpose of the audit will be to find out whether these increases were justified by rising costs. If they were not, the prices will be rolled back.

The battle against inflation is everybody's business. I have told you what the administration will do. There is also a vital role for the Congress, as I explained to the congressional leaders just a few moments ago.

The most important single thing the Congress can do in holding down the cost of living is to hold down the cost of government. For my part, I shall continue to veto spending bills that we cannot afford, no matter how noble sounding their names may be. If these budget-busters become law, the money would come out of your pocket—in higher prices, higher taxes, or both.

There are several specific recommendations I have already made to the Congress that will be important in holding down prices in the future. I again urge quick action on all of these proposals.

Congress should give the President authority to reduce tariffs in selected cases in order to increase supplies of scarce goods and thereby hold down their prices. This action will help on such scarce items as

meat, plywood and zinc. And in particular, the tariff we now have on imported meat should be removed.

Congress should provide authority to dispose of more surplus commodities now held in Government stockpiles.

Congress should let us go ahead quickly with the Alaska pipeline so that we can combat the shortage of oil and gasoline we otherwise will have. I will also soon send to the Congress a major new set of proposals on energy, spelling out new actions I believe are necessary to help us meet our energy needs and thereby lessen pressures on fuel prices.

In its consideration of new farm legislation, it is vital that the Congress put high production ahead of high prices, so that farm prosperity will not be at the cost of higher prices for the consumer. If the Congress sends me a farm bill, or any other bill, that I consider inflationary, I shall veto that bill.

Beyond what the Administration can do, beyond what the Congress can do, there is a great deal you can do. The next 60 days can decide the question of whether we shall have a continuing inflation that leads to a recession or whether we deal responsibly with our present problems and so go forward with a vigorous prosperity and a swift return to a free market.

You can help, by giving your Senators and Congressmen your support when they make the difficult decisions to hold back on unnecessary Government spending.

You can help, by saying no to those who would impose a permanent system of controls on this great, productive economy of ours which is the wonder of the world.

Let there be no mistake: If our economy is to remain dynamic, we must never slip into the temptation of imagining that in the long run, controls can substitute for a free economy or permit us to escape the need for discipline in fiscal and monetary policy. We must not let controls become a narcotic—we must not become addicted.

There are all sorts of seemingly simple gimmicks that would give the appearance or offer the promise of controlling inflation, but that would carry a dangerous risk of bringing on a recession, and that would not be effective in controlling inflation. Rigid, permanent controls always look better on paper than they do in practice.

We must never go down that road which would lead us to economic disaster.

We have a great deal to be thankful for as Americans tonight. We are the best-clothed, best-fed, best-housed people in the world; we are the envy of every nation in that respect. This year, for the first time in 12 years, we are at peace in Vietnam and our courageous prisoners of war have returned to their homes. This year, for the first time in a generation, no American is being drafted into the Armed Forces. This year, we find our prospects brighter than at any time in the modern era for a lasting peace and for the abundant prosperity such a peace can make possible.

Next Monday, I will meet at the summit here in Washington with General Secretary Brezhnev of the Soviet Union. Based on the months of preparatory work that has been done for this meeting, and based on the extensive consultation and correspondence we have had, much of it quite recently, I can confidently predict tonight that out of our meetings will come major new progress toward reducing both the burden of arms and the danger of war; and toward a better and more rewarding relationship between the world's two most powerful nations.

Today in America, we have a magnificent opportunity. We hold the future—our future—in our hands. By standing together, by working together, by joining in bold yet sensible policies to meet our temporary problems without sacrificing our lasting strengths, we can achieve what America has not had since President Eisenhower was in this office: full prosperity without war and without inflation. This is a great goal, and working together, we can and we will achieve that goal.

Thank you and good evening.

# THE WHITE HOUSE

## EXECUTIVE ORDER

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## FURTHER PROVIDING FOR THE STABILIZATION OF THE ECONOMY

On January 11, 1973 I issued Executive Order 11695 which provided for establishment of Phase III of the Economic Stabilization Program. On April 30, 1973 the Congress enacted, and I signed into law, amendments to the Economic Stabilization Act of 1970 which extended for one year, until April 30, 1974, the legislative authority for carrying out the Economic Stabilization Program.

During Phase III, labor and management have contributed to our stabilization efforts through responsible collective bargaining. The American people look to labor and management to continue their constructive and cooperative contributions. Price behavior under Phase III has not been satisfactory, however. I have therefore determined to impose a comprehensive freeze for a maximum period of 60 days on the prices of all commodities and services offered for sale except the prices charged for raw agricultural products. I have determined that this action is necessary to stabilize the economy, reduce inflation, minimize unemployment, improve the Nation's competitive position in world trade and protect the purchasing power of the dollar, all in the context of sound fiscal management and effective monetary policies.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, particularly the Economic Stabilization Act of 1970, as amended, it is hereby ordered as follows:

Section 1. Effective 9:00 p.m., e.s.t., June 13, 1973, no seller may charge to any class of purchaser and no purchaser may pay a price for any commodity or service which exceeds the freeze price charged for the same or a similar commodity or service in transactions with the same class of purchaser during the freeze base period. This order shall be effective for a maximum period of 60 days from the date hereof, until 11:59 p.m., e.s.t., August 12, 1973. It is not unlawful to charge or pay a price less than the freeze price and lower prices are encouraged.

Section 2. Each seller shall prepare a list of freeze prices for all commodities and services which he sells and shall maintain a copy of that list available for public inspection, during normal business hours, at each place of business where such commodities or services are offered for sale. In addition, the calculations and supporting data upon which the list is based shall be maintained by the seller at the location where the pricing decisions reflected on the list are ordinarily made and shall be made available on request to representatives of the Economic Stabilization Program.

Section 3. The provisions of this order shall not extend to the prices charged for raw agricultural products. The prices of processed agricultural products, however, are subject to the provisions of this order. For those agricultural products which are sold for ultimate consumption in their original unprocessed form, this provision applies after the first sale.

Section 4. The provisions of this order do not extend to (a) wages and salaries, which continue to be subject to the program established pursuant to Executive Order 11695; (b) interest and dividends, which continue to be subject to the program established by the Committee on Interest and Dividends and (c) rents which continue to be subject to controls only to the limited extent provided in Executive Order 11695.

Section 5. The Cost of Living Council shall develop and recommend to the President policies, mechanisms and procedures to achieve and maintain stability of prices and costs in a growing economy after the expiration of this freeze. To this end, it shall consult with

representatives of agriculture, industry, labor, consumers and the public.

Section 6(a). Executive Order 11695 continues to remain in full force and effect and the authority conferred by and pursuant to this order shall be in addition to the authority conferred by or pursuant to Executive Order 11695 including authority to grant exceptions and exemptions under appropriate standards issued pursuant to regulations.

(b) All powers and duties delegated to the Chairman of the Cost of Living Council by Executive Order 11695 for the purpose of carrying out the provisions of that order are hereby delegated to the Chairman of the Cost of Living Council for the purpose of carrying out the provisions of this order.

Section 7. Whoever willfully violates this order or any order or regulation continued or issued under authority of this order shall be subject to a fine of not more than $5,000 for each such violation. Whoever violates this order or any order or regulation continued or issued under authority of this order shall be subject to a civil penalty of not more than $2,500 for each such violation.

Section 8. For purposes of this Executive Order, the following definitions apply:

"Freeze price" means the highest price at or above which at least 10 percent of the commodities or services concerned were priced by the seller in transactions with the class of purchaser concerned during the freeze base period. In computing the freeze price, a seller may not exclude any temporary special sale, deal or allowance in effect during the freeze base period.

"Class of purchaser" means all those purchasers to whom a seller has charged a comparable price for comparable commodities or services during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers.

"Freeze base period" means—

(a) the period June 1 to June 8, 1973; or

(b) in the case of a seller who had no transactions during that period, the nearest preceding seven-day period in which he had a transaction.

"Transaction" means an arms length sale between unrelated persons and is considered to occur at the time of shipment in the case of commodities and the time of performance in the case of services.

THE WHITE HOUSE, *June 13, 1973.*

# ECONOMIC PROGRAM

## FACT SHEET

### FREEZE PERIOD CONTROLS

1. A ceiling is placed on prices at a level not to exceed the base period level: the highest price at which substantial transactions occurred in the period June 1–8.

2. Unprocessed agricultural products at the farm level are exempt.

3. Wages are not frozen but remain under the Phase III control system. We recognize that the exclusion of wages from the freeze is possible only if the freeze is short.

4. Rents are not covered.

5. Interest and dividends remain under the jurisdiction of CID on a voluntary basis.

6. The freeze is to be a maximum of 60 days duration.

7. A profit sweep will be conducted during the freeze and prices will be reduced to levels permitted by existing Phase III rules where they are found to be above those levels. These reduced prices will be the maximum permitted during the freeze.

8. The freeze will be administered by the COLC with increased assistance from IRS.

### LICENSING OF AGRICULTURAL EXPORTS

1. All exporters must notify the Secretary of Commerce by June 20 of orders for export of grains, soybeans and products thereof on their books as of this date (June 13, 1973).

2. Weekly thereafter exporters must notify the Secretary of Commerce of export orders for above commodities received after this date.

3. Steps will be taken to reduce Government-supported exports of foods.

4. Congress is asked to amend the Economic Stabilization Act to authorize the President to limit exports where necessary to effectuate the purposes of the Act, under conditions less restrictive than in the Export Administration Act.

5. The export control authority will be used if necessary to restrain exports sufficiently to bring domestic prices of feed down to levels consistent with the present prices of meats and other animal products.

### THE POST-FREEZE CONTROLS PROGRAM

1. The purpose of the post-freeze program (Phase IV) is to yield lower rates of inflation than we had during Phase III. One purpose of the freeze is to give time for consultation and for the development of a more effective, temporary, system of controls.

2. Information obtained from the reports to be received on the first quarter's operations under Phase III will be helpful in judging the points of adequacy or deficiency in the Phase III system.

3. Phase IV will require more prenotificants, tighter standards, a wider spread of mandatory controls, and a larger administrative staff than we had with Phase III.

4. The Cost of Living Council will develop regulations for food prices in Phase IV which in conjunction with actions on exports will stabilize the retail price of food.

5. The Cost of Living Council will develop regulations to stabilize the retail price of gasoline.

6. Phase IV will recognize the need for consistent treatment of wages and prices.

7. Every effort will be made to provide more specific information on the nature of the Phase IV system in about 30 days.

8. It is a primary objective of the Administration to manage Phase IV and other aspects of economic policy so as to permit early termination of controls.

## QUESTIONS AND ANSWERS

**1. Why is it necessary to have a freeze rather than simply return to Phase II-type flexible controls?**

The freeze has several purposes. First, after the outbreak of inflation that has occurred over the past few months, a freeze provides a kind of shock treatment reducing inflationary expectations. Second, it will provide the time necessary to consult with labor, management, and consumer representatives on the shape of the post-freeze program. This program will not be simply a duplicate of the Phase II or Phase III controls. Third, it will provide time to review the detailed CLC–2 forms submitted by major companies, to check records, and to roll back prices when violations are found. Fourth, it will cut off any bulge in prices until farm policies and fiscal restraint take effect. Finally, it cuts off price increases made in anticipation of tighter controls.

**2. Won't this freeze prices at the highest level ever?**

No. The freeze sets the maximum prices which can be charged, and in no way prevents prices from falling below that level.

The experience with the meat ceiling and the ceiling prices during Phase I shows that market conditions can force prices below the level established by a freeze or a ceiling.

As more fundamental economic forces take hold, it is expected that some prices will be below their present level.

**3. Will all prices be frozen at present levels, or will some prices be rolled back?**

Price ceilings have been established based on the highest price charged for at least 10 percent of the transactions that took place during June 1 to 8. We do not anticipate that many prices will be rolled back during the freeze, but this could happen if we find that violations of the Phase III standards have taken place.

**4. Why will the freeze last for such a short period of time? Why not continue it indefinitely?**

A freeze of long duration will be inevitably harmful and inequitable. As we have noted, the freeze period will be used for a profit sweep and to develop a tough post-freeze controls program following a 30-day consultation period, as well as a period to develop a better way to get us out of the controls business in the long run. We don't know the details of that program yet, except that it must ensure consistent treatment of wages and prices.

**5. Why didn't you do it sooner?**

Price increases early in Phase III were in only a few sectors, e.g., food and certain other products traded in international markets such as petroleum, lumber, metals, and textiles like wool and cotton. In each of these areas, strong action was taken such as the reimposition of mandatory controls on the largest oil companies, and the establishment of ceilings on meat prices.

It has only been recently that evidence became available to the Cost of Living Council that price increases were becoming pervasive over the rest of the economy.

As soon as analysis could be completed so that policy makers were satisfied that across-the-board action was appropriate, this action was taken.

**6. Are wages frozen?**

No, but they remain subject to the same standards and controls as during Phase III. Wage settlements reached under the rules of Phase III have been generally in line with stabilization policy.

**7. During Phase III the Cost of Living Council emphasized that most of the rapid price increases were due mainly to demand-pull pressures. Does this mean that this action could be economically dangerous, whatever its political and psychological merits?**

It is true that a prolonged freeze would be harmful to the economy, but for the freeze we are speaking of here, there should be minimal harmful effects, despite inevitable hardships and inequities in any freeze. The important thing is that the freeze period gives a breathing space to put in place a tougher controls program.

**8. What sectors or commodities are exempt from the freeze?**

Exemptions from the freeze are quite limited. Unprocessed agricultural products are exempt up to the first sale, and rents are not frozen. Wages are covered by existing regulations and interest and dividends will be handled by the Committee on Interest and Dividends.

**9. Why not freeze raw agricultural products?**

The freeze does apply to those raw agricultural products which are sold for ultimate consumption in their original unprocessed form, after the first sale. This is more stringent than in Phase I, where the freeze only applied to processed agricultural products.

**10. Why has rent been excluded from the freeze?**

Rents have been excluded for two basic reasons:

1. Since the announcement of Phase III, the rent component of the CPI has shown steady improvement. The change from January to February was 0.5, from February to March 0.4, and from March to April 0.3. The annual rate of increase for April—the most recent figures available—is 3.6 percent, a moderate rate and lower than the 4.8 percent rate for the last two months of 1972.

2. The rent problem is quite localized. And in some of those areas where there is a problem, various forms of concerted local action have taken place to provide relief.

**11. How are interest and dividends affected by this action?**

Interest rates and dividends are not affected by this action. They remain under the guidelines of the Committee on Interest and Dividends, as they have been during Phase II and Phase III.

**12. Will the price freeze impede the Administration's efforts to enhance supplies, especially in industries such as oil where price increases are an incentive to increased production?**

The freeze makes it all the more important that we succeed in the supply increasing efforts that have been undertaken. In the present economic situation, increasing supplies offer the greatest promise for reducing the upward pressure on prices, and efforts directly to enhance supplies, where appropriate, will continue.

**13. Will the price freeze result in a slackening of output and capacity utilization, and a possible increase in unemployment?**

While there will be some distortions, it is not expected that these distortions would become serious or widespread during a 60-day period.

**14. Will the freeze be lifted all at once, or will it be lifted selectively?**

The freeze will provide an opportunity for wide consultation and detailed development of a post-freeze stabilization program. It would not be productive to speculate at this time as to what form that program would take.

**15. May parties request exceptions to the general freeze?**

Only where very extraordinary circumstances exist, in which case requests should be submitted to the local IRS Districts.

**16. What criteria will be used in granting exceptions and exemptions?**

The rules and procedures that will apply to requests for exceptions and exemptions will be based very closely on how these requests were handled during the 1971 freeze. These requests are to be filed with district IRS offices which are implementing the freeze.

**17. Will there be an appeals process in instances where exception requests are denied?**

Yes.

**18. Does this action mean that we are right back where we were in August 1971?**

No, it does not. The economy is in a fundamentally different condition now than it was in August of 1971. We will have to design the post-freeze program to take that difference into account. In particular, we have to continue the tough fiscal policy that we have, and also monetary restraint, both of which are essential to the long-term solution of the inflation problem.

**19. What actions will the Cost of Living Council take to try to prevent a bulge in wages and prices when the freeze is lifted?**

Following the freeze, a new, tougher controls mechanism will be put into effect. It will be developed following a 30-day consultation period.

**20. Were there any consultations with business, labor, and other economic groups as part of planning this step?**

As you know, the President met several times with several of his advisors and with the Labor-Management Advisory Committee last Monday. Other than that, there was not a widespread consultation. That will come during the next 30 days as we prepare for the post-freeze program.

**21. How does organized labor feel about this new step?**

It would be inappropriate for anyone but organized labor to speak for them. As you know, the President met with the Labor-Management Committee on Monday to discuss various actions which might be taken to alleviate the growth in inflation.

**22. Did the Administration misjudge the American people when it implemented a largely voluntary program in Phase III?**

No, I don't think it was a simple matter of misjudging the mood or expectations of the American people. It is clear, nonetheless, that many things that we did not expect happened to inflation. Certainly we did not anticipate the explosion of the prices of food and other commodities traded in international markets that has taken place this year. Most significantly, perhaps, we did not expect to get the kind of anticipatory price increases—prices being marked up in expectation that a freeze would soon be put on the economy—that we had been getting ever since Congress started considering this issue in March.

**23. Why hasn't the CLC more vigorously enforced its powers during Phase III?**

The Cost of Living Council took a number of steps during Phase III to correct extraordinary price increases. These actions included:

*1. Compliance and Enforcement*
- —325 pay investigations, including executive compensation surveys of 290 firms.
- —1,500 profit margin investigations.
- —500 firms surveyed for price and profit margin control systems.
- —23,800 meat ceiling checks.

*2. Special Rules*
- —(March 6) special mandatory controls imposed on petroleum products.
- —(March 29) meat ceilings.
- —(May 2) additional prenotification requirements and clarification of reporting and record-keeping requirements.

*3. Supply Enhancement*
- —(March 15) stockpiles of basic materials no longer needed for national security to be released.
- —Lumber—forest service meets target of 11.8 million board feet.
- —Agriculture—50 million set-aside acres; cheese and non-fat dry import quotas relaxed.
- —Additional sales of steel scrap by the Department of Defense and the Maritime Administration.

**24. What long-range economic conditions need to be achieved to break out of this cycle of tightening-and-loosening of economic controls?**

We need both a substantial reduction in the actual rate of inflation and a substantial reduction in expectations about the future rate of inflation.

**25. Will there be modifications in the structure of the Cost of Living Council or other stabilization groups and committees?**

There will be a special unit set up within the Cost of Living Council to operate the freeze program. This unit will have full operating control over day-to-day freeze operations. We do not anticipate other major changes in the structure of the stabilization program. The various Advisory Committees will remain.

**26. Who should be contacted for general information and guidance on the freeze?**

The local IRS office.

**27. Will retailers and wholesalers be required to post prices?**

No, there are no new posting requirements. However, all sellers are required to maintain a list of freeze prices for all products and services, and to make a copy of that list available for public inspection. Posting of meat ceiling prices shall continue.

**28. Will there be any record-keeping requirements for retailers, wholesalers, manufacturers, service organizations, etc.?**

Yes.

**29. What enforcement capability will be available to deal with violations?**

Civil and criminal penalty sanctions are available under the existing legislation. The Justice Department through the Assistant U.S. Attorneys will implement special procedures to provide expedited processing of potential violators.

**30. How should parties respond to apparent violations?**

Inform the local IRS office.

**31. What will be CLC's disclosure policy regarding potential violations?**

(1) Firms served with CLC remedial orders or filed against in court will be publicly cited.

(2) Patterns of violations will be publicized without naming individual firms.

**32. Will CLC continue to pursue Phase II and Phase III apparent violations?**

Yes.

**33. What, if any, Phase III price compliance efforts will be continued?**

All in-process Phase III directed investigations will be completed. Phase III profit margins and price increases will be examined based on the CLC–2 submission due on June 21, 1973.

**34. How will CLC and the IRS dispose of in-process cases (i.e., exceptions requests, prenotification requests, appeals, requests for reconsideration, compliance investigations, etc.)?**

All cases now in process will be reviewed to determine if they are still relevant. Those that are will be processed as before.

**35. Must CLC–2 reports that were due to be filed during the freeze period still be submitted?**

Yes. The first reports must be filed by June 21, and they will be very thoroughly reviewed as part of the price and profit-margin sweep.

**36. What commodities are covered by the export reporting system? Why did you exclude other commodities?**

Food grains (wheat and rice), feed grains (corn, barley, sorghum, oats), soybeans, and primary products of these commodities that are used in animal feeds. Our primary concern is with commodities that have an important influence on the price of animal feeds where price increases have been exceptionally large. Commodities not included in the system announced today can be added at any time.

**37. How will the export reporting system work?**

Exporters are required to report all unfilled orders as of today to the Department of Commerce by June 20. They are also required to submit weekly reports on all new orders and on all shipments against old and new orders.

**38. What will the export reporting system achieve?**

It will provide a substantial flow of information that is not available on the current and prospective demands for the Nation's supplies of commodities that are essential to domestic food supplies.

**39. Will this export reporting system control the actual flow of exports out of the country?**

No, not directly. It is a monitoring system. Exporters will have to register commitments, and new sales and actual shipments. But this is not a system with quantitative limitations.

**40. Why didn't you control exports directly?**

There are two reasons. First, export controls are a strong action that conflict with other national objectives besides inflation. We do not want to restrict exports unless it is clearly required to achieve stable food prices for U.S. consumers. In the next few weeks we will be receiving new information, particularly about the number of acres farmers were able to plant this year and their expected production from those acres. The reporting system will itself provide more complete up-to-date information about intended purchases by other countries. As this information becomes available, it may show that it would have been a mistake to adopt export controls.

Second, it is unclear whether the President has the legal authority to require licensing of exports under current circumstances. That is why he is asking the Congress for emergency legislation that would permit us to operate a system of licensing.

**41. Since the export reporting system does not limit exports, are you concerned that there will be a rush of export sales before Congress passes legislation?**

No. We have said that all export contracts made after today will be subject to export controls, and that all shipments made against such sales will be counted against export quotas if and when they are implemented. There should be no incentive to accelerate either sales or shipments. Indeed, the reporting system and the possibility of controls should discourage anticipatory buying.

**42. What if Congress does not pass the export control legislation?**

There is always the possibility that new information will show that conditions have changed and that action is warranted under the Export Administration Act. The legislation the President is requesting would be temporary since it would be an amendment to the Economic Stabilization Act. We believe this will increase its chances of passage.

**43. If passed, would the legislation permit export controls on commodities such as lumber that are not included in the new reporting system?**

Yes.

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## FREEZE GROUP QUESTIONS AND ANSWERS

(No. 1)

**1. Does the freeze cover just retail or consumer prices?**

No. Prices at all levels of production and distribution are covered by the freeze.

**2. Are public utility rates covered by the freeze?**

Yes.

**3. Will mail rate increases scheduled for implementation during the freeze be permitted to go into effect?**

No.

**4. May rates and charges established by the Interstate Commerce Commission and other government regulatory agencies be increased during the freeze?**

No. All rates, fees and charges set by regulatory agencies are considered prices and are subject to the freeze.

**5. Is the freeze base period the first seven days in June or the first eight days in June?**

The freeze base period is the first eight days in June, 1973; June 1 through 8. If no transaction occurred during that period, the nearest preceding seven-day period in which a transaction occurred is used as the freeze base period.

**6. If a freeze price was *below* the following prices, may it be increased up to the applicable price without regard to the freeze rules? a) Phase II base price; b) the price "authorized or lawfully in effect" on January 10, 1973; c) the price in effect on May 25, 1970.**

(a) No. (b) No. (c) No. The freeze rules, except in the case of red meat sales subject to special meat ceiling rules, take precedence over prior rules with respect to permissible price levels.

**7. During Phase II, special provision was made for contracts entered into *prior* to the August 15, 1971, freeze. Will the same be true for the present freeze?**

No.

**8. Do different rules apply to determining the freeze price for new homes as opposed to used homes?**

No. The freeze price for the sale of any interest in real property is determined according to the provisions of section 140.11 of the freeze regulations. The freeze price is (a) the sale price specified in a sales contract signed by both parties on or before June 12, 1973; or (b) when there is no such sales contract, the fair market value of the property as of the freeze base period based on sales of like or similar property under similar circumstances.

**9. Are all sellers, regardless of size, subject to the requirement to maintain lists of freeze prices for the commodities and services that they sell?**

Yes. The Executive Order which establishes the freeze states that this requirment applies to "each seller."

**10. Will there be general relief (that is, other than by individual exception) for loss/low profit firms during the freeze?**

No.

**11. May a *contract* for goods entered into during the freeze base period establish the freeze base price for the goods covered by the contract, even though shipment was not to occur until later?**

No. Freeze base prices are determined in accordance with *transactions* made during the freeze base period. The freeze regulations state that a transaction "is considered to occur at the time of shipment in the case of commodities, and the time of performance in the case of services." The only exception in the regulations applies to a sales contract of real property signed by both parties on or before June 12, 1973.

**12. May a *payment* (or partial payment) received during the freeze base period establish the freeze base price, even though shipment was not to occur until later?**

No. Payment is not considered to establish a transaction under the freeze regulations.

**13. Does the freeze apply to long-term purchase contracts that call for delivery after the freeze?**

No. However, lawful prices during the post-freeze period will be determined in accordance with the Phase IV regulations.

**14. What is the status of volatile pricing orders during the freeze?**

Volatile pricing orders remain in effect during the freeze but are subject to the freeze. Prices cannot be increased above freeze prices under authority of a volatile pricing order. Prices which have been increased pursuant to volatile pricing authority must be reduced in accordance with that authorization if volatile input costs decline.

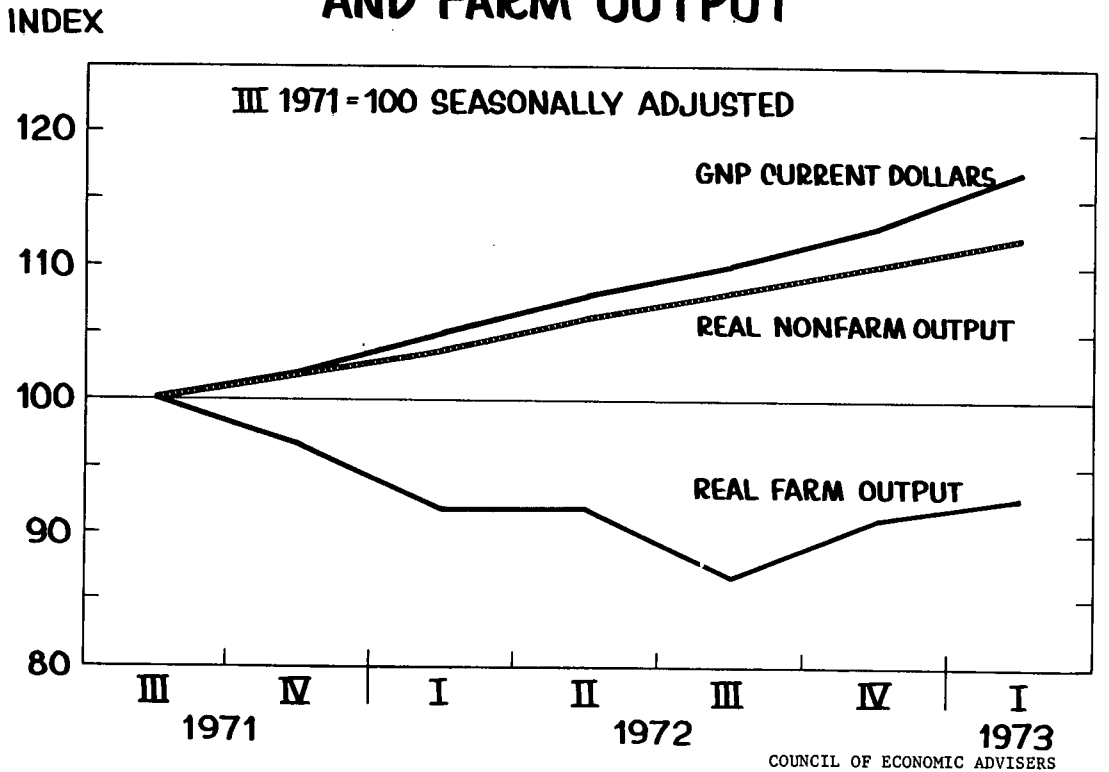
**15. When must sellers have price lists available?**

Price lists must be available not later than 11:59 p.m., Sunday, June 24.

**16. Does the small firm exemption (60 employees or less) apply during the freeze?**

No.

# DEMAND, NONFARM OUTPUT, AND FARM OUTPUT

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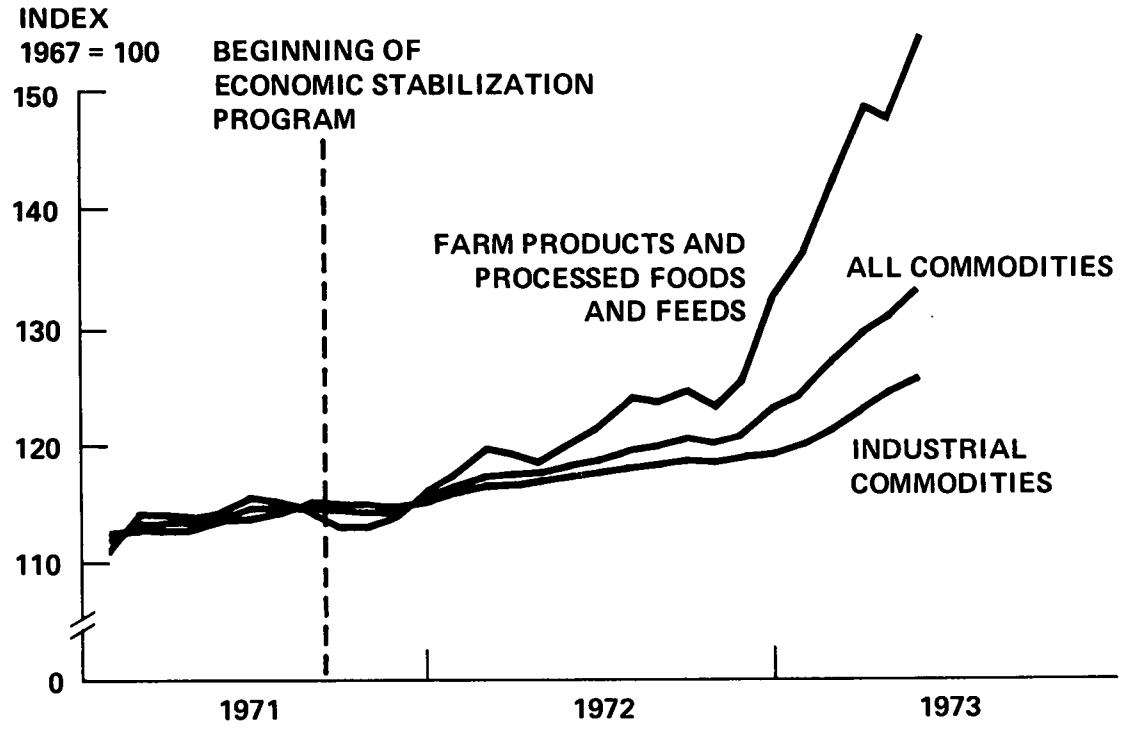
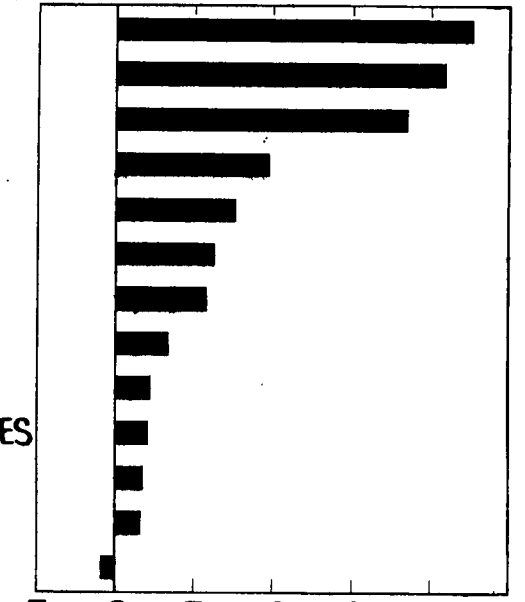
# WHOLESALE PRICES



# CONTRIBUTIONS TO RISE IN WPI INDUSTRIALS
## JANUARY TO MAY 1973

FUELS AND RELATED PRODUCTS
LUMBER AND WOOD PRODUCTS
METALS AND METAL PRODUCTS
TEXTILE PRODUCTS AND APPAREL
MACHINERY AND EQUIPMENT
CHEMICALS AND PRODUCTS
PULP AND PAPER PRODUCTS
RUBBER AND PLASTIC PRODUCTS
MISCELLANEOUS PRODUCTS
FURNITURE AND HOUSEHOLD DURABLES
TRANSPORTATION EQUIPMENT
NONMETALLIC MINERAL PRODUCTS
HIDES, SKINS, LEATHER




NOTE: BASED ON UNADJUSTED INDEXES

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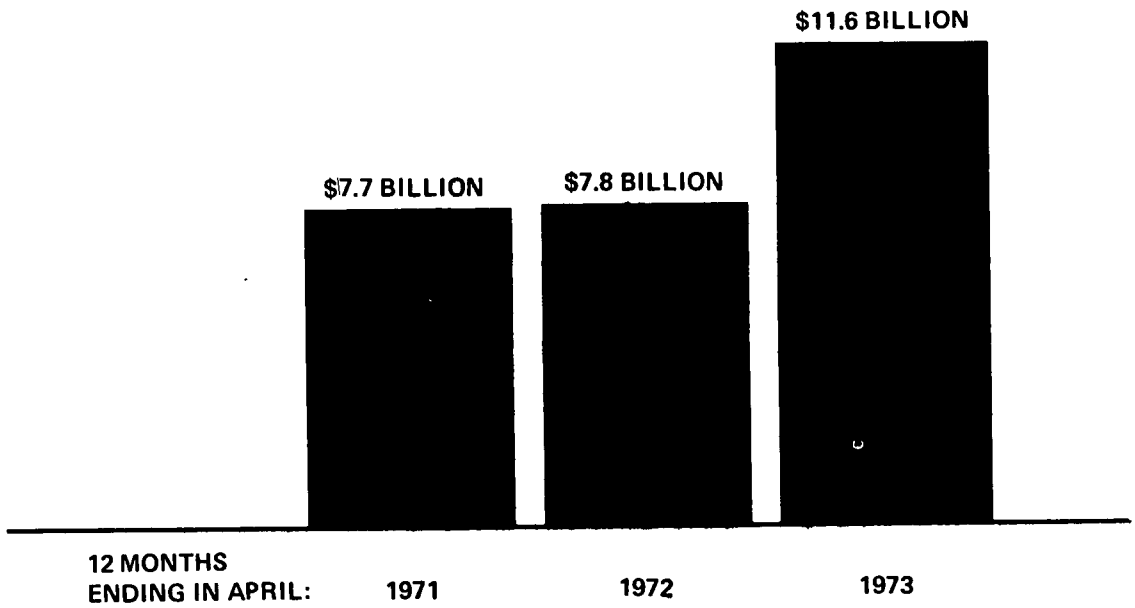
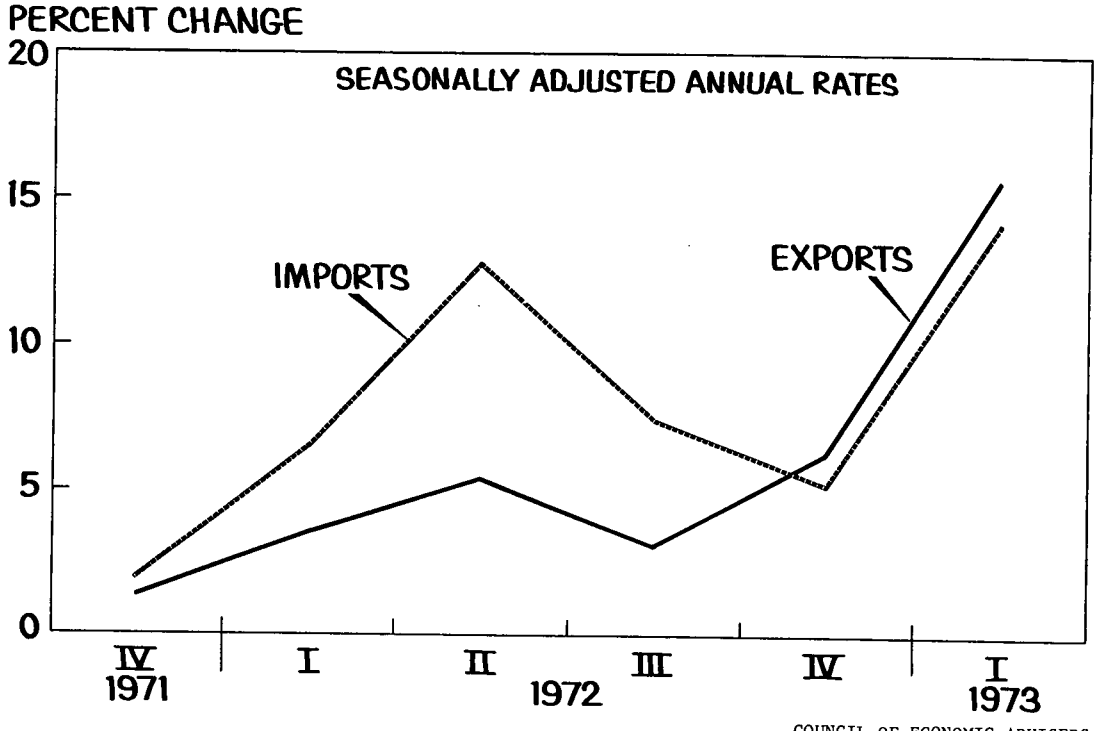
# EXPORTS OF AGRICULTURAL PRODUCTS




SOURCE: U.S. DEPARTMENT OF COMMERCE

# PERCENT CHANGE IN GNP DEFLATORS FOR EXPORTS AND IMPORTS, 1971 IV - 1973 I

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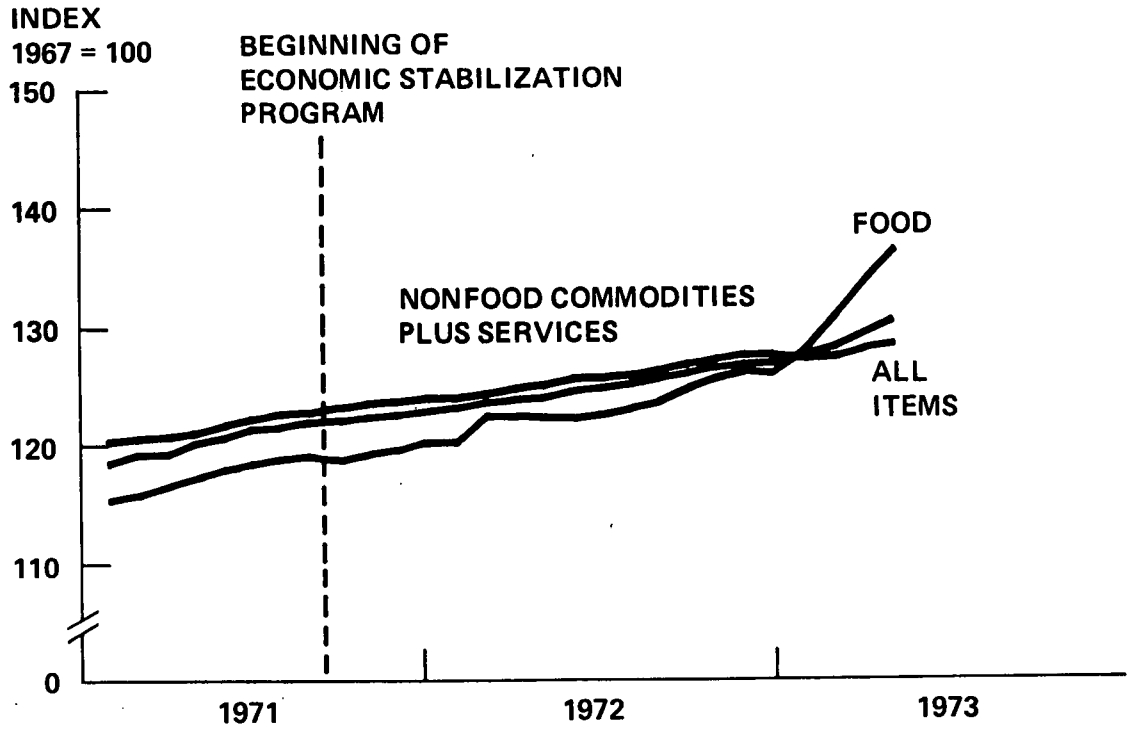
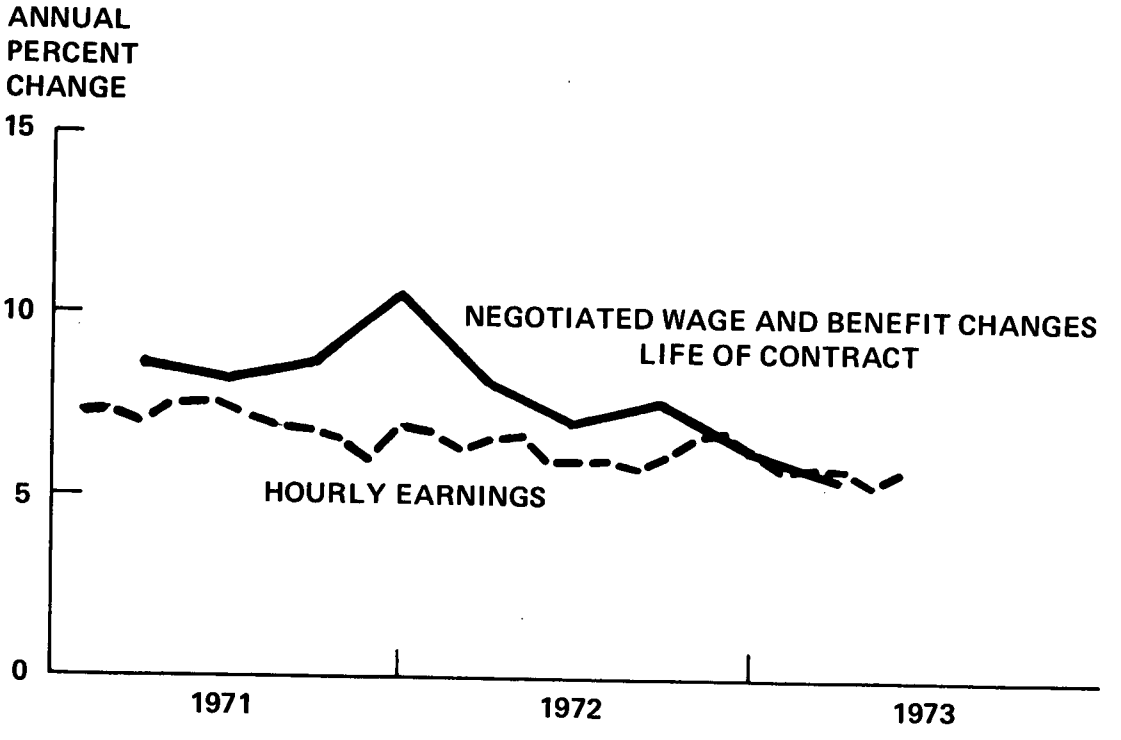
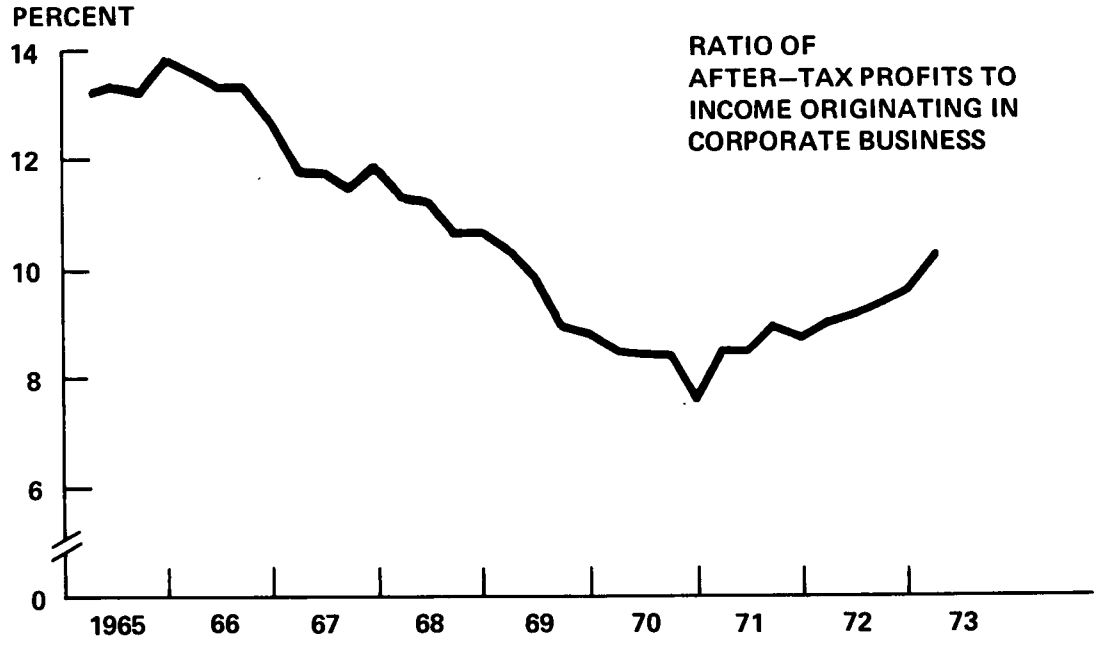
# CONSUMER PRICES



# WAGES

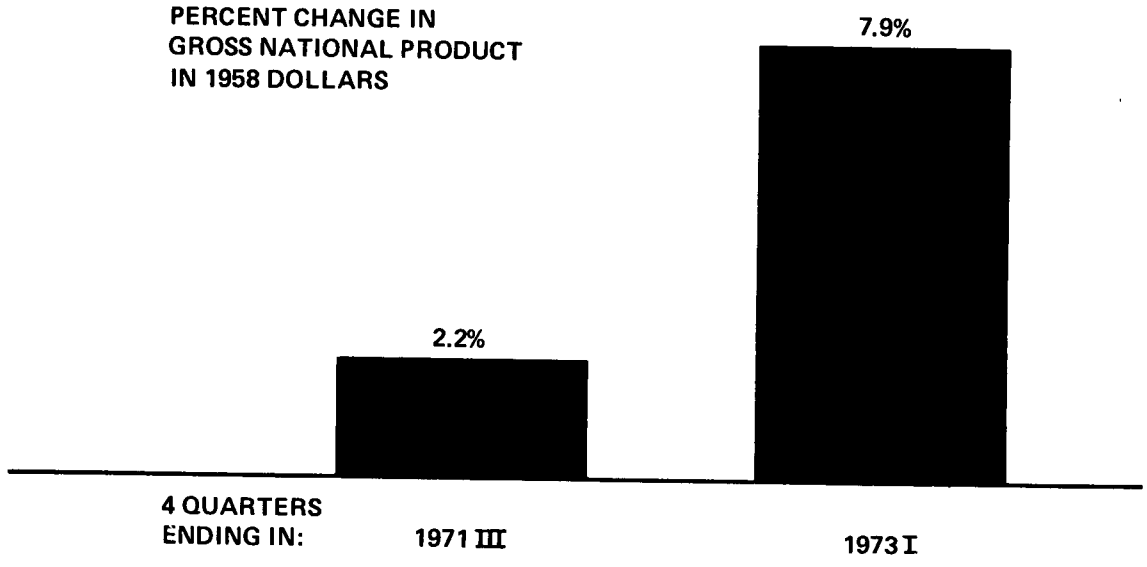

ANNUAL
PERCENT
CHANGE
15
10
5
0
NEGOTIATED WAGE AND BENEFIT CHANGES
LIFE OF CONTRACT
HOURLY EARNINGS
1971
1972
1973

# CORPORATE PROFIT MARGINS



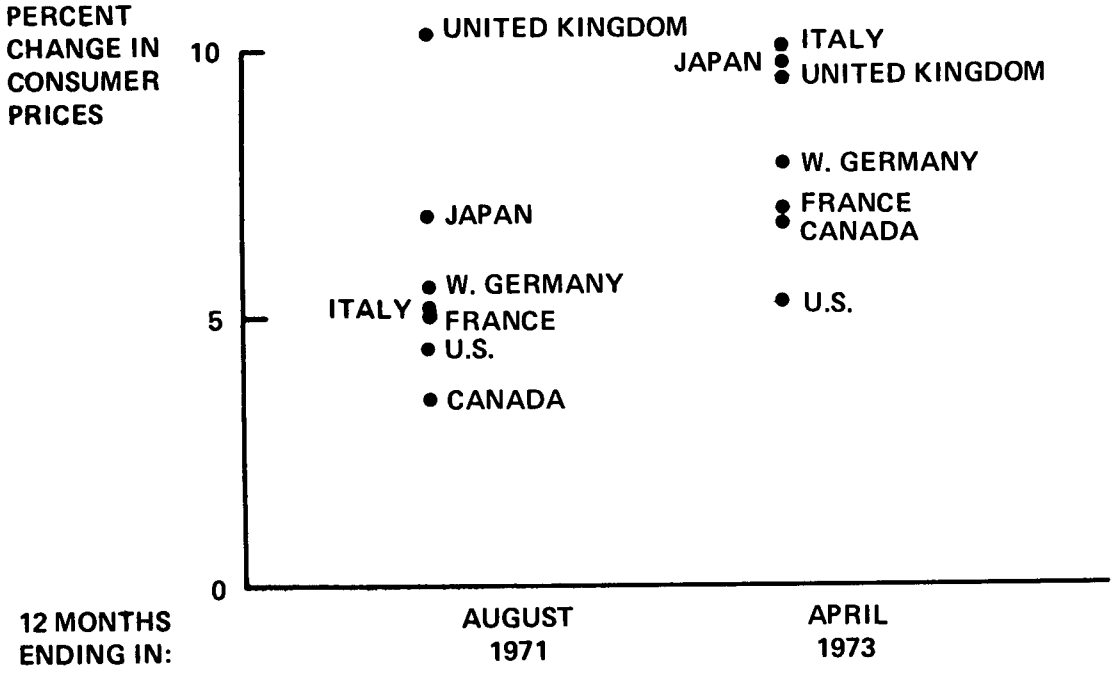

SOURCE: US DEPARTMENT OF COMMERCE

# REAL ECONOMIC GROWTH




SOURCE: U.S. DEPARTMENT OF COMMERCE

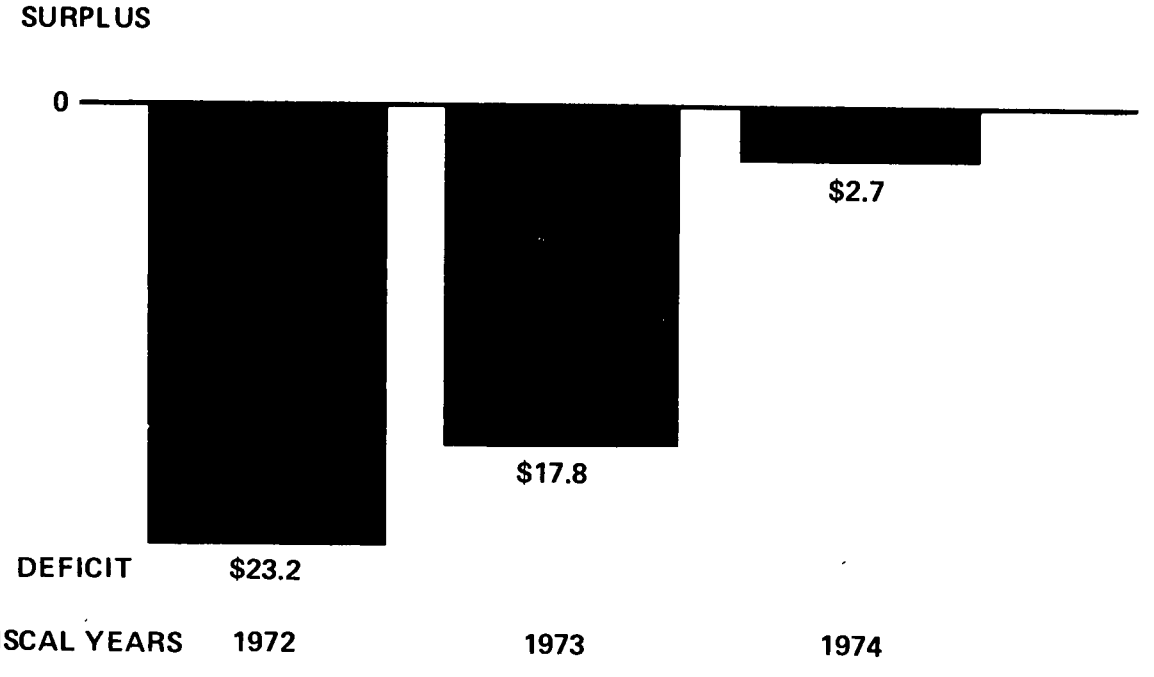
# INTERNATIONAL INFLATION




SOURCE: OECD

# THE FEDERAL BUDGET

$ BILLIONS



*Supply Actions*

# MEAT

- IMPORT QUOTAS REMOVED
- GRAZING ALLOWED ON "SET–ASIDE" ACREAGE
- CEILING PRICES IMPOSED ON RED MEATS

*Supply Actions*

# GRAIN

- 50 MILLION ACRES OF FARM LAND RELEASED FOR PRODUCTION
- GOVERNMENT–OWNED GRAIN STOCKS HAVE BEEN SOLD
- GOVERNMENT LOANS HAVE BEEN CALLED
- RICE ACREAGE INCREASED 20 PERCENT

*Supply Actions*

# OTHER FOOD PRODUCTS

- DIRECT EXPORT SUBSIDIES ENDED
- NON–FAT DRY MILK IMPORT QUOTAS LIFTED TWICE
- MILK PRICE SUPPORTS HELD AT MINIMUM
- CHEESE IMPORT QUOTAS RAISED 50 PERCENT
- VEGETABLE OIL EXPORTS UNDER GOVERNMENT PROGRAMS POSTPONED
- FRUIT AND VEGETABLE SUPPLIES INCREASED BY MODIFYING USDA MARKETING ORDERS

*Supply Actions*

# ENERGY

- MANDATORY CONTROLS REIMPOSED ON 23 LARGE PETROLEUM COMPANIES

- OIL IMPORT QUOTAS ENDED

- ACREAGE TRIPLED FOR CONTINENTAL SHELF OIL EXPLORATION

*Supply Actions*

# LUMBER

- NATIONAL FOREST LOG HARVEST INCREASING 18 PERCENT IN 1973

- JAPANESE LOG PURCHASES WILL BE REDUCED

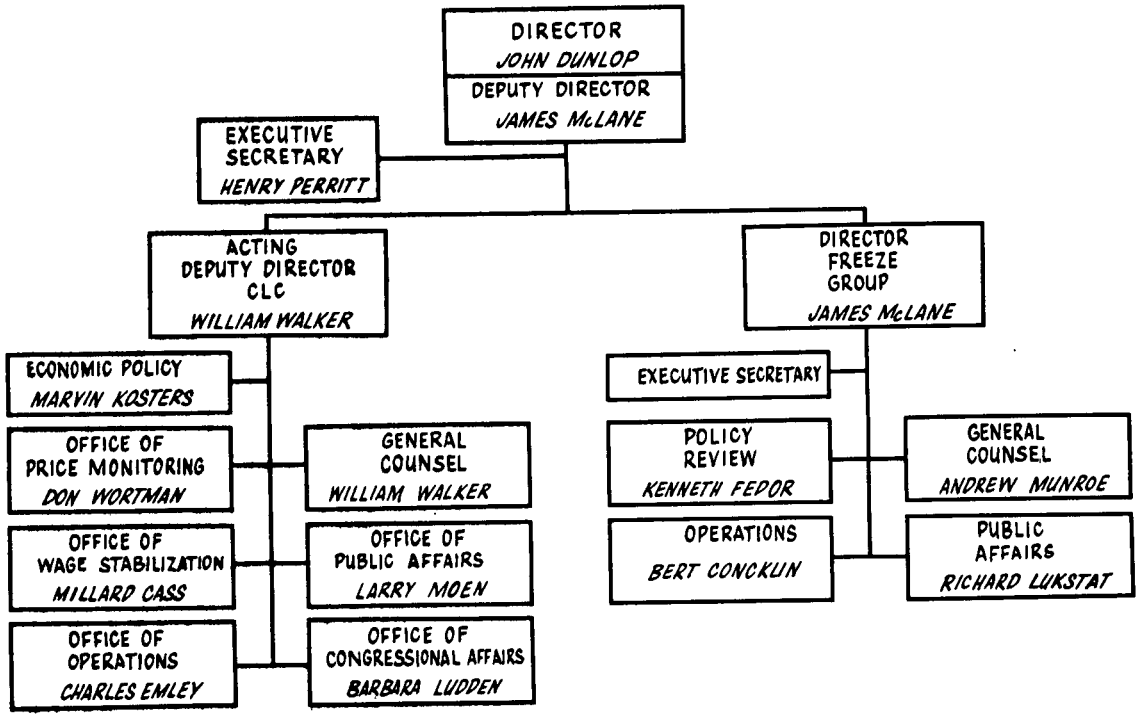
- TRANSPORTATION DEPARTMENT IS ELIMINATING RAILROAD SHIPPING BOTTLENECKS

*Supply Actions*

# METALS AND OTHER COMMODITIES

- $1.9 BILLION OF EXCESS GOVERNMENT STOCKPILES ARE BEING SOLD
- CONGRESS ASKED FOR ADDITIONAL $4.1 BILLION OF SALES AUTHORITY
- INCREASED SALES OF STEEL SCRAP BY MARITIME ADMINISTRATION AND DEFENSE DEPARTMENT
- DECISION BY JAPANESE FIRMS TO REDUCE IMPORTS OF SCRAP STEEL FROM THE UNITED STATES

# COST OF LIVING COUNCIL



## FREEZE GROUP

A special Freeze Group is being established within the Cost of Living Council. This unit will be headed by James W. McLane, currently the Council's Deputy Director, and will report directly to John T. Dunlop, the Director of the Cost of Living Council.

This special unit will consist of four principal offices, including Policy Review, General Counsel, Public Affairs, and Operations, which shall serve as the command nerve center for the freeze program. The Office of Operations will directly supervise the day-to-day activities of the 58 IRS district offices which will serve as the Program's field offices. A special action desk of Department of Justice stabilization staff will also be established to ensure quick enforcement of violations.

The staffing of the Stabilization Program is being increased substantially, principally by additions to the Internal Revenue Service. Two thousand IRS agents are being assigned to the Freeze Group to ensure compliance with the freeze.

*Functions*

The primary functions of the Freeze Group include:

—Formulate specific policies governing the freeze.

—Supervise the administration of the freeze program.

—Conduct an effective public education program.

—Design and implement a systematic surveillance effort to verify compliance with the freeze.

—Direct the investigation of reports of alleged violations received from the field.

—Make decisions on exception requests to specific policies, rules and interpretations.

*Operations Center*

A command center is being established within the Freeze Group at the Cost of Living Council Headquarters to ensure prompt responsive action. This center will have 10 direct lines to the 58 IRS district officers, and will be open 14 hours a day six days a week.

The IRS field operations will be ready for freeze operations on Friday, June 15, 1973. Questions concerning the freeze should be submitted to the IRS district offices at that time.

*Freeze Policy Group*

A Freeze Policy Group is also being established. It will be chaired by the Director of the Cost of Living Council and include a member of the Council of Economic Advisors, the Assistant Secretary of Treasury for Economic Policy, the Assistant Secretary of Commerce for Economic Affairs, an Assistant Secretary of Agriculture and the Director of the Freeze Group. This group will meet daily to review major policy matters and make decisions affecting the operations of the freeze program.

*Organization*

Cost of Living Council: Director, John T. Dunlop.

Special Freeze Group:

Director, James W. McLane.

General Counsel, Andrew T. Munroe.

Associate Director, Bert M. Concklin, Operations.

Associate Director, Kenneth J. Fedor, Policy Review.

Associate Director, Richard Lukstat, Public Affairs.

## COST OF LIVING COUNCIL

The bulk of the current staff of the Cost of Living Council will mount an intensive enforcement action against Phase III non-compliance. This will involve an IRS sweep based upon price and profit margin reports which Phase III regulations require to be submitted to the Council no later than June 21, 1973. In addition, the Council will undertake an immediate program of wide-ranging consultations seeking advice as to plans for the post-freeze program (Phase IV). The Council will have primary responsibility for developing recommendations to the President for Phase IV. In addition, the Council will continue to administer the Phase III wage and salary program.

The Council's organization will remain essentially as currently established:

Director, John T. Dunlop
Acting Deputy Director and General Counsel, William N. Walker
Associate Director, Economic Policy, Marvin Kosters
Associate Director, Operations, Charles Emley
Administrator, Office of Wage Stabilization, Millard Cass
Administrator, Office of Price Monitoring, Don I. Wortman
Assistant Director, Congressional Affairs, Barbara Ludden
Assistant Director, Public Affairs, Larry Moen
Executive Secretary, Henry Perritt



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# THE WHITE HOUSE

## PRESS CONFERENCE
## OF
## SECRETARY OF THE TREASURY GEORGE SHULTZ
## DR. HERBERT STEIN, CHAIRMAN, COUNCIL OF ECONOMIC ADVISERS
## DR. JOHN DUNLOP, DIRECTOR, COST OF LIVING COUNCIL

[The East Room—7:15 p.m. EDT]

Mr. ZIEGLER. I think you have had a chance to read over some of the material, at least, that we have provided to you. All of the material, as it states on its front page, is embargoed until 8:30 p.m., Eastern Time, as of course, are the remarks that Secretary Shultz, Dr. Stein and Dr. Dunlop make to you.

I understand that in addition to the materials that you have, additional information and materials from the Cost of Living Council will be available here after the briefing, and provided to you on departure.

Also, we should advise you tonight that the Cost of Living Council plans to brief at 10 o'clock tomorrow on the regulations which are involved with this program at the Cost of Living Council office.

Secretary Shultz.

Secretary SHULTZ. I would like to just summarize the actions and requests the President is making this evening.

First in terms of the actions is a freeze for a maximum of 60 days on prices. It does not influence rents, wages, interest and dividends, which continue under the present control arrangements.

Raw agricultural products are also exempt from the freeze. During the 60 days, or less, if it can be worked out that way, we hope that the following things can happen.

First, that Congress can act on some matters that the President now has before them and on one particular matter that is put forward in the President's speech tonight and which we will be sending up tomorrow.

The areas for congressional actions are, first of all, authority for the President to reduce tariffs in the case of commodities where prices are rising rapidly and that are in scarce supply. This is a request that was made on March 29th, I believe, in his speech; authority to sell the surplus stockpiles, authority that we have asked from the Congress, I think, several weeks ago; authority for a farm bill that encourages production rather than high prices.

Fourth, let's get the Alaska pipeline built. That, of course, is a long-term matter. Finally, in terms of things that are currently before the Congress and obviously, this can't be completed, but it is a continuing proposition—hold the line on the budget so that our basic fiscal stance is maintained.

Finally, in terms of new legislation needed in order to make this freeze and the following program, Phase IV, or whatever it will turn out to be called, work, is the need for an ability to control exports and authority more flexible than that which is now in our hands.

So, during the 60 days we look for a lot of action by the Congress. We also expect a wide amount of consultation on what programs should follow the freeze. It is clear that the Phase IV program will have a greater element of mandatoriness, pre-notification and so forth, in it, but precisely what its structure should be, both in terms of the institutions of administration and the rules, is something that we expect to get from the consultation process.

It will be a strong controls program. I might say also, during the freeze we expect to be examining the reports now coming to hand on the first quarter of this year and where we find prices to have risen beyond those allowed in the Phase III rules, we will roll those prices back to what has been allowed.

I might say also that we will change the base from the August 15th and then audit trail base up to the present to a January 10th base.

As I am sure most of you realize, during Phase I and Phase II, there were many prices well below what they were allowed to be. That is, the market was effectively holding prices down. During the surge in the economy during the fourth quarter and the first quarter of this year, much of that water was taken out of the system, but there is still some and we can take that out by referencing the January 10th date as the base period date.

Well, that is a quick summary of the program and we are here to take your questions.

Question. Mr. Secretary, why couldn't you move directly into Phase IV? Did you not have enough proposals, wit or imagination to do it? Why did you need the 60-day period?

Secretary SHULTZ. Because it serves a number of functions. First of all, it does provide again the kind of shock treatment that we think is called for and the President feels is called for at this point in time. It does take some time to put a Phase IV program in place and to consult about it.

We have had a period, in many ways too long a period, in which discussion of a freeze has taken place, and it has tended to be inflationary in itself, and I think the feeling is we had better just sort of clamp the lid on and then put the follow-on program into place.

Those are some of the reasons why the President decided to move with this freeze up to a maximum of 60 days.

Question. Mr. Secretary, will the enforcement staff be enlarged at the COLC?

Secretary SHULTZ. Yes, there will be an increase in staff, probably a fairly large increase in staff, both at the COLC and at the Internal Revenue Service, to be able to carry out not only the freeze, but the follow-on program.

Question. How do you reconcile this action with all the economic garbage that you and Mr. Stein gave against a freeze during the past few weeks? Are all of those economic arguments inoperative now?

Secretary SHULTZ. The economic arguments that we have given are in terms of the basic things that need to be done to solve this problem, and they go primarily to the problem of increasing supplies, and the things of that kind.

Now, I think the freeze, and also the export controls to a certain extent, are a case of demand creating its own supply, so to speak. That is, there has been so much talk about these things, they have created such a stir, so much speculation, that the anticipatory increases of various kinds and no doubt a lot of anticipatory contracting of potential exportable goods, that in a sense you get forced to move in this way.

Question. Isn't this an admission that Phase III was a failure?

Secretary SHULTZ. Everybody thinks Phase III was a failure. We are not arguing about that. I mean, you all think so. There are a few little good nuggets around, but we don't have to argue about that.

Question. Phase IV sounds an awful lot like a repeat of Phase II. What will the differences be?

Secretary SHULTZ. That remains to be seen. We will examine Phase II. We will examine Phase III, our experiences, and try to develop a program in cooperation with people with whom we consult that is suited to the new situation.

The situation to be faced in 1973 is very different from that faced at the end of 1971 and '72 in terms of the strength of markets, as is apparent from what it means to change this base date, and so we want to try to adapt this program to be appropriate for the circumstances.

It may very well have a lot of resemblance to Phase II, but that remains to be seen. We want to examine it.

Question. Will it be tougher than Phase II, Mr. Secretary?

Secretary SHULTZ. I don't know. We are going to consult, and we will see what kind of a program is put into place. Obviously, it is going to be tougher in some respects. Phase III is tougher than Phase II insofar as food is concerned. We will have to make it tougher yet in terms of export controls—that is the key here—in terms of keeping a more sizeable fraction of the total produce here at home.

In other respects, it may be looser. On the whole, in Phase III, the wage side has worked very well, and so we will have to examine that and see what changes, if any, should be made. Phase IV will treat wages and prices in an equitable manner. There is no point in disturbing something that is working well.

Question. Why didn't you put in a rent control?

Secretary SHULTZ. For two reasons. First, the broad one, that rent controls tend to produce poor housing, and in the long run are self-defeating, so we don't want to get embedded in that.

Second, while we had a little bulge when rent controls were removed in January, that has proven to be temporary. If you look at the indexes, the rate of increase each month has come down and it is now down to, I think, three-tenths in the most recent months, which is a tolerable level.

Now, there are problems in local areas that can be worked at, but it is not a national problem, so it does not need to get back into this box.

Question. Mr. Secretary, the President says that Phase IV will recognize the need for wages and prices to be treated consistently, and that is also singled out in the fact sheet. What does that signify?

Secretary SHULTZ. What that signifies is that we recognize that during this maximum of 60 days, prices are frozen, wages remain under the Phase III rules. Now, we don't expect that in Phase IV you can be so different about the way you treat wages and prices.

However, so the price side will move to some kind of a control mechanism other than a freeze, that deals with inequities and reasons for increases and so forth, as Phase II did, as any price control program does, there will be a program of that kind on the wage side.

What it will be exactly remains to be seen. There is a program of that kind now, and maybe what we have now will be sufficient, but that remains to be seen, and in consultation we will work that out.

Question. Will food, health and construction remain subject to the Phase III rules for wages, but subject to freeze on the price side during this time?

Secretary SHULTZ. Yes.

Question. Yes?

Secretary SHULTZ. It was easier just to say yes. (Laughter) You can read it in the transcript.

Question. No, seriously. She may have asked if you were guilty and you said yes. (Laughter)

Secretary SHULTZ. The question was whether or not on the wage side, if I am correct, in food, health and construction, it remains as it is, but prices are frozen on the price end. That is correct.

Question. Mr. Secretary, can this program work effectively if you don't get what you are asking for on the export side?

Secretary SHULTZ. It will be very difficult, because if we in some manner succeed in holding domestic prices below world prices, then without export controls, all of our commodities will just go abroad, so we will have low prices and nothing to buy. So, the two things have to work together.

Question. Can you give us some examples of the exports you tend to limit by control?

Secretary SHULTZ. The Secretary of Commerce has sent out now—and you have in your packet the form and so forth that he is using—a requirement that exporters report to him by June 20th all of their existing forward contracts, and the President has said we will honor the contracts the country has made that are in place now. He is also stating that new contracts for export that are made must be reported within three days. So, we will then have a picture of what is going on. That is a much better picture of the forward market situation than we now have.

We then are asking for authority that is more flexible than the authority that we now have, which we don't think from a legal standpoint is too usable, to impose export controls if that seems necessary, and the commodities—I think somebody was asking what are the critical commodities here. I don't want to give a complete list. They are in this handout, but wheat, rice, barley, corn, soybeans, those are the types.

Question. Mr. Secretary, wasn't the Russian wheat deal a mistake?

Secretary SHULTZ. No, the desire here is to open up markets for American farm products. This is good for us and will continue to be good for us. We are trying now to take advantage of the fact that we have big world markets opening up, as well as a fantastic market here at home; to encourage a different kind of agricultural policy where farmers can make a high income from high production and reasonable prices, rather than seeking to limit production through our agricultural policy and have high income from high prices.

We have had a long period dominated by the latter policy. We have accumulated large stocks, and the effort to sell those stocks and open these markets is an important long-term problem. Now we have an immedaite problem that has arisen from a number of things, including the terrifically bad break we have had in the weather, not only here but abroad, but we look for large crops this year, and once we have those and are underway with this, we will be wanting those markets. They will be good for us both in our balance of trade and on the farm income side.

Question. Mr. Secretary, how can you limit exports and ask at the same time the EEC to reduce their CAP system?

Secretary SHULTZ. Very easily. We will just ask and argue. (Laughter) We intend to be a reliable supplier. We are a reliable supplier. We can produce these products at costs well under the costs in other parts of the world, so we have a great comparative advantage in this area.

We are talking here about a temporary effort to get our own situation under control, and at the same time, in terms of our trade negotiations, the major negotiations opening in the 24–6 negotiations you are probably referring to, that looks to the long-term implications of farm markets for our products.

Question. Do you rule out for Phase IV any surcharge like August 15th? Do you rule it out now?

Secretary SHULTZ. Yes. There is no proposal for a surcharge.

Question. Mr. Secretary, do you anticipate any export controls on anything but agricultural products?

Secretary SHULTZ. There may be.

Question. Gasoline?

Secretary SHULTZ. Maybe you haven't noticed. We have been importing on the energy side lately.

Question. Still on the export question, aren't you setting yourself up for a surge of exports with this announcement prior to any Congressional legislation?

Secretary SHULTZ. We are stating that as of when the President speaks tonight, new contracts made will, if an export control is put in, be subject to whatever allocation process is involved, so that what people have managed to do prior to this announcement, well, they have that in the bin, but from here on out it is not going to get grandfathered.

Question. That depends on the legislation going through Congress?

Secretary SHULTZ. Oh, yes. We have to have cooperation from Congress in many respects, not only in this respect, if we are going to control inflation. We can't have the Congress voting to raise farm prices with a farm bill on the one hand, refusing to give us the authority we need on the export controls and at the same time saying control wages and prices. You just can't have everything at once that way.

Question. Was a consideration given to a freeze on raw agricultural products prior to the time the Congress would have passed such export legislation you are asking for?

Secretary SHULTZ. The people who know most about that subject don't see how it is possible to do it. It just seems to be a very difficult technical matter to do, and raises lots of long-term problems about the supply when you intervene that directly on that particular category of products. It was not done during World War II or the Korean War. It has been some thing people have stayed away from, and I think there are probably some pretty good reasons for doing that.

Question. Would you tell us about your consultation process? Did you talk to leaders of labor and export and consumer groups and what reactions did you get, and could you tell us also what disapproval, if any, there was?

Secretary SHULTZ. Well, the President is announcing his program tonight. We haven't announced this program to anybody in the course of the general discussions and consultations. That is, for example, on Monday the President met for, I guess, two and one-half hours with the Labor Management Advisory Committee.

He had a wide-ranging discussion, sort of analyzing the situation as we saw it and others saw it, various possible things that might be done, what did they think about them and so forth.

The President didn't say I am thinking about doing "X" and what do you think of it. So, you will have to ask them their reactions when they see the President's full program.

Question. Do I understand that these export reports are to be confidential and not to be made public?

Secretary SHULTZ. The flow of information generated by them—I don't want to make some statement that will get the Secretary of Commerce in trouble.

Question. It says "confidential information" on the form.

Secretary SHULTZ. There has to be a difference between the particular company's contract and our flow of statistical information generated by the total picture and just what the situation will be on that, I think I had better pass and leave to the Secretary of Commerce. We will have an answer for that, I hope, by the time of the ten o'clock briefing tomorrow.

Question. Tonight the President is telling America's housewife that the only prices not covered will be those of unprocessed agricultural products at the farm level. What is she supposed to think that means, that raw food prices will continue to go up tomorrow in the supermarket or they will not?

Secretary SHULTZ. She is also told that prices at retail are frozen.

Question. Does that include raw products?

Secretary SHULTZ. The answer is yes.

Question. Lettuce, butter, eggs and so on?

Dr. DUNLOP. The answer is found in Section 3 of the Executive Order.

Question. Are also industrial commodities frozen, too, like metals?

Secretary SHULTZ. Yes.

Question. Mr. Secretary, given the kind of inflation that occurred in January after Phase III went into effect, is it realistic to expect a return to the free market system that the President talks about during the life of the Administration?

Secretary SHULTZ. Yes. The basic problem I think we had, as we moved into Phase III, was not so much with the areas that you commonly think of programs like Phase II or Phase III as covering, but other areas, primarily food products, and internationally traded raw materials.

And we were hit by a combination of factors there, I think, and if we pursue our policy correctly, we are unlikely to get hit with it in just that manner, particu-

larly if we are successful in expanding greatly, as we are trying to do, the supplies of agricultural products.

So, if we can keep a strong fiscal policy in place, as the President is recommending, if we can have monetary policy consistent with that, and bring the economy to a sort of soft landing on a 4 percent rate of growth, and get this farm produce coming, we again will have a chance to try to re-enter.

Question. Mr. Secretary, was a rollback in prices considered and, if so, why was it not adopted?

Secretary SHULTZ. There is—I don't know whether you want to call it a rollback or not. You notice that the freeze applies to the first week in June. That is the base period. So, that is a slight rollback, and that is in recognition of the way in which continuous discussion of freezes, when it is possible for the President to act, tends to drum up prices.

Second is the effort that will be made with the IRS profit sweep to identify companies which have raised prices beyond the Phase III rules. Now, where they are found, they will be rolled back. So the freeze level for them will become whatever that rollback level is, if violations are found.

Third, I think the impact of changing the base from essentially August '71 to January '73 will have some considerable impact on the number of industries.

Question. What is the present rate of the annual rate of inflation?

Secretary SHULTZ. It depends on how you calculate it. We have some charts.

Question. What figures are comparable to 3.4 at the end of last year?

Secretary SHULTZ. The problem with answering your question—and I can give you 12 different answers, if you want—is what period you are covering. Now, if you say what is the analyzed rate for the last month or the last three or four months, you are in the area of around 9 percent.

If you say what is the rate over the past year, so that you get that round of experience, then it turns out to be something on the order of about 5 pecent, I guess, reading this chart. In your chart book there is kind of an interesting one that you might want to look at. It is called "International"——

Question. Give us the Phase III rate of inflation?

Secretary SHULTZ. Just a second. This is a terrific chart from my point of view, so I want to get it across to you. (Laughter) It is called "International Inflation" and here we have August '71, and the higher on the chart you are, the higher you are.

Here is United Kingdom, Japan, West Germany, Italy, France, U.S., Canada. Here is April '73. We are taking the most recent months. These are OECD figures. Italy, Japan, United Kingdom, West Germany, France, Canada, U.S. We are doing terribly, but we are doing better than most anybody else.

Dr. Dunlop informs me that the charts will be distributed to you at the door.

Question. We were directed to read Section 3, and may I suggest——

Secretary SHULTZ. Nobody directs you fellows to do anything. Don't give me that.

Question. You suggested that we read Section 3, and may I suggest that is not written in housewifely or housemaley language? May I suggest an interpretation to see if I am correct; that is, that all food prices at retail level for the most part are frozen. Is that correct?

Dr. DUNLOP. All food.

Secretary SHULTZ. That is really not very good housewifely language, if you have been shopping lately. Most things are in frozen packages, but some stuff is fresh. (Laughter)

Question. Mr. Secretary, what does this do to the steel and copper price indexes?

Secretary SHULTZ. The price increases in effect in the first week in June are the prices that are frozen. The fact that someone has announced an increase prospectively doesn't mean they can increase the prices. The increases in effect are there so those prices will not rise during the freeze period.

Question. Mr. Secretary, how confident are you personally that this will work as opposed to the Phase III program? How chancy and risky is it in your personal opinion?

Secretary SHULTZ. I think the analysis here goes more or less along this line, but we have felt as some of you have pointed out, that this situation would moderate and we have tried to give reasons for that.

Now, there are two problems with that. One, it takes patience, and two, it is a risk. Maybe it will, and maybe it won't. So, this is by way of saying you are not going to take the risk or wait that long and we will try to sort of cut off the tops here and hope that the basic policies will be working and the control system can ride the basic policies down the way it was done in Phase II.

Question. Mr. Secretary, is it now unlikely that the Administration will ask Congress to increase the federal gasoline tax?

Secretary SHULTZ. Yes, that is very unlikely.

The PRESS: Thank you, gentlemen.

[End at 7:45 P.M., e.d.t.]

## ANTI-INFLATION LEGISLATION INITIATIVES

Requests for Congressional action to help in the fight against inflation:

—For authority to reduce tariffs temporarily in selected cases to increase supplies.

—For farm legislation that permits farmers to earn higher incomes through greater production, rather than higher prices.

—For authority to dispose of more surplus materials.

—For continuation of efforts to improve productivity.

—For authority to build the Alaska pipeline to increase supplies of petroleum.

—For authority to control exports if necessary to stabilize domestic prices.

—Most important of all, for cooperation on holding down the budget.

*Anti-Inflation Trade Bill*

Would authorize the President to reduce or suspend temporarily any duty applicable to any article and to increase temporarily any value or quantity of articles which may be imported whenever the President determines that supplies are inadequate to meet domestic demand at reasonable prices.

This bill would give the President the authority to allow greater imports and thus increase supplies when excess demand is pushing prices higher.

*Farm Policy*

The Administration has recommended substantial changes in the pending farm legislation to allow farmers to increase production and increase farm incomes through volume increases, rather than price increases. The goals of the recommended changes are to reduce government intrusion into the farm commodity marketplace and to allow farmers the opportunity to produce for expanding domestic and international demands. The Nation wants and needs expanded supplies of reasonably priced farm commodities.

Unfortunately, the Agriculture and Consumer Protection Act of 1973, as passed by the Senate, fails to incorporate these policy objectives. The bill, unless it is modified by the House, would set target prices for agricultural products at levels higher than consumers should have to pay. It would require enormous budget outlays which would weaken the battle against inflation on the fiscal front. It would require a greater degree of government intervention in the agricultural marketplace than is necessary, thus unduly restricting farmer freedom and increasing costs to consumers and taxpayers.

*Stockpile legislation ("To authorize the disposal of various materials from the National Stockpile . . .")*

Would allow GSA to offer for sale certain materials held in the National Stockpile which have been determined to be in excess of government needs.

Since several of the materials proposed for disposal are in short supply, selling these materials would tend to increase the available supply and thus moderate price increases.

*Extension of National Commission on Productivity*

Extends the activities of the National Commission on Productivity for another year and outlines some new objectives and functions for the Commission, including concentration on the international competitive position of the United States and the cost of goods and services which are considered necessary to fulfill the most basic needs of Americans. By enhancing productivity through new forms of labor management cooperation, wages can be increased without putting pressure on prices.

*Trans Alaska Pipeline*

Would remove the outdated statutory restriction on right-of-way width, which has halted construction of the Trans Alaska pipeline by amending the Mineral Lands Leasing Act of 1920.

This bill would eliminate another of the legal obstacles which have delayed oil supplies the United States needs to help resolve the energy crisis.

*Export Control Act*

The Administration is submitting a proposal to give the President authority to impose export controls temporarily whenever he determines such action is necessary to stabilize domestic price levels. The President would also be able to allocate exports to prevent undue distortion of world trade.

## A BILL

To further amend the Economic Stabilization Act of 1970, as amended, to authorize the President to prohibit or curtail the exportation of articles, commodities or products from the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* that section 203 of the Economic Stabilization Act of 1970, as amended, is further amended by adding at the end thereof the following new subsection:

"(k) Notwithstanding any other provision of law, the President is authorized by orders and regulations, whenever he determines such action to be appropriate to stabilize prices, rents, wages and salaries, to prohibit or curtail in such manner and upon such conditions as he deems appropriate for such purposes, the exportation from the United States, its territories and possessions, of any articles, commodities or products. In prescribing orders and regulations under this subsection, the President may allocate exports, amounts or quotas on such basis as he determines to be in the national interest, including allocation on a country, regional, or other geographical basis so as to prevent undue distortion of world trade."

### Statement of Purpose and Need

The unrestrained exportation of certain articles, commodities, and products can lead to disruption of the Economic Stabilization Program that was initially established on August 15, 1971, by President Nixon under the Economic Stabilization Act of 1970. Legislative authority is needed to expressly allow the President to combat such disruptive exports. Specifically, the legislation would authorize the President by orders and regulations, whenever he determines such action to be appropriate to stabilize prices, rents, wages and salaries, to prohibit or curtail in such manner and upon such conditions as he deems appropriate for such purposes, the exportation from the United States, its territories and possessions, of any articles, commodities or products. In prescribing orders and regulations under the legislation, the President may allocate exports, amounts or quotas on such basis as he determines to be in the national interest, including allocation on a country, regional or other geographical basis so as to prevent undue distortion of world trade. The duration of this authority to prohibit or curtail exports would coincide with that of the Economic Stabilization Program, i.e., it would expire at midnight, April 30, 1974.

### SECTION 376.3 AGRICULTURAL COMMODITIES REQUIRING REPORTS

(a) *Exports and Anticipated Exports of Certain Grains, Oil Seeds, and Oilseed Products.*

(*1*) *Initial Report of Unfilled Orders.*—No later than June 20, 1973, each U.S. exporter shall file a report of all anticipated exports (as hereinafter defined) of more than $250 of each separate agricultural commodity listed in Supplement No. 1 of this Part 376. Such report will provide the tonnage (in metric tons) of such anticipated exports as of the close of business June 13, 1973. The commodities subject to the reporting requirement set forth herein shall be listed by the appropriate number in Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, U.S. Bureau of the Census, as set forth in Supplement No. 1 and in the case of wheat also by the separate classes of wheat set forth in Supplement No. 1; by country of ultimate destination; and by month of scheduled or anticipated export. For optional sales, the report shall include that portion of the sale expected to be exported from the United States or in the case of optional class or kind of grain, the report shall include the particular class or kind of grain expected to be exported.

A separate report shall be filed on the appropriate Form DIB–634P (a) through (i) "Anticipated Exports" for each of the nine agricultural commodity is promulgated in series (a) through (i) inclusive, so

grouping listed in Supplement No. 1. Form DIB–634P that each of the nine commodity groupings has its own particular form, designated by color coding.

(2) *Subsequent Reports.*—On June 25, 1973, and on the first business day of each week thereafter, each U.S. exporter shall file a report on the appropriate Form DIB–634P setting forth as of the close of business the preceding Friday all anticipated exports of more than $250 for each separate commodity set forth in Supplement No. 1. Such report shall be made on the same basis as and shall contain all data required under (1) above. Such report shall also have attached a reconciliation of all changes from the prior report which will show in aggregate form all new anticipated exports of more than $250; all cancellations of, or changes in, orders previously reported; a breakdown showing whether such cancelled orders were accepted on or before June 13, 1973 or accepted after June 13, 1973; all exports made since the closing date of the prior report, whether or not such exports were made against reported or accepted orders; a breakdown of exports showing whether they were against orders accepted on or before June 13, 1973 or against orders accepted after June 13, 1973; any changes in the quantities to be exported to particular countries; any changes in the month of scheduled or anticipated export; and in the case of optional sales any change in the particular class or kind of grain expected to be exported from the U.S. Such reconciliation shall be filed on Form DIB–635P which is also promulgated in series (a) through (i) inclusive. If there are no changes on a line of information from the prior report, the information contained in the prior report shall not be repeated but Form DIB–634P shall nevertheless be submitted with the statement "no change" entered in its face; in such case, Form DIB–635P need not be filed. If there are changes, even though these do not result in changes in the aggregates because they are offsetting, Form DIB–635P shall be filed showing such changes.

(3) *Reporting Requirements:*

(i) *Manner of reporting.*—All reports required under this Part 376 must be filed in an original and one copy with the Office of Export Control (Attn: 547), U.S. Department of Commerce, Washington, D.C. 20230. Such reports shall be deemed filed when actually received by the Office of Export Control.

(ii) *Date of export.*—For purposes of Section 376.3 only, a commodity shall be considered as scheduled for export on the date the exporting carrier is expected to depart from the United States.

(iii) *Corrections.*—If, because of a carrier's earlier or delayed departure or for other reasons, data reported pursuant to (ii) above are found to have been incorrect, such facts shall be set forth on Form DIB–635P (a) through (i) and corrected data shall thereafter be set forth on the appropriate Form DIB–634P(a) through (i).

(iv) *Who shall file reports.*—For purposes of Section 376.3 only, in order to prevent duplication as well as to insure complete and accurate coverage of pending orders and shipments, the exporter as the principal party in interest in the export transaction will have the sole responsibility of reporting any and all information even though there may also be a U.S. order party involved. The exporter will have the sole responsibility of reporting the anticipated exports whether the exporter employs a freight forwarder to handle the shipping of the material or delivers the material to a carrier for export out of the country.

(v) The term "anticipated export(s)" as used herein and in the Reporting Forms means exports expected which are based upon accepted orders which are unfilled in whole or in part or upon other firms arrangements, such as exports for the exporters own account. It does not include merely hoped-for sales for export or anticipated orders.

[Supplement No. 1 to Part 376]

*Agricultural commodities subject to monitoring*

| Schedule B number | Commodity description |
|---|---|
| | *Group I—Wheat* |
| 041.0020 | Wheat—Hard red winter. |
| 041.0020 | Wheat—Soft red winter. |
| 041.0020 | Wheat—Hard red spring. |
| 041.0020 | Wheat—White. |
| 041.0020 | Wheat—Durum. |
| | *Group II—Rice* |
| 042.1010 | Rice in the husk, unmilled. |
| 042.1030 | Rice, husked, long grain. |
| 042.1040 | Rice, husked, medium grain. |
| 042.1050 | Rice, husked, short grain. |
| 042.1060 | Rice, husked, mixed. |
| 042.2022 | Rice, parboiled, long grain. |
| 042.2024 | Rice, parboiled, medium grain. |
| 042.2026 | Rice, parboiled, short grain. |
| 042.2028 | Rice, parboiled, mixed grain. |
| 042.2030 | Rice, milled, containing 75 percent or more broken kernels. |

[Supplement No. 1 to Part 376]

*Agricultural commodities subject to monitoring*—Continued

| Schedule B number | Commodity description |
|---|---|
| 042.2050 | Rice, milled, long grain, containing less than 75 percent broken kernels. |
| 042.2060 | Rice, milled, medium grain, containing less than 75 percent broken kernels. |
| 042.2070 | Rice, milled, short grain, containing less than 75 percent broken kernels. |
| 042.2080 | Rice, milled, mixed grain, containing less than 75 percent broken kernels. |
| | *Group III—Barley* |
| 043. 0000 | Barley, unmilled. |
| | *Group IV—Corn* |
| 044. 0020 | Corn, except seed, unmilled. |
| | *Group V—Rye* |
| 045. 1000 | Rye, unmilled. |
| | *Group VI—Oats* |
| 045. 2000 | Oats, unmilled. |
| | *Group VII—Grain sorghums* |
| 045. 9015 | Grain sorghums, unmilled. |
| | *Group VIII—Soybeans and soybean products* |
| 081. 3030 | Soybean oil-cake and meal. |
| 221. 4000 | Soybeans. |
| | *Group IX—Cottonseeds and cottonseed products* |
| 081. 3020 | Cottonseed oil-cake and meal. |
| 221. 6000 | Cottonseed. |

RAUER H. MEYER
*Director, Office of Export Control*

## Fact Sheet on Agricultural Exports

TABLE 1.—*Exports of U.S. agricultural products, 1969 to 1972 calendar years*

[In millions of dollars]

| | Specified Government programs [1] | Commercial | Total |
|---|---|---|---|
| 1969 | 1, 579 | 4, 357 | 5, 936 |
| 1970 | 2, 005 | 5, 254 | 7, 259 |
| 1971 | 2, 469 | 5, 224 | 7, 693 |
| 1972 | 2, 592 | 6, 812 | 9, 404 |

[1] Includes shipments under Public Law 480, mutual security and barter programs; and shipments financed by credit from the Export-Import Bank and the Commodity Credit Corporation.

TABLE 2.—*U.S. agricultural exports under Public Law 480 program, 1971 and 1972 calendar years* [1]

[In millions of dollars]

| Commodity | 1971 | 1972 |
|---|---|---|
| Total | 1, 068. 7 | 1, 065. 4 |
| Wheat and wheat flour | 372. 6 | 355. 9 |
| Feed grains | 74. 7 | 91. 4 |
| Rice | 133. 6 | 238. 2 |
| Dairy and animal products | 140. 2 | 75. 0 |
| Oilseeds and products | 116. 8 | 112. 2 |
| Other [2] | 230. 8 | 192. 7 |

[1] Includes $87,000,000 under Mutual Security (AID) programs in 1971.
[2] Including cotton and unmanufactured tobacco.

*Supply and use of grains and animal feed products*
*Agricultural commodities subject to monitoring*

[In millions of bushels]

| Item | 1970-71 | 1971-72 | 1972-73 estimate |
|---|---|---|---|
| Corn [1]: | | | |
| Supply | 5, 161 | 6, 309 | 6, 680 |
| Use | 4, 494 | 5, 183 | 5, 830 |
| Domestic | 3, 977 | 4, 387 | 4, 780 |
| Export | 517 | 796 | 1, 050 |
| Ending stocks, Sept. 30 | 667 | 1, 126 | 850 |
| Wheat [1]: | | | |
| Supply | 2, 237 | 2, 350 | 2, 409 |
| Use | 1, 506 | 1, 487 | 1, 976 |
| Domestic | 768 | 855 | 826 |
| Export | 738 | 632 | 1, 150 |
| Ending stocks, June 30 | 731 | 863 | 433 |
| Soybeans [1]: | | | |
| Supply | 1, 357 | 1, 275 | 1, 355 |
| Use | 1, 258 | 1, 203 | 1, 315 |
| Domestic | 824 | 787 | 825 |
| Export | 434 | 416 | 490 |
| Ending stocks, Aug. 31 | 99 | 72 | 40 |

[1] Crop years: Corn, Oct. 1-Sept. 30; wheat, July 1-June 30; soybeans, Sept. 1-Aug. 31.
Source: U.S. Department of Agriculture.

The President announced today that he is seeking legislation to give him new authority to prohibit or curtail the exportation of articles, commodities, and products from the United States and its territories and possessions. The unrestrained growth of certain exports has necessitated the seeking of such authority to enable the government to prevent disruption of the Economic Stabilization Program, which the Administration initially established on August 15, 1971, under the Economic Stabilization Act of 1970. The legislation being sought would expressly authorize the Administration to combat such disruptive exports, authority which is currently lacking under the Economic Stabilization Act. The legislation, which would take the form of an amendment to the Economic Stabilization Act of 1970, would expire at midnight, April 30, 1974.

This legislation is necessary because the President has been advised that under current conditions the present export control authority under the Export Administration Act may not be usable, and a more rapid and flexible system is desirable.

## EXPORT REPORTING

The reporting requirement imposed by the President requires all exporters to report to the Department of Commerce by Wednesday, June 20, 1973, all anticipated exports as of July 13 of a large number of grains, oilseeds, and oilseed products. This includes both exports for which an exporter has an order and those he will ship for his own account. It is a rigorous and detailed reporting requirement.

As a result of the reporting requirement, the Administration will be able to make an accurate determination of demand for the products involved and thus be able to better predict changes in the prices of these commodities. Prior to institution of this program, it was only possible to determine the actual export shipments of the commodities, and this information was available only after a considerable time lag. Under this new program the Administration will be able to determine the amount of anticipated exports prior to shipment, and will also have current information on both shipments and orders. On the basis of the information that will be obtained, the Administration will be in a position to determine whether restrictions on exports of these commodities may have to be imposed at some future date.

Under the reporting requirements, anticipated exports must be listed for the various separate classes of grains, oilseeds and oilseed products. The reports must show the anticipated months of shipments, countries of ultimate destination and aggregate quantities to be exported.

The reports must be updated every Monday for changes in anticipated export, changes in existing orders and shipments occurring in the prior week.

Orders accepted after the date of the President's announcement are distinguished from orders accepted on or prior to the President's announcement. Exporters reporting shipments must designate whether they are against pre-announcement orders or post-announcement orders.

Notice is given to exporters that if controls on exports are imposed, orders accepted or arrangements for exports made after the date of the President's announcement but unshipped on the date of controls may be fully subject to whatever restraints are imposed. In addition, exports made after the President's announcement based upon orders or arrangements made after the announcement may be included in whatever export quotas would later be established. (See Department of Commerce, Export Bulletin 84A.)

FORM DIB-635P-a

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
OFFICE OF EXPORT CONTROL

**REPORT OF EXPORTS, NEW AND CHANGED ORDERS AND RECONCILIATION OF ANTICIPATED EXPORT REPORT DATA FOR WEEK ENDING FRIDAY _____, 1973**

**GROUP I - WHEAT**

(To be treated as confidential information under Section 7 (c) of the Export Administration Act of 1969, as amended)

| Name and Address of Exporter<br>_____<br>_____<br>_____ | COUNTRY<br>_____ | COUNTRY<br>_____ | COUNTRY<br>_____ |
|---|---|---|---|
| Name and Title of Person authorized to execute this form<br>_____<br>_____ | CLASS<br>_____ | CLASS<br>_____ | CLASS<br>_____ |
| _____<br>_____ | MONTH<br>_____ | MONTH<br>_____ | MONTH<br>_____ |
| | METRIC TONS | METRIC TONS | METRIC TONS |
| 1. Quantity on previous report | | | |
| 2. Exports during week against orders accepted on or before June 13, 1973 | | | |
| 3. Exports during week against orders accepted after June 13, 1973 | | | |
| 4. Other Exports during week | | | |
| 5. a. Orders cancelled ( accepted before June 14, 1973) | | | |
| b. Orders cancelled (accepted after June 13, 1973) | | | |
| 6. Change in destination for orders previously reported ( show + or -) | | | |
| 7. Change in month of anticipated export for orders previously reported (show + or -) | | | |
| 8. New orders accepted | | | |
| 9. Other (including firm arrangements for anticipated exports for your own account | | | |
| 10. New aggregate | | | |

*CERTIFICATION: I certify that the information reported on this and the accompanying _____ pages is an accurate statement of all exports in new, changed or cancelled orders, changes in destination, changes in anticipated date of export, and reconciliation of anticipated export report data.*

SIGNATURE _____ DATE _____

FORM APPROVED, OMB

FORM D18-634P-b
18-731

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
OFFICE OF EXPORT CONTROL

## GROUP II - RICE

## ANTICIPATED EXPORTS AS OF JUNE 13, 1973 OR WEEK ENDING FRIDAY, _____ 1973

See special instructions on reverse

(To be treated as confidential information under Section 7(c) of the Export Administration Act of 1969, as amended)

| MONTH OF ANTICIPATED EXPORT | SCHEDULE B NUMBERS | QUANTITY IN METRIC TONS TO BE SHIPPED TO COUNTRIES LISTED (Write in countries of ultimate destination immediately below and insert quantities opposite appropriate Schedule B Nos.) | | | | | | TOTAL |
|---|---|---|---|---|---|---|---|---|
| | | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | |
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| TOTAL → | | | | | | | | |

IF MORE SPACE IS REQUIRED USE ADDITIONAL COPIES OF FORM D18-634P-b

NAME AND ADDRESS OF EXPORTER

NAME AND TITLE OF PERSON AUTHORIZED TO EXECUTE THIS FORM

*CERTIFICATION: I certify that the information reported on this and the accompanying _____ pages is an accurate statement of all anticipated exports of more than $250 of rice in Group II by the exporter on the basis of accepted orders or other firm arrangements.*

SIGNATURE OF AUTHORIZED PERSON AND DATE SIGNED _____

INSTRUCTIONS

(1) For detailed instructions, before filling out this form refer to § 376.3 of the Export Control Regulations, 15 C.F.R. Part 376, also reproduced in Export Control Bulletin No. 84(a).

(2) This report form shall be used for the first report to set forth all anticipated exports of one commodity involved as of the close of business June 13, 1973 which are based upon orders which are unfilled in whole or in part or upon other firm arrangements, such as exports for the exporter's account.

Thereafter, this report form shall be filed weekly on the first business day of each week and shall curtain all such anticipated exports as of the close of business the Friday preceding the date of the report. If there are no changes in a line of information from the last report filed, the line should be identified by filling in the month and commodity description or number called for and the words "NO CHANGE" shall be written on one line.

(3) Schedule B Numbers are contained in the U.S. Bureau of Census, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, which are set forth in Supplement No. 1 of Part 376 of the Export Control Regulations.

FORM DIB-634P-C (6-73)

**GROUP III - BARLEY (Schedule B No. 043.0000)**

**ANTICIPATED EXPORTS AS OF JUNE 13, 1973 OR WEEK ENDING FRIDAY, _____ 1973**

See special instructions on reverse

(To be treated as confidential information under Section 7(c) of the Export Administration Act of 1969, as amended)

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
OFFICE OF EXPORT CONTROL

| MONTH OF ANTICIPATED EXPORT | QUANTITY IN METRIC TONS TO BE SHIPPED TO COUNTRIES LISTED (Write in countries of ultimate destination below and insert quantities) | | | | | | | TOTAL |
|---|---|---|---|---|---|---|---|---|
| | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | |
| MONTH OF _____ | | | | | | | | |
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| TOTAL → | | | | | | | | |

IF MORE SPACE IS REQUIRED USE ADDITIONAL COPIES OF FORM DIB-634P-b

NAME AND ADDRESS OF EXPORTER

NAME AND TITLE OF PERSON AUTHORIZED TO EXECUTE THIS FORM

*CERTIFICATION: I certify that the information reported on this and the accompanying _____ pages is an accurate statement of all anticipated exports of more than $250 of barley in Group III by the exporter on the basis of accepted orders or other firm arrangements.*

SIGNATURE OF AUTHORIZED PERSON AND DATE SIGNED _____

INSTRUCTIONS

(1) For detailed instructions, before filling out this form refer to § 376.3 of the Export Control Regulations, 15 C.F.R. Part 376, also reproduced in Export Control Bulletin No. 84(a).

(2) This report form shall be used for the first report to set forth all anticipated exports of one commodity involved as of the close of business June 13, 1973 which are based upon orders which are unfilled in whole or in part or upon other firm arrangements, such as exports for the exporter's account.

Thereafter, this report form shall be filed weekly on the first business day of each week and shall curtain all such anticipated exports as of the close of business the Friday preceding the date of the report. If there are no changes in a line of information from the last report filed, the line should be identified by filling in the month and commodity description or number called for and the words "NO CHANGE" shall be written on one line.

(3) Schedule B Numbers are contained in the U.S. Bureau of Census, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, which are set forth in Supplement No. 1 of Part 376 of the Export Control Regulations.

FORM APPROVED, OMB

FORM DIB-634P-a
10-731

## GROUP I - WHEAT

## ANTICIPATED EXPORTS AS OF JUNE 13, 1973 OR WEEK ENDING FRIDAY, _____ 1973

See special instructions on reverse

(To be treated as confidential information under Section 7(c) of the Export Administration Act of 1969, as amended)

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
OFFICE OF EXPORT CONTROL

| MONTH OF ANTICIPATED EXPORT | CLASS OF WHEAT | QUANTITY IN METRIC TONS TO BE SHIPPED TO COUNTRIES LISTED (Write in countries of ultimate destination immediately below and insert quantities opposite appropriate class) | | | | | | TOTAL |
|---|---|---|---|---|---|---|---|---|
| | | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | COUNTRY | |
| MONTH OF _____ | | | | | | | | |
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| TOTAL → | | | | | | | | |

IF MORE SPACE IS REQUIRED USE ADDITIONAL COPIES OF FORM DIB-634P-a

NAME AND ADDRESS OF EXPORTER

NAME AND TITLE OF PERSON AUTHORIZED TO EXECUTE THIS FORM

*CERTIFICATION: I certify that the information reported on this and the accompanying _____ pages is an accurate statement of all anticipated exports of more than $250 of wheat in Group I by the exporter on the basis of accepted orders or other firm arrangements.*

SIGNATURE OF AUTHORIZED PERSON AND DATE SIGNED _____



20-973 O - 73 - 9

INSTRUCTIONS

(1) For detailed instructions, before filling out this form refer to § 376.3 of the Export Control Regulations, 15 C.F.R. Part 376, also reproduced in Export Control Bulletin No. 84(a).

(2) This report form shall be used for the first report to set forth all anticipated exports of one commodity involved as of the close of business June 13, 1973 which are based upon orders which are unfilled in whole or in part or upon other firm arrangements, such as exports for the exporter's account.

Thereafter, this report form shall be filed weekly on the first business day of each week and shall curtain all such anticipated exports as of the close of business the Friday preceding the date of the report. If there are no changes in a line of information from the last report filed, the line should be identified by filling in the month and commodity description or number called for and the words "NO CHANGE" shall be written on one line.

(3) Schedule B Numbers are contained in the U.S. Bureau of Census, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, which are set forth in Supplement No. 1 of Part 376 of the Export Control Regulations. For purposes of this Reporting Requirement, Schedule B Number 041.0020 (wheat) is subdivided into the following classes of wheat:

Hard Red Winter
Soft Red Winter
Hard Red Spring
White
Durum

Accordingly, information should be separately reported in terms of each of the aforementioned classes of wheat.

## REGULATIONS

TITLE 6—ECONOMIC STABILIZATION

CHAPTER I—COST OF LIVING COUNCIL

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

*Issuance of Remedial Orders: Procedures Governing Requests for Modification or Rescission*

Part 140 is added to title 6, chapter 1, Code of Federal Regulations. This part sets forth price freeze regulations in accordance with the provisions of Executive Order No. 11723. In general, this part is in addition to the provisions of part 130 and chapter III (Price Commission Regulations) of this title with respect to prices charged or received for commodities and services beginning 9 p.m., e.s.t., June 13, 1973, for a maximum of 60 days. The provisions of this part do not extend to (i) wages and salaries, which continue to be subject to the program established pursuant to Executive Order 11695; (ii) interest and dividends, which continue to be subject to the program established by the Committee on Interest and Dividends and (iii) rents, which continue to be subject to controls only to the limited extent provided in Executive Order 11695.

This part does not apply to sales of meat subject to subpart M of part 130. In addition, this part does not affect the provisions regarding the filing of reports or the maintenance of records pursuant to part 130 or the renegotiation of construction contracts under subpart H of part 130.

Because the immediate implementation of Executive Order No. 11723 is required, and because the purpose of these regulations is to provide immediate guidance as to Cost of Living Council decisions, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making these regulations effective in less than 30 days. Interested persons may submit comments regarding these regulations. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20507.

These regulations are effective as of 9 p.m., e.s.t., June 13, 1973.

JAMES W. McLANE,
*Deputy Director, Cost of Living Council.*

*Subpart A—General*

Sec.



*Subpart B—Freeze Price Rules*



*Subpart C—Recordkeeping*



*Subpart D—Exemptions*



*Subpart E—Sanctions*



*Subpart F—Administrative Sanctions*

*Subpart G—Compromise of Civil Penalties*



AUTHORITY.—Economic Stabilization Act of 1970, as amended, Public Law 91-379. 84 Stat. 799; Public Law 91-558. 84 Stat. 1468; Public Law 92-8, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; Public Law 93-28, 87 Stat. 27; and Executive Order 11723.

## SUBPART A—GENERAL

### § 140.1 Purpose and scope.

(a) The purpose of this part is to implement the provisions of Executive Order 11723 prescribing freeze prices for commodities and services. Except as provided in paragraph (b) of this section, the provisions of this part are in addition to the provisions of part 130 of this chapter with respect to the prices charged or received for commodities and services beginning 9 p.m., e.s.t., June 13, 1973 for a maximum of 60 days and shall not operate to abrogate any requirements imposed under part 130. To the extent that the provisions of this part are in conflict with the provisions of part 130 of this chapter, the provisions of this part control, except that the provisions of this part shall not operate to permit prices higher than permitted under part 130 of this chapter. The provisions of this part do not extend to (1) wages and salaries, which continue to be subject to the program established pursuant to Executive Order 11695; (2) interest and dividends, which continue to be subject to the program established by the Committee on Interest and Dividends and (3) rents, which continue to be subject to controls only to the limited extent provided in Executive Order 11695.

This part does not apply to sales of meat subject to subpart M of part 130 of this chapter.

(c) This part does not apply to economic transactions which are not prices within the meaning of the act as amended. Examples of transactions not within the meaning of the act are:

(1) State or local income, sales and real estate taxes;

(2) Workmen's compensation payments;

(3) Welfare payments;

(4) Child support payments; and

(5) Alimony payments.

(d) The Cost of Living Council may permit any exceptions or exemptions that it considers appropriate with respect to the requirements prescribed in this part. Requests for exceptions or exemptions from the requirements of this part shall be submitted in accordance with the provisions of part 105 of this chapter.

(e) This part applies to:

(i) economic units and transactions in the several States and the District of Columbia; and

(ii) sales of commodities and services by firms in the several States and the District of Columbia to firms in the Commonwealth of Puerto Rico.

### § 140.2 Definitions.

"Act" means the Economic Stabilization Act of 1970, as amended.

"Class of purchaser" means purchasers to whom a person has charged a comparable price for comparable property or service during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers.

"Commodity" means an item of tangible personal property offered for sale or lease to another person or real property offered for sale.

"Council" means the Chairman of the Cost of Living Council established by Executive Order 11615 (3 CFR, 1971 Comp., p. 199) and continued under the provisions of Executive Order 11695, or his delegate.

"Customary price differential" includes a price distinction based on a discount, allowance, add-on, premium, and an extra based on a difference in volume, grade, quality, or location or type of purchaser, or a term or condition of sale or delivery.

"Exception" means a waiver directed to an individual firm in a particular case which relieves it from the requirements of a rule, regulation, or order issued pursuant to the act.

"Exemption" means a general waiver of the requirements of all rules, regulations, and orders issued pursuant to the act.

"Freeze base period" means

(a) the period June 1 to June 8, 1973; or

(b) in the case of a seller who had no transactions during that period, the nearest preceding seven-day period in which he had a transaction.

"Freeze price" means the highest price at or above which at least 10 percent of the commodities or services concerned were priced by the seller in transactions with the class of purchaser concerned during the freeze base period. In computing the freeze price, a seller may not exclude any temporary special sale, deal or allowance in effect during the freeze base period.

"Manufacturer" means a person who carries on the trade or business of making, fabricating, or assembling a product or commodity by manual labor or machin-

ery for sale to another person, and also includes the mining of natural deposits, the production or refining of oil from wells, and the refining of ores, and whenever the Council considers it appropriate, also includes any manufacturing subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by another person.

"Person" includes any individual, trust, estate, partnership, association, company, firm, or corporation, a government, and any agency or instrumentality of a government.

"Price" means any compensation for the sale or lease of a commodity or service or a decrease in the quality of substantially the same commodity or service, except that it does not mean rental pursuant to a lease of real property.

"Retailer" means a person who carries on the trade or business of purchasing a commodity and, without substantially changing the form of that commodity, reselling it to ultimate consumers, and, whenever the Council considers it appropriate, includes any retailing subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by, another person.

"Sale" means any exchange, transfer, or other disposition in return for valuable consideration.

"Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing, agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

"Service" includes any service performed by a person for another person, other than in an employment relationship, and also includes professional services of any kind and services performed by membership organizations for which dues are charged, and the leasing or licensing of a commodity to another person.

"Service organization" means a person who carries on the trade or business of selling or making available services, including nonprofit organizations, governments, and government agencies or instrumentalities which carry on those activities, and a person who provides professional services; and, whenever the Council considers it appropriate, also including any service organization subsidiary, division, affiliate, or similar entity that is part of, or is directly or indirectly controlled by, another person.

"Transaction" means an arms-length sale between unrelated persons and is considered to occur at the time of shipment in the case of commodities and the time of performance in the case of services.

"Wholesaler" means a person who carries on the trade or business of purchasing a commodity and, without substantially changing the form of that commodity, reselling it to retailers for resale or to industrial, commercial, institutional, or professional business users. It also includes, whenever the Council considers it appropriate, any wholesaling subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by, another person.

## SUBPART B—FREEZE PRICE RULES

### § 140.10 General rule.

Effective 9 p.m., e.s.t, June 13, 1973, no person may charge to any class of purchaser and no purchaser may pay a price for any commodity or service which exceeds the freeze price charged for the same or a similar commodity or service in transactions with the same class of purchaser during the freeze base period. The freeze price shall be determined in accordance with the definitions set forth in §140.2 notwithstanding the fact that the freeze price so determined may be lower than the price prevailing on May 25, 1970.

### § 140.11 Sales of real property.

The freeze price for the sale of any interest in real property shall be:

(a) The sale price specified in a sales contract signed by both parties on or before June 12, 1973; or

(b) When there is no such sales contract, the fair market value of the property as of the freeze base period based on sales of like or similar property.

### § 140.12 New commodities and new services.

(a) *Freeze price determination.*—A person offering a new commodity or a new service shall determine its freeze price as follows:

(1) *Net operating profit markup—Manufacturer or service organization.*—A manufacturer or service organization shall apply the net operating profit markup it received on the most nearly similar commodity or service it sold or leased to the same market during the freeze base period to the total allowable unit costs

of the new commodity or service. For the purposes of this subparagraph, "net operating profit markup" means the ratio which the selling price bears to the total allowable unit costs of the commodity or service.

(2) *Customary initial percentage markup—Retailer or wholesaler.*—A retailer or wholesaler shall apply the customary initial percentage markup it received on the most nearly similar commodity or service it sold to the same market during the freeze base period to the total allowable unit costs of the new commodity.

(3) *Average price of comparable commodities or services.*—If the person did not offer a similar commodity or service for sale or lease to a particular market during the freeze base period, the freeze price for sales or leases to that market shall be the average price received in a substantial number of current transactions in that market by other persons selling or leasing comparable commodities or services in the same marketing area.

(b) *Base prices determined by predecessor entities.*—If a legal entity or a component of a legal entity determines a base price for a commodity or service which it sells or leases to a particular market and the entity or component is acquired by another person after June 12, 1973, the commodity or service does not become a new commodity or new service with respect to the same market. The ceiling price of the commodity or service with respect to that market remains the ceiling price determined for it by the predecessor entity or component.

(c) *General—New item.*—(1) A commodity or service is a new commodity or new service if—

(i) The offering person did not sell or lease it in the same or substantially similar form at any time during the 1-year period immediately preceding the first date on which he offers it for sale or lease. (A change in appearance, arrangement, or combination does not create a new commodity or service. Ordinarily, a change in fashion, style, form, or packaging does not create a new commodity or service. In the case of personal property for lease, a permanent improvement or betterment made to the property, as a part thereof, to increase value or to restore it makes it a new commodity for purposes of a lease if the cost of the improvements or betterment is greater than $100 and at least as much as 3 months' rent for the property); and

(ii) It is substantially different in purpose, function, quality, or technology, or its use or service effects a substantially different result from any other commodity or service which the offering person currently sells or leases or sold or leased at any time during the 1-year period immediately preceding the first date on which he offers it for sale or lease.

(2) *New market.*—A commodity or service which the offering person has previously sold or leased is a new commodity or a new service with respect to its offer or sale to any market to which he did not sell or lease it at any time during the 1-year period immediately preceding the first date on which he offers it for sale or lease. For the purposes of this section, a "market" is one or more members of any one of the following groups: wholesalers; retailers; consumers; manufacturers; or service organizations.

(d) *Inapplicability.*—This section does not apply to sales of real property.

(e) *Burden of proof.*—Any seller seeking to utilize the provisions of this section to establish a freeze price has the burden of establishing the facts upon which the determination of a freeze price is made and demonstrating those facts upon request by a representative of the Council.

**§ 140.13 Seasonal patterns.**

(a) *General.*—Notwithstanding any other provision of this subpart, prices which normally fluctuate in distinct seasonal patterns may be adjusted as prescribed in this section.

(b) *Distinct fluctuation.*—Prices must show a large or otherwise distinct fluctuation at a specific, identifiable point in time. The distinct fluctuation must be an established practice that has taken place in each of the 3 years before the date of the contemplated change. New persons may determine their qualifications from those generally prevailing with respect to persons similarly situated, selling or leasing in the same marketing area. If there are not similar persons in the immediate area, qualification may be established by reference to the nearest similar marketing area.

(c) *Time of price fluctuation.*—The price fluctuation referred to in paragraph (b) of this section may not take place at a time other than the time at which that fluctuation took place in the preceding year unless the date of the price fluctuation is tied to a specific event such as a previously planned introduction of new models.

(d) *Allowable price.*—Subject to paragraph (e) of this section, if the requirements of paragraphs (b) and (c) of this section are met, the maximum price which may be charged by the person concerned is the greater of the following:

(1) The freeze price determined under this part; or

(2) The price charged by that person during the first 30 days of the period following the near-

est preceding seasonal price adjustment, or if the season was less than 30 days, during the period of that season.

For the purposes of paragraph (d)(2) of this section, the price charged during that 30-day period, or the period of the season if less than 30 days, is the weighted average of the prices charged on all transactions during that period.

(e) *Return to nonseasonal prices.*—Each person that increases a price under this section shall decrease that price at the same date or identifiable point in time as the price was decreased in the previous season.

(f) *Burden of proof.*—Any seller seeking to utilize the provisions of this section to establish a freeze price has the burden of establishing the facts upon which the determination of a freeze price is made and demonstrating those facts upon request by a representative of the Council.

### § 140.14 Imported commodity.

Notwithstanding the provisions of § 140.10, any person who imports and sells a commodity from outside the several states and the District of Columbia and each reseller of such a commodity may pass on price increases for such imported commodity incurred after June 12, 1973, on a dollar-for-dollar basis so long as the commodity is neither physically transformed by the seller nor becomes a component of another product. However, this section shall not apply to commodities which were originally purchased in the United States but exported and subsequently imported in any form.

## SUBPART C—RECORDKEEPING

### § 140.20 General.

Each seller shall prepare a list of freeze prices for all commodities and services which he sells and shall maintain a copy of that list available for public inspection, during normal business hours, at each place of business where such commodities or services are offered for sale. In addition, the calculations and supporting data upon which the list is based shall be maintained by the seller at the location where the pricing decisions reflected on the list are ordinarily made and shall be made available on request to representatives of the Economic Stabilization program.

### § 140.21 Reporting and recordkeeping under part 130 of this chapter.

The reporting and recordkeeping requirements set forth in part 130 of this chapter with respect to prices, costs, and profits remain in full force and effect.

## SUBPART D—EXEMPTIONS

### § 140.30 General.

Prices with regard to the commodities and services set forth in this subpart are exempt from the provisions of Executive Order 11723 and this part 140.

### § 140.31 Agricultural products and seafood products.

(a) *Raw agricultural products.*—(1) Subject to the special rule set forth below, the sale of agricultural products which retain their original physical form and have not been processed is exempt. Processed agricultural products are products which have been canned, frozen, slaughtered, milled, or otherwise changed in their physical form. Packaging is not considered a processing activity. Examples:

| *Exempt* | *Nonexempt* |
|---|---|
| Live cattle, calves, hogs, sheep, and lambs. | Carcasses and meat cuts. |
| Live poultry. | |
| Raw milk | Pasteurized milk and processed products such as butter, cheese, ice cream. |
| | Frozen, dried, or liquid eggs. |
| Sheared or pulled wool. | Wool products. |
| | Processed and blended honeybutter product. |
| Mohair. | |
| Hay: Bulk, pelleted, cubed, or baled. | Dehydrated alfalfa meal or alfalfa meal pellets. |
| Wheat | Flour. |
| Feed grains including: | |
| Corn | Mixed feed. |
| Sorghum | Cracked corn. |
| Barley | Rolled barley. |
| Oats | Rolled oats. |
| Soybean | Soybean meal and oil. |
| Leaf tobacco | Cigarettes and cigars. |
| Baled cotton, cottonseed, cotton lint. | Cotton yarn, cottonseed oil, cottonseed meal. |
| | Frozen french fries, dehydrated potatoes. |
| Unmilled rice | Milled rice. |
| | Roasted, salted, or otherwise processed nuts. |
| | Canned or freeze dried mushrooms. |
| Fresh hops. | |
| Sugar beets and sugarcane. | Refined sugar. |
| Maple sap. | |
| All seeds for planting. | Seeds processed for other uses. |
| Raw coffee bean | Roasted coffee bean. |
| | Canned and frozen vegetables. |
| | Dill pickles. |
| | Package slaw. |
| | Popped popcorn. |

| *Exempt* | *Nonexempt* |
|---|---|
| Stumpage or trees cut from the stump. | Milled lumber. |
| | Canned fruit or juices. |
| | Glazed citrus peel. |
| | Canned grapes, wine. |
| | Applesauce. |
| | Canned prunes and prune juice. |
| | Canned olives. |
| | Floral wreath. |
| Garden plants. | |

(2) Special rule: Only the first sale by the producer or grower of those agricultural products which are of a type sold for ultimate consumption in their original physical form is exempt. Examples of these products are:

| | |
|---|---|
| Shell, eggs packaged or loose. | Tomatoes. |
| Raw honeycomb honey. | Lettuce. |
| Fresh potatoes, packaged or not. | Sweet corn. |
| | Brussel sprouts. |
| All raw nuts—shelled and unshelled. | Beets. |
| | Unpopped popcorn. |
| Fresh mushrooms. | All fresh or naturally dried fruits, packaged or not, including: |
| Fresh mint. | |
| Dried beans, peas, and lentils. | Fresh oranges. |
| | Grapes and raisins. |
| All fresh vegetables and melons including: | Apples. |
| | Peaches. |
| Strawberries. | Escarole. |
| Grapefruit. | Garlic. |
| Pears. | Artichokes. |
| Lemons. | Eggplant. |
| Plums and prunes. | Avocados. |
| Cherries. | Blueberries. |
| Cranberries. | Apricots. |
| Onions. | Tangerines. |
| Green beans. | Olives, uncured. |
| Cantaloupe. | Nectarines. |
| Cucumbers. | Raspberries. |
| Cabbage. | Blackberries. |
| Carrots. | Figs. |
| Watermelons. | Tangelos. |
| Green peas. | Limes. |
| Asparagus. | Dates. |
| Pepper. | Papayas. |
| Broccoli. | Bananas. |
| Cauliflower. | Pomegranates. |
| Spinach. | Currants. |
| Green lima beans. | Persimmons. |
| Honeydews. | Cut flowers. |

(b) *Dressed broilers and turkeys and raw seafood products.*—The first sale by (1) a producer of broilers or turkeys or (2) a producer or fisherman of raw seafood products including those which have been shelled, shucked, iced, skinned, scaled, eviscerated, or decapitated is exempt.

(c) *Raw sugar prices.*—Raw sugar price adjustments which are controlled under the Sugar Act of 1948, as amended, are exempt.

(d) The first sale of mint oil and maple syrup or sugar is exempt.

(e) The first sale of dehydrated fruits is exempt.

**§ 140.32 Securities.**

Prices charged for securities are exempt.

**§ 140.33 Exports.**

Prices charged for exports are exempt.

**§ 140.34 Commodity futures.**

The sale of commodity futures on an organized commodities exchange is exempt. However, delivery of a commodity pursuant to a futures contract must be made at the freeze price, unless the commodity itself is exempt.

## SUBPART E—SANCTIONS

**§ 140.40 Violations.**

(a) Any practice which constitutes a means to obtain a price higher than is permitted by this regulation is a violation of this regulation. Such practices include, but are not limited to, devices making use of inducements, commissions, kickbacks, retroactive increases, transportation arrangements, premiums, discounts, special privileges, tie-in agreements, trade understandings, falsification of records, substitution of inferior commodities or failure to provide the same services and equipment previously sold.

**§ 140.41 Sanctions; criminal fine and civil penalty.**

(a) Whoever willfully violates any order or regulation under this title shall be subject to a fine of not more than $5,000 for each violation.

(b) Whoever violates any order or regulation under this title shall be subject to a civil penalty of not more than $2,500 for each violation.

**§ 140.42 Injunctions and other relief.**

Whenever it appears to the Council that any firm has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this title, the Council may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices. The relief sought may include a mandatory injunction commanding any person to comply with any such order or regulation and restitution of moneys received in violation of any such order or regulation.

## SUBPART F—ADMINISTRATIVE SANCTIONS—ISSUANCE OF REMEDIAL ORDERS: PROCEDURES GOVERNING REQUESTS FOR MODIFICATION OF RESCISSION OF SUCH ORDERS

### § 140.50 Purpose and scope.

This subpart establishes the procedures for determining the nature and extent of violations, the procedures for the issuance of remedial orders, and the procedures for requests for modificaion or recission of remedial orders.

(a) Each District Director of Internal Revenue is authorized to take final action under this subpart with respect to matters arising in his district and may delegate the performance of any function under this subpart.

(b) A "remedial order" is an order requiring a person to cease a violation or to take action to eliminate or to compensate for the effects of a violation, or both, or which imposed other sanctions.

(c) The District Director will not consider that a person has exhausted his administrative remedies until he has filed a request for modification or rescission under §§ 140.56–140.59 and final action has been taken thereon by the District Director under § 140.55.

### § 140.51 General.

When any audit or investigation discloses, or the District Director otherwise discovers, that a person appears to be in violation of any provision of this part, the District Director may conduct proceedings to determine the nature and extent of the violations and issue remedial orders. The District Director may commence proceedings by serving a notice of probable violation or by issuing a remedial order.

### § 140.52 Issuance of notice of probable violation to begin proceedings.

The District Director may begin proceedings under this subpart F by issuing a notice of probable violation if the District Director has reason to believe that a violation has occurred or is about to occur.

### § 140.53 Issuance of remedial orders to begin proceedings in unusual circumstances.

Remedial orders may be issued to begin proceedings under this subpart F if the District Director finds on preliminary examination that the violations are patent or repetitive, that their immediate cessation is required to avoid irreparable injury to others or unjust enrichment to the person to whom the order is issued, or for any other unusual circumstance the District Director deems sufficient.

(a) When the District Director issues a remedial order to begin proceedings the person to whom the order is issued may request a stay of the order, or a suspension of the order if it has already become operative, whichever is appropriate, pending completion of the proceedings, which stay the District Director will grant as a matter of course unless the District Director finds that the order is needed to avoid irreparable injury to others or the unjust enrichment of the person to whom the order was issued.

(b) A request for stay, if any, should be sent to the District Director and should be appropriately identified on the envelope.

### § 140.54 Reply.

Within 5 days of receipt of a notice of probable violation issued under § 140.52 or a remedial order issued under § 140.53, the person to whom the notice or order is issued may file a reply. The reply must be in writing. He may also request an appointment for a personal appearance, which must be held within the 5-day period provided for reply. He may be represented or accompanied by counsel at the personal appearance. The District Director will extend the 5-day reply period for good cause shown.

(a) If a person has not requested a stay or suspension of a remedial order issued to begin proceedings, or if such a stay has been denied, the order will go into effect or remain in effect, in accordance with its terms, as the case may be.

(b) If a person does not reply within the time allowed by a notice of probable violation, the violation will be considered admitted as alleged and the District Director may issue whatever remedial order would be appropriate.

(c) An order which goes into effect or is permitted to remain in effect under paragraph (a) of this section or an order issued under paragraph (b) of this section is not subject to judicial or any other review with respect to any finding of fact or conclusion of law which could have been raised in the proceedings before the District Director by the filing of a reply.

### § 140.55 Decision.

(a) If the District Director finds, after the person has filed a reply under § 140.54, that no violation has occurred or is about to occur or that for any other reason the issuance of a remedial order would not be appropriate, it will issue a decision so stating, and, if necessary, an order revoking or modifying any remedial order which already may be outstanding.

(b) If the District Director finds that a violation has occurred or is about to occur and that a remedial order is appropriate, it will issue a decision so stating, specifying the nature and extent of the violation, and, if necessary, issue a remedial order implementing the decision, vacating the suspension of any outstanding remedial order, or modifying as appropriate, an outstanding remedial order. The decision will state the reasons upon which it is based.

(c) Remedial orders issued hereunder may include provisions for rollbacks and refunds or any other requirement which is reasonable and appropriate.

**§ 140.56 Who may request modification or rescission of an order issued under § 140.55.**

The person to whom an order is issued under § 140.55 may file a request for modification or rescission of that order.

**§ 140.57 Where to file.**

A request for modification or rescission shall be filed with the District Director who issued the order.

**§ 140.58 When to file.**

A request for modification or rescission must be filed within 5 days of receipt of the order issued under § 140.55.

**§ 140.59 Contents of request.**

A request for modification or rescission shall—

(a) Be in writing and signed by the applicant;

(b) Be designated clearly as a request for modification or rescission;

(c) Identify the order which is the subject of the request;

(d) Point out the alleged error in the order;

(e) Contain a concise statement of the grounds for the request for modification or rescission and the requested relief;

(f) Be accompanied by briefs, if any; and

(g) Be marked on the outside of the envelope "Request for Modification or Rescission."

**§ 140.60 Preliminary processing by the District Director.**

(a) A request for modification or rescission of an order issued under § 140.55 will be considered by the District Director only if it:

(1) Is made by a person to whom the order sought to be modified or rescinded was issued;

(2) Is timely; and

(3) Makes a prima facie showing of error.

(b) The District Director may summarily reject a request for modification or rescission which is not made by a person to whom the order was issued, or which is not timely filed, or which fails to make a prima facie showing of error.

(c) When the request for modification or rescission meets the requirements set forth in paragraph (a) of this section, the District Director on its own motion or for good cause shown may temporarily suspend the order appealed from and then proceed in accordance with § 140.55.

## SUBPART G—COMPROMISE OF CIVIL PENALTIES

**§ 140.70 Purpose and scope.**

Under section 208(b) of the Economic Stabilization Act of 1970, as amended, whoever violates an order or regulation issued by the Council or its delegate under that act is subject to a civil penalty of not more than $2,500 for each violation. This subpart prescribes procedures governing the compromise and collection of those civil penalties which each District Director of Internal Revenue may utilize with respect to matters arising in his district under this part.

**§ 140.71 Notice of possible compromise of civil penalties.**

If the District Director considers it appropriate or advisable under the circumstances of a particular civil penalty case to settle it through compromise, the District Director sends a letter to the person charged with the violation advising him of the charges against him, the order or regulation that he is charged with violating, and the total amount of the penalty involved, and that the District Director is willing to consider an offer in compromise of the amount of the penalty.

**§ 140.72 Response to notice.**

(a) A person who receives a notice pursuant to § 140.71 may present to the District Director any information or material bearing on the charges that denies, explains, or mitigates the violation. The person charged with the violation may present the information or materials in writing or he may request an informal conference for the purpose of presenting them. Information or materials so presented will be considered in making a final determination as to the amount for which a civil penalty is to be compromised.

(b) A person who receives such a notice may offer to compromise the civil penalty for a specific amount by delivering to the District Director a certified check for that amount payable to the Treasury of the United States. An offer to compromise does not admit or deny the violation.

**§ 140.73 Acceptance of offer to compromise.**

(a) The District Director may accept or reject an offer to compromise a civil penalty. If he accepts it, he sends a letter to the person charged with the violation advising him of the acceptance.

(b) If the District Director accepts an offer to compromise, that acceptance is in full settlement on behalf of the United States of the civil penalty for the violation. It is not a determination as to the merits of the charges. A compromise settlement does not constitute an admission of violation by the person concerned.

**§140.74 No compromise.**

If a compromise settlement of a civil penalty cannot be reached, the District Director may refer the matter to the Attorney General for the initiation of proceedings in a U.S. district court to collect the full amount of the penalty, or take such other action as is necessary.

Chairman PROXMIRE. Mr. Dunlop, as you know, I have deep respect for you and I know you are in a very, very difficult position, and I think you have done at least part of your job extraordinarily well. But there have been a lot of criticisms of the operations of your office and I would like to give you a chance to meet them.

There is one by a man named Art Pine of the Baltimore Sun. There are some rather damaging statements. His main criticism is you have yet to use the "big stick." There was a lot of talk at the time phase III went into effect. Secretary Shultz used this more than anybody else. He said if the firms, corporations, get out of line, that they are going to be clobbered. "We have a big stick in the closet and it is going to be used."

The charge in this article is there is not one single action in phase III to roll back wages or prices. Not one. Is that true?

Mr. DUNLOP. No.

Chairman PROXMIRE. What significant action have you taken in phase III to roll back wages or prices?

Mr. DUNLOP. Well, the question of what is significant, I suppose, is the matter. We have been issuing releases regularly on the compliance actions which the Council has been taking. When I testified the other day in the Congress, I talked about the surveys we had made and compliance actions we had taken with regard to the meat ceilings, and the people we have found in violation of that.

We announced the other day a group of compliance actions on Blue Cross-Blue Shield. We publish a report every 2 weeks, which lists all of the compliance actions we have taken. I will be glad to furnish to the committee a copy of that.

[The following information was subsequently supplied for the record:]

CHRONOLOGICAL NARRATIVE AND STATISTICAL SUMMARY OF MAJOR PHASE III COMPLIANCE ACTIVITIES

For your convenience, the attached is divided into three sections:

1. Price compliance actions.
2. Pay compliance actions.
3. A statistical case summary.

For each subject area covered, a description of our compliance action begun is provided:

SUMMARY OF MAJOR PHASE III COMPLIANCE ACTIVITIES

PRICE

January 29, 1973, Major Oil Company Surveys: Investigations of Exxon, Mobil Oil, and Texaco Phase III heating oil price increases begun. Investigations resulted in no violations identified.

February 5, 1973, Tier III Profit Margin Survey: Over 2,300 investigations of Tier III firms commenced by IRS district offices. Two-thirds of the survey has ben completed.

March 16, 1973, Health Industry Audit Package: Development of a standard complaince audit package for health providers completed. IRS directed to begin systematic survey of health providers using audit package.

March 19, 1973, Selected Price Investigations: Sixty investigations of Tier I and Tier II firms denied price increases in the last quarter of Phase II was begun. Completed investigations indicate no violation of ESP regulations to date.

March 23, 1973, Meat Packer Investigation: Five investigations of meat packing firms to determine extent intercompany sales affected prices commenced.

March 28, 1973, Lumber Survey: Fifteen western lumber firms surveyed to obtain gross margin data.

March 29, 1973, Tier I Survey: Survey of approximately 450 Tier I firms to review Phase III management price control systems commenced. A CLC/IRS team has been formed to analyze the results of the surveys upon their completion.

April 9, 1973, Enforcement Meat Ceiling Regulation: Serveys of firms begun to determine compliance with posting and ceiling price requirements. Approximately 30,000 firms surveyed with 20% found to have committed minor technical violations.

April 13, 1973, IRS Auto Dealer Compliance Project: A nationwide project to identify Phase II pricing violations of auto parts sales commenced. Violations totaling $15 million were identified and refunds being made. A total of 14,220 dealers have been surveyed.

April 20, 1973, Crude Oil Survey: Seven independent producers in Mid-west investigated to identify any Phase III price violations. No violations identified.

May 11, 1973, Service Industry Study: IRS collecting data for service industry Phase III policy formulation by CLC.

May 14, 1973, Scrap Steel Industry Survey: Investigations of 19 suppliers to determine compliance with Phase III regulations began.

May 29, 1973, Health Industry Audit Package: The development of a revised compliance audit package for health providers was completed. IRS directed to begin systematically applying audit packages to local health providers.

May 31, 1973, General Service Industry Survey: 70 investigations of service industry firms, to identify Phase II profit margin violations and Phase III price increases begun.

June 5, 1973, Rent Compliance: Development of a SLC directive to IRS concerning processing and reporting of rent complaints completed.

June 11, 1973, Zinz Price Increases: Challenge of a Phase III zinc price increase prepared and issued.

June 13, 1973, Lumber Survey: Development of a directive to IRS to provide IRS with authority and procedures to issue refund and reduction orders of Phase II reclassified lumber firms completed.

PAY

March 1, 1973, Executive Compensation Survey Part I: Surveys of 94 firms to determine compliance with Phase II and Phase III regulations regarding Executive compensation directed. Four notices of Probable Violation and one Challenge Notice issued.

March 16, 1973, State and Local Government Directed Investigations: Twelve situations investigated by IRS based on complaints and intelligence reports.

April 5, 1973, Private Sector Survey: Survey of 48 firms by IRS, to determine compliance with Phase II orders and Phase III guidelines begun.

May 15, 1973, Selected Law Firm Investigation: Twelve firms in New York City investigated by IRS to determine compliance with general Phase III pay standards.

May 16, 1973, Executive Compensation Survey Part II: Surveys of 290 publicly and privately held firms begun. Preliminary reports indicate some instances of noncompliance with five Notices of Probable Violation issued.

May 31, 1973, Banking Institution Investigations: Five investigations initiated to identify reported Phase II and Phase III wage violations.

June 13, 1973, State and Local Government Directed Investigations: Investigations of 14 additional situations by IRS since March 20, 1973, begun as a result of complaints and IRS intelligence reports.

PHASE III INVESTIGATION STATISTICS AS OF JUNE 18, 1973

| | Directed price | | Directed pay | | Locally initiated | | | |
|---|---|---|---|---|---|---|---|---|
| | Phase II | Phase III | Phase II | Phase III | Phase II | C.I.[1] phase III | SPM[2] phase III | Total |
| Total opened since Jan. 10 | 94 | 774 | 2 | 481 | ---- | 1,024 | 2,362 | 4,737 |
| Results received from IRS since Jan. 10 | 294 | 201 | 39 | 142 | 182 | ---- | ---- | 858 |
| Total analysis completed since Jan. 10 | 299 | 113 | 44 | 122 | 96 | 357 | 1,745 | 2,776 |
| Active investigations at IRS | 51 | 568 | 2 | 326 | ---- | 667 | 617 | 2,231 |

[1] Controlled industry.
[2] Special profit margin (tier III).

Mr. DUNLOP. Now, it is not my custom, Mr. Chairman, in this job or in others where I have held somewhat contentious positions, to respond to personal comments——

Chairman PROXMIRE. Yes, I certainly don't mean this in a personal way, as I am sure you will appreciate. But I think we have an oversight duty here to determine whether or not charges that are honestly and sincerely made by responsible people in the press, what validity they have, and we would like to get your response as the man in the best position to answer, to tell us whether they have substance.

Mr. DUNLOP. I think the subject we have been discussing this morning is precisely an illustration of the matter that you invited my comment on. I welcome that kind of surveillance, you know. No problem with me at all.

In this executive compensation field which we talked about most of the morning, I told you that of those 94 firms we had found 7 who had violated our rule. The real problem, as it turns out, was not with the fact that there were extended violations of those rules; people were complying with them and I told you this morning of the seven companies reported to you on May 9 where we thought there was reason for concern, for compliance action. I told you we had taken that action with respect to six of the seven companies. I can tell you that in two of those companies the executives involved have given up stock options that they had been awarded, in violation to our rule.

Chairman PROXMIRE. Could you tell us what these companies were? The name of the company?

Mr. DUNLOP. I do not have that information. Mr. Messer would have to.

Chairman PROXMIRE. Can you give it to us, Mr. Messer, now?

Mr. MESSER. I don't have it with me, sir.

Chairman PROXMIRE. You can't remember the 7 companies out of the 94?

Mr. MESSER. No, sir. I do not handle compliance. I am handling active cases but I did check the other day to find out the aggregate numbers.

Chairman PROXMIRE. One other question on that. The most spectacular increases were in the automobile industry and by the top people—Ford, Chrysler, and General Motors. Were any of those three among the seven?

Mr. MESSER. No, sir.

Chairman PROXMIRE. These were not violations under normal conditions?

Mr. DUNLOP. Definitely not.

Mr. MESSER. No, sir. As a matter of fact, of the survey we took of the 94 companies, that included 25 of the largest companies in the economy. The 25 companies, largest companies, were all in compliance with our regulations. We did not have one violation among the top 25. The violations we detected were actually from fairly small, what you might regard as medium-sized companies.

Mr. DUNLOP. You see, the point I am making, Senator Proxmire, is this: I am all for using compliance action where there is reason to. The fact is that in this executive compensation area, these payments were made within the regulations. In my view, the regulations need to be changed. Anybody who was clearly in violation or was suspected of

being in violation, we went out to—and not only am I saying we have identified them but we are now in the middle of compliance action and in several cases that has been completed.

Take the price situation more generally. We had hoped to use and are planning to use the prenotification forms and these first quarterly report forms as a major method of compliance. We have a force of 2,500 IRS people who are experts in this area, and we have them programed to do the kind of review of these concerns to see if people are in violation.

However, in many sectors of the economy, Senator Proxmire, such as in chemicals, rubber, aluminum, areas of that sort, in phase II those prices were floating way below ceiling and substantial increases were possible to bring them up to their authorized price levels.

The areas where we have had these price increases, as I said earlier, are the areas where there are highly competitive prices with very significant international overtones. My view is that the problem cannot be dealt with very effectively with either controls or compliance.

Chairman PROXMIRE. The area of price increases includes not only the five you listed but paper and allied products, increase of April over March of 15.6 percent at an annual rate. Metal and metal products, in addition to the nonferrous, 10.8 percent; machinery and equipment, 9.6 percent; and so on. In other words, this isn't confined to just those five, although as you say——

Mr. DUNLOP. Ninety percent of it was.

Chairman PROXMIRE. But also Mr. Fine says the Internal Revenue Service reported apparent violations of the Wage Price Regulations but the reports have largely gone unheeded.

Mr. DUNLOP. I deny that. We have taken those very seriously. There is, by the way, always a problem when the IRS finds a probable violation. Our General Counsel's office and the Justice Department have to review the question of whether it is appropriate to prosecute. Of course, I think you know it is our policy and has been in the stabilization program from the outset, to try to bring people in where there is violation and attempt to secure voluntary compliance.

Chairman PROXMIRE. Can you give us the number or report of current violations and the number of reports that have received action by your Agency?

Mr. DUNLOP. That is in this biweekly blue book.

Chairman PROXMIRE. Can you give us a summary?

Mr. DUNLOP. I didn't bring it with me.

Chairman PROXMIRE. I am saying for the record.

Mr. DUNLOP. I will furnish that to you, yes.

[The following information was subsequently supplied for the record:]

# ECONOMIC STABILIZATION PROGRAM

## BI-WEEKLY SUMMARY

No. 11

MAY 28 - JUNE 8, 1973

## COST OF LIVING COUNCIL

# HIGHLIGHTS

## ECONOMIC INDICATORS

Wholesale prices in May increased 2 percent on seasonally adjusted basis. Percent changes in WPI and its components for selected periods are summarized below.

Wholesale Price Index Increases
(Seasonally Adjusted, in Percent)

| Period | All Commodities | Farm Products & Food Prices | Industrial Commodities | Consumer Goods |
|---|---|---|---|---|
| May 1973 | 2.0 | 4.1 | 1.2 | 0.7 |
| Annual Rate | 24.0 | 49.2 | 14.4 | 8.4 |
| From 3 months ago | 23.4 | 43.4 | 15.9 | 18.8 |
| From 6 months ago | 20.5 | 47.4 | 10.7 | 16.7 |
| From 12 months ago | 12.9 | 29.1 | 7.0 | 10.7 |

The 1973 WPI Increases by Month
(Seasonally Adjusted, in Percent)

| | | | | |
|---|---|---|---|---|
| January | 1.1 | 2.9 | 0.3 | 1.4 |
| February | 1.6 | 3.2 | 1.0 | 1.3 |
| March | 2.2 | 4.7 | 1.2 | 2.2 |
| April | 1.0 | 0.1 | 1.3 | 1.4 |
| May | 2.0 | 4.1 | 1.2 | 0.7 |

Unemployment in May remained at 5 percent, unchanged since last November. Since May a year ago, however, unemployment has decreased by 550,000. There was little or no change among the major age-sex groups; jobless rates for adult men, adult women, and teenagers were 3.4, 4.6, and 15.4 percent, respectively. Average (mean) duration of unemployment was unchanged at 10 weeks in May but has moved downward substantially from a year ago when it was 12.2 weeks.

New-car sales in May rose 11 percent to 1.1 million units, a record for any month. Domestic-make sales rose 9.5 percent to 971,304 cars, while sales of imported cars jumped 24.0 percent to 174,000 units.

Retail sales in May rose 1 percent and totaled a seasonally adjusted $41.56 billion, up from a revised $40.98 billion in April. The May volume of sales was 12 percent above that of a year earlier. Sales of durable goods totaled an adjusted $14.50 billion, up 2 percent from April and 18 percent higher than those of a year earlier. Sales of nondurables totaled an adjusted $27.07 billion, up 1 percent from April.



20-973 O - 73 - 10

Personal income in April rose at a seasonally adjusted rate of $7\frac{1}{2}$ billion, about the same as the average rise in the 2 preceding months, to $1.009 trillion. With employment and average weekly earnings high, wages and salaries increased $6 billion.

Money stock in April rose to $258.3 billion, up from a revised $256.6 billion at the end of March.

## COST OF LIVING COUNCIL ACTIVITIES

Dr. John T. Dunlop, Director of the Council, cited the General Services Administration announcement of an increased disposal rate for stockpiled aluminum as "a vital part of the government effort to curb inflationary pressures by increasing supplies". The Council's role in the stockpile disposal program will be to monitor the economic impact of stockpile sales and make recommendations for changes in disposal rates.

A compliance report released by the Council indicates that more than 13,600 automobile dealers are rolling back auto parts and accessory prices by $12.7 million. The rollbacks are the result of a national survey by the Internal Revenue Service of 25,000 Ford and General Motors dealers. A similar survey of Chrysler and American Motors is underway. The Ford and General Motors survey is 80 percent complete. Thus far, 13,624 dealers were found to have been out of compliance with the regulations and are rolling back prices $12,754,450 by discounting current sales of parts and accessories. "Actions such as these restitutions of money to the public are indicative of our ongoing efforts to assure compliance with the regulations as well as the goals of the Economic Stabilization Program," stated James McLane, Deputy Director of the Council.

The Cost of Living Council and U.S. Department of Commerce jointly announced they were informed through the Japanese Embassy that Japanese imports of ferrous scrap from the United States in the last six months of calendar year 1973 will be approximately 24 percent less than in the first six months. COLC and Commerce officials regard this action as a positive step in reducing the inflationary pressure coming from this sector of the economy.

The Council issued a new set of instructions covering Phase III price controls for institutional providers of health care, including hospitals and nursing homes.

The Council issued a Notice of Challenge to National Zinc Company and ordered suspension of a 1.5 cent per pound price increase on zinc announced by the company until the Council has determined whether the increase is consistent with the standards and goals of the Economic Stabilization Program.

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* The section on IRS Activities for this report period is omitted because IRS is in the process of computerizing its reporting procedures and in the transition is unable to furnish the necessary data.

Prepared by Operations Review

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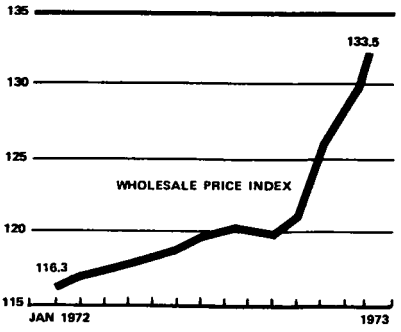
Room 3128
Washington, D. C. 20508

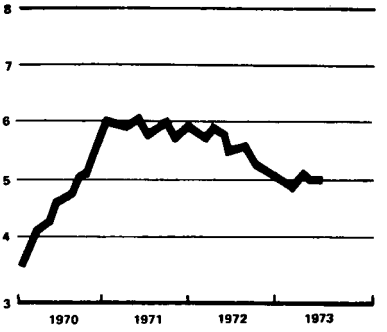
Telephone: 254-8750

# REVIEW OF MAJOR ECONOMIC INDICATORS

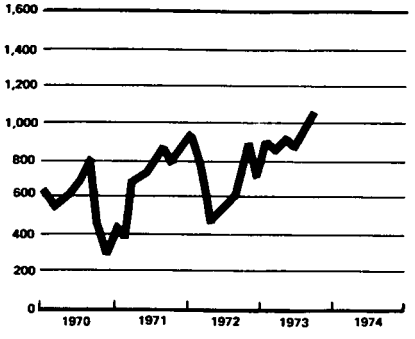
WHOLESALE PRICE INDEX – MAY
NOT SEASONALLY ADJUSTED 1967=100



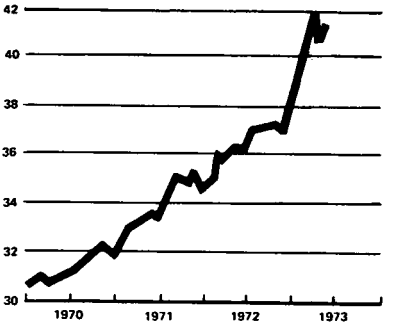

UNEMPLOYMENT RATE – MAY
PERCENT OF LABOR FORCE,
SEASONALLY ADJUSTED



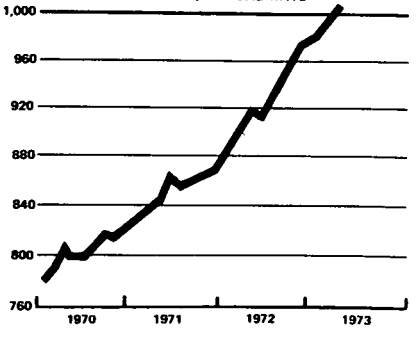

PASSANGER CAR PRODUCTION – MAY
THOUSANDS



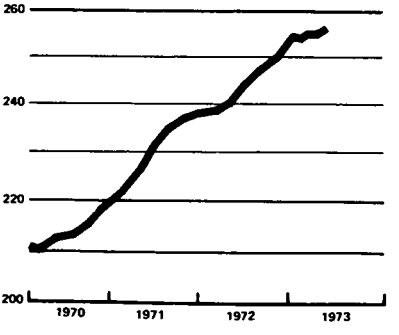

RETAIL SALES – MAY
BILLIONS OF DOLLARS




PERSONAL INCOME – APRIL
BILLIONS OF DOLLARS, ANNUAL RATE




MONEY STOCK – APRIL
BILLIONS OF DOLLARS



General Services Administration announced that commercial sales of stockpile ingot tin will be resumed as of June 7, 1973. During the month of June 1973, GSA will offer for sale up to 1,500 long tons of tin if the U.S. market demand justifies the need for this quantity of tin. During the period July 1, 1973, through December 31, 1973, no more than 5,000 long tons will be sold through monthly sales averaging 830 tons. Dr. Dunlop said: "The government's action to make available a significant amount of tin for private purchase is part of the Administration's continuing effort to stabilize prices of essential commodities by increasing supplies. We at the Cost of Living Council are committed to augmenting supply through government actions whenever possible. This approach is most effective in dealing with inflation problems caused by short supplies and strong demand."

Cost of Living Council Deputy Director James McLane commented on the announcement by the General Services Administration of new disposal rates for eight commodities currently held in government stockpiles: "This action is part of a continuing effort by the Administration to decrease prices by increasing supplies. Disposals are being made from stockpiles that are in excess of the national security requirements, and the new rates will not disrupt the domestic market for these commodities. Taking these excess supplies out of storage at this time will significantly aid the national effort to lessen inflationary pressures."

OFFICE OF PRICE MONITORING

A. Price Transactions

Food Price Increase Requests Filed

In the last two weeks, 95 new requests for food price increases were filed by industry with the COLC. This is a 25% increase over the 76 requests received in the preceding two weeks.

Of the 95 new requests, 19 were for major increases involving $1 million or more. The largest of these was a request from the Norton-Simon Company for an increase of $12.1 million (8.0%) in the price of shortening. The next largest was a $7.3 million request (1.7%) from Pepsico/Frito Lay for increased prices for snack foods.

The OPM in-house inventory of food cases remained essentially unchanged. On June 8, the inventory consisted of 141 cases under active analysis and 18 cases in suspense awaiting additional data from companies.

Food Decisions - Last Two Weeks

In the last two weeks, 86 decisions on food increase requests were reported out by the COLC. This was the largest number of decisions issued during any two-week period of Phase III.

Full or partial approvals accounted for 67 of the 86 decisions. The remaining 19 decisions were full denials. The weighted average increase sought was 2.7%, of which 1.7% was granted and 1.0 denied.

The largest approvals and denials processed during the past two weeks are as follows:

| | | |
|---|---|---|
| Nabisco, Inc. | Cookies & Crackers | $5.8 mil. granted |
| CPC International | Mayonnaise | 4.8 mil. granted |
| Del Monte Co. | Canned Vegetables | 4.6 mil. granted |
| Proctor & Gamble | Cakes | 3.6 mil. granted |
| Campbell Taggart | Cereals | 12.1 mil. denied |
| Carnation Co. | Milk | 6.2 mil. denied |

Food Decisions - All of Phase III

Since January 12, a total of 506 decisions have been rendered by COLC on food price increase requests. Of these, 40% were full approvals, 37% were partial approvals, and the remaining 23% were denials. It should be noted that a large number of the denied requests were later resubmitted by industry. On the basis of the resubmitted data, many of these originally-denied actions were eventually approved in full or in part.

The weighted averages for the 506 decisions in Phase III are: 3.4% sought, 2.4% approved, and 1.0% denied.

For food subcategories, the average increase granted ranges from a high of 6.1% for "meats" down to a low of 0.3% for "dairy products".

CLC-2 Prenotifications and Quarterly Reports

On May 16, the first CLC-2 prenotification reports of price increases were filed by industry with the COLC. Through June 8, a total of 51 prenotifications have been received, covering 117 product-line price increases. There have been no CLC-2 decisions yet, as the COLC has 30 days to act before the prenotified increases are put into effect.

Of the 51 prenotifications received, 8 are for steel, 7 are for soap and toiletries, 6 are for paper and paperboard, and 5 are for glass. The remainder (25) are scattered among 18 different industries.

The first of the CLC-2 quarterly reports were filed by industry with the COLC on June 4. Through June 8, only 12 quarterly reports have been received. A large influx of these reports is expected soon, as all Tier VI companies are required to file their initial reports within 45 days after April 30, covering their first 1973 fiscal quarter.

Phase II Reports

Over the last two weeks, there has been a priority effort to review and close out the OPM caseload of year-end PC-51 reports. As a result, the in-house inventory has been reduced from 1,465 on May 25 to 700 on June 8.

Phase II Violations

Activity on violation cases was low over the last two weeks. Three Notices of Probable Violation were issued and none were resolved. The NOPV inventory now stands at 80.

B. Requests for Exceptions

Health Exceptions

A current inventory of 348 cases includes 153 institutional and 195 non-institutional requests for exception.

Nineteen institutionals and 34 non-institutionals were received in this two-week period.

Twenty-five cases were completed in the same two-week period.

Price Exceptions

There are 96 open price exception cases.

Thirty-one cases were received in a two-week period including 29 meat cases.

Fourteen cases were completed during this report period.

OFFICE OF PRICE MONITORING

Phase III

Price Prenotifications on Food

| | Cumulative as of May 25 | Report Period May 28 - June 8 | Cumulative as of June 8 |
|---|---|---|---|
| Food Industry Filings: | | | |
| Received | 906* | 95 | 1,001* |
| Approved (full) | 182 | 19 | 201 |
| Approved (part) | 140 | 48 | 188 |
| Denied | 98 | 19 | 117 |
| Other Closings | 336 | 0 | 336 |
| Inventory: Active | 126 | - | 141 |
| Inventory: Suspense | 24 | - | 18 |

* Includes January 11 inventory of 186 Phase II Food Prenotifications pending under Phase III regulations.

Decisions on Price Prenotifications on Food

| | Dollar Value (in millions) | Weighted Average % of Applicable Sales |
|---|---|---|
| 1. Report Period, May 28 - June 8: Increase: | | |
| Sought | 93.4 | 2.7% |
| Granted | 58.4 | 1.7 |
| Denied | 35.0 | 1.0 |
| Total Applicable Sales | $ 3,415.7 | - |
| 2. Cumulative, January 12 - June 8: Increase: | | |
| Sought | 503.5 | 3.4% |
| Granted | 354.8 | 2.4 |
| Denied | 148.7 | 1.0 |
| Total Applicable Sales | $14,599.0 | - |

Price Prenotifications on Food

Report Period, May 28 - June 8

| PRODUCT LINE | Number of Decisions | | | | Increase (in Millions) | | | Applicable Sales (in Millions) | Weighted Average % | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | Full Appr. | Part Appr. | Full Denial | Sought | Granted | Denied | | Sought | Granted | Denied |
| Meats | 2 | - | 1 | 1 | $ 3.8 | $ 1.9 | $ 1.9 | $ 280.5 | 1.4% | .7% | .7% |
| Seafood | 3 | - | 2 | 1 | 2.4 | 1.6 | .8 | 23.2 | 10.3 | 6.9 | 3.4 |
| Dairy Products | 9 | 2 | 3 | 4 | 8.5 | .4 | 8.1 | 330.1 | 2.6 | .1 | 2.5 |
| Fruits & Vegetables | 16 | 7 | 6 | 3 | 17.7 | 14.2 | 3.5 | 334.7 | 5.2 | 4.2 | 1.0 |
| Grain Products | 7 | 2 | 4 | 1 | 18.3 | 6.1 | 12.2 | 1,168.8 | 1.5 | .5 | 1.0 |
| Bakery Products | 9 | 3 | 6 | - | 17.4 | 14.9 | 2.5 | 749.2 | 2.3 | 2.0 | .3 |
| Sugar & Confec. | 9 | 3 | 3 | 3 | 8.5 | 7.2 | 1.3 | 153.3 | 5.5 | 4.7 | .8 |
| Beverages | 9 | 2 | 3 | 4 | 7.8 | 4.5 | 3.3 | 259.2 | 3.0 | 1.7 | 1.3 |
| Misc. Food Prod. | 22 | - | 20 | 2 | 9.0 | 7.6 | 1.4 | 116.7 | 7.7 | 6.5 | 1.2 |
| TOTALS | 86 | 19 | 48 | 19 | $93.4 | $58.4 | $35.0 | $3,415.7 | 2.7 | 1.7 | 1.0 |

Price Prenotifications on Food

Cumulative, January 12 - June 8

| PRODUCT LINE | Number of Decisions | | | | Increase (in Millions) | | | Applicable Sales (in Millions) | Weighted Average % | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | Full Appr. | Part Appr. | Full Denial | Sought | Granted | Denied | | Sought | Granted | Denied |
| Meats | 20 | 9 | 6 | 5 | $ 67.8 | $ 57.0 | $ 10.8 | $ 928.0 | 7.3% | 6.1% | 1.2% |
| Seafood | 17 | 6 | 7 | 4 | 13.0 | 9.5 | 3.5 | 248.9 | 5.2 | 3.8 | 1.4 |
| Dairy Products | 46 | 15 | 14 | 17 | 28.7 | 6.7 | 22.0 | 1,973.9 | 1.4 | .3 | 1.1 |
| Fruits & Vegetables | 142 | 90 | 31 | 21 | 65.5 | 48.6 | 16.9 | 1,002.0 | 6.5 | 4.8 | 1.7 |
| Grain Products | 66 | 32 | 27 | 7 | 87.0 | 61.3 | 25.7 | 2,721.1 | 3.2 | 2.3 | .9 |
| Bakery Products | 60 | 10 | 40 | 10 | 91.3 | 66.1 | 25.2 | 3,095.4 | 2.9 | 2.1 | .8 |
| Sugar & Confec. | 61 | 15 | 17 | 29 | 75.8 | 57.7 | 18.1 | 1,806.7 | 4.2 | 3.2 | 1.0 |
| Beverages | 42 | 15 | 16 | 11 | 31.7 | 21.8 | 9.9 | 1,448.5 | 2.2 | 1.5 | .7 |
| Misc. Food Prod. | 52 | 9 | 30 | 13 | 42.7 | 26.1 | 16.6 | 1,374.5 | 3.1 | 1.9 | 1.2 |
| TOTALS | 506 | 201 | 188 | 117 | $503.5 | $354.8 | $148.7 | $14,599.0 | 3.4% | 2.4% | 1.0% |

PHASE III - MAJOR FOOD PRICE INCREASE REQUESTS
(All Requests Over $1 Million Received Since May 28)

| Company | Product Line | Applicable Sales (in Millions) | Increase Requested (in Millions) | Increase Requested (in Percent) |
|---|---|---|---|---|
| Norton Simon | Shortening | $152.4 | $12.1 | 8.0% |
| Pepsico/Frito Lay | Snack Foods | 437.0 | 7.3 | 1.7 |
| Pepsico/Frito Lay | Potato Chips | 182.1 | 5.6 | 3.1 |
| CPC International | Mayonnaise | 82.2 | 5.3 | 6.4 |
| ITT/Cont. Baking | Cakes | 208.0 | 4.3 | 2.1 |
| Standard Brands | Margarine | 63.6 | 4.2 | 6.6 |
| CPC International | Cooking Oil | 68.8 | 3.1 | 4.4 |
| Pet, Inc. | Canned Shrimp | 9.3 | 2.7 | 29.6 |
| CPC International | Margarine | 11.7 | 2.4 | 20.4 |
| Carnation Co. | Evaporated Milk | 109.8 | 1.9 | 1.7 |
| Consolidated Foods | Candy Bars | 23.0 | 1.7 | 7.2 |
| Standard Brands | Yeast | 25.3 | 1.6 | 6.4 |
| Coca Cola | Soft Drinks | 21.0 | 1.5 | 7.0 |
| Beatrice Foods | Pickles | 16.7 | 1.4 | 8.6 |
| Beatrice Foods | Chinese Food | 29.1 | 1.4 | 4.7 |
| Southland Co. | Milk | 186.3 | 1.3 | 0.7 |
| Consolidated Foods | Frozen Potatoes | 11.6 | 1.3 | 11.3 |
| Carnation Co. | Canned Meat | 37.4 | 1.1 | 3.1 |
| Borden Co. | Canned Beets | 6.1 | 1.1 | 17.8 |

PHASE III - CLC-2 PRENOTIFICATION REPORTS OF PRICE INCREASES
(All Prenotifications Received Through June 8)

| Industry | No. of CLC-2 Prenotifications Received |
|---|---|
| Steel | 8 |
| Soap, Toiletries | 7 |
| Paper, Paperboard | 6 |
| Glass | 5 |
| Alcoholic Beverages | 3 |
| Animal Foods | 3 |
| Copper | 2 |
| Textiles, Clothing | 2 |
| Printing, Publishing | 2 |
| 13 Other Industries (one CLC-2 each) | 13 |
| Total Received | 51 |

Status of Phase II Quarterly Reports

| Category | Report Period May 28 - June 8 | Cumulative Since January 11 | Cumulative Prior to January 11 | Cumulative Nov. 1971 to June 8, 1973 |
|---|---|---|---|---|
| PC-51 Reports | | | | |
| Total Received | 38 | 2,624 | 7,221 | 9,845 |
| Closed | 803 | 3,326* | 5,819 | 9,145 |
| Open | -- | -- | 1,402 | 700 |
| TLP Reports | | | | |
| Total Received | 2 | 423 | 420 | 843 |
| Closed | 60 | 442 | 338 | 780 |
| Open | -- | -- | 82 | 63 |
| Certificates | | | | |
| Total Received | 37 | 710 | 2,370 | 3,080 |

Status of Phase II Base Period Reports

| | | | | |
|---|---|---|---|---|
| PC-50 Reports | | | | |
| Total Received | 14 | 949 | 2,377 | 3,326 |
| Closed | 170 | 1,026 | 2,080 | 3,106 |
| Open | -- | -- | 297 | 220 |

* The large number of closeouts of PC-51 reports in Phase II (3,326) is due to the continuing effort to eliminate from Office of Price Monitoring open inventory all PC-51s except the year-end PC-51s.

Phase II Violations

| Notices of Probable Violation | Report Period May 28 - June8 | Cumulative Since January 11 | Cumulative Prior to January 11 | Cumulative Nov. 1971 to June 8, 1973 |
|---|---|---|---|---|
| Total Issued | 3 | 34 | 488 | 522 |
| Resolved | 0 | 168 | 274 | 442 |
| Satisfactory | | 119 | 115 | 234 |
| Remedial Order | | 15 | 77 | 92 |
| Voluntary Compliance | | 7 | 17 | 24 |
| Repurification | | 0 | 4 | 4 |
| Compromise Settlement | | 15 | 29 | 44 |
| Litigation | | 3 | 32 | 35 |
| Beef Cases (Suspended Indef.) | | 9 | | 9 |
| Final Action Pending | | | 214 | 80 |
| Satisfactory | | | 5 | 5 |
| Exception Pending | | | 10 | 5 |
| To be Sent to General Counsel | | | 1 | 3 |
| Remedial Order Pending | | | 11 | 1 |
| Decision Pending | | | 187 | 66 |
| Remedial Orders (Refund/Reduction)* | | | | |
| Total Issued | 0 | 16 | 113 | 129 |
| Profit Margin | | 7 | 58 | 65 |
| Illegal Price Increase | | 9 | 55 | 64 |
| Failure to Prenotify | | 6 | 22 | 28 |
| PC-10/Markups | | | 30 | 30 |
| Other | | 3 | 3 | 6 |
| Total $ Impact (Est.) in Millions of Dollars | | | $15.3 | $26.0 |
| Profit Margin | | | 8.4 | 17.3 |
| Illegal Price Increase | | | 6.9 | 8.7 |
| Remedial Orders (Failure to File) | | 1 | 10 | 11 |
| Value of Price Reductions Due to: (in Millions) | | | | |
| Voluntary Compliance (59 Firms) | | | | $13.7 |
| Repurification (40 Firms) | | | | 14.1 |
| Compromise Settlements | | | | 0.8 |

* Excludes orders issued and later rescinded.

Health Services Exceptions Filings

| | Report Period May 28 - June 8 | Cumulative Since January 11 | Cumulative Prior to January 11 | Cumulative Nov. 1971 to June 8, 1973 |
|---|---|---|---|---|
| Received | | | | |
| Initial Filings | 46 | 433 | 899 | 1,332 |
| Reconsiderations | 5 | 31 | 119 | 150 |
| Appeals | 2 | 43 | 3 | 46 |
| Approved (full) | 2 | 27 | 106 | 133 |
| Approved (part) | 8 | 73 | 205 | 278 |
| Denied | 14 | 143 | 364 | 507 |
| Other Closings | 1 | 74 | 188 | 262 |
| Inventory | 348 | -- | -- | 348 |

Institutional Providers of Health Care

Price Increase Decisions, in Thousands of Dollars

| | | | | |
|---|---|---|---|---|
| Increase Sought: | $44,680 | $ 73,117 | $126,638 | $199,755 |
| Allowed by Regulations | 10,965 | 25,318 | 60,875 | 86,193 |
| Granted by Exception | 7,681 | 9,397 | 14,541 | 23,938 |
| Denied | 26,034 | 38,402 | 51,222 | 89,624 |
| Aggregate Annual Revenue | $204,641 | $446,198 | $1,633,335 | $2,079,533 |

Exceptions Actions

| | Report Period May 28 - June 8 | Cumulative Since January 11 | Cumulative Prior to January 11 | Cumulative Nov. 1971 to June 8, 1973 |
|---|---|---|---|---|
| **Price** | | | | |
| Received | | | | |
| Initial Filings | 27 | 158 | 1,593 | 1,749 |
| Reconsiderations | 3 | 42 | 150 | 192 |
| Appeals | 1 | 32 | 14 | 45 |
| Approved (full) | 1 | 15 | 129 | 144 |
| Approved (part) | 0 | 34 | 117 | 151 |
| Denied | 5 | 78 | 439 | 517 |
| Other Closings | 8 | 211 | 867 | 1,078 |
| Inventory | 96 | -- | -- | 96 |
| **Rent** | | | | |
| Received | | | | |
| Reconsiderations | 0 | 0 | 136 | 136 |
| Appeals | 2 | 125 | 76 | 201 |
| Approved (full) | 7 | 12 | 10 | 22 |
| Approved (part) | 0 | 0 | 16 | 16 |
| Denied | 7 | 15 | 107 | 122 |
| Other Closings | 0 | 92 | 24 | 116 |
| Inventory | 61 | -- | -- | 61 |

OFFICE OF WAGE STABILIZATION

Status of Inventory of Phase II & Phase III Cases, 11th Report Period

| | Categories | | |
|---|---|---|---|
| | I | II | III |
| PHASE II | | | |
| Cases Improperly Filed/Withdrawn | 0 | 0 | 49 |
| New Adjustments Approved | 1 | 17 | 49 |
| Deferred Adjustments | 1 | 2 | 9 |
| Construction | 0 | 0 | 5 |
| Executive Compensation | 0 | 0 | 15 |
| All Other Cases | 1 | 8 | 0 |
| TOTAL PHASE II | 3 | 27 | 137 |
| PHASE III | | | |
| Cases Improperly Filed/Withdrawn | 0 | 0 | 13 |
| Food | 0 | 0 | 28 |
| Health | 0 | 16 | 1 |
| Construction | 0 | 0 | 34 |
| Self-Administered | 0 | 0 | 0 |
| Executive Compensation | 0 | 0 | 38 |
| TOTAL PHASE III | 0 | 16 | 114 |
| Total Actionable Cases Decided | 3 | 43 | 251 |



20-973 O - 73 - 11

Status of Inventory, All Cases as of June 7, 1973

| | Beginning Inventory | Received this Period | | | Decided this Period | | | | Current Inventory |
|---|---|---|---|---|---|---|---|---|---|
| | | New Case Submissions | Appeals | Total Receipts | Submissions | Appeals | Deleted | Total Decisions & Deletions | |
| PHASE II | | | | | | | | | |
| Self-Administered Sector | 73 | 10 | 0 | 10 | 7 | 0 | 2 | 9 | 74 |
| Food | 507 | 59 | 0 | 59 | 63 | 6 | 3 | 72 | 494 |
| Health | 70 | 34 | 0 | 34 | 17 | 3 | 1 | 21 | 83 |
| Non-union Construction | 31 | 6 | 0 | 6 | 7 | 0 | 2 | 9 | 28 |
| Executive Compensation | 16 | 7 | 0 | 7 | 1 | 0 | 0 | 1 | 22 |
| TOTAL | 697 | 116 | 0 | 116 | 95 | 9 | 8 | 112 | 701 |
| PHASE III | | | | | | | | | |
| Category I Reports | 24 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 25 |
| Category II & III Reports | 358 | 12 | 0 | 12 | 11 | 0 | 3 | 14 | 356 |
| Food | 473 | 141 | 0 | 141 | 41 | 0 | 3 | 44 | 570 |
| Health | 28 | 4 | 0 | 4 | 3 | 0 | 0 | 3 | 29 |
| Non-union Construction | 68 | 19 | 0 | 19 | 34 | 0 | 0 | 34 | 53 |
| Executive Compensation | 82 | 51 | 1 | 52 | 18 | 0 | 1 | 19 | 115 |
| TOTAL | 1033 | 228 | 1 | 229 | 107 | 0 | 7 | 114 | 1,148 |
| GRAND TOTAL - Phases II & III | 1730 | 344 | 1 | 345 | 202 | 9 | 15 | 226 | 1,849 |

Patterns of Pay Decisions (Phase II)

| | Total | | Existing on Nov. 13 | | New (Post - Nov. 13) | |
|---|---|---|---|---|---|---|
| | % Increase Granted | No. of Employees (000) | % Increase Granted | No. of Employees (000) | % Increase Granted | No. of Employees (000) |
| CATEGORY I Approvals | | | | | | |
| Week | | | | | | |
| 15th - 17th (4/9-27/73) | 6.8 | 139 | 6.9 | 15 | 6.8 | 124 |
| 18th - 19th (4/30 - 5/11/73) | 5.8 | 377 | 5.3 | 56 | 5.9 | 321 |
| 20th - 21st (5/14-25/73) | 6.1 | 50 | 6.5 | 30 | 5.4 | 20 |
| 22nd-23rd (5/25 - 6/7/73) | 2.3 | 15 | 0.2 | 10 | 6.0 | 5 |
| Cumulative Approvals | | | | | | |
| Weeks | | | | | | |
| 1-59th (11/13/71 - 12/31/72) | 5.3 | 16,487 | | | | |
| 1-23rd (1/1 - 6/7/73) | 6.0 | 3,270 | 6.2 | 1,013 | 5.9 | 2,257 |
| CATEGORY II Approvals | | | | | | |
| Week | | | | | | |
| 15th - 17th (4/9-27/73) | 6.8 | 131 | 8.5 | 48 | 5.8 | 83 |
| 18th - 19th (4/30 - 5/11/73) | 5.3 | 527 | 5.9 | 55 | 5.2 | 472 |
| 20th - 21st (5/14-25/73) | 4.8 | 55 | 6.4 | 8 | 4.5 | 47 |
| 22nd- 23rd(5/25 - 6/7/73) | 5.3 | 39 | 7.1 | 6 | 5.0 | 33 |
| Cumulative Approvals | | | | | | |
| Weeks | | | | | | |
| 1-59th (11/13/71-12/31/72) | 5.2 | 5,522 | | | | |
| 1-23rd (1/1 - 6/7/73) | 5.8 | 2,187 | 6.8 | 371 | 5.6 | 1,816 |
| CATEGORY I and II Combined | | | | | | |
| Weeks | | | | | | |
| 1-59th (11/13/71 - 12/31/72) | 5.2 | 22,115 | | | | |
| 1-23rd (1/1 - 6/7/73) | 6.0 | 5,457 | 6.4 | 1,384 | 5.8 | 4,073 |

CONSTRUCTION INDUSTRY STABILIZATION COMMITTEE

New Agreements (Negotiated after November 13, 1971)

1. Trend

During May, the Committee received 7 new agreements for review. Since November 13, 1971, a total of 3,386 new agreements have been submitted to the Committee for review, or a cumulative daily average of 9.

2. Status of Inventory

The following table shows the action taken by the Committee during May on new agreements, and the remaining inventory.

| | May | Cumulative |
|---|---|---|
| Filings | 7 | 3,386 |
| Approved | 71 | 2,335 |
| Returned to Craft Boards for Review | 11 | |
| Remaining Inventory | | 1,051* |

* Includes cases returned to Craft Boards for review.

Agreements Existing on November 13, 1971

The Committee reviews increments in collective bargaining agreements which were in existence on November 13, 1971. Since November 14, 1971, the Committee has formally disapproved economic adjustments in 1,076 separate collective bargaining agreements.

Work Stoppages in Construction

During May, 74 work stoppages were reported for the first time by the Federal Mediation and Conciliation Service. This compares with 163 in 1970, 73 in 1971, and 85 in 1972 for the same month. At the end of the month there were 19 work stoppages in progress; 70 work stoppages were settled during May.

Patterns of CISC Decisions

The Committee reviews all economic adjustments in collective bargaining agreements in construction. Economic adjustments include wages, fringe benefits and changes in working rules. The data given below include the cents per hour and percentage adjustments in both wages and all fringe benefits.

Both cents per hour and percentage changes have been weighted by the number of employees covered by the agreement.

| Cases Negotiated Since November 14, 1971 | 1st Year Change | 2nd Year Change | Time Weighted* |
|---|---|---|---|
| Number of Cases | | | |
| 2,346 | 44¢ | .42¢ | |
| Number of Employees | | | |
| 949,787 | 5.9% | 5.5% | 5.6% |

* Time Weighted - each change is weighted by the time it will be in effect during the contract period and thus measures the effect of settlement on hourly costs during the life of the agreement.

NOTE: The operational data in this section were provided by the Construction Industry Stabilization Committee. It is updated monthly.

OFFICE OF COMPLIANCE AND ENFORCEMENT

Directed investigations involving potential Phase II violations initiated since January 11, total 96: 323 investigations have been completed and the remaining inventory, 101 is down 11% from last report's figure of 114.

| | Bi-Weekly Report Period | Cumulative Since January 11 |
|---|---|---|
| On Hand, January 11 | | 328 |
| Investigations Opened | 0 | 96 |
| Price | (0) | (94) |
| Pay | (0) | ( 2) |
| Case Analysis Completed | 0 | 323 |
| Closed, No Violation | (0) | (272) |
| Referred to Justice | (0) | ( 47) |
| Referred for Remedial/ Administrative Action | (0) | ( 3) |
| Active Case Inventory | | 101 |
| At IRS | | ( 53) |
| At OCE | | ( 48) |

Directed investigations involving potential Phase III violations initiated since January 11, total 1,255; 238 investigations have been completed and the remaining inventory, 1,017, is up 2% from last report's figure of 1,002.

| | | |
|---|---|---|
| Investigations Opened | 101 | 1,255 |
| Price | ( 88) | (774) |
| Pay | ( 13) | (481) |
| Case Analysis Completed | 82 | 238 |
| Closed, No Violation | ( 84) | (229) |
| Referred to Justice | ( 2) | ( 9) |
| Referred for Remedial/ Administrative Action | ( 0) | ( 0) |
| Active Case Inventory | | 1,017 |
| At IRS | | 894 |
| At OCE | | 123 |



GPO 865-464

Chairman PROXMIRE. The article also alleges a report of a huge backlog of wage cases with files actually "lost" in the overall mixup. Do you concede that or deny it?

Mr. DUNLOP. I deny it. I deny the first part of it. Let me give you some kind of figures.

When I came to the office in January, as I recall it, the order of backlog of wage cases was somewhere around 4,000 cases. In the IRS offices and the Pay Board, that backlog of cases has been very substantially reduced. The one area where we have an appreciable backlog is in the food area, which remains under mandatory order, where I have set up a tripartite committee, Mr. Chairman, and where I think it is doing very good work in a very difficult circumstance.

The parties in that industry and the chain stores particularly—both on the union side, involving four major unions, the Teamsters, Butchers, Bakers, Clerks, and the management side—are working together. Indeed, I have real hope of coming out of those discussions with a long range plan for labor management peace in the retail industry as a result of the work of that committee.

As far as losing cases is concerned, I suppose I would agree that in the past where one had a very large case backlog, on occasion one may have lost a case. I do not know it as an extended or pervasive problem.

Chairman PROXMIRE. Can you give us a report on the number of cases that have been lost, where the material has been lost?

Mr. DUNLOP. Almost logically speaking, this is a non sequitor, isn't it? If you knew it was lost, if it is really lost, I wouldn't know it. But I will try to.

Chairman PROXMIRE. All right. Give me a report on——

Mr. DUNLOP. On the problem.

Chairman PROXMIRE [continuing]. On the number of instances in which you have tried to find material on a case, and you haven't been able to find it. I suppose that is the only way you can tell the files have been lost.

Mr. DUNLOP. I will ask Mr. Millard Cass, our Administrator for Wage Stabilization, to prepare a statement for you.

[The following information was subsequently supplied for the record:]

I. THE REPORT OF "LOST" CASES

During the first week in April, 1973, an audit was held at OWS to ensure the accuracy of the OWS computer data file on active cases. This consisted of comparing data drawn from the physical case files with the data on the computer data file.

The data procedure was designed to be completed within 48 hours with respect to the bulk of the case load. The remaining portion of the case load was audited over the following weeks.

During the first 48 hours, approximately 1,800 active cases were audited; i.e., reconciled with the data file. This left approximately 400 cases unaudited. Of these, over 250 either (a) were in the data entry room; i.e., just received by OWS for action, or (b) were in the closed case room; i.e., the decision had been mailed out and the case was being transferred to the closed case file from the active file.

Procedures were instituted to audit these remaining cases. Approximately 233 remain to be audited, but of this number 120 are already decided and the parties notified. So, only 123 (of some 17,000 cases processed) are unaudited. These should be processed soon.

II. LOST FILES

As in any organization dealing with the volume of cases handled by the Pay Board and the Cost of Living Council, there have been occasions when parties

would request information and the precise physical location of the file was difficult to ascertain. This is particularly true because the cases were filed with the Internal Revenue Service in the field and sent by them to the National IRS office in Washington and then to the Pay Board in Phase II. Nearly all files, of course were found. In the few instances when a file could not be found, the parties were asked for duplicate submissions. No data were kept on the number of such instances, but it is estimated that the rate of incidence of files which could not be located was a small fraction of a percent.

*Backlog*

| | *Cases* |
|---|---|
| Filed with IRS before January 11, 1973, but forwarded to the Office of Wage Stabilization during phase III | 260 |
| Filed with Pay Board before January 11, 1973 | 315 |
| Filed during phase III but relating to phase II adjustments | 320 |
| Phase III cases | [1] 1,046 |
| Appeals from Pay Board or Office of Wage Stabilization decisions | 124 |
| Decisions issued during phase III | 5,689 |

[1] A large number of these cases do not require any decision by Office of Wage Stabilization but have been filed for information purposes only.

Chairman PROXMIRE. You said you had a backlog of 4,000 cases. What is the backlog now?

Mr. DUNLOP. In the order of a thousand.

But I wish I had known, Mr. Chairman, of these sorts of questions. I would have had my—as a matter of fact, I have a report on this matter, which I normally present to our Labor Management Advisory Committee that meets tomorrow, and I would have brought it along.

Chairman PROXMIRE. Do you monitor the major oil companies?

Mr. DUNLOP. On the price side?

Chairman PROXMIRE. Yes.

Mr. DUNLOP. Under Special Rule No. 1, they are required to present reports to us on a monthly basis.

Chairman PROXMIRE. You monitor those?

Mr. DUNLOP. Yes.

Chairman PROXMIRE. Why isn't there any limit on the amount individual prices can go up? Under phase II, the TLP set not only average limits, but individual price increases?

Mr. DUNLOP. CAPS as they were called.

Chairman PROXMIRE. You don't have that now?

Mr. DUNLOP. No, sir.

Chairman PROXMIRE. Why not?

Mr. DUNLOP. Well, for two reasons: One, if you are going to carry forward a system with a product limit of a percent and a half, to place CAPS on individual commodities requires careful definitions of commodities. Where does one commodity begin—is it a product line? Is it a product group? Is it an individual product? These become very difficult areas.

Secondly, it seems to me as we get to these very tight scarcity areas—and, by the way, the Paper case you talked about is very much one in which we are at capacity. If I might digress for just 1 second, Mr. Chairman, on this. You know that we have spent some time, a couple of hours each, with the chief executive officers ordinarily and a few of their top staff of 52 companies in all of these areas of price pressure, to which you have referred. We have talked at length about their problems, their view of pricing, and capacity.

Now, paper is an area which is pressing capacity very closely. We have not built papermills in this country in the last several years. This is an area in which there is a need to expand capacity. I don't want to

go into all of these problems of why that is the case, but it is very clear to me that the use of CAPS on individual product lines, in places where price pressures are different product-by-product, becomes a rather constraining matter which will have serious adverse affects on output.

Chairman PROXMIRE. Even the oil companies which are under mandatory controls don't have CAPS. Is gasoline harder to define?

Mr. DUNLOP. There are all kinds of gasoline, various octanes. There are various types of distillate products in between. Moreover, once you put a cap on a given product, such as, say, gasoline, and you don't do it on fuel oil, or kerosene or other products, it becomes economically profitable to shift the raw material from one of those product lines to another and to distort the optimum use of the basic product in the economy. And one of the reasons the particular price ceilings were developed as they were in petroleum is that during the course of the year it is important to shift distillate from fuel oil in one period to kerosene in another and to gasoline in another. There are important seasonal variations in the operations of these oil refineries.

Chairman PROXMIRE. Are the major oil companies actually filing those monthly reports?

Mr. DUNLOP. The regulations require them to do so. I am not as familiar as I should be with this point—the problem of whether we have the form actually out of the Budget Bureau, I don't really know.

Chairman PROXMIRE. The forms are not ready, or may not be ready?

Mr. DUNLOP. I will have to check.

Chairman PROXMIRE. It is not the CLC–2?

Mr. DUNLOP. No, sir. It is a special form for the 23 companies under Special Rule No. 1.

Chairman PROXMIRE. Let me get briefly into the steel situation, and I quote two paragraphs from Business Week:

> Some domestic steel prices have risen 10 percent to 15 percent since the first of the year, say buyers, because discounts have dried up and there have also been list price increases. On top of this, there is talk of a gray market in which some distributors are selling steel above list.
>
> "This could be a viloation of Phase III regulations. But so far, the Cost of Living Council has just started looking at steel prices.

Could you comment on the accuracy of that statement? Is it true that the Cost of Living Council has just started to look at steel prices?

Mr. DUNLOP. No, sir.

May I just drop a footnote to your previous question? The petroleum forms are being printed. One of my staff advised me.

Chairman PROXMIRE. They are?

Mr. DUNLOP. On the steel situation——

Chairman PROXMIRE. But you have not received reports as yet? They have not been out as yet to get reports?

Mr. DUNLOP. I will check that.

On the steel situation, the industry, as you know, is operating at a very high rate of capacity. We had, as I testified here before, the steel companies in May, when the United States Steel Corp. first announced that they intended to put increases into effect on 40 percent, roughly, of the industry's output in the form of sheet and stripped steel. I asked them to furnish us the sort of information that would be required for prenotification.

They said they did not have to prenotify us in most cases, because the effects of these increases were less than 1.5 percent. I said I would like to see the information anyway, and they agreed, I am happy to say, to present it to us.

We had a unit in the former Price Commission and now have one in the Cost of Living Council, that follows steel developments regularly, and our staff has been in touch with the steel companies, I am advised, on a very regular basis over the last 6 or 8 months. In the current period, since that notice, I have met with them a couple of times as to what the cost justification is with respect to the sheet and strip steel proposals, which the industry said it would like to put into effect on June 15 or some date.

Chairman PROXMIRE. Have transaction prices actually risen 10 or 15 percent? Is there a gray market?

Mr. DUNLOP. I don't know. There has been in many industries a change from quoted prices in which actual transactions went below those list prices. As you know, in many industries when volume is low, people buy and sell below list price. As volume rises, one of those things that happens is that those list prices become more realistic prices in terms of the——

Chairman PROXMIRE. It would be quite a sharp increase, though, would it not, 10 or 15 percent?

Mr. DUNLOP. It depends on the product.

Chairman PROXMIRE. Have the steel companies prenotified you of the 5-percent increase on sheet steel which they have announced for later this month?

Mr. DUNLOP. I just noted that most of them said they did not have to prenotify us. I requested such information and they have furnished it to us.

Chairman PROXMIRE. What decisions have you reached?

Mr. DUNLOP. I have reached no decision.

Chairman PROXMIRE. When will you reach a decision? Will you hold public hearings?

Mr. DUNLOP. Presumably before the 15th.

Chairman PROXMIRE. You will hold public hearings on it?

Mr. DUNLOP. I do not know. That is one of the alternatives I have had in mind.

Chairman PROXMIRE. I wonder whether it is an alternative or you are mandated. Section 207(c) requires public hearings in important cases. Surely, this is an important case. It is the key to the whole future of the control program. If we can't control steel, I don't know what we can control.

Mr. DUNLOP. Well, Mr. Chairman, I have been more hospitable to hearings than I think most people who have held my sort of job——

Chairman PROXMIRE. That is not saying very much. That is true, but your predecessor held no hearings at all.

Mr. DUNLOP. I don't know. And it does seem to me that one needs to look at the specific situations. It is an alternative. I would not wish ahead of time to indicate how that would be handled.

Chairman PROXMIRE. I certainly hope so. Will the prenotification information submitted by the steel companies be made public?

Mr. DUNLOP. I take it that is a part of the larger question you will express your views about to us tomorrow?

This particular information, they said, was not mandated. They were submitting to me this information, most of the companies, pursuant to my request. Therefore, that might put that information, regardless of the views you have on the main subject, in a different category.

Chairman PROXMIRE. If the draft regulations you have issued for comment as required under the Hathaway amendment are approved, that is, the ones you issued, will they provide the information submitted by steel companies relative to these price increases be made public?

Mr. DUNLOP. What I was trying to say——

Chairman PROXMIRE. The answer to that is "No," isn't it?

Mr. DUNLOP. Well, the fact is, however, Mr. Chairman, some of the companies, I forget the number—I think it is three—would have to prenotify because the increases that they proposed would have brought their price increases up to a percent and a half. With many of the companies it would not.

Chairman PROXMIRE. But the regulations are such that all they would require is a price increase. They wouldn't give the cost justification for it. So there is no way the public could know whether the price increase was justified. This is the dilemma.

Mr. DUNLOP. That is the issue that I have substantively and procedurally under review.

Chairman PROXMIRE. Has the Cost of Living Council staff submitted to you their staff analysis of the processed price request?

Mr. DUNLOP. Yes.

Chairman PROXMIRE. Can the staff analyses be made available to this committee?

Mr. DUNLOP. I do not know the answer to that.

Chairman PROXMIRE. What do these staff analyses show about the range of price increases?

Mr. DUNLOP. What is that?

Chairman PROXMIRE. Will increases on such specific products exceed 5 percent?

Mr. DUNLOP. I don't recall them. I don't think so.

Chairman PROXMIRE. Could you tell us what will happen to profit margins if price increases are permitted?

Mr. DUNLOP. Our rules would clearly not permit this without special exception, which no one has envisaged in this situation, based on profit margins. In other words, the companies said they intended to place into effect these price increases. They were thoroughly cost justified and their profit margins would still be below base. And, as you know, profit margins in the steel industry have not been large in comparison with other industries.

Chairman PROXMIRE. When you operate this close to your vest and we don't have the information to judge it ourselves, we have to take it all on faith. I have great faith in you but I think faith is a diminishing element in this town in the last couple of months. I think this is a time when we need to have disclosure so we can have credibility based on knowledge.

Thank you very much, Mr. Dunlop. This is a very trying job you have and you do an excellent job and certainly you are a fine witness.

Our next witness is Mr. Robert Townsend, and I want to apologize once again to Mr. Townsend for delaying you for so long.

Mr. Townsend is the former chief executive officer of Avis.

## STATEMENT OF ROBERT TOWNSEND, FORMER CHIEF EXECUTIVE OFFICER OF AVIS

Mr. TOWNSEND. I would like to point out with Avis making headlines for purchasing an assistant district attorney in Queens County, I haven't been with them for 8 years.

Chairman PROXMIRE. You are also the author of "Up the Organization."

I understand you don't have a prepared statement, but we welcome any comments you would like to make.

Mr. TOWNSEND. I thought it might be worthwhile just to make sure the committee realized the attitude of the top management on compensation.

Chairman PROXMIRE. Good.

Mr. TOWNSEND. Their attitude generally is, who is retiring? Who do we want to pay what salaries to? And then when they decide what they want to pay each other in the top management, or when the chief executive does, he typically calls up his general counsel and says, "These are the increases that we are going to get approved by the salary committee and then by the board of directors at the next meeting. Now tell us, 'Who Goes to Jail and How Much is the Fine?' " And the typical answer is, "Nobody goes to jail and we will mix it in with a whole lot of other small increases, so there won't even be a fine and the chances are they will lose the file and they won't even find out about it anyway."

So they go ahead and do what they want to. They have been doing that for years, but with the general moral leadership that we have been getting from this Capital recently, I can understand why it is even more widespread now, the attitude of "Grab what you can; we are all on the *Titanic*. Why not go first class?"

Chairman PROXMIRE. First class to the bottom.

Mr. TOWNSEND. "While we are afloat."

I would suggest that your only real weapon to use on these people with their outrageous salaries and bonuses is disclosure. Rather than just disclosing the top three salaries which I believe is what the SEC requires. I don't see why you don't use your influence to perhaps get the SEC to require disclosure of everybody who is paid $100,000 or more. Because some of the "nonjobs" that are paid over $100,000 a year would be a source of great humor to the business community if they were disclosed, some of the "public relation hacks" that get over $100,000. There are several pressures. There is the pressure of Gerstenberg getting $875,000. Henry Ford must raise himself to $874,000 and Lynn Townsend must raise himself to whatever. There is that pressure. But then, once you are up there in that rarified salary atmosphere, there is the feeling, "I am too conspicuous; I had better call up some of these hacks and get their salaries a little closer to mine."

So it has that kind of effect, you see.

There is a lot of humor in it if you know the job content of some of these people. Most housewives with a college education and a low tolerance for nonsense would make better chief executives than the ones we have in companies now. Because they would ask the right questions and set the right priorities and the right posteriorities.

So I would urge you to consider advocating disclosure of all salaries

and bonuses of $100,000 or more. As you pointed out, a dollar is a dollar is a dollar; you don't care what it is called.

Another thing I urge—and I don't know why this hasn't been done—is making expense accounts public. They have to be prepared anyway for the IRS. So it wouldn't be more paperwork. Just to require that anybody who makes over $100,000 a year must make public his expense account.

Chairman PROXMIRE. Why $100,000? Why not $42,500, over that?

Mr. TOWNSEND. Well, if you get much lower than $100,000, you would have to appropriate a lot more money for the SEC to go into microfilm for their files, because there would be so many people involved. But $100,000 is a good round number, and for glorified receptionists, which a lot of these public relations people are, that is a lot of money. And what we are trying to do is throw light on what people are being paid and see if we can develop a little moral outrage in this country, a little effort to make compensation more equitable.

There is another thought which you might consider, which is that if there were any way of putting up for bid chief executive jobs, qualified outsiders—and I would say in the United States there are hundreds of thousands of qualified chief executives—there would be people who would pay GM $50,000 in order to control their limousine fleet, and the dolphin farm they own in Tahiti, their private air force, so that they can go visit their dolphin farm in Tahiti. It would be worth having an auction every year among qualified people bidding for chief executive jobs.

That would again set a lower level if the chief executive was paid minus $50,000 a year. That would sort of set the peak of the pyramid a little lower than $875,000, from which to hang all of the other salaries in the country.

That is not practical, but in compensation you have to consider, when you consider how outrageous the numbers are, the fact that salary isn't really the main reason the job is attractive. It is because you get to set the priorities, you get to hire outsiders to work on pet projects, you get to assign tasks, you may not get to accomplish them, but you get to assign them. It is more or less like your committee here. You get to use moral suasion.

You get, as I say, control of limousines, yachts, who gets to ride on the yacht, who gets to ride in the aircraft.

Peter McColough, chief executive of Xerox, the other day told me, with great pride, how he and a group had flown out to San Jose, Calif., from White Plains, to address a management group there. And as they were leaving the plane, the pilot said, "I have to go back to Chicago now and take somebody else and will be back tomorrow to take you down to L.A.," which is a 45-minute hop. Commercial planes leave every hour.

McColough said, with great pride, "I told him he didn't have to come back; we would fly commercial." This was a great sacrifice for the stockholders.

But this is the kind of atmosphere that makes people want to be chief executives.

You are certainly on the right track in this disclosure of product line figures, because the people that are hurt the most by secrecy are the stockholders and employees of the companies that indulge in se-

crecy of this kind. Because, seriously, when they don't make product line figures available, it is very easy then not to make them available to the outside directors. And outside directors have been helpless. They can't ask the right questions. They can't compare their costs with somebody else who is a much more logical producer of that good or service, and suggest the company devote its resources to something they can produce well rather than wasting their time in this particular field.

So it is the company and the country who are hurt by secrecy, really. It is what makes our productivity low and our efficiency low and our competitive position low, or contributing to that.

I would suggest to you just one other thing. There is something called the Scanlon plan. If I were in your position, I would be advocating that we appeal again to the normal greed in management, which seems to be about the most effective producer of action, and use some form of the Scanlon plan, which is a plan devised in the twenties whereby a company will devise a formula which describes its productivity and then publish monthly results, and any improvement in productivity is translated into dollars and then just paid monthly, pro rata, according to salary from the president on down to the sweeper, monthly bonus checks, but related only to improvement in productivity.

Chairman PROXMIRE. Improvement in overall productivity specifically?

Mr. TOWNSEND. Overall. It can be done on as little as a plant-by-plant basis. There are about 400 of these Scanlon plans in effect. The Harvard Business Review has a few articles on it. The plans work in union or nonunion situations.

I will give you one example: Donnelly Mirrors Co. in Holland, Mich. I have no stock in the company, have no connection with the company, except I went out there and toured their plant out of curiosity.

They make rearview mirrors, 70 percent of the rearview mirrors in the country, in Holland, Mich., and they sell to GM, Ford, and Chrysler, who are not exactly impulse buyers. They felt their costs were getting out of hand, and they were, obviously, under the threat that these large companies would go into the mirror business themselves.

So in 1952 they put a Scanlon plan into effect, devised their own formula, explained it to all of their employees, which is the difficult part, and today their profits have shown handsome increases, their wages paid to their employees are at the top for that area of the country, and yet their prices are 25 percent below what they were in 1952. And their costs are steel, glass, copper, and labor, which have risen dramatically in the last 20 years. Just this year they offered the Big Three that if they signed a 3-year contract instead of 1 year, Donnelly would sell the basic mirror at $1.30 the first year, $1.29 the next year, and $1.26 the year after. Which is how confident they are. They have their people lined up toward eliminating waste and improving productivity out of sheer self-interest.

I believe Israel some time ago used Government measures to encourage some installation of plans like this. All they did was say any bonuses from the Scanlon plan can be treated like capital gains: tremendous incentive to the top people, who are the ones who have to authorize and implement the plan.

Chairman PROXMIRE. They cut your tax in half. Your compensation is a result of the entire group productivity.

Mr. TOWNSEND. Yes. Your basic salary is, of course, taxed at ordinary rates. It is the monthly bonus which is related to productivity. If there is no increase in productivity, there is no bonus, that is all.

What Israel did, I am told, they set up a fairly small but competent commission to make sure that each Scanlon plan that was installed was a legitimate Scanlon plan, where everybody in the company shared and the formula really measured productivity and reflected productivity.

It just seems to me that is worth consideration.

Chairman PROXMIRE. Let me ask you a couple of questions. I understand you have to leave fairly soon to get your plane.

You served as the chief executive officer of a large company. We get almost universal protest against disclosure of cost information from executives of large corporations. What legitimate problems, what legitimate difficulties develop for companies when they have to disclose the cost increases as justification for price increases? The No. 1 point that is made is that it makes it very difficult in terms of foreign competition. Foreign companies, of course, don't disclose that to us; and if domestic companies have to disclose it here, the argument is that they are at a disadvantage.

Mr. TOWNSEND. The principal reason for their unwillingness is fear of embarrassment. If all their competitors had to simultaneously disclose, they would still dread the day when they must reveal they are the highest cost operator in the field, and then all of the stockholder mail they are going to get and some selling of their stock.

But really that is what free enterprise is all about, you know. If all of the facts are known, then the healthy producers will stay in the business, the ones who are clearly outmatched will get out of it, which they should, and devote their resources to something they can do.

Chairman PROXMIRE. Is this a step toward disclosing trade secrets that might be important to keep as an incentive for developing new processes that they can use and if disclosed might lose whatever competitive advantage?

Mr. TOWNSEND. It has really been my experience that trade secrets are badly overrated. Your real No. 1 and No. 2 competitors probably know much more about what you consider trade secrets than your board of directors.

Chairman PROXMIRE. If nothing else, you have in these big corporations a tendency for Ford to hire a General Motors man and Chrysler to hire a Ford man and vice versa, so I don't understand how these things can be kept private for more than a year or two anyway.

Mr. TOWNSEND. Mr. Chairman, it is just as simple as this. If the figures were known, there would be no excuse to sweep problems under the rug. It is a big problem to liquidate a division, we will say, because Ann and Joe and Billy and Fred work there, and if the figures were made known, it becomes obvious that the company doesn't belong in the business. But the chief executive has blinked at that and ducked the problem.

The result is, the company and the country is less productive and less effective than it could be.

Chairman PROXMIRE. Why is it that Henry Ford increases his salary by $200,000, 26 percent, up to $874,000; that your namesake, Lynn Townsend, increased his by more than threefold, 219 percent; Richard Gerstenberg increases his by 100 percent, up to $874,000? If it were just a matter of greed, I can understand it. After all, we are all greedy; we would like to increase our compensation, but I do think you get to a point where it doesn't mean anything.

You can't spend that much money unless you are like the fellow who we read about the other day, who had three beautiful girls in bikinis. A great big fellow in Fort Lauderdale who went into a place where they sold boats and bought one big one and gave it to one bikini-clad girl, and another boat for another, and another boat for a third, and roared away over the water at 35 miles an hour scattering $100 bills on the surface of the ocean.

Mr. TOWNSEND. That is not the General Motors attitude.

Chairman PROXMIRE. What do you do with it? I just don't understand it.

Mr. TOWNSEND. It is like getting your fifth star as a general. It really doesn't increase your power. It is a matter of prestige. You are going to be listed in SEC reports. Everybody at Grosse Point knows about them.

Chairman PROXMIRE. They look like they must be terribly important.

Mr. TOWNSEND. If Henry Ford were paid $100,000, which is probably $90,000 more than he is worth to the company, he couldn't face his neighbors on the golf course out there when the proxy statement came out. So it is General Motors really setting the pace.

And why they do that, I don't know. I guess you will have to read Wheels, or something.

Chairman PROXMIRE. Another question I had on my mind for you. There is a question I want to read you. You can understand why I don't ask it. It was prepared by the staff:

"Do you think anyone, such as Mr. Gerstenberg, earns a salary of $874,963 based on his productivity?"

The next line is this: "The President of the United States earns around $200,000 or $300,000. Is what GM is doing so much that more important?"

I won't give you a chance to comment on it. I don't want to continue on that in view of what happened the last 3 months. That is not a very serious question.

But then, a followup. A poor Senator—I don't know whether it means "poor" in terms of quality or "poor" in terms of his income—a poor Senator earns only 5 percent of that amount. Do you think this is a measure of relative productivity?

I won't give you a chance to comment on that, either, because I think it is pretty hard to measure.

Mr. TOWNSEND. I think it is an important thing. You can't price-control it out of existence. The fact of the matter is America has gotten fat and lazy and these salaries are a measure of it, and the excessive money paid the people at the top causes them to be distracted from what they should be worried about and they wind up in Bimini and Key West and Augusta National and out at leadership seminars at Aspen, Colo., instead of worrying about the transportation industry

and how should we be phasing out of automobiles into mass transit, which is clear to everybody except the leaders in Detroit.

Chairman PROXMIRE. Let me ask you about the Scanlon plan. You answered what I wanted to ask you at first when you first described it. You apparently think it should be put into effect by law as in Israel?

Mr. TOWNSEND. Tax incentive. All you have to do is clear it with the Commission. It doesn't have to be Scanlon, because I have no exclusive interest in that plan. It has to be a plan related to productivity and has to apply to everybody in the company, with bonuses paid monthly.

Chairman PROXMIRE. You are convinced it is possible to keep it from being rigged? You can measure productivity, you can have an agency that has responsibility for determining the plan put into effect is a legitimate productivity-determining measurement? I think if the only effect of this program would be to get firms conscious of productivity, would be an immense help.

Mr. TOWNSEND. What happens—the difficult part—it is simple and difficult, like honesty. You have to explain the formula to everybody in the company, what it is, and he has got to understand it and understand the formula. This is time consuming. This is why it is done generally on a plant-by-plant basis, but it should be eventually companywide. It must apply to everybody. What happens, instead of a normal situation where everybody on the production floor knows if you put operation B before operation A, you wouldn't need operation C, and they get their kicks out of watching all of that money draining out and the management comes down and passes it every day and doesn't know it is going on.

Instead of that, they stop it. They go to the foreman and say, "Let's switch these two processes and cancel the third. It is going to mean something in all of our pay envelopes."

And when you and I, and you, who are a small team on the floor, and I am getting ready to retire and we all know I don't have to be replaced, instead of getting a replacement, what we do is go to the foreman and say, "When Townsend retires, we want our two jobs reevaluated so we can get a higher base, but we can do our job better without him."

Chairman PROXMIRE. How widely would it be applied? Obviously, it couldn't be applied to newspapers. Could you have a newspaper reporter on a productivity basis, the number of stories or lines?

Mr. TOWNSEND. It is not individuals. There is no competition within the company caused by Scanlon. A newspaper would just have to devise a formula which would measure its—well, there are several ways of doing it. The Donnelly formula is 78.5 percent of cost to sales. That has been in effect since 1952, and that is of certain selected costs which are controllable by the management and employees. They list all of the exempt costs and have explained to all of their people why they are exempt and why they are not in the formula. Which is one of the reasons why it would be easy for a top level committee to administer because if they can't explain it to their last hire in the janitor's department, it won't work.

Chairman PROXMIRE. So you might have the editorial department exempt but the presses, linotypes, and so forth, included?

Mr. TOWNSEND. You might.

Chairman PROXMIRE. And maybe the circulation department also included.

Mr. TOWNSEND. Well, there is another one. Lincoln Electric in Cleveland, which was going bust and put in their form of the Scanlon plan in 1933. In 1934, average bonuses were 26 percent of base pay and their principal product, arc welding machinery, is selling roughly still around 1933 prices, and yet there are 2,000 employees who got paid bonuses of $19 million in 1972. That is $9,500 per employee. Their employees—these are factory workers, production workers—talk about their $58,000 homes and their $25,000 pay.

Chairman PROXMIRE. I am told by the staff that IBM, as efficient as they are, and at least we view it as an efficient firm, a very profitable firm, they don't know how to measure their productivity even now.

Mr. TOWNSEND. Well, as I say, there are other ways of doing it. The Lincoln formula, which started in 1933, is that we are going to take $x$ percent of sale for—this is after all costs except taxes and bonus, productivity bonus—we are going to take $x$ percent for product improvement and cost reduction, $y$ percent of sales for plant and machinery replacement, $z$ percent for dividends, and the balance belongs to the employees, from the president on down, as a percentage of his pay in the form of monthly bonus.

On $133 million of sales, they had a profit margin of 20 percent pretax and paid $19 million in bonuses, productivity bonuses alone, and they are still selling their product at 1933 prices. It is just amazing.

It is axiomatic in industry, 15 percent of the people in typical companies do the thinking and the other 85 percent don't, can't think, can't be persuaded to think, they just beat the system, strike, ask for more money, goof off, that kind of thing. The Scanlon plan, if properly explained and the formula carefully calculated, calculated right, tends to get those 85 percent people not to like the management any better, but to understand that their interests are parallel to the management's.

Chairman PROXMIRE. Are these hearings counterproductive on executive compensation? In a sense, we are calling attention to these, these fellows get more prestige and everything because they are getting $874,000 now.

Mr. TOWNSEND. No, it has no effect at all. What happens is, salary increases—you know, as chief executive of a company, I know Nixon is obviously permissive to big business. I say to myself that we had better get all of our salaries up to the roof, because whatever follows Nixon probably isn't going to be that permissive. So we get it all done as fast as we can. Then, you know, if nothing comes along to stop us, we will do it all over again in 1974 and 1975.

Chairman PROXMIRE. Thank you very much, Mr. Townsend. You have been most helpful and delightful, as well as informative.

The subcommittee will stand in recess until 2:30 this afternoon, when we will hear from Mr. Ralph Nader.

[Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.]

## AFTERNOON SESSION

Chairman PROXMIRE. Mr. Nader, we are very glad you could attend our hearings on executive compensation and disclosure.

At our session this morning, Mr. Dunlop was reluctant to discuss the corporation disclosures. I undedstand you will concentrate on this aspect of our hearings, but we are also interested in other aspects of phase III price controls or lack thereof. We look forward to hearing your views on these matters.

## STATEMENT OF RALPH NADER, CONSUMER ADVOCATE, CONSUMERS UNION OF THE UNITED STATES, INC., ACCOMPANIED BY PETER J. PETKAS, ASSISTANT

Mr. NADER. Thank you for inviting me to come to discuss certain aspects of the economic stabilization program.

With me today is my assistant Peter Petkas, who has worked on the problem of disclosure and nondisclosure surrounding this program, as well as other executive branch activities involving Government secrecy.

I have with me a copy of phase II price increase approvals and denials, which is a complete compilation of phase II actions in these areas, published in March 1973. I think emphasis should be drawn to phase II behavior for two reasons: One, it affords a large, relatively large, period of time in order to assess the willingness of the Government to enforce the law in the price control area; and, second, because there is some indication that we might get another wage-price freeze, certainly if the Senate Democrats have anything to do with it, in the reasonable future.

This document that I refer to is a fascinating one. There are almost 400 pages listing approvals. In the vast majority of the approvals, the applicant corporation got what it asked for. There are 20 pages of denials and only 10 pages listing reductions or refunds ordered for both changed circumstances and illegal conduct. But these figures are only suggestive. The consumer or the wage earner or a small businessman has a vague feeling that he has been taken, but he doesn't know how and how much.

Phase II is over. A unique opportunity presents itself. I would urge you seek to have the General Accounting Office extensively audit the whole episode so as to match regulation against compliance and orders against enforcement.

I think the GAO will be able to document properly the most flagrant and systematic nonenforcement of Federal regulations in the history of our Government.

Chairman PROXMIRE. How long do you think that kind of study would take?

Mr. NADER. I think, with the cooperation of the executive branch, it could be done in 3 months.

First of all, on the record, there are admissions by the former Price Commission of rent violations in the lumber area, oil area, hospital area, and particularly in the construction and food areas, such as meat prices. So there are the rudiments of evidence that the GAO can quickly assemble, if indeed they are still all intact.

In private conversations with various staff members of the Price Commission, when one would ask them the question, is your staff dealing with compliance? To what extent do you monitor these with IRS? There was almost a visible concession that the effort was not

even being made in many areas, other than to issue a few press releases to draw public attention to these violations.

With such a GAO study, we believe that the essence of any new price and wage control program will be given the kind of background to make it work. That is, with the establishment of effective enforcement machinery and compliance surveillance of these economic institutions, we will be able to see if, indeed, these controls can work. I think that the fact that controls in the past have not worked in the price area is indicated by massive corporate profits, not set off by equivalent productivity increases, and is indicated by wholesale and consumer price indexes, as well as executive compensation increases. The program has not worked because basically it is a toothless tiger.

Business has learned to understand what toothless tigers are like and how to work with them. The Price Commission was a classic example of a regulatory charade in this respect.

We understand, on the basis of reports from former price stabilization practitioners, that throughout the course of phase II special arrangements with particular firms or industries were common and that the regulations, even reporting and recordkeeping requirement, were sometimes flaunted by supposedly regulated firms because the price controllers were known to lack either the backbone or the political clout within this big business bankrolled administration to take any action.

This was a tiny regulatory agency, trying to regulate the prices of virtually a trillion-dollar economy.

Chairman Grayson himself released a list of uncooperative firms at one point. Certainly the record of phase II justifies at least the apprehension that this may have been true. Only the GAO, with strong support from this committee, will be able to find the truth. I recommend that they select at random four, five, or more industries, and carefully analyze council and Price Commission actions and then measure them against actual pricing behavior and profits.

Phase III replaced phase II, not because economic reality demanded it, but because of the shocking inadequacies of phase II—especially those that led to soaring corporate profits, with wages, but not prices and profits, controlled—were about to catch up with the administration. But rather than chart a bold new course, they did precisely the opposite: They replaced the half truth of phase II with a big vacuum called phase III.

The executive compensation boondoggle is an instructive example. While the average worker had an effective lid placed on wage increases, top executives of giant corporations whose profits have been soaring, were allowed large salary and fringe benefit increases.

In 1972 the chairman of the board of the General Motors Corp., Richard Gerstenberg's total remuneration ballooned 107.1 percent, to $874,963, a large part of the increase due to incentive compensation tied to higher profits for the corporation.

As you know, Mr. Chairman, GM reported in the past year by far the highest profits in its history.

Lynn Townsend, chairman, Chrysler Corp., received 219.3 percent more in 1972 than in 1971. For Charles Sommer, Monsanto's chairman, the increase was 96.9 percent. John G. McLean and John D. Harper, chairmen, respectively, of Continental Oil and Alcoa, cashed in on

boosts of more than 37 percent. Charles J. Pilliod, Jr., then executive vice president, now president, of Goodyear Tire & Rubber, received 112 percent more in 1972 than in 1971.

When you asked CLC Director Dunlop to provide information on executive compensation level changes, he indicated that overall changes were within the guidelines. It did not then suit his purposes to elaborate that top executive salaries had been lumped together with those of hundreds of thousands of other so-called management employees to produce that result.

I understand from the testimony this morning that Mr. Dunlop has finally recognized the problem now that these practices have been exposed. It remains to be seen whether or not honest enforcement will follow honest disclosure.

Disclosure, it seems, is one of John Dunlop's pet bugaboos. His disregard for the press is legendary. In his mind, the only good reporter is a compliant one, content to print only so much as Mr. Dunlop sees fit to offer, when he wants it printed. This attitude is understandable perhaps in one whose career is based on the ability to orchestrate immensely complex labor-management negotiations in smoke-filled rooms behind closed doors.

They have no place in a public official's understanding of his responsibilities, nor are they consistent with the requirements of the Economic Stabilization Act, especially as recently amended, or the Freedom of Information Act, or with Mr. Dunlop's obligations to the Congress as the head of an agency created to carry out the will of Congress.

Mr. Dunlop has for years been a private adviser to Government agencies and an official behind-the-scenes adviser to a number of powerful labor unions, and he is simply having a difficult time in his capacity as a public official making the transition toward the kind of open information that the Cost of Living Council requires.

Mr. Dunlop ought to be reminded that corporate security unlike national security has yet to be recognized as a legitimate grounds for covert operations.

Since their creation, the Cost of Living Council and the now defunct Price Commission and Pay Board have remained largely inaccessible to the public. Throughout most of phases I and II, associates of mine and others have attempted with little success to pierce the veil of secrecy permitted by section 205 of the Economic Stabilization Act of 1970, as amended. The original act contained no special secrecy provision. The Congress then felt that the so-called trade secrets exemption to the Freedom of Information Act was quite sufficient to protect business secrets.

After the freeze of August 15, 1971, the administration offered its own, far more stringent, secrecy provisions. That provision, contained now in section 205(a) of the act, faced substantial opposition in both the Senate and House. An amendment offered by Senator Gaylord Nelson, which you actively supported, Mr. Chairman, would have required all information received in justification of price increases, except trade secrets and processes, to be made public.

Senator Nelson's proposal was rejected, 53 to 35, 12 Senators not voting. But the concerns he and his supporters raised then have plagued the public ever since. They led to the adoption of what is now known as the Hathaway amendment, contained in paragraphs (b)(1) through (b)(3) of section 205, as amended on April 30, 1973.

This is the amendment now being undermined by the Cost of Living Council. The amendment reflected concerns including, first, unfairness—that is, benefits of wage settlements were immediately made public, but prices and profits on product lines for which increases were allowed, other than those from publicly held single-product companies, remained secret.

Second, public participation: Without cost justification information, the public could not review or effectively challenge Price Commission actions.

Third, congressional oversight: Congress was not able to monitor the effectiveness of the administration's implementation and enforcement of the act until it was too late.

And fourth, competition: Large sectors of the economy are now dominated by huge corporations that operate at the edge of or beyond the limits of the antitrust laws and that set prices through informal administered price arrangements which in turn limit or eliminate downward price pressures. This has been described by Prof. Gardiner Means in many of his writings over the years.

The very dearth of extensive price, profit, and cost information from giant corporations on a product line basis—unrelieved by inadequate SEC disclosure rules—is itself a substantially anticompetitive and thus structurally inflationary defect in the economy.

With the failure of the Nelson amendment, Congress and the public were compelled to tolerate more than a year of limited access to and knowledge about the price stabilization program. I might add that the only remaining avenue for public examination of and participation in Price Commission and CLC actions—the public hearings provided for in section 207(c)—has never been used extensively to develop and publicly air the facts supposedly justifying price increases. We, for example, had to inform the Price Commission we would file suit if they didn't hold hearings on the auto price increases.

Only when Consumers Union and others filed suit last summer, was the Commission willing to hold hearings on auto company price increases and even then the Commission declined to release any of the relevant justification information.[1]

Since the Commission has ignored the intent of Congress and the clear language of section 207(c) of the Economic Stabilization Act by declining to hold hearings on other than broad policy questions, this mechanism has failed to enhance effective public participation.

The saga of the efforts of the Cost of Living Council to subvert the recently adopted disclosure amendment to the Economic Stabilization Act throws into sharp relief both the attitudes of the present Director, Mr. Dunlop, and the continued willingness of the Council—consistent with what seems to be a longstanding high priority for the Nixon administration—to subvert the will of Congress.

The Hathaway amendment, which became part of the law on April 30, 1973, sets up new disclosure requirements for business enterprises with annual sales of over $250 million that increases prices more than 1.5 percent on any of their products—defined as those accounting for more than 10 percent of the reporting unit's sales. These corporations—there would be about 800 of them if they all increased prices

[1] Section 205(a) of the act does permit disclosure of the matter listed in 18 U.S.C., section 1905, "When relevant in any proceeding. * * *"

above the threshold of 1.5 percent—are now required to make all their reports public to the extent that a single product company would have to make such information public in its SEC filings.

Eleven days after the new requirement went into effect, proposed regulations were published in the Federal Register. Now well over a month has passed and the Council's rules are not in effect, even though the law required them to be issued immediately. Compare this with past Council and Price Commission practice and their present practice with regard to other regulations: They publish decisions, if at all, often after their effective date without having provided any opportunity for public comment. The effect of this delay will be to postpone a court challenge which a number of groups, including the AFL–CIO, have indicated they are contemplating.

Mr. Petkas has prepared extensive comments on the proposed rule copies which I offer for the record.[1] In essence, the Council has concluded that the Hathaway amendments effected no change whatsoever in the prior practice of total secrecy. That proposition is, of course, absurd on its face. Mr. Petkas' comments to the Council included as an attachment, a copy of CLC form 2 on which he crossed out all blanks for data that would remain proprietary under the proposed regulations. Everything but the following remains secret:

1. The name and the address of the firm, the name of its chief executive and the name, address, and phone number of a person to contact for further information;
2. Various dates, including the date the form was signed;
3. The "weighted average percent price adjustment" for each product;
4. The "maximum percent price increase"; and
5. The cumulative "authorized weighted average percent price adjustment."

Since the Hathaway amendment requires public disclosure by the companies affected to the same extent a single-product company would have to disclose in public reports to the SEC, the relationship between Council reports and SEC reports is of central importance. If information would not have to be reported by a single-product firm in some form to the SEC, then the Hathaway amendment does not require disclosure.

The Cost of Living Council reads this to mean that unless SEC definitions of such items as "net sales," "revenues," and "operating revenues" are precisely the same as Council definitions, no disclosure is necessary. This is semantics sleight of hand. Since companies that report sales to the Council are required to exclude sales from certain sources, such as foreign operations and food, the Council concluded that no disclosure of net sales, for example, would be necessary.

But this interpretation totally destroys the Hathaway amendment. If the Council persists, and the Congress or the courts do not act to reverse it, no more information will be public than before.

The amendment in effect establishes a standard of disclosure: The public disclosure obligations of a hypothetical single-product firm filing reports with the SEC. If that hypothetical firm is assumed to have sources of income or revenue that are excludable on Cost of Living Council reports, then necessarily its SEC filings would always be different from its Council filings. But that assumption—obviously made by the Council—means no public disclosure whatsoever. Congress could not and did not intend such a result.

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[1] See exhibit 1, beginning on p. 183.

If the courts overrule the Council maybe a year later, what happens to the Council for engaging in such lawless activity? Nothing. That is, they have nothing to lose and time to gain for their lawlessness. Mr. Dunlop will not be fined, he will not be demoted to janitorial status, he will not be fired. Neither will his subordinates.

That is why, again and again and again, whether it is the Price Commission or the Cost of Living Council, lawlessness pays. Because they have nothing to lose and time to gain for their lawless activities.

Clearly, the Council decided that the Hathaway amendment was inconsistent with its own version of proper disclosure. It could not ignore it, so it has offered regulations that will have the effect of repealing it.

Several other aspects of Cost of Living Council's performance require comment. From the beginning, the administration's price control efforts have represented a new and more virulent form of "government by advisory committee." It began 1 week before the freeze when then Secretary, now part-time Presidential Assistant John Connally, met privately with a group of executives from the largest corporations at a secluded Smoky Mountain resort in Tennessee—Washington Post, October 15, 1971.[1]

With phase II, came several more advisory groups with more than advisory roles but without significant accountability: The Price Commission, the Pay Board, the Health Services Industry Committee, and the Rent Advisory Board. As you have pointed out on many occasions, the heads of these four full commissions, advisory commissions, were not confirmable by the Senate.

In phase III, these last four groups were abolished but the prefreeze Construction Industry Stabilization Committee, a favorite of Mr. Dunlop, was continued and three more advisory committees established: the Health Industry Committee, the Food Industry Advisory Committee, and the Labor-Management Advisory Committee.

Chairman PROXMIRE. I hesitate to interrupt. I have to recess the hearings for about 10 minutes and I will be right back.

[A brief recess was taken.]

Chairman PROXMIRE. The subcommittee will come to order.

Go right ahead, Mr. Nader.

Mr. NADER. I might add, there is a Committee on Industry and Dividends that needs to be added to that list.

In the creation and initial operation of these last three committees, the Council completely ignored the requirements of the new Federal Advisory Committee Act for advance public notice of meetings and adequate justification for closed meetings. I am submitting for the record our complaint and supporting correspondence and memorandums in a lawsuit we have filed to compel full compliance with the new advisory committee law and to end these unlawful practices.[2]

Mr. Chairman, you might inquire whether Mr. Dunlop was informed by his General Counsel of the violation, the course of violation that the Counsel was pursuing in not adhering to the Federal Advisory Committee Act.

The Council has begun to play an important role in the energy crisis. Director Dunlop and Deputy Secretary of the Treasury, William Simon, meet on a regular basis. In February, William Walker,

[1] Executive Order 11588, April 3, 1971, established the Construction Industry Stabilization Committee, which still functions as the labor-management advisory committee for that industry under phase III.

[2] See exhibit 2, beginning on p. 190.

General Counsel, and James McLane, Deputy Director of the Council, indicated one of their goals would be to keep gasoline prices high enough, especially in areas where there might otherwise be shortages. On May 11 the Council granted the 23 major oil companies authority to increase prices automatically in order to pass on certain increased costs—Federal Register, May 11, 1973.

This is an amazing strategy. It would, in effect, permit a monopolistic industry to have higher prices because of a short-term gasoline shortage created by that very industry in order to reap political and economic dividends by driving out the independents, for getting increased tax credits, and offshore drilling rights on the Atlantic Coast.

If there is any desire on the part of the CLC to depress demand, it might be done better by a surcharge, a tax surcharge, so the added revenues can be used for such purposes.

Apparently, this wasn't enough: The major companies backed by Deputy Secretary of the Treasury William E. Simon, want new rules to permit them to attribute a higher cost to the crude oil they exchange with independent refiners,[1] and if their costs go up, they will be able to charge higher prices. Astonishingly, the Council does not even collect actual cost data from the majors, but allows them to report costs in terms of posted prices, which until recently were as much as 50 percent higher than actual prices in many contracts.

Parenthetically, every Government agency I know of, Senator Proxmire, has failed to get basic information from the oil industry to pursue the law enforcement responsibilities of these agencies. This includes the attorney general of Connecticut; it includes the Federal Trade Commission, whose subpenas have been challenged in court by the oil industry and whose requests for information have been blocked by that Khyber Pass called the Office of Management and Budget, operated under the industry-oriented Federal Reports Act of 1942.

Here we have the CLC in the same position, trying to make policy in the dark and not demanding that information from the oil industry be given to it.

It is disturbing that consumers are denied such useful financial information with which to measure the performance of the price stabilization program, but it is inexcusable that the program fails to collect this important data for its own purposes.

More and more, Mr. Chairman, the problem of corporate secrecy is going to be seen as the first barrier to overcome. I notice in the Wall Street Journal today an advertisement by the Wall Street Transcript Corp.,[2] asking all companies to heed the necessity for more disclosure and more communicated disclosure around the country, in order to bring the individual investor back into the market whose absence the Wall Street Transcript Corp. believes is the major cause of the present market depression.

They offer a new service which takes corporate reports and financial information and reproduces them in newspaper style, and sends them free to all public and private law libraries throughout the country, and other depositories of information that the public can have access to.

[1] Independent refiners in the past have exchanged their import tickets with the majors in exchange for low sulfur domestic oil produced by the majors. Since the relaxation of import restrictions and the rise in price of foreign oil, the majors have been less interested in the exchanges. The result: the independents can't obtain enough domestic—low sulfur—crude; see Muriel Allen in the Journal of Commerce, May 30, 31, June 1, 1973.

[2] See exhibit 3, beginning on p. 199.

Senator Nelson, as you know, has proposed legislation to require greater corporate disclosure across the board, particularly for antitrust and health and safety enforcement, and now this committee is coming squarely around to face the problem of corporate secrecy.

Without corporate information, public policy cannot be made, shareholders cannot know how they are being abused, and consumers and workers cannot make intelligent decisions or react in the courts or take advantage of whatever legal rights they have.

The Price Commission and now the Cost of Living Council have made fending off citizens and consumers a science. I will submit for this hearing record copies of several previous statements I made on the subject last year.[1] Each is a litany of abuses that as far as can be determined continued today, though perhaps more so since with phase III we have the form as well as the subtance of unresponsiveness and inaction.

Even now, the Council has no effective machinery for disclosure. Under phase II the Price Commission at least published a daily list of actions taken—known as the decision list. It has no counterpart under phase III. We have to rely on leaks and tidbits thrown reporters from the business press who are lucky.

There is still no effective means for consumers to protest price increases—unless they have the resources to mount a nationwide boycott. As you recall, in a last-minute amendment on the Senate floor, Senator Daniel Inouye successfully pushed the adoption of an amendment which stripped the consumer class action provision in the then pending bill of its practical effect.

To illustrate this point, after the bill allows consumers who may have been overcharged to go to court—this is section 210—and possibly receive treble damages for not less than $100 or more than $1,000, there is a provision that says where the overcharge is "not willful within the meaning of section 208(a) of this title"—and let me point out here, try to prove willfulness without having Covington and Burling and a $100,000 slush fund for attorneys at one's disposal—"no action for overcharge may be brought by or on behalf of any person unless such person has first presented to the seller or renter a bona fide claim for refund of the overcharge and has not received repayment of such overcharge within 90 days of the presentation of such a claim."

And there goes consumer class action right down the drain. Thus, a potentially effective judicial instrument for returning unjust profits to aggrieved consumers and generating deterrence against further violations was lost.

Finally, Mr. Chairman, let me urge you once again to seek to have the GAO audit the price stabilization program's performance. This need not be an exhaustive inquiry into every action of the Council, the Commission, and the Board in every industry. It can and should be limited to the treatment of a selection of key industries, in the interest of time, to have this information for your disposal. I believe the results of such a vigorous, shaply defined inquiry would finally illuminate the dark corners of price control for the public and for Congress.

I might say in conclusion, Mr. Chairman, it is heartening to note the action yesterday of the Senate Democratic Caucus in asking for a 90-day price-wage freeze.

[1] See exhibit 4, beginning on p. 200.

What is happening to the dollar abroad, to the skyrocketing price of gold, to the spiralling inflation here at home, all at the same time that our Treasury Secretary says our economy is healthy and growing, is unprecedented in our economic history. The American dollar, which was once a symbol of financial solidity, is looked on with contempt abroad.

I was in Europe 2 weeks ago and to have an American dollar was almost like having a franc 25 years ago, with such contempt was it treated. And for the Treasury Secretary to come up before Mr. Mills' subcommittee yesterday and say he was puzzled about why the dollar is behaving in this manner is at least a confession of lack of leadership.

I think the basis of this problem in the short run is that all over the world, to a growing degree in this country, people in economic institutions are losing confidence in the ability of the administration to do anything, much less the wrong thing. The paralysis at the highest levels of Government in moving toward an economic policy that will restore confidence and permit a systematic approach, including rigorous and effective antitrust enforcement and other procompetitive policies, has to be dealt with by the Congress.

I would hope this temporary price-wage freeze, which I would recommend be extended to 120 days at least—it takes 30 days for the White House to get the word from the economists—will allow a breathing spell as well as restoration of public confidence that at least something systematic is being thought of at the highest level of Government and the Congress.

Thank you.

[The submissions referred to in Mr. Nader's statement for the record follow:]

**Exhibit 1**

CORPORATE ACCOUNTABILITY RESEARCH GROUP,
*Washington, D.C., May 29, 1973.*

Re Comments on Proposed Rulemaking, Public Access to Records [6 CFR Part 102], 38 Federal Register 12413–12416, May 11, 1973.

OFFICE OF GENERAL COUNSEL,
*Cost of Living Council*
*Washington, D.C.*

DEAR SIR: These comments are intended to serve both as a response to the referenced notice of proposed rulemaking and as an elaboration of any remarks I may make at a public hearing on these proposed rules now scheduled by the Cost of Living Council (the Council) for June 6, 1973. I respectfully reserve the right to submit additional comments for the hearing record.

I have attached a copy of CLC–2, the Council's current "Prenotification Report or Record of Prices, Costs, and Profits" and by hatch marks (#) have indicated thereon the data which the Council proposes to declare excludable under its interpretation of the recent amendments to section 205 of the Economic Stabilization Act of 1970 (approved April 30, 1973 as PL 93–28) (the Act). Virtually every item if financial information, except several categories relating to percentage of price increases and annual [total] sales or revenues (line 5) have been excluded. This I submit represents a remarkably perverse reading of both the clear language of new section 205, its legislative history, and the manifest intent of Congress.

I would normally assume to be self-evident the proposition that Congress intended to change the former practice with respect to disclosure by certain business enterprises covered by new section 205 of the Act. Since the Council has apparently rejected that proposition, the greater part of this comment is devoted to an analysis of the movement of this legislation through each house of Congress.

1. *New subsection 205 establishes a new class of reporting enterprises for purposes of disclosure: large firms who increase price on substantial products by more than 1.5 percent.*

Old section 205 severely limited both the discretion of the Council to disclose and the ability of the public to obtain any information "reported to or otherwise obtained by" the Council or its staff by "any person." These limitations on disclosure by the Council itself expressly covered all matter, including trade secrets, enumerated in 18 USC § 1905. They are still in effect, but *only* with respect to business enterprises (or "persons") not subject to the disclosure requirements of section 130.21(b) of the regulations of the Council in effect on January 11, 1973.

New subsection 205(b)(1)–(3) imposes quite different disclosure requirements directly on a certain class of business enterprises (those, in effect, with annual sales of more than $250,000,000 that increase their prices more than 1.5 percent).* Thus, section 18 USC § 1905 does not define or limit public information for purposes of reports of these large enterprises, even though selected language from that criminal statute was apparently borrowed and used in parts of two of the three new paragraphs added to old section 205 of the Act.

For reasons that defy rational analysis, the Council nevertheless maintains in its prefatory comments to these proposed rules, "that no change was intended by the use of the term 'proprietary' in the new section 205 and that 'confidential' in 18 USC § 1905 and 'proprietary' in section 205 of the Economic Stabilization Act are to be understood as synonymous." The Council then proceeds to treat the terms differently by setting out to define "proprietary" purportedly in accordance with new section 205. Finally, in a *tour de force*, remarkable for its refined application of sophistry, it *applies* its definition of the term "proprietary" in such a way as to produce precisely the same result as would have been obtained were that word equivalent to "confidential" in 18 USC § 1905. The result, as I have indicated with the attached cross-hatched version of CLC–2, is to reveal no more information to the public.

The term "proprietary," introduced in new paragraph 205(b)(2) (the so-called Tower amendment) and defined there and in new paragraph 295(b)(3), *includes*

(1) "income, profits, losses, costs, or expenditures" and

(2) "trade secrets, processes, operations, style of work, or apparatus of the business enterprise."

*Except* to the extent that any of these matters involve "any information or data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 12 or 15(d) of the Securities Exchange Act of 1934 by a business enterprise exclusively engaged in the manufacture of a substantial product." This is *not* the language contained in 18 USC § 1905 which is adopted by reference to define "confidential" in subsection 205(a) (old section 205):

. . . which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; . . . .

2. *The Senate's treatment of new subsection 205(b) does not support—but rather contradicts—the Council's interpretation.*

What is now paragraph 205(b)(1) was adopted by the Senate on March 19, 1973 [Cong. Rec. (daily ed.) p. S5124] after an amendment [now paragraph 205(b)(2)] was agreed to. 205(b)(1) as reported by the Senate Committee on Banking, Housing and Urban Affairs (Senate Banking Committee) unqualifiedly required reports of certain large enterprises to be made public by those enterprises. Senate Report No. 93–63, March 14, 1973. The Committee found that its amendment would "not involve the disclosure of legitimate trade secrets, such as manufacturing and technical processes, or inventions." It found further that the information contained in the reports of these large firms would be "nothing more than information commonly disclosed by small one-product firms in their annual reports." Senator Tower strongly dissented, but he did not, nor did any of the other proponents of his position, either in supplemental views in the Banking Committee Report or on the floor of the Senate, challenge the proposition.

*The Committee on Banking, Housing and Urban Affairs correctly assumed "that should a firm not make the required information public, then the Cost of Living Council would be authorized to do so. Senate Report No. 93–63, March 14, 1973, p. 8. Furthermore, since such information would no longer be a trade secret or "privileged" or "confidential" under the Freedom of Information Act, the fifth exemption of that Act would not be applicable.

(1) That large firms were to be treated differently (the Tower amendment accepts the classification and merely establishes a category of information called "proprietary" which can be excluded from the reports which those firms—unlike smaller firms and firms not increasing their prices more than 1.5 percent—would have to make public); and

(2) That, whatever the characterization of this information (e.g., "trade secret," "confidential," or "proprietary"), small, one-product companies are, in effect, disclosing it all the time in their annual reports.

Without further amendment, however, Senator Tower's amendment would have severely limited the public disclosure obligations of large firms, though *not* by adopting the standards contained in 18 USC § 1905. Certainly, that course was open to him. Instead he selected some of the language of § 1905 and added a new word "costs." Senator Tower expressly recognized that his amendment "does not wipe out the present provision of the bill. It simply makes it possible to exclude information which is proprietary in nature . . ." His amendment was agreed to by a vote of 43 to 35 (22 not voting), efforts undertaken by Chairman Sparkman to seek a compromise having failed.

The next day Senator Hathaway, author of the Committee's version of amended section 205, proposed what is now paragraph (b)(3) of section 205. Cong. Rec. (daily ed.). March 20, 1973, pp. S5313–5325. He made clear that his purpose was to further define and qualify the term "proprietary" in the Tower amendment, which he believed totally destroyed the original version. He clearly expected—and his expectations were substantially met—that a number of Senators would support a compromise between the Committee's version of the section and that version as modified by Senator Tower. (Senators Bayh, Bentsen, Cook, Nunn, Sparkman, and Talmadge all supported the Tower amendment, but voted the next day to accept Senator Hathaway's amendment of it which became paragraph (b)(3).)

Senator Tower did not view Hathaway's proposal of the 20th as an empty gesture. He said it "would simply be for us to undo what we did yesterday." Neither Senator Tower nor Senator Hathaway, nor any of their respective supporters, ever express the view that section 205 as finally amended would have permitted the exclusion of virtually every piece of financial information except "weighted average % price adjustments," "maximum % price increases," and "authorized weighted average % price adjustments."

3. *The treatment of new subsection 205(b) by the House does not support the Council's interpretation.*

Neither the House Banking and Currency Committee nor the full House offered their own version of section 205 of the Act. The new section was discussed briefly, however, when the House considered the Conference Report on April 30, 1973. Cong. Rec. (daily ed.) pp. H3142–3150.

At the insistence of the House conferees, only one change was made in new section 205. This sentence taken from 18 USC § 1905 was added to paragraph (3) of subsection (b):

Such regulation shall define as excludable any information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of the business enterprise.

Since subsection (b), in effect, created a new class of reporting entities and since neither the Tower amendment nor the Hathaway amendment of March 20th expressly included such matter in the definition of proprietary information, it was apparently considered necessary to insure that traditional trade secrets would remain confidential. However, no such information has ever been, nor is it reasonable to expect that it ever will be, reported to the Council. The change did, however, close a technical gap in the new subsection. Subsection (a), which applies to smaller firms and large firms which do not increase their prices more than 1.5 percent, by incorporating the matter listed in 18 USC § 1905 clearly prohibits disclosure of such information. However, subsection (b), including the Tower amendment, as it reached the Conference, did not permit the nondisclosure of such information by the large firms affected. Both Chairman Patman's and conferee Rees's comments characterizing the additional sentence as narrowing the Senate disclosure provision are consistent with this view.

Representative Widnall, a minority conferee *who expressly declined to sign the Conference Report* apparently was intent on building some legislative history which would tend to substantially expand the clear language of the sentence added in Conference. He said:

"It was our intention that this language would protect against the disclosure of information which would have anti-competitive effects and we hope it will be so construed. We would certainly consider confidential cost information a 'trade secret.' "

Whomever Representative Widnall was speaking for, it is apparent from his refusal to sign the Conference Report that he was speaking for neither the House nor the Senate conferees, nor for the authors of new section 205, nor for the Senate where the section originated. Moreover, the proponents of new section 205 had consistently argued that *non*-disclosure of this information by large multi-product firms is the real locus of anti-competitive effects.

Subsequently, Representative Rees, speaking for the House conferees, and Representative Brown of Michigan engaged in a short colloquy about the relationship of the language added in conference to what Brown described as "section 1905 of the Freedom of Information Act." This colloquy may be the source of the Council's misapprehension of the legislative history of new section 205.

There is, of course, no section 1905 in the Freedom of Information Act. Representative Rees's responses must be read in light of Representative Brown's apparent confusion about the content of that Act and the relationship of 18 USC § 1905 to it. First, Rees expressed the opinion that "all of section 1905 is now included as an exemption in the bill." But for the confusion introduced by Representative Brown, this statement would be absurd, since "all of section 1905" was never included in new section 205 of the Act either as reported out of the Senate Banking Committee, amended by the Senate on March 19th, further amended by the Senate on March 20th, or discussed on the floor of the Senate, or reported by the House conferees. Even the Council has declined to accept this view since its proposed rules require the disclosure of *non*-financial information clearly listed in 18 USC §1905 (e.g., "identity . . . of any person, firm, partnership, corporation, or association").

Representative Brown then read selected sections of 18 USC § 1905 which he apparently believed not to have been included in the Conference Report and said "in effect, the language of section 1905 is by implication included in the conference report." Rees responded, "Yes." He did not elaborate except to add a few moments later, "It is specifically included in the conference report. Section 1905 of the Freedom of Information Act is one section." Selected language from 18 USC § 1905 is in fact specifically included in the Conference Report. Senator Tower's amendment used some of the language of that section and the House conferees obtained the Senate's agreement to a sentence which closed a technical gap with respect to possible disclosure of non-financial trade secrets and processes. But any implication that the inclusion of these words "in effect" absorbed or somehow dragged along the rest of 18 USC § 1905 or nullified the requirement which the Senate accepted on March 20th and which the House conferees agreed to that any information or data that would be required to be reported to the SEC by a single product firm could not be kept secret is wholly unwarranted.

Such legislative history can have no weight. It is a well established principle of statutory interpretation that floor debates or discussions are relevant only when a statute is ambiguous or unclear on its face, and then only to reconcile otherwise irreconcilable conflicts in the language.

As to the points discussed by Representatives Rees and Brown, there are no such ambiguities or irreconcilable conflicts. The language of the Conference Report here is clear and unambiguous, though this colloquy may itself suffer from such defects. I urge the Council to request Representative Rees to clarify his statements for the record, if he has not already done so.

4. *The Council's interpretation of the relationship between the disclosure requirements of new section 205 and SEC reporting requirements are clearly erroneous.*

The Council attempts to avoid the consequences of new paragraph 205(b)(3) by stating that its definitions of rules and other items are not identical to those contained in the SEC's form 10K and that therefore such items are not subject to disclosure. Section 205(b)(3) does *not*, however, establish such a narrow test. It simply requires that a large firm which increases its prices more than 1.5 percent must disclose as much as a *hypothetical* single (substantial) product company would have to report publicly to the SEC. The hypothetical company might not have any sales, revenues, or operating income from the areas (foreign operations, public utilities, insurance activities, etc.) excluded by the Council from its definitions of these items. For such a firm these items would necessarily be defined precisely the same for both SEC and Council purposes. Strictly speak-

ing, the SEC's definitions of these items do not differ from the Council's for firms who do not have such excluded operations to disclose. Any other interpretation of paragraph 205(b)(3) leads to the absurd result that Congress intended absolutely no change—other than limited price change disclosure—when it passed the Hathaway amendment of March 20, 1973.

Sincerely yours,

PETER J. PETKAS, Esq.



APPENDIX C—COST OF LIVING COUNCIL REPORTING FORMS

Form CLC-2
(May 1973)
Cost of Living Council

Prenotification Report or Record of Prices, Costs and Profits

Type of submission
(a) ☐ Prenotification (b) ☐ Quarterly report (c) ☐ Other ▶

CLC Identification Number (Parent)
Unconsolidated Entity

Form applies to:
☐ Reporting Parent and consolidated entities
☐ Reporting unconsolidated entity. Parent name
☐ Recordkeeping parent and consolidated entities
☐ Recordkeeping unconsolidated entity. Parent name

O/B Number: 172-R0001
Approval Expires April 1974
Reference Number
Batch Number
Time Stamp
Cost of Living Council Use Only

Part I.—Identification Data

1 (a) Name of parent or unconsolidated entity to which this form applies

(b) Address (Number and street)

(c) City or town, State and ZIP code

(d) Chief executive officer

2 Is this a resubmission? ☐ Yes ☐ No
3 Ending date of most recently completed fiscal year (Month, day, and year). ▶
4 Reporting period ending date (Month, day, and year). ▶
5 Annual sales or revenues (To be completed by Parent only) ▶ $

Part II.—Calculation of Base Period Profit Margin

| | | |
|---|---|---|
| 6 Base year 1 net sales — Fiscal year ended(Month, day, and year) | | $ |
| 7 Base year 2 net sales — Fiscal year ended(Month, day, and year) | | $ |
| 8 (Add item 6 and 7) | ▶ | $ |
| 9 Base year 1 operating income | | |
| 10 Base year 2 operating income | | |
| 11 Total (Add item 9 and 10) | ▶ | |
| 12 Base period profit margin (Divide item 11 by item 8) | ▶ | |

Part III.—Calculation of Profit Variation

| | Current Period | Same Period Prior Year |
|---|---|---|
| 13 Net sales | | |
| 14 Base period profit margin (From Part II, item 12) | | |
| 15 Target current period profit (Item 13 times item 14) | | |
| 16 Actual operating income | $ | |
| 17 Current profit under (over) target profit (Subtract item 16 from item 15) | $ | |

Part IV.—Additional Information

18 (a) Name and title of individual to be contracted for further information

(b) Address (Number and street)

(c) City or town, State and ZIP code

(d) Phone number (include area code)

19 You must maintain for possible inspection and audit, a record of all price changes subsequent to November 13, 1971. Give location of such records. ▶

Part V.—Certification

I certify that the information submitted on and with this Form is factually correct, complete, and in accordance with Economic Stabilization Regulations (Title 6, Code of Federal Regulations) and instructions to Form CLC-2.

Type name and title of the Chief Executive Officer of parent or other authorized Executive Officer and date of signing.

Name ▶
Title ▶
Date ▶
Signature ▶

Part VI.—Price/Cost Information

Name of parent or unconsolidated entity (From Part I)

| Product or Service Line Description (a) | 4-Digit SIC (b) | Reporting Period From ▶ To ▶ Sales ($000 Omitted) (c) | Weighted Average % Price Adjustment Actual (d) | Weighted Average % Price Adjustment Authorized (e) | % Cost Justification (f) | Maximum Percentage Price Increase (g) | Cumulative Period From ▶ To ▶ Sales ($000 Omitted) (h) | Authorized Weighted Average % Price Adjustment (i) |
|---|---|---|---|---|---|---|---|---|
| 1 | | ########## | | | ######## | | ########## | |
| 2 | | ########## | | | ######## | | ########## | |
| 3 | | ########## | | | ######## | | ########## | |
| 4 | | ########## | | | ######## | | ########## | |
| 5 | | ########## | | | ######## | | ########## | |
| 6 | | ########## | | | ######## | | ########## | |
| 7 | | ########## | | | ######## | | ########## | |
| 8 | | ########## | | | ######## | | ########## | |
| 9 | | ########## | | | ######## | | ########## | |
| 10 | | ########## | | | ######## | | ########## | |
| 11 | | ########## | | | ######## | | ########## | |
| 12 | | ########## | | | ######## | | ########## | |
| 13 | | ########## | | | ######## | | ########## | |
| 14 | | ########## | | | ######## | | ########## | |
| 15 | | ########## | | | ######## | | ########## | |
| 16 | | ########## | | | ######## | | ########## | |
| 17 | | ########## | | | ######## | | ########## | |
| 18 | | ########## | | | ######## | | ########## | |
| 19 | | ########## | | | ######## | | ########## | |
| 20 Totals from Continuation Schedule | | ########## | | | | | ########## | |
| 21 Totals (lines 1 through 20) | | $ ########## | | | | | ########## | |
| 22 Weighted Average % Price Adjustment | | | ##### | ##### | ###### | | | |
| 23 Sales of or from Foreign Operations | | $ ########## | | | | | $ ########## | |
| 24 Sales of Food | | ########## | | | | | ########## | |
| 25 Other Non-applicable Sales | | ########## | | | | | ########## | |
| 26 Net Sales | | ########## | | | | | ########## | |

Schedule C
(Form CLC-2)
(May 1973)
Cost of Living Council

**Calculation of Cost Justification to Support Net Price Increases on Form CLC - 2**

CLC Identification Number (Parent)
Unconsolidated Entity
OMB Number: 172-R0001
Approval Expires April 1974
Reference Number

Product or service line description
(From Columns (a) and (b), Part V) on corresponding Form CLC-2)

4-digit SIC

Part I—Identification Data

1 (a) Name of parent or unconsolidated entity

(b) Address (Number and street)

(c) City or town, State and ZIP code

2 Reporting period ending date (Month, day, and year) . . . . . ▶

Part II.—Calculation of Cost Justification

| Cost Elements (Attach supporting schedules as required by instructions) | % of Cost element that is variable (a) | % Increase (Decrease) in current cost level vs. primary cost level (b) | % of Cost element to total costs at the primary cost level (c) | (b) x (c) expressed as a percent (d) |
|---|---|---|---|---|
| 3 Direct materials | | | | |
| (a) Imported | ######## | ######## | ######## | ######## |
| (b) Other | ######## | ######## | ######## | ######## |
| 4 Direct labor | ######## | ######## | ######## | ######## |
| 5 Other manufacturing or service costs | | | | |
| (a) Labor | ######## | ######## | ######## | ######## |
| (b) Other costs | ######## | ######## | ######## | ######## |
| 6 Other operating costs | | | | |
| (a) Labor | ######## | ######## | ######## | ######## |
| (b) Marketing, General and Administrative | ######## | ######## | ######## | ######## |
| (c) All other costs | ######## | ######## | ######## | ######## |
| 7 Non-Allowable costs | ######## | ######## | ######## | |
| 8 Subtotal | | | 100% | ######## % |
| 9 Offset for productivity increase | | | | ######## % |
| 10 Offset for volume increase | | | | ######## % |
| 11 Weighted average percentage price increase justified by this Schedule C. (Subtract line 9 and 10 from 8) | | | | ######## % |
| 12 Percent of total current costs to sales | | | | ######## % |

## Exhibit 2

JULY 27, 1972.

Ralph Nader and Consumers Union of United States today filed suit in the United States District Court for the District of Columbia to compel the Price Commission to hold immediate open, public hearings on the price increases on 1973 models sought by GM, Ford, Chrysler and American Motors.

The Economic Stabilization Amendments of 1971 require such hearings for all price and wage changes which "have or may have a significantly large impact upon the national economy." "No one has contended that auto prices are not significant," said Mr. Nader. "Mr. Grayson has simply refused to hold hearings because he insists that Congress did not mean what it so plainly said when it provided that open public hearings 'shall' be conducted in significant cases such as these."

In May, 1972 Mr. Nader wrote Mr. Grayson to ask that hearings on the yet unannounced auto price increases be held (see Exhibit A to the complaint). Mr. Grayson, replying on behalf of the Commission, stated that such hearings would not be "useful" because much of the data submitted by the auto companies would not be publicly available. "Those excuses are pure camouflage since the Commission has never held any hearing on specific price increases," stated Mr. Nader. "Congress was aware of these problems regarding confidentiality, but nevertheless told the Price Commission to hold closed hearings to gather this data, if it chose not to make the information public. Public hearings, even without all the data from the auto companies, will have a very healthy effect by moderating demands for increases and by forcing the Commission to decide these matters in the open, instead of behind closed doors. The Commission would also have to develop a reasoned basis for its confidentiality policies instead of knee jerking to the companies' blanket demands."

Consumers Union, a co-plaintiff in the case, is more likely than many other buyers of American cars to be affected by any price increase. Because of its 35 year practice of buying and testing most new cars, Consumers Union will buy these new cars whatever the price may be and cannot choose other cars based on lower prices.

Along with the complaint, plaintiffs filed a motion for a preliminary injunction which asks the Court to direct the Price Commission to schedule hearings immediately, in order to reduce the inevitable delay between a final decision in the case and a decision by the Commission after the hearings are held. The papers submitted on that motion include a letter of July 7th from Senator William Proxmire (D. Wis.) which asked the Commission to reconsider its decision not to hold hearings on auto price increases. No reply has yet been received by Senator Proxmire's office to that letter (copy attached).

The automobile makers were not named as parties since the duty to hold hearings is imposed only on the Price Commission. Because the statute allows hearings to be held either before or after an increase, the complaint does not ask that any price increases be held up until the hearings have been completed.

—

### U.S. DISTRICT COURT, DISTRICT OF COLUMBIA

(Civil Action No. 1492–72)

RALPH NADER AND CONSUMERS UNION OF UNITED STATES, INC., PLAINTIFFS *v.* C. JACKSON GRAYSON ET AL., DEFENDANTS

#### MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

This is an action which seeks to compel the defendants to hold open public hearings with respect to the proposed price increases for the 1973 model automobiles manufactured by American Motors, General Motors, Chrysler, and Ford. This motion for preliminary relief seeks an order directing defendants to establish hearings dates for each manufacturer's proposed increase and to give public notice thereof, so that the hearings can be commenced immediately after a final decision is reached on the merits. The relevant facts are not in dispute, and the case presents simply a question of law.

FACTS

The Economic Stabilization Act of 1970, as amended by the Economic Stabilization Amendments of 1971 (P.L. 92–210, a copy of which is submitted herewith) (the "Act") authorizes the President in Section 203(a) to issue appropriate orders and regulations, for various purposes, including to stabilize prices. Pursuant to Section 204 of the Act, the President has delegated the authority to stabilize prices to the Price Commission, of which the defendants are the sole members. In carrying out its mandate, the Price Commission has issued a regulation, 6 C.F.R. § 300.51(a), which requires that all manufacturing firms which have sales in excess of $100 million per year must notify the Price Commission of their intention to raise prices, with certain exceptions not relevant here. The notification also must include data to support the increase, and the Commission has 30 days in which to act on the request. If it has neither approved the request in whole or part, nor rejected it at the end of the 30 days, the manufacturer is then at liberty to increase his prices in accordance with his notification, subject to any later rollback which the Commission may order after further study, or in the light of new facts that it may obtain.

On June 28, 1972, American Motors filed with the Commission a notification of intention to raise prices on its 1973 model automobiles by an average of 5%. During the next four weeks, General Motors, Chrysler, and Ford—the other three major manufacturers of passenger vehicles in this country—also filed similar requests although the amounts varied from company to company. The details of these requests, insofar as they are public, are set forth in paragraph 8 of the accompanying affidavit of Mark Frederiksen, a colleague of the plaintiff Ralph Nader who has been actively studying the operation of the Act since it was put into effect in August 1971 (hereinafter the "Frederiksen affidavit"). Thus, for the 1973 model automobiles which will begin to go on sale in September, 1972, price increases may go into effect starting July 28th for American Motors, unless the Commission, contrary to its present indications, determines not to approve the proposed increases.[1]

Section 207(c) of the Act provides:

To the maximum extent possible, the President or his delegate shall conduct formal hearings for the purpose of hearing arguments or acquiring information bearing on a change or proposed changes in wages, salaries, prices, rents, interest rates, or corporate dividends or similar transfers, which have or may have a significantly large impact upon the national economy, and such hearings shall be open to the public except that a private formal hearing may be conducted to receive information considered confidential under section 205 of this title.

The Commission itself has issued a regulation, 6 C.F.R. § 305.40, which is virtually identical language, but without further amplification requires hearings in the same circumstances as mandated by Section 207(c).

The plaintiff Ralph Nader has for some time maintained an interest in consumer affairs and in the stabilization and reduction of prices of consumer products. He and his colleague Mark Frederiksen have been studying the operations of the Price Commission and have testified before it concerning its general procedures and the rules for utilities (complaint paragraph 3; Frederiksen affidavit paragraph 1). On May 17, 1972. before any of the automobile manufacturers had filed for price increases. plaintiff Nader wrote the defendant C. Jackson Grayson, the Chairman of the Price Commission, requesting that formal public hearings be held with respect to any increases that might be sought for 1973 automobiles. By letter dated June 7, 1972, the defendant Grayson, on behalf of the Commission, wrote plaintiff Nader and denied his request, although leaving open the possibility that in some conceivable situations, hearings might be appropriate. Copies of those letters are annexed as Exhibits A and B to the complaint.

Subsequent to the time that the first two auto price increases were filed, Senator William Proxmire wrote the Commission to ask it to reconsider its decision not to hold hearings on automobile price increases, but he has not yet received a reply to that letter (Frederiksen affidavit paragraph 3, letter attached as Exhibit 1). In addition, on July 24, Mr. Frederiksen asked the Executive Secretary of the Price Commission about the hearings and was told that none were planned. Thus, notwitstadning the mandate of Section 207(c) of the Act,

[1] Regulation 300.51(d) provides for an extension of the 30-day period where the firm has not supplied sufficient data and the Commission has requested additional information. To our knowledge no such requests have been made by the Commission regarding these increases.

the Price Commission is adamantly refusing to hold hearings but has simply claimed that hearings would be futile (Exhibit B to the complaint). As we shall demonstrate below, these reasons are legally insufficient to sustain the Commission's position. Therefore, its refusal to hold hearings is a violation of Section 207(c) which requires hearings under the facts of this case. In the alternative, to the extent that Section 207(c) gives the Commission discretion to refuse to hold hearings, the decision not to hold hearings is arbitrary, capricious, and an abuse of discretion.

The absence of hearings denies to both plaintiffs the opportunity to attempt to influence the decision-making process of the Commission with respect to its determination as to whether to approve, in whole or in part, the price increases sought. Plaintiffs will be deprived of their opportunities to hear the arguments of the manufacturers and to reply to them; to make independent arguments of their own; to submit relevant information and questions to be posed to the manufacturers; and, subject to the Commission's discretion, to examine confidential information submitted in support of the proposed increases. In addition, the plaintiff Consumers Union, as a buyer of automobiles, will also be injured by the absence of hearings since without hearings there is a reduced likelihood that the Commission will disapprove the increases, thereby causing Consumers Union to pay higher prices for the 1973 cars. In this connection Consumers Union is certain to suffer damage if any car buyer in the United States will, since every year it purchases new automobiles of almost every model sold in the United States, regardless of price. It does this in order to test almost all of the cars and then to issue reports on them to the 2,100,000 persons subscribing to its magazine Consumer Reports. Thus, if there is a price increase, Consumers Union, unlike other car buyers, cannot shop elsewhere for lower price models but must absorb any price increases.[2]

In light of these facts, the complaint was filed on July 26, 1972, two days before the American Motors price increase may go into effect. This motion for preliminary relief seeks to require that the Commission establish hearing dates for all proposed automobile price increases and give the public notice of them. It is apparent that hearings cannot be held overnight because of scheduling and preparation problems, and that no action with respect to the price increases based on the results of those hearings can take effect until after they have been held. Since the proposed increase may actually go into effect almost any day, this motion seeks to shorten the inevitable delay between the hearings and a decision on the increases to a minimum.

## ARGUMENT

### PLAINTIFFS ARE ENTITLED TO AN ORDER DIRECTING DEFENDANTS TO SCHEDULE PUBLIC HEARINGS ON THE PROPOSED AUTOMOBILE PRICE INCREASES

In determining whether or not to grant a motion for a preliminary injunction, the opinion of the Second Circuit in *Checker Motors Corp.* v. *Chrysler Corp.*, 405 F.2d 319, 323, *cert. denied*, 394 U.S. 999 (1969) gives the relevant considerations:

The purpose of a preliminary injunction is to maintain the *status quo* pending a final determination of the merits. It is an extraordinary remedy, and will not be granted except upon a clear showing of probable success *and* possible irreparable injury. However, "the burden [of showing probable success] is less where the balance of hardship tips decidedly toward the party requesting the temporary relief." In such a case, the moving party may obtain a preliminary injunction if he has raised questions going to the merits so serious, substantial, and difficult as to make them fair ground for litigation and thus for more deliberate investigation. [Citations omitted, emphasis and bracketed material in original.]

This memorandum will demonstrate that plaintiffs are in all probability entiled to the relief sought in the complaint and that defendants will be required to hold the open public hearings sought.

Before discussing plaintiffs' right to relief, it will be useful to focus precisely on the limited nature of the preliminary relief sought. Plaintiffs are not asking the Court to order that the hearings actually take place before a final determination of this action. All that we seek is an order directing defendants to start the wheels in motion, so that as soon as a final decision is reached, the hearings can commence without further delay. The acts which will be required of defendants

[2] Many of these subscribers, of whom approximately 340,000 are members of Consumers Union, plan to purchase 1973 automobiles.

if preliminary relief is granted will be no more than examining their schedules—or perhaps even the schedule of one Commission member (see 6 C.F.R. § 305.60)—and tentatively setting down a hearing date. The staff will then issue a public notice of the tentative hearing date, and any interested persons may begin preparation for the hearings.

The benefits to everyone that will flow from such a preliminary order are apparent. Essentially, the order will speed up the entire process since the inevitable delay between the decision and its implementation will be shortened significantly. The ultimate result of all of this will be a reduction of the time before the Commission will have received all of the information and arguments from the hearing and will be in a position to make an informed decision on that basis. The period of uncertainty for both car buyers and car manufacturers will thus be shortened, and if there are eventually any orders reducing these price increases, the period with the higher price to the consuming public will be lessened by taking this preliminary step.

Moreover, there is very little cost to either the defendants or anyone else from granting the relief sought. To schedule a public hearing for each of the companies and to give notice of them exhausts very little of the time or money of the Commission. Even if a court should eventually refuse to order public hearings—a possibility which we do not believe is likely—the costs incurred in granting preliminary relief will be trivial, particularly when compared with the benefits should the holding of hearings be ordered. Thus, it is apparent that the equities weigh heavily in favor of granting the preliminary relief sought, and as we shall now demonstrate, we submit that plaintiffs will also prevail on the merits.

Plaintiffs allege that pursuant to Section 207(c) of the Act, defendants owe a duty to them since there has been a specific request for open, public hearings at which they can testify. This plainly calls for mandamus relief, for which this Court has jurisdiction under 28 U.S.C. § 1361, and which will be ordered when a defendant is not in compliance with a statute or regulation which directs him to perform specific acts. *Feliciano v. Laird*, 426 F.2d 424 (2d Cir. 1970). In addition, this Court has jurisdiction over this action as a case "arising under this title" regardless of the amount in controversy. Section 211(a) of the Act.

On the merits, Section 207(c) commands that open, public hearings be held whenever the increases sought "have or may have a significantly large impact upon the national economy." The statute is qualified by the phrase "to the maximum extent possible," but the defendants have never suggested that it is not possible to hold hearings on automobile prices increases (see Exhibit B to the complaint). Since plaintiffs are not asking that hearings be held before the 30-day period for each company expires, the Commission cannot even argue that scheduling problems operate to prevent holding hearings.[3] On the facts of this case, any belated attempt to rely upon this qualifying phrase would surely be arbitrary and capricious and could not be a proper basis for denying the requested hearings.

Nor do defendants claim that auto price increases are not of sufficient importance to warrant hearings. When Senator Proxmire introduced an earlier version of this provision on the Senate floor, concern was expressed that hearings might have to be held for every price increase. The proposed amendment was then modified and adopted by the Senate, and Senate Tower stated that he "would like to make a little legislative history" and noted that the hearing requirement applied only to significant cases, to which Senator Proximire agreed.[4] When the bill went to conference, Section 207(c) was amended by inserting the phrase "which have or may have a significantly large impact upon the national economy," but it otherwise adopted this provision for which there was no counterpart in the House bill. The stated purpose of the conference amendment to "require hearings only on matters that are of such importance as to have a significant effect on the economy"—Conf. Rpt. 92–753, 92d Cong., 1st Sess., 19 (1971)—is identical to that stated by Senators Tower and Proximire on the floor of the Senate. Thus, there can be little doubt that the price increases here, dealing

[3] Section 207(c) appears to contemplate hearings both before and after price increases have gone into effect since it provides for the receipt of arguments and information bearing on a "change or proposed change in . . . prices. . . ."

[4] These remarks are quoted in Senator Proxmire's letter to the defendant Grayson (Exhibit 1 to the Frederiksen affidavit). For the Court's convenience, we are submitting with this motion the entire floor debate concerning the Proxmire amendment which eventually became Section 207(c). Cong. Rec. Dec. 1, 1971, S19940–19945.

with the domestic automobile industry, "have or may have a significantly large impact upon the national economy." [5]

In fact, on two separate occasions, one before and the other after Section 207(c) was enacted, the defendant Grayson stated his view that the automobile industry was a significant one in our economy. In the Hearings relating to the Act before the Joint Economic Committee on November 18, 1971, he stated that "obviously, autos are one of the most visible signals in the economy and they do have an impact on the economy." Hearings p. 9, quoted in paragraph 5 of the Frederiksen affidavit. In his own confirmation hearings before the Senate Banking, Housing and Urban Affairs Committee on January 27, 1972, (hereafter the "Confirmation Hearings") in discussing the kinds of decisions that he would not delegate to his staff, he included those relating to "a significant sector of the economy like autos, aluminum, steel. . . ." p. 24. Therefore, it hardly seems arguable, and has not in fact even been suggested by defendants in their opposition to holding hearings, that auto price increases are not significant in terms of the overall economy.

Having been stripped of all possible objections under Section 207(c), the duty of the defendants to hold hearings seems clear and beyond a doubt, and hence is appropriate for mandamus. The defendant Grayson himself has acknowledged that open public hearings of the type sought in this action are called for under the Act:

Now if public hearings are requested, we will certainly make every attempt in matters of national significance to the economy, as the act states—we will make every effort to [hold public hearings].

* * * * * * *

Yes; and I anticipate we will have some open hearings. I have none scheduled at the moment, but we are certainly receptive to the request for open hearings.

Confirmation Hearings at 25.

We will recognize that [hearings are required by the bill] and will hold hearings in cases that are of importance to the national economy.

*Id* at 34.

Notwithstanding these promises to the Senate, Mr. Grayson has apparently changed his mind and decided that other factors enter into a decision to hold public hearings and that these other factors are sufficiently persuasive to convince him that none need be held. But unless these reasons are authorized by the statute, the defendants cannot properly refuse to hold the requested public hearings on auto price increases.

The reasons enunciated by the defendant Grayson in his letter of June 7th to plaintiff Nader revolve primarily around the problems of confidentiality arising out of Section 205 which provides:

All information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purposes of carrying out this title or when relevant in any proceeding under this title.[6]

According to Mr. Grayson, this amounts to a "requirement and obligation . . . of not revealing company confidential information." (Exhibit B to the complaint, page 1.) That view of the law is, we submit, an incomplete one, and hence any refusal to hold hearings based on it is bound to be erroneous.

Section 205 is not itself an absolute bar against disclosure of the data submitted by the auto manufacturers since it permits disclosure "when relevant in any proceeding under this title." Thus, if the data became relevant in a hearing under Section 207(c), Section 205 would not forbid its disclosure. But even more important, Section 207(c) envisions the very situation involved here since its final clause provides that a "private formal hearing *may* be conducted to receive information considered confidential under Section 205 of this title." (emphasis added.) Thus, the Commission is given two choices: it may hold private formal hearings to receive confidential information, or it may receive that information

[5] As pointed out in the Frederiksen affidavit, the Big Three auto companies rank 1, 3, and 7, with American Motors 105 on the Fortune 500 list and automobiles account for 2.12% of the Consumer Price Index.

[6] We admit that the data submitted by the companies is within the terms of Section 205.

at the public hearings under Section 207(c). In this connection, it should be pointed out that in both the House and Senate, amendments were offered, which although defeated, would have required the release of all information other than trade secrets obtained by the Price Commission. Cong. Rec., 92d Cong., 1st Sess. November 30, 1971, S19817–S19825 and December 10, 1971, H12246–12449. Given this history, it is not surprising to find that the Commission has discretion to require that all data be presented at open, public hearings.

But even if the Price Commission, in its discretion, determines to hold confidential hearings to receive the information from the auto manufacturers, that still does not preclude the holding of open, public hearings without revealing that information. Mr. Grayson asserts, however, that since everyone would be arguing in the dark, that type of hearing would not be "useful for the purpose of making commission decisions on individual cases." Letter of June 7, 1972, page 2.[7] Notwithstanding Mr. Grayson's opinion of the utility of such hearings, it is perfectly apparent from the face of Section 207(c) that Congress disagreed with him and decided that even limited hearings would serve some useful purpose since that section envisions that hearings will be held in the very situation that we have here.

Furthermore, as the attached debate in the Senate suggests, there are a number of rational purposes that are advanced by holding even limited public hearings. First, the existence of public hearings will help give the public confidence in the overall fairness of the stabilization program. Second, the requirement of public hearings may cause some of the firms to moderate their demands rather than face the unhappy prospect of a public hearing attacking the company's pricing policies. Third, the companies will be required to make at least a minimum presentation, even without citing specific data, which will give interested parties some basis for determining whether the increase should be allowed. Fourth, opponents of the increase will have an opportunity to reply to arguments made in support of the increase, can present arguments of their own, and can submit information in a forum which gives some assurance that the members of the Commission will hear their position.[8] In short, the public hearings will provide an open forum for assessing the fairness of the Commission's proceedings and provide opponents of the price increase an opportunity to attempt to influence the Commission's decision on them.

Moreover, it is plain that Congress has decided that open, public hearings have a benefit to the overall program under the Act, and no member of the Price Commission, either individually or as a group, may overrule Congress in this matter. Congress has decreed that, whenever possible, and wherever a price increase may have a substantial effect on the economy, public hearings shall be held. Since those conditions have been met, hearings must be held when they are requested as they were here. At the very least, if the Commission has any discretion under Section 207(c), its refusal to hold hearings in this case is arbitrary, capricious and is an abuse of discretion which should be overturned by this Court.

As a final attempt to justify its refusal to hold hearings, the Commission suggests that hearings are appropriate for "large policy issues" rather than specific increases (letter of June 7, p. 2). But as Senator Proxmire points out in his letter of July 7th, Congress provided for hearings relating to policy in Section 207(b) and should not be presumed to duplicate itself in the amendment which became Section 207(c). Equally telling is the language of Section 207(c) itself, which calls for "hearing arguments or acquiring information bearing on a change or proposed change in wages, salaries, prices, rents, interest rates, or corporate dividends or similar transfers . . . ." This language strongly indicates that Congress was concerned with specific increases in Section 207(c), and the absence of any reference to policy hearings refutes the suggestion of Chairman Grayson that Congress was concerned here with any increases other than specific changes.

It thus appears that the reasons offered by the Commission for refusing to hold hearings on the 1973 model automobile price increases are not reasons which constitute a proper justification for their refusal under the Act. Since no other grounds have been suggested, we submit that the hearings on auto price increases are required by Section 207(c). Furthermore, pursuant to Rule 65(a)(2) of the

[7] Apparently Mr. Grayson had a change of heart following his prior testimony before Congress. See pages 10 and 11 *supra*.

[8] This is of particular significance in view of the testimony of Mr. Grayson at the Confirmation Hearings where he stated that he made the decisions subject to objection by the other Commission members (23–24).

Federal Rules of Civil Procedure, plantiffs request that this Court consolidate the hearing on this motion for preliminary relief with a trial of this action on the merits, and that the Court order the hearings on automobile price increases to be held forthwith.

CONCLUSION

For the reasons set forth above, this Court should grant plaintiff's motion for a preliminary injunction, should consolidate this proceeding with a trial on the merits, and grant plaintiffs the relief sought in their complaint.

Dated Washington, D.C., July 26, 1972.

Respectfully submitted,

ALAN B. MORRISON,
*Attorney for the Plaintiffs.*

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U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Civil Action No. 1492–72)

RALPH NADER AND CONSUMERS UNION OF UNITED STATES, INC., PLAINTIFFS *v.* C. JACKSON GRAYSON, CHAIRMAN, AND MARY T. HAMILTON, WILLIAM W. SCRANTON, JOHN WILLIAM QUEENAN, WILLIAM T. COLEMAN, JR., J. WILSON NEWMAN, ROBERT F. LANZILLOTTI, MEMBERS PRICE COMMISSION, DEFENDANTS.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER THAT THE CONTROVERSY IS MOOT

This cause came to be heard upon Plaintiffs' Complaint for Injunctive Relief and Declaratory Relief and Plaintiffs' Motion for Preliminary Injunction and upon Defendants' Motion to Dismiss or in the Alternative for Summary Judgment. The Court, having considered the memoranda, affidavits, and the statement submitted in accordance with Local Rule 9(h) in support of those motions and having heard argument of counsel for both parties, makes the following:

FINDINGS OF FACT

Plaintiffs, Ralph Nader and Consumers Union of United States, Inc., seek to compel the Defendants, members of the Price Commission, to hold formal public hearings on proposed changes in the prices of the 1973 automobiles. In response to the Plaintiffs' Motion for Preliminary Injunction, the Defendants filed the Affidavit of Defendant C. Jackson Grayson, Jr., a Motion to Dismiss or in the Alternative for Summary Judgment Defendants' Statement of Material Facts as to which there is No Genuine Issue, and a Memorandum in Opposition to the Motion for Preliminary Injunction and in Support of Defendants' Motion to Dismiss or in the Alternative for Summary Judgment.

In response to the Defendants' Statement of Material Facts as to which there Is No Genuine Issue, the Plaintiffs filed a reply with this Court in which they stated:

Plaintiffs do not dispute the facts set forth in defendants' statement of material facts as to which there is no dispute.

Contained with the State of Material Facts as to which there Is No Genuine Issue and the Affidavit of C. Jackson Grayson, Jr. is the following statement:

That the Price Commission has determined that it will hold hearing(s) before making a decision to grant any of these four companies any price increases on 1973 model automobiles.

That under Price Commission regulations, any increase in the unit price of a 1973 automobile over that of a comparable 1972 model constitutes a price increase.

In response, the Plaintiffs contended that further facts were required before the mootness of the controversy could be determined. They contended *inter alia* that the Affidavit of Defendant C. Jackson Grayson, Jr. did not contain in sufficient detail the procedures that the Price Commission will follow in determining whether it will hold open public hearings of the type required by the Plaintiffs. Further, they stated:

What we are concerned about is that the Price Commission will hold hearings only after it has made up its mind to grant the increases, when the information and arguments raised by the public will fall on deaf ears.

The Defendants have filed with this Court and served on opposing counsel the Affidavit of Bert Lewis, the Executive Director of the Price Commission. That affidavit contains the following paragraphs:

3. That the Price Commission staff is currently reviewing the Forms PC–1 (Request-Report for Price Increases for Manufacturing, Service Industries, and the Professions) submitted by General Motors, Ford, Chrysler, and American Motors requesting permission to increase 1973 automobile prices, Forms PC–50 (Base Period Income Statement) and PC–51 (Report on Sales, Costs and Profits), and other data available to the Price Commission to determine whether these companies have submitted sufficient and appropriate information and otherwise technically have qualified under Price Commission regulations, including Section 300.12, for consideration of these requests;

4. That a request for a price increases for 1973 model automobiles that does not meet the technical qualifications of the Price Commission will not be considered by the Price Commission for approval;

5. That the Price Commission will schedule a hearing for the purpose of hearing arguments or acquiring information bearing on any of the 1973 automobile price increase requests by any of these companies that technically qualify for such consideration;

6. That any hearing held before making a decision to grant any of these four companies any price increase on 1973 automobiles will, in accordance with Section 207(c) of the Economic Stabilization Act Amendments of 1971 and Section 305.40 of the regulations of the Price Commission, be open to the public, except that pursuant to Section 305.40(d) a private formal hearing may be held to receive information considered confidential under Section 205 of the Economic Stabilization Act Amendments of 1971;

7. That evidence, information and arguments received during the course of any such hearing held by the Price Commission with respect to price increases by these four companies on 1973 automobiles will be considered by the Price Commission, along with all other information available to it, before determining whether to approve any requested price increases.

On August 18, 1972, the Chairman of the Price Commission caused to be published in the Federal Register a notice that the Price Commission will hold a public hearing beginning at 9:30 a.m. September 12, 1972 to receive information and the views of interested persons on price increase requests currently pending before the Price Commission from automobile manufacturers. The notice further stated that the scheduled hearing is consistent with the Commission's intent to comply with the stated desire of Congress for public hearings on matters which have a significantly large impact on the national economy in conformance with Section 207 of the Economic Stabilization Act of 1970, as amended.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to Section 211 of the Economic Stabilization Act of 1970, as amended by the Economic Stabilization Act Amendements of 1971 (P.L. 92–210).

2. Venue is proper.

3. There is no genuine issue of material fact.

4. The Plaintiffs' demands that the Defendants should hold formal public hearings on the proposed changes in prices of 1973 model automobiles, that such hearings be for the purpose of hearing arguments or acquiring information bearing on the proposed 1973 automobile price increases, and that the hearing be held prior to any decision on the merits of the price increases have now been assured and thus these matters are now moot. *See United States* v. *Alaska S.S. Company*, 253 U.S. 113 (1920).

WHEREFORE, It is ORDERED, Adjudged and Decreed that:

1. Plaintiffs' Motion for Preliminary Injunction is denied.

2. Defendants' Motion to Dismiss is granted.

Dated August 22, 1972.

THOMAS A. FLANNERY,
*U.S. District Judge.*

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Civil Action No. 39–73)

CONSUMERS UNION OF THE UNITED STATES, INC., 236 WASHINGTON STREET, MT. VERNON, NEW YORK 10553, AND PUBLIC CITIZEN, INC., 1346 CONNECTICUT AVENUE, NW., WASHINGTON, D.C. 20036, PLAINTIFFS *v.* C. JACKSON GRAYSON, JR., CHAIRMAN, AND JOHN WILLIAM QUEENAN, MARY T. HAMILTON, WILLIAM T. COLEMAN, JR., J. WILSON NEWMAN, ROBERT F. LANZILLOTTI, MEMBERS, PRICE COMMISSION, 2000 M STREET NW., WASHINGTON, D.C. 20508, DEFENDANTS.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action which seeks to set aside as contrary to the evidence and the law, determinations by the defendants that General Motors Corporation ("G.M.") and The Ford Motor Company ("Ford") are entitled to price increases with respect to their 1973 model automobiles manufactured after December 1, 1972.

2. This Court has jurisdiction over this action pursuant to Sections 210 and 211 of the Economic Stabilization Act of 1970, as amended by the Economic Stabilization Act Amendments of 1971 (P.L. 92–210) (the "Act").

3. Plaintiff Consumers Union of the United States, Inc. ("Consumers Union") is a non-profit membership organization which, *inter alia*, annually tests new automobiles and issues reports to the public on the results of its tests in its publication *Consumer Reports*. It has been the practice of plaintiff Consumers Union for approximately 35 years to purchase samples of most automobiles sold in the United States. To this end, plaintiff Consumers Union has already purchased certain 1973 models sold by G.M. and Ford, and it intends to make other purchases of 1973 models of G.M. and Ford. *Consumer Reports* has approximately 2,100,000 subscribers, of whom approximately 350,000 are also members of Consumers Union. Many of these subscribers and members have not purchased, but plan to purchase 1973 model automobiles manufactured by G.M. and Ford.

4. Public Citizen, Inc., is a non-profit organization whose activities include efforts to insure that government officials carry out their duties according to law and that laws, as written by the Congress, are enforced when government officials are unwilling or unable to do so. In the slightly more than one year since Public Citizen began to seek public contributions, it has received contributions from approximately 65,000 individuals who support its objectives. Many of these supporters have not yet purchased, but plan to purchase 1973 automobiles manufactured by G.M. and Ford.

5. Defendants are the members of the Price Commission, to which the President has delegated, pursuant to Section 204 of the Act, the authority to stabilize prices granted to him under Section 203 of the Act.

6. On November 2, 1972, and November 6, 1972, respectively, G.M. and Ford advised the Price Commission, pursuant to its regulation 6 C.F.R. § 300.51(a), that they intended to raise their prices on their 1973 model vehicles by an average of $54.00 and $91.53 per vehicle, respectively.

7. On December 1, 1972, the defendants, acting as the Price Commission, approved an average increase of $54.00 per vehicle for G.M. and an average increase of $62.55 for Ford, effective for all vehicles manufactured after that date.

8. Defendants have stated that their approval was based on their finding that the increase was solely for direct costs incurred to comply with federal standards for 1973 motor vehicles.

9. The determination by the defendants that the direct costs incurred by G.M. and Ford to comply with federal standards for 1973 motor vehicles will be an average of $54.00 and $62.55 per vehicle, respectively, is not supported by substantial evidence and hence must be set aside pursuant to Section 211(a)(1) of the Act.

10. The determination by the defendants to permit these price increases by G.M. and Ford was arbitrary, capricious, and otherwise unlawful, and hence must be set aside pursuant to Section 211(d)(1) of the Act because, *inter alia:*

(A) They failed to exclude certain costs, such as for style changes and performance, which would ordinarily have been incurred in lieu of. and not in addition to some of the costs attributed to the 1973 federal standards; and

(B) In analyzing the profit date submitted by G.M. and Ford for the third quarter of calendar 1972, they apparently (1) failed to properly account for the strikes and other events such as changeovers on model years which occurred

during that period; (2) failed to take into account the fact that a significant portion of the sales by G.M. and Ford during that quarter were of low-profit fleet vehicles; and (3) failed to investigate public allegations that production had been reduced in order to reduce third quarter sales and profits.

11. As a result of the unlawful price increases allowed by the defandants for 1973 model vehicles for G.M. and Ford, plaintiff Consumers Union will be damaged by having to pay higher prices for its purchases of G.M. and Ford automobiles manufactured after December 1, 1972. The subscribers and members of the plaintiff Consumers Union and the supporters of plaintiff Public Citizen who have not yet purchased, but who plan to purchase 1973 model automobiles manufactured by G.M. and Ford, will also be damaged by having to pay higher prices for such automobiles as a result of the unlawful price increases allowed by defendants.

WHEREFORE, plaintiffs pray for an order (1) setting aside the determination of the defendants of December 1, 1972, approving a price increase of $54.00 for G.M. and of $62.55 for Ford; (2) directing defendants to take appropriate action to insure that refunds are made to all persons who purchased a motor vehicle from G.M. or Ford at a price greater than that prevailing on December 1, 1972; (3) directing defendants that, in considering any application by G.M. or Ford for price increases, they comply with the Act and take into account the factors set forth in paragraph 10 of this complaint; (4) awarding plaintiffs their costs and disbursements in this action; and (5) granting plaintiffs such other and further relief as may be just and proper.

Dated Washington, D.C., January 9, 1973.

ALAN B. MORRISON,
*Attorney for the Plaintiffs.*

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## Exhibit 3

[From the Wall Street Journal, June 5, 1973]

OPEN LETTER TO CHIEF EXECUTIVE OFFICERS OF PUBLICLY TRADED CORPORATIONS

(From Richard A. Holman, Editor and Publisher of The Wall Street Transcript)

THE INDIVIDUAL INVESTOR CRISIS—HOW YOU CAN HELP

Dear Sir: There is a crisis in Wall Street that is hurting your company.

This is a chance for you to do something about it.

This crisis is the flight of individual investors from the stock market. As they have fled, price/earnings ratios have crumbled, liquidity has disappeared, control has passed to a relative handful of institutions.

This crisis has affected the market value of your company, its ability to raise capital, to expand, to grow, to merge or acquire, even to protect itself against takeovers.

What you can do about it.

You can take a positive step to restore investor confidence by participating in an important new project called Corporate Reports on File. This service will, for the first time, give every investor fair and equal access to total news and information about your company and thousands of others—the same information of yours that is now on file only at the largest investment institutions and the brokers who serve them.

Corporate Reports on File will be issued every week, starting June 11, in an easy-to-read newspaper format. It will publish the complete texts of corporate annual and quarterly reports, press releases, financial data—any information you release of interest to investors. And all this information will be completely and cumulatively indexed.

Corporate Reports on File will be distributed, free of charge, to:

Every brokerage house and retail branch office in the United States.

Every significant public, college, and university library.

Every analyst, broker, money manager or research department subscribing to the authoritative Wall Street Transcript, sister publication to Corporate Reports on File.

The initial circulation of CRF will be about 25,000. It will be consulted weekly by many times that number of interested investors, brokers and analysts. It

will remain permanently on file, in the sturdy binders we make available, to serve as a basic reference instrument.

Until now, as you know, only the very largest institutional investors have been able to afford to keep complete files of corporate financial reports. They keep these reports because they know there is no more vital input in the process of investment decision-making.

Yet for all practical purposes the individual investor is shut off from this information. It is not available at his local library or his local stockbroker. He can get your reports and releases only by laboriously writing away for them and patiently waiting for them to arrive.

It's natural for this investor to feel he is not getting a fair shake. Corporate Reports on File can make sure he does get a fair shake, by making it easy for him to investigate before he invests.

And CRF helps your company as well. Right now, key documents like your annual report are generally not available when individual investment decisions are made. News releases you send out are published incompletely or not at all. There is a serious information gap between your company and the investing public—including many of your own stockholders.

Corporate Reports on File bridges the information gap. It presents your company's case fairly and completely to individuals and institutions alike. It demonstrates to the investor that your company is interested enough in him to want to provide him with the facts.

Quality and Impartiality.

Corporate Reports on File is published by the same experienced organization that publishes The Wall Street Transcript. In the past decade The Transcript has published and put on permanent file over 130 million words of investment news and information. This has included, for example, almost 7,000 management presentations to Security Analyst Societies so they are now equally available to institutional investors and individual investors.

It is a basic reference book in hundreds of public and University libraries as well as security research departments, and has earned a reputation for integrity and impartiality.

A planned program of announcements in newspapers and other media throughout the country will inform all investors and potential investors of the free availability of Corporate Reports on File.

How to Participate.

It's as easy as returning the coupon below. All you need to do is arrange to send us your corporate reports and releases, just as you want them published. The cost is extremely modest. At $1,100 per page of CRF you can place the information and content of a twenty-four page Annual Report on permanent file at approximately 25,000 sites throughout the country for a few thousand dollars. The usual press release for the financial community can be placed on file for $25 per hundred words.

In short, we're prepared to put your annual reports, interim reports and total information about you on file throughout the country for fair and equal access by individual investors.

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## Exhibit 4

STATEMENT OF FINDINGS AND RECOMMENDATIONS BY RALPH NADER BEFORE THE PRICE COMMISSION—MARCH 29, 1972, WASHINGTON, D.C.

Mr. Chairman, members of the Price Commission, thank you for the opportunity to present this statement and accompanying comments. Because of the severe time constraints, findings and recommendations will be, much as the practice of the Commission, sharply abbreviated. Unlike the practice of the Commission, we will be pleased to elaborate and explain as the Commission or any members thereof wish.

*Premise.*—The Price Commission's activities is largely for the benefit of consumers as clearly reflected in the "Findings" of the "Economic Stabilization Act Amendments of 1971" (P.L. 92–210).

*Procedures.*—The Price Commission's procedures provide for arbitrary, unchecked, unmonitored, unilateral, secretive price decisions whose violations are almost impossible for consumers to detect and obtain refunds. Data are submitted by the companies, held entirely secret by the Commission even to the point of withholding aggregate figures, and the Commission's edicts are rendered

daily without an iota of explanation or reasoning. As if this were not enough, the Commission has refused to hold any formal public hearings on a "proposed change" in "prices, rents, interest rates, or corporate dividends or similar transfers, which have or may have a significantly large impact upon the national economy" (section 207(c)—P.L. 92–210). There is no consumer participation, whether systematic or ad hoc, and no rules which anticipate such participation. Moreover, there is no public participation in the shaping of proposed rules and regulations, with the exception of the hearings on the utility regulations. There is no disclosure of the nature and extent of *ex parte* contacts which your agency is exposed to regularly. All these Commission curtains make impossible consumer participation and evaluation of the Commission's performance from a technical and normative standpoint. Yet contrary open procedures are all the more necessary with the Price Commission due to its awesome various powers and the absence of any Senate confirmation or routine accountabilities by four-fifths of the Commission members.

*Decisional Process.*—The Price Commission has declined to take the profits out of price increases. Under current regulations, the increased costs of materials and labor are not solely passed on to the consumer dollar-for-dollar. Instead the manufacturer may inflate its cost increases by tacking on its profit margin before passing it along to the consumer. For example, if General Motors incurs a one-hundred dollar increase, it may apply, say, a 14% profit margin. The consumer pays $114. As the company stands only to make more profits if costs increase, there is less incentive to hold down costs. For price increases already approved by the Commission, this "profit surcharge" will mean that consumers will be paying an additional $750 million. Under a system of wage and price controls, there should be no situation where a corporation receives increased profits which it has not earned. Yet this is the case today. The Price Commission must certainly go *no further* than permitting price increases to a dollar-for-dollar pass through of cost increases. If a corporation wants to earn added profits, it must be through increased productivity.

The December 17, 1971 issue of the *Journal of Commerce* reports:

The Phase II pricing mechanism will help corporations to boost their profit margins substantially—provided that they are able to keep competition to a minimum. A study by Gary M. Wenglowski, of Goldman, Sachs and Co., estimated that Price Commission profit margin and price guidelines will permit U.S. corporations to boost their after tax profits by 17 to 22 percent next year, following a 10 to 13 percent gain this year. Only 3 of 22 industries, the study shows, will bump against Price Commission profit margin ceilings in 1972. These margins are based on the average of two of the best three years, between 1968 and 1972.

Since Phase II started, all components of the Wholesale Price index have been accelerating faster than before the freeze. For example, consumer finished goods have increased in Phase II at twice the rate seen before the freeze; industrial commodities are increasing at a 6% annual rate. To consumers, this means that the so-called "bulge" will continue to unfold for the foreseeable future.

So far, the Economic Stabilization Program can be proud only of the extreme modesty of its accomplishments. The new stabilization law calls for "generally comparable sacrifices by business and labor as well as other segments of the economy." Overall, it is labor and the consumer who are bearing the brunt of the burdens not the companies with their rosy profit forecasts nourished by pretty much "business as usual" accommodations and not productivity increases. Even after the ravages of inflation, the average worker realized a 2.8% increase in real earnings during the six month period preceding the economic controls, according to BLS. But during the past half year of economic controls, real earnings declined .34%. All of the wage increases and more have been wiped out by the "regulated inflation" of the past six months. It must always be remembered that the vast majority of American workers are not unionized, do not receive the highly publicized percentage increases that a few relatively strong unions receive and that the alleged stabilization program impinges most severely on the working poor below the $6500 per year family income level.

The system of Term Limit Pricing also must be changed, if not totally abolished. For 133 of the country's larger corporations (representing over $100 billion in sales), the Price Commission controls only the aggregate price increase, rather than reviewing increases on a product-by-product basis. This permits large corporations great leeway to avoid the full effects of competition. If competitive forces preclude the full pass-through of cost increases on one product, the TLP company is free to make-up the difference with additional increases in other product lines that are facing less competitive pressures. This is obviously an

advantage that the small, one product firms do not enjoy. Another problem with the TLP approach is the long time before enforcement, if any, arrives to curtail violations, quite apart from any attempt to facilitate rebates to bilked consumers.

Although, with a might assist from Senator Daniel Inouye, the consumer recovery rights in the Senate bill were drastically encumbered and curtailed, the Commission should strive to facilitate consumer monitoring and ability to obtain rebates when violations occur. The Commission should require the retailer to post adequate information so that the consumer can determine the legality of any price increase. Presently, the consumer is given only the ceiling price during the freeze; which does not show the allowable price during Phase II. The retailer should be required to post all price increases in a notebook publicly displayed. This book would be updated weekly to show all items which have increased in price, listing the old price, new price, percent difference and reason for the increase, with old and new applied margins. Such information would enable interested consumers in determining the legality of spiralling food costs, for example. (According to the USDA, only about half of the increases in beef during Phase II was due to increases in farm prices. About 45% of the increase was added by the retailers who are under Phase II controls.)

There should also be disclosure of all price increases found in violation of the Phase II rules. Though the IRS will now give the names of companies that have rolled back prices, it will not give further details of the violation, as a reporter for the *Washington Post* learned recently. In addition. companies should be required to publicly post or advertise the details of the violation to allow all aggrieved consumers the opportunity to obtain a full rebate. Consumers should not have to spend hours every week individually to secure such facts. Such a policy by the Commission will also help further its overall objectives of containing prices, for rebates are good deterrents.

If the Commission is to meet its obligations to the poor, increasingly worn down by price increases owing to businesses and products and services which are not under controls or are exempted, then it must assume the determined responsibility to urge further exemptions of wage controls for the working poor, at least to the level of $6900 family income noted in the Congressional history of P.L. 92–210.

In addition, specific quality degradation data should be acquired by the Price Commission rather than submitted as a mysterious fudge factor in the company's cost accounting. Enough information about the wondrous ways of quality reduction initiated by various industries have come out in Congressional consumer hearings, ranging from food to automobiles, to warrant a sharpened persistence by the Commission.

In conclusion, the Price Commission should step aside from its daily thicket and consider whether it can do anything. especially on a longer term basis than setting the interim price of products, given its operating assumptions. Isn't it time at last to take official note of the correlation between inflation and economic concentration? Isn't it time as well for you to turn your critical attention toward that two-thirds of our industrial economy dominated by shared monopolies—i.e. when four or fewer firms control 50% or more of sales? The eminent economist Gardner Means has estimated that the bulk of our present inflation can be traced to the oligopolistic sectors of the economy. Nearly all econometric studies have documented the high correlation between corporate profits and these oligopoly structures. A recent FTC staff memorandum to the Commissioners estimates that "if highly concentrataed industries were deconcentrated to the point where the four largest firms control forty percent or less of an industry's sales, prices would fall by twenty-five percent or more." Professor William Shepherd of Michigan asserts that at least $23 billion annually is redistributed from consumers to large corporations due to oligopoly overpricing.

High profits, and hence high prices, in fact, inhere in the model of monopoly pricing. Firms like GM, U.S. Steel, Alcoa—the pricing leaders in their respective industries—set so-called "target prices" regardless of consumer demand. In the steel industry. it has been shown that when demand is down, production, not prices, are reduced—a point Professor Ianzilotti has written extensively and ably about.

There is, in sum, an inflationary bias built into the very structure of our corporate economy. As long as that structure remains intact, Kevnesian policies and Price Commissions will continue to dally with effects and not causes. Quite simply, the discipline of competition must be a major weapon against inflation.

The pricing benefits of competition are not merely theoretical; for example:

There were a number of competing milk firms in Minneapolis-St. Paul in the mid-Sixties, but only three big milk firms in neighboring Duluth-Superior; although costs were similar in both markets, the half-gallon wholesale price in 1967 was 33.8 cents in Minneapolis-St. Paul, 45 cents in Duluth-Superior.

Between 1953 and 1961, 100 tablets of the antibiotic tetracycline retailed for about $51. This inflated price had been set by a conspiracy among some of the nation's largest drug houses. Ten years later, after the exposure of Congressional hearings and a criminal indictment, the price for the same quantity was approxi- five dollars, a 90% decrease.

The oil imports quota, by keeping out much foreign competition, permits domestic oil firms to overcharge consumers, according to a Presidential Task Force, by an estimated $5 billion to $7 billion a year; for a family of four in New York, this means an average of $102 added to gasoline and home heating bills every year.

In 1964 all Americans paid an average of about 20¢ for a loaf of bread. In Seattle, however, they paid 24¢, or 20% more, due to a local price-fixing conspiracy. After the conspiracy was ended by a Federal Trade Commission ruling, the Seattle price began to fall, reaching the national average by 1966. In the 10-year period of the conspiracy, it it estimated that consumers in the Seattle-Tacoma area were robbed of $35 million.

To achieve more price competition, and hence lower prices, in industries dominated by a few firms, vigorous antitrust enforcement and the deconcentration of our major shared monopolies must be undertaken under the antitrust laws. Three years ago, the proposal to break up the corporate giants was made by President Johnson's Antitrust Task Force and Senator Hart will shortly introduce a bill containing similar proposals. This proposal—a radically conservative idea reaching back to the 1890 Sherman Act—is a most compelling policy to cure much of the structural bias toward inflation in the economy. The Commission should promptly consider what it can do under its authority to spur the recognition and acceptance of such anti-inflationary, pro-consumer policies. The Commission's investigative, educational and recommendatory responsibilities are good starting points to commence the restructured basis for competitive pricing and practices. Such solid longer range perspectives are required. After all, the Price Commission cannot continue to rubber-stamp most product price increases and deal daily with the *fait accompli* of concentrated corporate power.

Thank you.

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STATEMENT BY RALPH NADER BEFORE THE SUBCOMMITTEE ON PRIORITIES AND ECONOMY IN GOVERNMENT, JOINT ECONOMIC COMMITTEE, ON THE ISSUE OF PRODUCTIVITY, APRIL 25, 1972, WASHINGTON, D.C.

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to comment on the issue of productivity—a subject which must be viewed in the broadest possible context if it is to become a humane means to a higher quality standard of living for the people. I have the following suggestions to make:

1. Traditional measures of productivity are too heavily focused on "output" per "worker hour" and are too plant or factorybound. Far greater emphasis needs to be placed, for example, on the *service sector and white collars**, on *poor higher-level management*, and on *competition* between companies and industries as a spur to higher productivity. Attention should be given to such relationships as that between a rising labor productivity and a declining energy productivity. One product—such as aluminum cans—may have a much lower energy productivity compared with an acceptable alternative material; the extra energy used by the steel industry or aluminum industry to compensate for their drop in energy productivity may have accounted for about two percent of all electricity produced in this country during a recent five year period. With a restricted energy supply, such demand can raise prices, generate pollution and its costs and radiate in other ways throughout the economy so as to have a most significant impact on productivity determinants. Such a trend, too long ignored, needs to be charted much more carefully. It might spotlight better the problems of greater efficiency in energy utilization and innovation.

2. Productivity must not be viewed at the expense of worker safety and health. The coal industry, for example, with its highly automated machines, actually increased the fine, dense coal dust that impaired and destroyed the lungs of coal miners. Proper safeguards could have been taken. All measures of productivity

* Accounting for over 60% of labor in the U.S.

should take this "social cost" into account. Occupational health and safety also is a key factor in the society's standard of living. Industries in European countries frequently exceed the job safety performance of industries in this country.

3. The elusive problem of "job satisfaction", the development of the quest for meaning *in* work, the reduction of monotony, expendibility on the job, absence of opportunity or right to share in decisions affecting the workplace require more initiatives and habitbreaking by management and labor leaders. Spending some time "on the line" for two or three weeks a year on both their part may be just the kind of behavioral experience that will sensitize them to worker problems, alienation, and anomie.

4. Consumer fraud, product hazards, and monopolistic practices, as they raise prices to the consumer, provide increased pressure for high wage demands that are unrelated to company efficiencies.

This connection obviously misallocates resources and reduces competiveness in international trade. The reduction of the 2 by 4 for housing construction may be viewed by some as increased productivity but by others as shoddy or even unsafe construction.

5. A faster emerging technology which efficiently recycles waste material or prevents such waste in the first place by developing standards or systems which reduce the use of energy or ecologically harmful materials, for example, is a key factor in the longer range productivity planning. If as the chief of Dow Chemical told Business Week recently, some companies are already at the point of being able to recycle for profit, as well as avoid fines, then more needs to be known fast about this horizon.

6. The Subcommittee should hear from workers, foremen, and union specialists in labor productivity. Such experience may well bring fresh insights into the subject which economists and statisticians cannot generate, or, in present conceptual frameworks, measure or use. Such input might, I am suggesting, lead to better theory and be a stimulant to broader measurement standards. This suggestion extends to receiving the experience of other countries, such as Sweden and Yugoslavia where new organizational methods of mass production and workers sharing in such decisions have been undertaken.

7. The following quotation by Robert Stevenson, President of Ford International, appeared in the August 13, 1970 issue of *Autocar:* it warrants careful consideration, given the myths and alarms peddled by too many industries in this country seeking special supports and privileges from government:

"Political, social or monetary problems, the economic systems elected by the different countries, all this will hardly count on a long term basis. Only one thing matters: the level of productiivty. Whether they are socialist, communist or capitalist, the countries remaining in the race will be those capable of producing efficiently. This also applies, of course, to the different manufacturers. In this respect, the great progress in automation made over the past 10 years has minimized the differences among the big world manufacturers, whatever their labor costs may be. U.S. hourly wages are often double those of other countries, but this is no longer as important as it used to be, inasmuch as labor costs have a lesser bearing on the cost of a vehicle. There are no more than nine or ten hours of manual labor left in the assembly of an automobile. If you add up all the elements of a car, from tires to engine, glass, seats, etc. (without counting raw material), the total number of working hours embodied in a car is between 65 and 70. Hourly wages don't make the difference anymore between manufacturers in different countries. The difference lies in techniques and in production volume."

8. The Price Commission has changed its method of calculating the effects of productivity when determining the maximum allowable price increase. Previously, the Commission required the companies to calculate their own productivity figures. This productivity increase was subtracted from the cost increases to determine the final price increase. Thus if costs went up 4%, but productivity went 2%, the company was granted a 2% price increase. Apparently, it was in the companies' own narrow and immediate interest to hedge for lower productivity figures. Chairman Grayson testified before the Joint Economic Committee that some 95% of the companies reported productivity figures below their respective industry *average.* The Commission has now changed and begun utilizing BLS productivity figures. Sources, in the Price Commission have informed us that had BLS data been used all along, the average price increases approved would generally be .2% lower than was the case. Applying this to $7.5 billion approved before March 22, it would have meant a savings to consumers of about $475 million. This Subcommittee might wish to follow through on this episode to determine what

recommendations should be made regarding unjust enrichment by the companies at the expense of consumers.

Furthermore, the Price Commission continues to prevent citizens from having the information due them in order to more precisely evaluate its performance. Still, among other penchants for secrecy the Commission refuses to disclose the *average* productivity increases, for instance, of the four domestic auto manufacturers. It claimed that it does not calculate such average data, but the information is stored in their computer system (which has cost almost ¾ million dollars) and can be easily calculated. This information is not of marginal significance, since each percentage point shaved could mean hundreds of millions of dollars to consumers. Small wonder that corporate profits are rising so much over last year, while real wage gains are relatively constant and price levels are increasing, with wholesale price indices forecasting the same trend for the future.

9. A good many of the criticisms of the Price Commission might have been avoided if more of their members came from non-business backgrounds or allegiances. For example J. Wilson Newman of the Commission, is on the boards of several companies, including General Foods. On March 7, the Price Commission acted by a vote of 4 to 2 to reduce the maximum price increase for Term Limit Pricing (TLP) firms. Previously, a firm under the TLP agreement was allowed to raise prices an average of 2% in one year. Under the Price Commission's revised TLP agreement, all *new* TLP firms would be limited to an average annual increase of 1.8%. Mr. J. Wilson Newman, a current director of General Foods, voted against the TLP reduction. In a press release of March 15, the Price Commission announced the new lower limit for TLP firms. General Foods submitted a price increase request dated March 16, which was hand delivered to the Price Commission and received on March 17, at 10:33 am. The company requested a TLP agreement under the old limit of 2%. The Commission announced in its decision list of April 18 that General Foods was granted a Term Limit Pricing agreement at the 2% rate. Jeff Eves, of the Price Commission's office of public affairs said that the General Foods increase was the very last case under the 2% TLP agreement.

It seems as though General Food knowledge of the impending rule change hastened their efforts to gain a TLP agreement. Still they didn't get in "under the wire," but were allowed the more liberal increase rate, a savings of over $4 million. The Price Commission explanation raises serious doubts about the process of "negotiating" price increases and the ex post facto interpretations of such malleable ambiguities.

10. The Committee should not only inquire about what the National Commission on Productivity has done since 1970 but what can it do, given the predominant views of its membership. Take the "public membership," which consumers would have to rely on heavily. John T. Dunlop has spent a career consulting for unions and is a cautious status symbol of the status quo. Arjay Miller, formerly president of Ford Motor Co. and now Dean of Stanford Business School, should have been placed in the Business membership column, along with his industry-indentured colleague, W. Allen Wallis of the University of Rochester. One searches for members, in addition to William T. Coleman, who have the inclination, freedom and time to really come to grips with some of the more controversial determinants of productivity, such as competition and enforcement of antitrust laws and other points mentioned above. The problem with the Price Commission, the Pay Board and the National Commission on Productivity is that their structure and representativeness are not conducive to a job well and justly done.

Thank you.

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## Addendum to the Testimony of Ralph Nader Before the Joint Economic Committee's Hearings on Productivity, April 25, 1972

I would like to comment further on the recent denials of price increases discussed in yesterday's hearings. On cursory examination, the action of the Price Commission, in turning down the price increase request by the Ford Motor Company, and that of the ICC in denying the railroads a 4.5% increases in rates, give the impression that the government's long arm of Price Stabilization is finally flexing its muscle. Closer examination, however, shows that the actions are more on the order of isometric exercises. While the ICC suspended the railroads' request for a 4.5% increase, it quietly eliminated the expiration date for the "emergency surcharge" of 2.5% which has been in effect since February 5,

1972. Thus the denial of a "4.5%" increase really amounts to a suspension of a further 2% increase. The Price Commission, meanwhile, denied the request of Ford to increase the price of certain auto parts by 4.45%, and applied Ford's customary profit markup to the cost increases for its foreign-made Capri autos. Although the decision is meaningful to those purchasing replacement parts or Capri autos (who won't be feeding extra profits into Ford's coffers for retailing its foreign cars) its significance to Ford is miniscule in light of the increases already granted.

Secondly, I would like to reemphasize the significance of the procedural process which was brought to light by the General Foods TLP increase. The Price Commission has stated that it had held many "negotiated" sessions with General Foods before any request was formally made. Once more, the Price Commission seems to think that these discussions are binding on itself, but not on the company involved. In the case of General Foods, a rule change was duly made before the actual request for an increase was made. I believe that the point of negotiation begins when the formal increase is submitted, as this is the first time that the public is notified of the requested increase, and thus is its first opportunity for participating in the decisionmaking process. The Price Commission would prefer that the agreement be hammered out in the back rooms, out of sight of the public, as was done for over a month and a half with the General Foods case, and is currently being done with the increases for next year's auto prices. For the company, these back-room negotiations not only have the advantage of secrecy, but they buffer the company from any future rule—changes not the company's liking, as the Price Commission will not apply the rule changes "ex post facto" upon a company that has entered into no binding agreements with the commission. If such procedures are to continue, all companies would do well to discuss with the Price Commission as soon as possible any increase proposed for the distant future. Thus, if a rule change comes along, the company would retain the option of choosing which regulation, old or new, would best suit the company's purpose.

The concept that prior discussions free a company from the effects of a rule change should send shivers down the spine of any administrator with a semblance of obligation to his duty. In the General Foods case, the company formally requested an increase under a rule that had been changed two days previously. The simple argument that the Price Commission had been talking to the Company is hardly a rationale for granting the price increase under the older more liberal rules (at a savings to the company and expense to the public of over four million dollars).

I believe that this committee would be wise to investigate further the Price Commission's process of hammering out "negotiated increases" made before the public has been given the chance to participate. Certainly the increases of the auto industry, with its significant impact on the economy, must not be handled in this way. Also, in light of the General Foods case, it seems in the public interest that the company be handled like any other that filed for a TLP increase afer the rules had been changed.

Finally, there is the issue of whether the public must pay increases in excess of $475 million granted by the Price Commission based on false productivity data provided by the companies. A "mistake" of this magnitude cannot be "chalked off to experience" but must be rolled back. This, coupled with the Price Commission's bankrupt policy of allowing companies to gain further profits from price increases, has cost the consumers over $1.2 billion in overcharges, with no relief in sight.

### FURTHER QUESTIONS FOR THE PRICE COMMISSION

Although many questions were raised about the Price Commission's activities during the hearings of the Joint Economic Committee, few have been thoroughly answered, and many new questions have grown out of the testimony. I feel that concise answers to the following questions will better aid the public's efforts to scrutinize the Price Commission's actions in this country's fight against inflation.

1. The Price Commission's decision to use the productivity statistics of the Bureau of Labor Statistics, rather than statistics provided by the company in question, seems advisable in light of the fact that 95% of the companies reported productivity figures below the industry average in order to gain greater increases. It seems obvious that if this proposed policy (that is not even in effect as of today) had been utilized since the beginning of Phase II, the price in-

creases granted would have been considerably less. What is the Price Commission going to do in order to recoup the excess increases granted by the Price Commission on the basis of false information submitted by the companies? It must be noted that not all of these increases will be caught by the profit-margin test, as a study by *Business Week* (Nov. 20, 1971) has shown that some two-thirds of the country's top 70 companies were not even within 10% of their profit margin ceiling.

2. Information compiled by the Department of Agriculture continues to show widespread violations by meat retailers of an incredible magnitude. The Department's report, *Price Spreads for Farm Foods* (April 26, 1972), shows that while farm prices for beef have been declining, the costs added by grocery stores have increased over 30% since December of 1971. The regulations stipulate that retailers must not increase their percentage markup. Hence, if wholesale prices go down, the retailers must decrease their prices to the consumer accordingly. The figures show that in December, the costs added by the retailer accounted for 26.1% of the retail price. In all of March, the retailer's proportion of beef prices was 31.8%. The elusive "middleman" (the meat packer), to whom everyone was pointing during last month's meat controversy, actually accounts for less of the retail price than he did in December, or even a year ago. These figures indicate that the grocery retailers are violating the Price Commission's regulations in staggering proportions. What is the Price Commission going to do about this?

3. The Price Commission's infatuation with secrecy must end, and end immediately, if there is any interest in involving the public in the process that decides the increases the public must ultimately bear. Currently, everything is kept from the public. The Price Commission has encouraged secrecy by providing a preprinted request for confidentiality on its price increase forms, ready for the corporate official to sign. The present "secret until proven worthless" attitude of disclosure must be turned full circle to bring it in line with the Freedom of Information Act. Can the process be made such that everything the Price Commission collects can be publicly disclosed upon request, with exceptions being made only when the company involved can prove that such disclosure would directly impair its competitive position? In addition, what moves will the Price Commission make to compile aggregate data of costs and profits, keeping in mind that the Commission's computer system can easily churn out these figures?

4. What plans does the Price Commission have to insure the proper rebates by companies that have exceeded their profit margins? The recent news that Ford will reduce its prices on new cars is of little use to the millions of customers that have already been overcharged.

5. The revelation that the Price Commission habitually "negotiates" price increases with firms long before the public is aware of any formal request (over one and a half months in the case of General Foods) casts further light on the Commission's disinterest in public participation and leaves only the corporate voices to be heard. Recalling the Price Commission's show of arrogance before the Joint Economic Committee, when Mr. Grayson said that it would hold no public hearings on individual cases (as it is required to do under law), is the Price Commission now already to outline the conditions under which it will meet its obligations to the law and hold such hearings? The increases of the auto companies, which are now being hammered out in the Commission's back rooms, seem of obvious significance to the economy, and clearly falls within the purview of the Economics Stabilization Act's stipulation for holding public hearings, Will the Price Commission hold such public hearings and curtail its secret negotiations?

6. Although the Price Commission's Public Affairs Department has gone to great lengths to sell the country on Phase II, it has done little to explain the incredibly complex regulations to the public. What is the Price Commission going to do to educate consumers of their Phase II "rights?" Can and will the Commission use public service T.V. spots, printed media and posters in order to regain the proper balance of information between businessmen and consumers?

7. It would be of interest to know the names, positions and business associations of all people working for the Price Commission who are on leave from the business community.

8. It would also be of interest if the Price Commission provided a detailed outline of the process by which price increase requests are handled, including any pre-submission negotiations. In addition, how extensive a review does the Price Commission give to the data submitted to it? What basis do they use for ques-

tioning the data? Is there any provision for public participation in the review of a company's request for an increase?

9. There have been over 75 letters received by Ralph Nader's office from consumers complaining that the auto companies have not rebated the excise tax charged, or that delivery of their cars, ordered long before the beginning of Phase II, were stalled until after the increases were approved. What action has been taken by the Cost of Living Council to insure the proper rebate of the taxes, and checking to see that the correct prices were charged to consumers?

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EXECUTIVE OFFICE OF THE PRESIDENT PRICE COMMISSION,
*Washington, D.C., June 7, 1972.*

MR. RALPH NADER,
*National Press Building,*
*Washington, D.C.*

DEAR MR. NADER: Thank you for your letter of May 17, 1972, requesting that public hearings be held before any proposed price increases are granted on 1973 model cars or auto parts.

Your letter reveals a deep concern for adequate public participation in the Price Commission's decision process. This participation would provide greater informational input and public scrutiny of our decisions. I share your concern. However, the Commission has the additional requirement and obligation, as you know, of not revealing company confidential data (Section 205 of the Economic Stabilization Act).

It is of prime importance in our work here that any data which a firm submits to us and is considered confidential be used exclusively by the Commission and the other agencies of the Stabilization Program that work with the Commission in the subject concerned. By maintaining this policy, we have gained the trust and cooperation of the business community without which we could not conduct our analysis and have sufficient data on which to base resulting decisions. At present, we feel that we receive honest and open responses from the firms with which we deal and with which we sometimes encounter problems. In short, I cannot over emphasize the importance of the cooperation of the business community in carrying out the mission of the Price Commission.

For this reason, the Commission itself does not have plans to hold formal hearings on specific cases. Because of the confidentiality requirements, only the firm concerned and the Commission would have access to certain key information such as a firm's amount and source of income, projected profits, volume, productivity, losses, income and expenditures. Everyone else would be arguing in the dark. I do not foresee at this time that this type of hearing would be useful for the purpose of making Commission decisions on individual cases.

Because of its importance, I raised this matter at the May 16 Commission meeting. The discussion was considerable. It reflected the difficulty of balancing the dual obligations of public participation in our decisions and maintaining confidentiality of firms' data. The decision resulted in the members of the Commission unanimously reaffirming the view that formal hearings are not planned on individual price increase requests at this time.

Let me make it clear, however, this does not rule out the possibility that the Commission itself might not at some future date find that it is practical and desirable for such hearings. There are some conceivable situations where hearings of some nature might prove necessary. These might include a case in which the accuracy of pertinent facts is in controversy or in which there exists serious question as to the Price Commission's understanding and interpretation of material facts or rulings. It might also apply to a case where the record upon which a Commission decision was based later proved either incomplete or incorrect. Nevertheless, under no circumstances would a hearing be held if the confidentiality of a firm's data could not be preserved.

Presently, the Commission's opinion is that the letter and spirit of Section 207 (c) is best accomplished by devoting resources available for formal hearings to hearings concerned with large policy issues. We have already held public hearings on food, rent and utilities. We are also considering holding hearings on certain proposed regulations and rulings or on entire industries.

A decision to hold hearings on an industry as a whole would rest on two general criteria: administrative feasibility and the determination that the price or rent increases involved have a significantly large impact upon the national econ-

omy. In addition, the decision to hold hearings on an industry basis would normally follow sufficient analysis of all relevant facts presented in price increase requests received by the Commission from numerous firms in the industry. These criterita would apply to the automobile industry as well. In anticipation of possible price increase requests from the automobile manufacturers on 1973 models and auto parts, the Commission is now obtaining information and expertise which should be useful in making an analysis of such requests. Of course, the need for these hearings will depend upon the amount and impact of price increases requested. We are presently welcoming any information and comments which might bear on the review of these possible requests. Because of your particular interest in the automobile industry, I will be sure that you are informed and have a chance to comment if and when the auto companies file for a price increase.

I hope I have been of assistance to you. I appreciate your interest in the Commission's procedures and their importance to the American public.

Sincerely,

C. JACKSON GRAYSON, Jr.,
*Chairman, Price Commission.*

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TESTIMONY OF RALPH NADER BEFORE THE PRICE COMMISSION AT HEARINGS ON UNDETERMINED AUTO INDUSTRY PRICE INCREASE REQUESTS, SEPTEMBER 1972

Mr. Chairman and members of the Commission, I welcome this opportunity to comment on the requests for price increases by the automobile manufacturers. Consumers Union joins with the positions expressed herein.

It is a sad story, though, that of the nearly 10 billion dollars of increases granted by the Price Commission, this is the first opportunity that the public has had to question the merits of an increase. Sadder still is that the public's request for these hearings, which are clearly required under the Economic Stabilization Act, had to be taken to court before the Price Commission agreed to hold them.

As we can see today, residuals of the Commission's reluctance to have the merits of the auto increases aired for all America to judge has seriously undermined the effectiveness of these hearings. The Commission has seen fit to schedule the hearings even after recognizing there is really no dollars and cents issue at stake. With the temporary denials of the General Motors and Ford requests, significant increases by the two smaller companies have realistically been precluded. Round I of the 1973 auto increases will not be fought until General Motors and Ford resubmit their requests, more than a month after these hearings, yet the Commission ignored recent requests to have the hearings postponed until that time. Even more important than the resulting unnecessary expenditure of time and money at the moment is the attempt by the Chairman to have these hearings encompass all price increases for the 1973 model year. It should be obvious to the Commission, as it surely will be to a court, that hearings now cannot substitute for hearings for future increases for amounts and purposes yet undisclosed.

Furthermore, the Price Commission has withheld from the public all of the relevant information submitted by the auto industry in substantiation of these requests. Of major interest at these hearings, but hidden from the public view, are the profit margins, productivity increases, cost savings associated with volume increases, and even the details of price increases sought, all of which the industry asked the Commission to keep secret. Pre-printed on the Price Commission's own forms were requests for confidentiality which have been automatically granted without substantiation of the need for secrecy. The protectors' cloak of the Price Commission has even been extended to aggregate industry data, although the Bureau of Labor Statistics releases some of the information on an annual basis.

The primary aim of the auto manufacturers, from the time early last spring when they first mentioned that increases were being sought for their 1973 models, has been to focus the attention of the Commission and the public on the alleged tie-in between the increases and Federally mandated safety and emission requirements. In doing so, the car makers have deflected attention from a number of important counterbalancing facts which must be considered in determining whether any increase is justified.

First, almost all of the 1973 safety standards, which are hardly costly changes, were put into effect on 1972 model cars, so that the change is of a far lesser magnitude than would appear from the complaints of the manufacturers. For instance, tests conducted by the Insurance Institute for Highway Safety found

that all of the 1972 cars tested met the rear bumper requirements, that some met the front bumper requirements, and that others could have done so with minor modifications. As for the cost of emission control devices, the National Academy of Sciences study submitted to EPA indicated that the maximum additional direct cost of $37. per vehicle to the company applies to only 3 of the industry's 31 engine families and that for the remaining 28, the increased cost will be about $8. Since neither the Commission nor the companies will make the detailed cost breakdowns public, the extent of the overstatement by the companies cannot be determined by the consumer who will have to pay the cost of any increases.

Second, by trying to place these changes under the category of Federally mandated increases, the car makers have engaged in a massive PR job designed to induce the public to attribute the need for net increases to the government. In fact, the safety standards relate to front and rear bumpers which change their faces with the frequency and timing of leaves falling from the trees. At the very least, the styling cost component of bumper changes should not be ignored.

Third, on the social balance sheet, which the auto makers conveniently forget to include, they are all greatly in debt to the American public for years of neglect in safety and pollution control. This debt, which has created profits of billions of dollars over the years, has been ignored by the companies as they seek to require the Federal Government to shoulder the blame for the price increases which they are now seeking. It is grossly unfair for the auto companies to ask consumers, whose wages are tightly controlled, to pay higher prices for features that the companies demonstrably could have and should have put into effect many years ago. Certainly their exuberant portrayal of their autos in their promotions would have led to the expectation by consumers that such features should have been installed.

Fourth, even if the Federal Government were making additional demands on the auto companies, it has been more than generous to them since price controls went into effect thirteen months ago. Not only did the devaluation of the dollar help the auto industry in combating foreign competition, but the auto makers were also the recipients of a guaranteed boost in sales through the repeal of the 7% auto excise tax. As was predicted and in fact intended, car sales soared by an estimated 600,000 vehicles, substantially boosting the 1972 model year sales. If profit per car will be cut because of added costs, total profits per company will be increased nonetheless because of the reduction in the fixed costs per car which results from increased volume. When the recent corporate tax benefits of accelerated depreciation and investment credits are tacked on top, it should be apparent that if the Federal Government is cutting into auto profits in one direction, it is more than compensating for it in other ways. Moreover, the Commission has seen fit to preserve the oligopolistic profit level of General Motors which is far higher than the average for U.S. industry—a questionable practice in a supposed anti-inflation program.

Fifth, the issue of productivity remains hidden from public scrutiny. Unless we can determine whether cost cutting in other areas has counter- balanced these alleged cost increases, we cannot grasp their relative significance to the auto companies. These corporate giants did not sit still and allow others to make labor-saving changes that will leave them far behind but increased their productivity by 12.7% in 1971. In a year with extraordinary profits such as this last model year has been, there was plenty of money to pour back into increased productivity, especially when increasing dividends would have incurred the public wrath. An insight into the magnitude of the industry's achievements in this area is provided by John De Lorean, the head of GM's Chevrolet division. He recently revealed that 75% of the direct labor involved in making a V–8 engine has been eliminated since 1954.

Since we do not have the data from the companies, we can only ask that the Commission look into these questions, do its arithmetic, and then compare the results to the claims of the manufacturers. However, we do have a limited amount of additional information which will give some indication of how far from being justified these increases are.

The necessity of tight scrutiny of the industry-provided data can be readily seen. The story of profit controls in the auto industry since Phase 2 went into effect is a chronicle of a disaster. In the first six months of 1972 GM has increased its after-tax profits by 17%, with Ford registering a 46% increase, and Chrysler vaulting by 147%. Measuring this increase in profits against revenues, the additional profit margin added an average of over one and one-half percent to the price of GM cars above what they were in the inflation-ridden first half of 1971 when no controls existed. The margin increases for Ford, whose pre-tax

profits increased by almost a third of a billion dollars during the first half of this year, added an addition 1% to prices. The figures show that the increase which the Commission authorized for recovery of increased costs turned up in the profit column for most of the amount allowed. With a record of prognostication only slightly better than that of the pollsters who predicted a Dewey landslide in 1948, the estimates submitted by the auto makers must be viewed with great skepticism.

The assessments by the Bureau of Labor Statistics of the increases in the 1973 models attributed to bumper and emission controls, often quoted by industry members, are far in excess of those estimated by other government studies. A study of costs imposed by Federal vehicle regulations prepared for the Office of Science and Technology places the cost of a bumper that will endure no damage in a 5 mph front and 2.5 mph rear collision at $55 retail. Yet the BLS cost estimate of providing *only* protection to safety items (the 1973 standard) is $69 retail. The BLS estimate for costs of 1973 emission standards is $27, over twice the cost derived from the EPA-supplied data. In utilizing the BLS data, it should be remembered that the estimates are derived almost entirely from self-serving industry-provided data.

Furthermore, the BLS report showing a $123 auto quality increase for 1973 was released in mid-August, long before the usual release date of late October or early November. It is fair to assume that the auto companies viewed the quality adjustment as a bargaining chip to be used with the Price Commission, so that any price increase less than $123 would register as a price decline on the Commission's report card, the Consumer Price Index. Although the Bureau is quick to register the quality increases pointed out by the industry, it lacks the capability and, judging by its past attitude, even the will to detect and report hidden quality decreases. Save for the obvious changes of standard equipment made optional, or the decrease in warranty coverage, the BLS review of quality has not registered any quality decreases in recent years. Yet an analysis by Consumers Union of cars used to compile the Consumer Price Index, for example, finds that the frequency of repair has either stayed the same or increased, but in no case has the repair of any of the surveyed cars decreased since 1966. In addition the auto companies have not been known to inform the BLS of any quality *decreases*. A regular reading of *Consumer Reports* or the mounting recall record of the auto companies would argue that BLS could be more demanding of the truth from the industry (including such data as warranty records).

Beyond the money saved by not installing no-damage bumpers in prior years, the industry substantially augmented its profits from the sale of "crash" parts necessitated by the inadequate bumpers installed by the manufacturers. In testimony before the Senate Subcommittee on Anti-trust and Monopoly, the Washington Metropolitan Auto Body Association stated that it found the cost of parts used in replacing a front bumper on a 1969 Buick LeSaber to be greater than the retail cost of a new Frigidaire dishwasher produced by the same company. For a 1969 Mercury station wagon, the cost of parts for a new bumper equalled the price of a Philco upright freezer also made by Ford. None of these cost includes the labor charges which go into the pockets of the dealers who service these large unnecessary damages.

The impact to the American public from uncontrolled pollution does not show up in as noticeable a form as does the damage from faulty bumpers, but it exists nonetheless. Applying EPA's cost factors to the pollution generated by the automobiles in fiscal 1972, results in total costs of over $5 billion. The health costs are high but not yet calculated precisely. While no American is required to buy a car, no American can avoid the pollution surcharge imposed by the car makers unless he is prepared to live deep in the woods where no roads reach.

Lurking behind the excessive profits and industry failure to meet the needs of the public are the forces of industry concentration at work. A recently disclosed Federal Trade Commission report estimated that monopoly overcharges accounted for a 9% increase in prices in the motor vehicle industry. Industry concentration enables the manufacturers to make annual style changes which are purely for cosmetic purposes and then to pass along the costs of doing so to the consumer. During a period of price controls, costs associated with style changes should not be found to be "allowable" cost increases since they are wholly within the discretion of the manufacturers and provide no functional improvement in the auto's operation except, as in the case of sharp external ornamentation, to make the vehicle more hazardous to pedestrians. These style changes, which also add to the cost of replacement parts and reduce a car's resale value, should be absorbed entirely by the manufacturers and not the consumers. Therefore, I call

upon the Price Commission to determine the costs of style changes for 1973 and to subtract that figure from the proposed price of the new models. If, as may well be, the resulting total is less than last year's auto price, the Commission should order a reduction in car prices rather than granting an increase which it seems inclined to do once the third quarter profits are submitted.

It is hardly a surprise that the Commission with an under-budgeted operation and staff of only 121 analysts to cover the entire economy is no match for GM, Ford, Chrysler and American Motors with their battalions of accountants, statisticians and other assorted support personnel. With so much in the way of dollar profits at stake, the public must expect the auto makers to attempt to overwhelm the Commission with data and arguments. Although our every request for information has been denied, I nonetheless request the Commission to divulge to the public the number of pages, or even pounds, of documents submitted by each of the companies in support of its request since even they cannot contend that such information would be a trade secret or confidential financial information. With this most minimum departure from a ukase operating practice, it would be possible to partially assess whether the staff could possibly read the materials submitted, much less verify the data in them.

Against such odds, the Commission had two choices. It could have insisted that the data be made public as a condition of granting any increase and thus brought into its camp the members of the public who could assist the Commission in its determination on these requests. It has chosen not to take this path, but instead has covered its deliberations with a veil of stifling secrecy as though the very existence of the Nation depended on keeping the information from the public. To make matters more outrageous, the basis of the decisions granting increases are also not disclosed to the consumer. Once the Commission decides, it refuses to provide the public with any explanation or justification of its decision. The loss of public confidence resulting from the Commission's policy of total secrecy is greatly magnified when corporate officials such as Henry Ford II, as reported in the Wall St. Journal, threaten to go "over the head" of the Price Commission to the President should their future requests also be denied. Only by revealing all of the necessary information and by articulating the basis for granting significant increases can the public's fear that *ex parte* appeals to the White House, such as Mr. Ford's will succeed where the evidence did not.

If the system of price controls is to retain any credibility with the American people, it must come out from behind the hidden recesses of the Price Commission where it operates by fiat and not by law. It is both adminstratively impossible and morally indefensible to continue to operate the system as it has been in the past. The time for a change is long overdue. When the inevitable auto price increases are sought next month, the Commission should reverse its present policy and make full disclosure of all the auto company data and then conduct meaningful open public hearings that will truly protect the interest of the American consumer. The law provides the Commission with the discretion to do just that. Thank you.

Chairman PROXMIRE. Thank you very much, and thank you for your support for our resolution that the Democratic caucus did pass unanimously, although there were 33 Senators there and a number of Senators who weren't, who might oppose it. But it was an indication of a very powerful congressional support for wage-price freeze.

As you know, we came within two votes of passing it just before the Easter recess. If the absentees had been present, on the basis of their announced position, we would have passed it. And the day after we failed, the wholesale price index statistics came out, disclosing an enormous increase in prices, the biggest we had in 22 years. Putting all of those things together, I think we had a good chance. It is true that in the House a somewhat similar movement failed, but that required rollbacks which made it an administrative nightmare and I think discredited the effort.

I have a whole series of questions. I would like to ask you first, to make sure we understand it. As I understand the Hathaway amendment, I remember we thrashed it out first in this committee, and Sena-

tor Hathaway pushed it hard and I supported him. We won in the committee. We defeated amendments on the floor that would have knocked it out. We had a fight about it in conference and won it there.

We felt all along the line this was one battle we had won. There were other provisions we lost, but we did win on this one. Now I feel it has been completely voided by executive action. We have nothing there. I think that is pretty much what you said.

I have before me the Cost of Living Council form that is required to be filled out, and one of the items, one of the columns, is called "Cost Justification." This is column F. And as I understand it, that cost justification cannot and will not be made public. Is that your understanding?

Mr. NADER. That is right.

Chairman PROXMIRE. Is it also your understanding that this is precisely and exactly what the Hathaway amendment was designed to achieve, that this column should be made public?

Mr. PETKAS. Yes, sir. At least that, and also several other columns.

Chairman PROXMIRE. Sales, for example. I guess the reason is that the Cost of Living Council forms is not exactly the same as on the SEC form. It is not exactly the same numerically, but if you read the definitions contained in prior regulations of the Cost of Living Council, the definition of "net sales" on the Cost of Living Council is defined in terms of the figure that the firm enters on its 10K report. And that is so at the SEC. The only difference is on the Cost of Living Council form, foreign operations, farming operations, and a few other such items, are excluded.

Mr. NADER. Therefore, the Cost of Living Council excludes the whole thing.

Chairman PROXMIRE. Mr. Dunlop did testify, as I understand, this morning, this was a proposed regulation, that he was not responsible for this, that it was something drafted by his council. That he is in a kind of judicial position that he may decide it is not adequate, and at our request they are holding hearings, and Senator Hathaway and I will address them tomorrow.

But at least it is something that they can correct, and I think your very forceful testimony should help a great deal.

Let me ask you this: The opposition to this kind of disclosure has been twofold. No. 1, the Cost of Living Council says that if they require this disclosure, they won't get the cooperation of the corporations. That this is a program that relies on the cooperation and that they have had good success in the past by cooperation.

What is your reaction to the argument this is going to mean you will not get the cooperation to have a successful program?

Mr. NADER. They haven't succeeded. The figures show it. Record corporate profits cannot be justified by the increased productivity in the period of price controls. Record executive compensation and record inflation, I don't see how they can say they succeeded.

You know what would be a revealing counterpoint is to read the complaint of the auto executives, begging for 3, 4, 5 percent increases last year, on the grounds that they were just barely covering their costs, poor things, and then to read the kind of profits they registered.

It is embarrassing to themselves, literally, for GM, Ford, and Chrysler. So I don't think the Cost of Living Council has succeeded. If

they will only give us a criterion of success, maybe we can then give some sort of credence to what they are asserting.

Chairman PROXMIRE. Would it be possible, if the corporations did resent very deeply this corporate disclosure, something, as you know, UAW has fought for years, Woodcock and Reuther have both failed to secure this, in spite of the fact they have a lot of clout as a very powerful union. So there is great resistance to this. What could a corporation do under the law, in your judgment, to resist disclosing this if it were required to be made public?

Mr. NADER. All they have to do is resist it. That is all. They won't be prosecuted.

Chairman PROXMIRE. They won't be prosecuted under the law?

Mr. NADER. They won't be, given past experience under the price control—we have talked, for example, with lawyers who represent firms before the Price Commission, and there are examples of firms with $100 million sales or more, who have just blatantly refused to provide the Price Commission with information, and no prosecution.

Now, in answer to the question that they are more effective if they can permit——

Chairman PROXMIRE. Before you get to that, though, your answer suggests there is something to their position. That in the event the Cost of Living Council, which, after all, isn't a prosecutorial branch of government, if they don't do what industry wants and not require them to disclose, they are not going to get the cooperation, not going to get the figures.

Mr. NADER. The difference is the CLC's capability of referring violations to the Justice Department, via IRS, which is there. They just have sought not to refer these violations.

Chairman PROXMIRE. And to refer violations, in your judgment, prosecutions might well be brought?

Mr. NADER. Yes, and then you will see far greater cooperation that the Council wants from these companies.

Furthermore, with more disclosure of this information, the Cost of Living Council will have an informed Congress behind them, an informed public opinion behind them. They will get citizens who might be able to use the limited remedies in section 210 or other relief. There might be more shareholder response to make these companies responsible in their base order on illegal and secret justifications.

So the Cost of Living Council which, in effect, says all of these support structures, when they are forthcoming, are not to be enouraged is irresponsible. If they really want to get the cooperation of companies, they will refer violations to prosecution, and they will broaden the information base that the public and the Congress and other groups, unions and other groups, can avail themselves of to determine the constituency for supporting the Cost of Living Council's control activities.

Chairman PROXMIRE. The other aspect of this, the argument is this would do damage to corporations. This is a view that is held by Senators whom I respect very, very highly and members of this committee, who are men of integrity and they feel very deeply this is the fact. I disagree with them. But they argue, in the event business has to make this kind of disclosure, their foreign competitors don't have

to do it and they feel they would be at a serious disadvantage and it would be a serious problem.

Mr. NADER. Now, these Senators may well believe that because this whole business of trade secrets has been an article of faith rather than a proposition to be rationally examined. All you have to do is ask the Senators who believe that to give you one example of how this damage would be done.

As a matter of fact, the case can be made, Senator Proxmire, in directly the opposite direction; that is, if many of these water-logged obligopolies would have to disclose their productivity levels and their basic costs, they would be put to shame by the public and compelled by the scrutiny to become more efficient. And their executives who are so concerned about doubling their own compensation might perhaps begin to pay more attention to shaping these companies up so they can meet foreign competition.

Also, many of these facts are held by the trade associations in these companies. For example, the American Gas Association has data on many gas companies which the gas companies refuse to give to the Federal Power Commission. And since the only justification for trade secrets is to keep one's company's information from a competitor, that justification dissolves when the information is given to a trade association of competitors and not given to the government regulatory agencies.

I think just like in government, disclosure helps to root out inefficiencies and abuses, so it is true in business when you are dealing with product lines. Of course, I am hypothesizing a much greater disclosure than is actually provided for in the Hathaway amendment. I am saying, in effect, a case could be made for much greater disclosure. All the Hathaway amendment says is that these multiproducts or conglomerate companies must disclose is what a single-line company now has to disclose to the SEC.

Chairman PROXMIRE. In addition, there is the position taken on the floor, in order to get the amendment passed, we provided these corporations wouldn't have to expose trade secrets.

Mr. NADER. An added safeguard.

Chairman PROXMIRE. Yes. You would go farther than that?

Mr. NADER. Yes. I think a strong case can be made way beyond the Hathaway amendment which, in effect, says it is outrageous that the Hathaway amendment is not observed, since companies who produce one product now have to supply this information to the public via the SEC.

Chairman PROXMIRE. You referred to a fascinating article in the Wall Street Transcript calling for more disclosure on the part of companies, and saying that this would be desirable from the standpoint of the shareholders as well as the public. The thrust of the ad you said was to persuade investors to get back in the market, to have more confidence in the market.

Mr. NADER. That is right.

Chairman PROXMIRE. Was it related to cost?

Mr. NADER. No.

Chairman PROXMIRE. Did they have that in mind or not?

Mr. NADER. No. It was an advertisement by the Transcript in the Journal today and it was intended as an open letter to chief executive officers of publicly owned trade corporations, saying there is an

individual investor crisis of confidence and this is how you can help.

It says what you can do about it and what you can do about it is, in effect, to file information that is now only available to the largest investment institutions and filing it through what the Transcript calls "Corporate Report on file," which will be distributed free to every significant public college, university, library, et cetera.

This does not call for less secrecy; it calls for wider distribution of the information that is now provided only to the favored few, the large institutions. But the justification for greater disclosure, which is posted in this ad, is even greater than that given under the price control program of the Federal Government.

Chairman PROXMIRE. What risk does an individual company incur that complies with the Cost of Living Council regulation and keeps its cost reports from the public? Can a company be sued for disobeying the law?

Mr. NADER. Yes; and it should be properly instituted.

Chairman PROXMIRE. In view of the proposed regulations now in effect, would it be an adequate defense for them to say they are complying with the regulations or would it be possible to sue in spite of that?

Mr. NADER. It certainly would be a case with two sides to the argument. The company could say, we are observing the CLC regulation, therefore we are not liable. The challenging shareholder, or somebody who perceived legal wrong, can say, no, you are held to the knowledge that the CLC regulation was illegal.

I suppose judges could go either way. This, of course, means the companies would still be exposing themselves to risk of suit. Whether they would win or not depends, obviously, on the court. But they would be subjecting themselves to the risk of litigation.

Chairman PROXMIRE. Do you have a plan to bring that to suit?

Mr. NADER. We may bring suit. We have been looking at section 210(a). It could have been drafted better to provide for that kind of suit, but it is hard to prove damages, obviously, in a situation like that, specific damage to individuals.

But fortunately, the provision allows an action for declaratory judgment and injunctions. So we might well consider that type of suit. We have written to a number of companies.

Mr. PETKAS. We have written the United States Steel Corp., Bethlehem Steel Corp., and Jones & Laughlin Steel Corp., and I understand some other consumer groups have written oil companies, asking for disclosure pursuant to the Hathaway amendment. We have received answers from only one of the three steel companies, Bethlehem Steel.

The Bethlehem Steel Corp. interprets the Hathaway amendment as inapplicable to the particular information we requested.

I might add there are at least two possibilities for suit. One is suit against firms declining to reveal what we contend is required to be revealed, notwithstanding the regulation by the Hathaway amendment.

Chairman PROXMIRE. The Cost of Living Council.

Mr. PETKAS. I am sorry, the Cost of Living Council regulation.

The alternative is to sue the Cost of Living Council directly under the Freedom of Information Act. The regulations would be relevant in both suits and if they are improper, or illegal, so to speak, they would

not be a barrier to disclosure, or obtaining an order from the court ordering disclosure, by a corporation or by the Council, as the case might be. As time goes on, obviously, after the final version of the regulations are promulgated, we will take action accordingly to assess the situation in light of what we think is necessary.

Chairman PROXMIRE. This is a constitutional question, referring to the constitutional requirement to faithfully execute the laws. Do you think this proposed regulation would constitute a faithful execution of the law?

Mr. NADER. You mean of the CLC proposal?

Chairman PROXMIRE. Yes.

Mr. NADER. No.

Chairman PROXMIRE. So this would be, in that sense, unconstitutional?

Mr. NADER. Yes; by in a very general sense. That is, you can take the case on other than constitutional grounds. You can take the case on violating the statute. I don't think you would have to go as deep as the Constitution to make a case.

May I make just a suggestion that has occurred to me? I think if you haven't done so already, it would really be very, very useful if you and perhaps a number of other Senators would go over to the Cost of Living Council and just wander around and talk to the rank and file. When you ask Mr. Dunlop to come up, you get a battery of coordinated testimony——

Chairman PROXMIRE. I am going over tomorrow. Unfortunately, I have a meeting after that.

Mr. NADER. If Senators and Representatives did that, the reverberations would be wonderful to hear.

Chairman PROXMIRE. Apropos of that, have you had any chance to visit IRS people in the enforcement section? There are reports they are pretty demoralized for lack of followup.

Mr. NADER. Yes. We have not interviewed them. They are very tight-lipped for obvious reasons. There is a morale problem. There is a consulting firm that has been brought in, we understand, to look at the morale problem at the Cost of Living Council.

Mr. PETKAS. I understand this to be the case. We have not had a chance to check it out. I understand they have brought in a private consulting company to examine the morale problem at the Cost of Living Council. You might address that inquiry to the Council.

Chairman PROXMIRE. Supposing Mr. Dunlop comes down on the strong side and follows the position you have taken. What kind of resources are there in the private sector to assist the Cost of Living Council in viewing validity of price increases?

Mr. NADER. It is probably limited. I am sure there are a number of economists in town, there is a public interest economics group in Washington, that certainly would be available, probably some economists at Brookings, but basically speaking, as you know, economists are not very available for this thing except in rare instances. It will have to be launched by the Federal Government.

Chairman PROXMIRE. The Cost of Living Council presently has before it notifications for major steel company increases of 5 percent in 40 percent of all steel products. These notifications present a crucial test in many aspects. Steel, I guess, is the outstanding example of an administered or oligopolistic industry.

There are critical gaps in the publicly available information about the industry and it seems extraordinarily difficult to fill these gaps. Do you and those who work with you in the area find it is possible to determine from publicly available information whether proposed steel increases are in compliance with phase III?

Mr. NADER. We have not given that particular area careful study. We have noticed in recent reports that steel executives are once again sounding the call for greater accelerated depreciation and investment tax credit beyond and above what was given them. More antitrust exemptions, more import quotas, more government aid to support inefficient production. So as to the request you alluded to, we have to withhold comment.

Chairman PROXMIRE. Do you think there should be public hearings on the proposed steel increases?

Mr. NADER. Oh, most definitely.

Chairman PROXMIRE. You don't think it is required by the law?

Mr. NADER. We believe it is.

Chairman PROXMIRE. Section 202——

Mr. NADER. We believe it is.

Chairman PROXMIRE. It is not discretionary with the Cost of Living Council?

Mr. NADER. The phraseology is significant, industrywide—what is the phraseology?

Yes; which have or may have a significantly large impact upon the national economy. Certainly that qualifies the steel industry.

Chairman PROXMIRE. I apologize for asking you to stay a little longer. There is a rollcall and I have to go back. I have a few more questions and then we will be finished.

[A brief recess was taken.]

Chairman PROXMIRE. Mr. Dunlop's argument is one he and Mr. Schultz feel very deeply and that is controls just don't work, that our problem is dual. We have a very difficult problem of foreign supply of oil, to some extent in the lumber area, and so forth. He argued that about 90 percent of the figures—it may be exaggerated—but 90 percent of the inflation is caused because of what has happened to international markets, and this he says is beyond our control.

Furthermore, that one way of mobilizing resources is to permit prices to rise in those areas where you have shortages. That does two things: It tends to dampen demand and stimulate supply. He feels controls interfere with that and interfere with the adjustment and they are counterproductive.

Do you have a view on that?

Mr. NADER. Would you apply that to the controls of the construction trade? My answer is simply this: We are now talking about a temporray period of controls to take stock of this situation, to restore some sort of confidence in the Government's economic policy, and to ascertain the extent to which we want to rely on competitive economy.

My answer to Mr. Dunlop is, if long-term controls do not work, then is he prepared to promote a vigorous antitrust policy and vigorous competition policy? Because if controls don't work, that means the market has got to work and the market is not going to work with this kind of administered collusion between oil monopolies and quasi-

monopolies and the whole range of Government shields like import quotas and legal monopolies that are accorded various transportation and utility corporations.

Chairman PROXMIRE. Then, what you are saying is we ought to have a freeze, and after the freeze we ought to have an effective control program, and during the subsequent phases, there should be put into effect structural reform, especially in the area of antitrust policy, more effective regulations, and other policies that would make the market more workable. Is that it?

Mr. NADER. Exactly, and more selective emphasis on the hard-core sources of corporate-induced inflation in concentrated industries. And if you are going to have tax incentives, the worst way to have them is the way they were passed; that is, indiscriminately applying investment tax credits and accelerated depreciation, which now has been pretty widely acknowledged as colossal failures in terms of policy goals.

Chairman PROXMIRE. One other area I didn't get to touch on with you and I wanted to very much, and this is the area of executive compensation.

Mr. Dunlop agreed this morning, very clearly, that the present system is not working. There is no way you can justify the enormous increases in executive compensation compared with that of wage earners. And while he challenged the statistics that I quote from Business Week, that the compensation is about three times higher for executives than it has been for wage earners under phase II, nevertheless, he agreed that changes have to be made.

I wonder if your people have given any thought to the subject, and since a decision will be made shortly, if you have any strong opinion on the subject I hope you let the committee, and certainly the Cost of Living Council, know what you feel can be done in this area.

Mr. NADER. First of all, since these are pretty much self imposed wage increases, they increase their own salaries, you can't rely here on heads of the corporations, as in effect the Pay Board did, to keep the lid on their workers' wages.

Senator PROXMIRE. There is a very effective and efficient enforcement device for wages that worked very well, even in phase III, as weak as it is, to hold down wage increases, because it is in the interest of corporate management to hold wages down. But there is no such restraint on executive compensation. So it is up to the Government entirely.

Mr. NADER. That is right. There are various way to do it. One, you just have 5.5 percent guidelines applied to——

Chairman PROXMIRE. He argued, of course, the problem is they apply it to units and anybody within the units, whether a professional baseball player or movie star or whatnot, can receive a big increase if he has an enormously productive year. As long as the average increase isn't above 5.5 percent.

Mr. NADER. That may be true, for example, of a baseball player, because his active time is limited. But it certainly is not true in terms of a corporate president's career. I think that they should obey the same type of strictures as are imposed on their workers.

Chairman PROXMIRE. How about providing that nobody who has a salary of over $100,000 can get a higher compensation without specific Cost of Living Council approval on a case-by-case basis?

Mr. NADER. I think that as a short-term policy it would be quite effective. First of all, it would highlight the request. The shareholders and other parts of the corporate family would know what is going on before the decision was made.

Second, it would be relatively easy to administer.

Chairman PROXMIRE. I want to thank you very much. As usual, you have been a tremendously helpful witness and given us most unusual information.

Mr. NADER. Just one more point I would like to make.

Mr. Dunlop's argument troubles me. First of all, I think there should be far more cogent dealing, for example, with the steel industry, as Professor Houthakker suggested, who really argues that what the steel industry in this country needs is a healthy dose of intercompany competition. He has written cogently on this, and I think his arguments are very persuasive. Any time there is foreign competition challenging the markets of the domestic steel industry, the domestic steel industry begins accelerating its productivity but now, with the voluntary import quotas by the Japanese, they are settling back again.

Chairman PROXMIRE. Plus the devaluation, double devaluation.

Mr. NADER. Yes. Second, the construction trade's problem which Mr. Dunlop is very familiar with, is a classic antimarket practice. That is, the prices are, in effect, set by administrative deliberation, and the cost of construction is passed on to the homeowner or the consumer, as it may be. I mean, what does Mr. Dunlop want? If he doesn't want controls, is he willing to support the market in a competitive structure with the Government promoting a competitive market system through antitrust, reduction of quotas and more liberal regulatory policies, allowing younger firms or newer firms to challenge?

Chairman PROXMIRE. Maybe what Mr. Schultz has in mind, the situation hasn't really changed that much since the period of the sixties, when we had a situation where unemployment did go below 5 percent and we had inflation of less than 2 percent. Of course, this was true in a number of periods also in the fifties. We haven't had that dramatic a change in the structure and this will just spend itself and then you can go on to a free market. He relied very heavily on the Korean war experience where he was appointed by President Truman as one of the three administering the stabilization program.

At that time, he said, they came into office after all of the price increases had been put into effect, and he said it was kind of a piece of cake. They were able to operate pretty smoothly and it worked out very nicely. His argument is that if you put controls in now, it might work but only if inflation has already spent itself.

If you don't put it into effect, you don't get a great deal more inflation at any rate.

Mr. NADER. They have been saying that for awhile, haven't they?

Chairman PROXMIRE. It is almost like—you said, it is unprecedented. There is a precedent. Herbert Hoover's "Prosperity is just around the corner."

Mr. NADER. That is right.

Chairman PROXMIRE. Thank you very much, Mr. Nader.

The subcommittee stands adjourned.

[Whereupon, at 4 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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