

unless the parties have given their mutual consent to the termination of the supplier/purchaser relationship. Only if Supplier H and Firm K had so consented and could establish that their consent was in fact mutual and voluntary, would their supplier/purchaser relationship be considered terminated.

**Example 8 (New supplier/wholesale purchaser relationships):** During September, 1975, Supplier H entered into a contract to supply middle distillates to Firm L, a wholesale purchaser-reseller, and also agreed to supply Firms M and N, both wholesale purchaser-consumers. On September 1, 1975, Firm M and its base period supplier had mutually consented to terminate their supplier/purchaser relationship. Firm N had been notified that its base period supplier no longer intended to supply it.

The supply contract between Supplier H and Firm L does not establish a valid supplier/wholesale purchaser-reseller relationship because FEA approval has not been obtained as required by § 211.12(e) (2) (ii). Unless Firm L is without a base period supplier or a new supplier as provided in § 211.10(e) (1), it may not even apply to FEA for assignment of Supplier H as its base period supplier.

The supply arrangement between Supplier H and Firm M may continue as a mutual arrangement as contemplated by § 211.12(e) (1). This new supplier/purchaser relationship is subject to the notice and approval provisions of § 211.12(e) (1) (ii) and (iii).

In the case of Firm N, however, the new relationship between it and Supplier H is not valid unless Firm N now arranges by mutual consent to terminate its supplier/purchaser relationship with its base period supplier, which unilaterally refused to supply it during September. If that termination is effected, Firm N is considered to have been without a base period supplier and is therefore able to enter into a mutual supply arrangement with Supplier H as provided by § 211.12(e) (1). In this event, the notice and approval provisions of § 211.12(e) (1) (ii) and (iii) apply.

Supplier H may, of course, supply purchasers with which it has no supplier/purchaser relationship to the extent that it has surplus product and has complied with the provisions of § 211.10(g).

**Example 9 (Crude oil supplier/purchaser rule):** On September 1, 1975 Firm O, a crude oil producer, contracted for the sale of its production to Firm P, to whom Firm O had never previously sold. Prior to September 1, 1975, Firm O had sold its production to Firm Q, which had purchased Firm O's production under a supplier/purchaser relationship in effect pursuant to § 211.63(a). Firm Q did not consent to the termination of its supplier/purchaser relationship with Firm O. Therefore, Firm Q continues to be entitled to purchase Producer O's production for the month of September 1975 and thereafter, except as to September 1975 production where the sale and delivery thereof to Firm Q is no longer feasible because it is no longer within

Firm O's possession or control as of the date this ruling is published in the FEDERAL REGISTER. Crude oil which Firm O is otherwise contractually required to supply to Firm P but is still in Firm O's possession or control as of such publication date shall be delivered to Firm Q. This result would be identical if a broker or reseller, instead of Firm O, were the supplier to Firm Q.

In general, pursuant to the crude oil supplier/purchaser rule set forth in 10 CFR 211.63, all supplier/purchaser relationships in effect under contracts for sales, purchases, and exchanges of domestic crude oil on December 1, 1973 are required to remain in effect for the duration of the Mandatory Allocation Program. In accordance with the provisions of the EPAA of 1975, as a general rule, all crude oil supplier/purchaser relationships in effect under § 211.63 immediately prior to the period September 1 to 29, 1975 are required to be maintained in effect under § 211.63 for the period subsequent to August 31, 1975 during which the EPAA of 1973, as amended, is in effect.

If a valid termination under § 211.63 of Firm Q's supplier/purchaser relationship had been effected as of September 1, 1975, Firm O would no longer be required to sell its crude oil to Firm Q. Supplier/purchaser relationships required to be maintained under § 211.63 may be terminated by mutual consent of both parties and, as to new and released crude oil, may be terminated where the present purchaser of the crude oil refuses, after notice by the seller, to meet any bona fide offer for the crude oil by another purchaser at a higher lawful price. As to terminations by mutual consent, FEA has consistently ruled that any consent to such a termination must be made affirmatively in writing in light of the provisions of § 211.63. Accordingly, supplier/purchaser relationships in effect on August 31, 1975 may be terminated in the period September 1 to September 29, 1975 in the manner prescribed in § 211.63. No termination in this period is valid under § 211.63 unless effected in accordance with the provisions of that section.

**Example 10 (Old oil allocation program):** From September 1 to September 28, 1975 Firm R, a crude oil producer, sold its production to Firm S, a refiner. Firm R's entire production is classified as old crude oil under § 212.72 and therefore constitutes old oil (as defined in § 211.62) for purposes of the old oil allocation program set forth in § 211.67. All of such sales were made at a price in excess of the lawful ceiling price as computed under § 212.73.

Firm S must include the crude oil purchased from Firm R its crude oil receipts (in accordance with the provisions of § 211.62) and must report these particular receipts as old oil for purposes of § 211.66 and § 211.67, in accordance with the certification under § 212.131 received by Firm S from Firm R, regardless of the fact that Firm S may have paid an exempt price for the crude oil. Firm S's remedy in this case is to seek a refund from Firm R (under the procedures set

forth in Example 1 above) for these sales made at a price in excess of the lawful ceiling price.

ROBERT E. MONTGOMERY, Jr.,  
General Counsel.

OCTOBER 9, 1975.

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Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 75N-0016]

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

Testing Procedures

The Commissioner of Food and Drugs is amending the over-the-counter (OTC) antacid testing procedures in §§ 331.20, 331.23 (21 CFR 331.20, 331.23). This amendment shall be effective on November 14, 1975.

The Commissioner proposed, in the FEDERAL REGISTER of May 23, 1975 (40 FR 22553), to amend § 331.20(p) to provide for use of United States Pharmacopoeia (U.S.P.) Purified Water, and to amend § 331.23 to provide for use of 25° C or 37° C ± 3° C as the test temperature. No comments were received in response to the proposal during the comment period.

The Commissioner intends to require the simplest test that will yield uniform results and avoid unnecessary restrictions on testing procedures, unless there is a reasonable basis for such limitations. Since no comments were received, the Commissioner concludes that the proposed procedures should be adopted without change.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055-1056 as amended (21 U.S.C. 321, 352, 355, 371), and the Administrative Procedure Act (5 U.S.C. 553, 554, 702, 703, 704), and under authority delegated to the Commissioner (21 CFR 2.120), Part 331 is amended as follows:

1. By revising § 331.20(p).

§ 331.20 Apparatus and reagents.

\* \* \* \* \*

(p) Purified Water U.S.P.

2. By revising § 331.23.

§ 331.23 Temperature standardization.

All tests shall be conducted at 25° C ± 3°, or 37° C ± 3°.

**Effective date.** This amendment shall be effective on November 14, 1975.

(Secs. 201, 502, 505, 701, 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055-1056 as amended (21 U.S.C. 321, 252 355 371); (5 U.S.C. 553, 554, 702, 703, 704).)

Dated: October 8, 1975.

WILLIAM F. RANDOLPH,  
Acting Associate Commissioner  
for Compliance.

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