

DEPARTMENT CIRCULAR NO. 98-03-004

**Rules and Regulations Implementing Republic Act 8479,
“Downstream Oil Industry Deregulation Act of 1998”**

Pursuant to Chapter VII, Section 23 of Republic Act 8479, “*Downstream Oil Industry Deregulation Act of 1998*,” the Department of Energy, in coordination with the Energy Regulatory Board, Department of Environment and Natural Resources, Department of Foreign Affairs, Department of Labor and Employment, Department of Health, Department of Finance, Department of Trade and Industry, National Economic and Development Authority and Technology and Livelihood Resource Center, hereby issues, adopts and promulgates the following rules and regulations to implement the Act.

RULE I – GENERAL PROVISIONS

SECTION 1. *Title*

These rules shall be known and cited as the “Implementing Rules and Regulations (IRR) of the Downstream Oil Industry Deregulation Act of 1998.”

SECTION 2. *Coverage*

These rules shall apply to all persons or entities engaged in any, a combination of, or all activities or business of the downstream oil industry, such as importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and/or selling, crude oil, gasoline’s, diesel, fuel oils, aviation fuels, liquefied petroleum gas (LPG), kerosene, and other petroleum products as herein defined, as well as persons or companies directly importing refined petroleum products for their own use or requirement. This shall likewise include the activities or business of blending, recycling, and/or re-processing of petroleum products.

SECTION 3. ***Definition of Terms***

The terms used in this IRR shall have the following respective meanings:

- a. *Act* refers to Republic Act 8479;
- b. *Average Variable Cost* refers to the sum of all variable costs divided by the number of units of outputs;
- c. *Basel Convention* refers to the international accord which governs the trade or movement of hazardous and toxic waste across borders;
- d. *Board* refers to the Energy Regulatory Board;
- e. *BOI* refers to the Board of Investments;
- f. *BPS* refers to the Bureau of Product Standards of the DTI;
- g. *Bulk Supplier* refers to a person or entity engaged in the sale of petroleum products in bulk;
- h. *Bureau* refers to the Energy Industry Administration Bureau of the DOE;
- i. *Cartelization* refers to any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;
- j. *Crude Oil* refers to the oil in its natural state before the same has been refined or otherwise treated, but excluding water, bottoms, sediments and foreign substances;
- k. *Dealer* refers to any person, whether natural or juridical, engaged in the marketing and direct selling of petroleum products to motorists, end users, and other consumers;
- l. *DENR* refers to the Department of Environment and Natural Resources;
- m. *DFA* refers to the Department of Foreign Affairs;
- n. *DOE* refers to the Department of Energy;

- o. *DOF* refers to the Department of Finance;
- p. *DOH* refers to the Department of Health;
- q. *DOJ* refers to the Department of Justice;
- r. *DOLE* refers to the Department of Labor and Employment;
- s. *DTI* refers to the Department of Trade and Industry;
- t. *Downstream Oil Industry or Industry* refers to the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and/or selling, crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum products;
- u. *EMB* refers to the Environmental Management Bureau of the DENR;
- v. *Hauler* refers to any person, whether natural or juridical, engaged in the transport, distribution, hauling, and carriage of petroleum products, whether in bulk or packed form, from the oil companies and independent marketers to the petroleum dealers and other consumers;
- w. Unless the context otherwise indicates, *Importer* refers to any person, whether natural or juridical, engaged in the importation of crude oil and/or petroleum products, whether for processing, marketing or own use;
- x. *IRR* refers to these rules and regulations implementing the Act;
- y. *Liquefied Petroleum Gas or LPG* means commercial propane gas or commercial butane gas or a mixture of the two gases, with properties conforming to the specifications set by the BPS;
- z. *LPG cylinder* refers to any portable pressure-vessel or container for LPG, conforming to the specifications set by the BPS;
- aa. *LPG Distributor* refers to any person, whether natural or juridical, engaged in exporting, refilling, transporting, marketing, and/or selling of LPG to end users and other consumers;
- bb. *LPG Retail Outlet* refers to any person, whether natural or juridical, engaged in direct selling of LPG to consumers and whose supply comes from dealers;

- cc. *Marketer* refers to any person, whether natural or juridical, engaged in the sale of petroleum products, whether in bulk or retail;
- dd. *NEDA* refers to the National Economic and Development Authority;
- ee. *New Industry Participants* refers to new participants in a particular sub-sector of the downstream oil industry with investments and initial business operations commencing after January 1, 1994;
- ff. *OPSF* refers to the Oil Price Stabilization Fund established under Presidential Decree No. 1956, as amended;
- gg. *Person* refers to any person, whether natural or juridical, who is engaged in any activity of the downstream oil industry;
- hh. *Petroleum* refers to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances; with the exception of coal, peat, bituminous shale, and/or other stratified mineral fuel deposits;
- ii. *Petroleum Products* refers to products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvent, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products;
- jj. *PNS* refers to the Philippine National Standards;
- kk. *Predatory Pricing* refers to selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: *Provided, however*, That pricing below average variable cost in order to match lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing.

- ll. *Qualified LPG Serviceman* refers to an individual who has been trained, qualified and certified by the Philippine Liquefied Petroleum Gas Association (PLPGA) or to an individual who has successfully completed an approved training course for LPG servicemen in a training school duly recognized and accredited by the Philippine government;
- mm. *Refilling Plant* refers to any installation that has LPG bulk storage and filling/refilling facilities for bottling LPG;
- nn. *Refiller* refers to an LPG marketer who buys LPG in bulk from bulk suppliers, refills LPG into cylinders under his own brand name or that of other LPG marketers, and sells the same to his dealers, whether in bulk or retail to his customers;
- oo. *Refiner* refers to any person that locally refines through distillation, conversion and treatment of crude oil and other naturally occurring petroleum hydrocarbons; and
- pp. *Variable Cost* refers to costs such as utilities or raw materials, which vary as the output increases or decreases.

RULE II - LIBERALIZATION OF DOWNSTREAM OIL INDUSTRY AND TARIFF TREATMENT

SECTION 4. *Liberalization of Downstream Oil Industry*

Any person may import or purchase any quantity of crude oil and petroleum products from foreign or domestic source, lease or own and operate refineries and other downstream oil facilities and market such crude oil and petroleum products either in a generic name or his or its own trade name, or use the same for his or its own requirement: Provided, That, such person shall comply with the notice, reportorial, quality, health, safety and environmental requirements as set forth in this IRR.

SECTION 5. *Notice Prior to Engagement in any Activity or Business in the Downstream Oil Industry*

Any person who intends to engage in the business of importing, exporting, re-exporting, refining, processing, manufacturing, blending, recycling, and/or re-processing, shipping, transporting, transshipping, storing, distributing, and marketing and/or selling of crude oil, gasoline, diesel, LPG, kerosene, and other petroleum products, and in any similar activities, shall file a notice with the Bureau prior to initial engagement in the proposed activity or prior to construction of the petroleum products facilities, as the case may be.

All notices shall be in writing, addressed to the Bureau, and shall contain the following information, as may be applicable:

- a. Business name, address, telephone/fax number;
- b. Project or business plan indicating the scope of operation/activity;
- c. List of facilities and proof of the availability of such facilities to support the proposed business;
- d. Business permits such as Mayor's permit, Securities and Exchange Commission (SEC)/DTI registration;
- e. Building permit;
- f. Locational/ zoning clearance; and
- g. Other local government permits/clearances.

Any person already legally engaged in any activity in the downstream oil industry upon the effectivity of this IRR is deemed to have complied with this notice requirement.

SECTION 6. *Notice Prior to Every Importation*

For effective monitoring, and to ensure conformance to the Basel Convention, any person who shall import crude oil and/or petroleum products from foreign countries, freeports and economic zones, whether for trade or for his own use or requirement, shall file a notice with the Bureau prior to actual loading of every importation, indicating details and/or accompanying documents related to the importation, as follows:

- a. type and quantity of cargo;
- b. the estimated date of loading and arrival;
- c. supplier of cargo;
- d. FOB price, freight and insurance cost;
- e. vessel particulars;
- f. port of loading and discharge;
- g. guaranteed specification of the product; and
- h. proforma invoice

In the case of importations of slop/used/waste oils, sludges and similar petroleum products/by-products, such notice shall be accompanied by a clearance from the EMB/DENR pursuant to RA 6969, otherwise known as "*Toxic Substances, Hazardous and Nuclear Wastes Control Act of 1990*," in accordance with the Basel Convention.

SECTION 7. *Reportorial Requirements*

Any person who is engaged or intends to engage in any activity or business in the downstream oil industry shall submit the following reportorial requirements to the Bureau:

a. *Prior to Operation in Proposed Business or Activity*

Any person intending to engage in any business/activity in the downstream oil industry shall submit authenticated copies of the following documents and permits to the Bureau prior to operation:

- (1) Fire Safety Inspection Certificate of the facilities;
- (2) Permits on the suitability of facilities for the proposed operation (Certificate of conformance of facilities to national or accepted international standards on health, safety and environment);
- (3) Product Liability Insurance Certificate or Product Certificate of Quality; and
- (4) Environmental Compliance Certificate issued by EMB, whenever applicable.

For LPG dealers and retail outlets, an authenticated copy of the Fire Safety Inspection Certificate will suffice.

b. *Importations*

To ensure proper representation of the importation and to ascertain the quality of imported crude oil, petroleum products and petroleum-based products, the importer shall submit to the Bureau the following information/documents:

- (1) ***Not later than one (1) working day prior to loading of every importation:*** details of importation as enumerated in Section 6 of this Rule.
- (2) ***Not later than twenty (20) working days after unloading of every importation:***
 - i) Bill of lading;

- ii) Commercial Invoice;
- iii) Final Import Entry Declaration; and
- iv) Certificate of Quality issued by the supplier for the actual shipment including the Delivery Receipt or Receiving Report.

c. *Exportations*

Any person or entity who shall engage in exportation of crude oil and petroleum products shall submit the following to the Bureau, ***not later than ten (10) working days after the departure of shipment:***

- (1) Details of Exportation;
 - i) Name and address of exporter and consignee;
 - ii) Type and quantity of cargo;
 - iii) Loading and discharge ports and dates; and
 - iv) Cost and vessel particulars.
- (2) Certificate of Quality;
- (3) Export Manifest and Release Certificate; and
- (4) Bill of Lading.

d. *Bunkering From Freeports and Special Economic Zones*

Any person or entity who shall engage in bunkering of international vessels in Philippine waters, bunkering of aircraft for domestic service and liftings from Custom Bonded Warehouses located outside the source freeports/special economic zones, but which shall be eventually used for international bunkering shall report the following to the Bureau, ***not later than ten (10) working days after bunkering:***

- (1) Details of bunkering such as name and registry of vessel, type, quantity and price of product, place of bunkering, destination of vessel, transporter (product carrying vessel), loading and bunkering date;
- (2) Proforma Invoice;
- (3) Bunkering permit from Bureau of Customs (BOC) for specific vessels; and
- (4) Certificate of Quality.

e. *Chartering of Foreign Vessel*

Any person who shall use, charter or utilize a foreign-owned petroleum product tanker/vessel from an international source for domestic use in the Philippines, subject to existing and pertinent cabotage and maritime laws as approved by the Maritime Industry Authority (MARINA), shall report the following to the Bureau ***not later than ten (10) working days after the actual date of commissioning/utilization of the tanker/vessel***: name and capacity of vessel, number of compartments, cargo segregation, draft and year built.

f. *Monitoring Reports*

All refiners, importers, and marketers shall submit to the Bureau monthly reports of their actual and projected importations, exportations, local purchases, actual and projected sales (local, international and exports), and/or consumption, and inventory on a per crude and/or product basis, in the format to be prescribed for this purpose. Submissions are ***due on the fifteenth (15th) day of the month***.

For those engaged in the petroleum products business as bulk supplier, they shall submit the following data to the Bureau on or before January 15 of each year:

- (1) List of the names and addresses of their dealers/buyers;
- (2) Annual volume of petroleum products supplied to each dealer/buyer; and
- (3) Lists of names and business addresses of authorized petroleum product haulers.

Failure to comply with the notice requirement shall constitute violation of Sec. 5 in relation to Section 12 of the Act.

SECTION 8. *Tariff*

Pursuant to Section 6(a) of the Act, a single and uniform tariff duty shall be imposed and collected both on imported crude oil and imported refined petroleum products at the rate of three percent (3%): *Provided, however*, That the President of the Philippines may, in the exercise of his powers, reduce such tariff rate when on his judgment such reduction is warranted, pursuant to Republic Act No. 1937, as amended, otherwise known as the "Tariff and Customs Code": *Provided, further*, That beginning on January 1, 2004 or upon implementation of the Uniform Tariff Program under the World Trade Organization and ASEAN Free Trade Area commitments, the tariff rate shall be automatically adjusted to the

appropriate level notwithstanding the provisions under the aforementioned Section.

NPC Exemption

Pursuant to Section 6(b) of the Act, for as long as the National Power Corporation (NPC) enjoys exemptions from taxes and duties on petroleum products used for power generation, the exemption shall apply to purchases through the local refineries and to the importation of fuel oil and diesel.

RULE III - FAIR TRADE PRACTICES AND PROMOTION OF FREE COMPETITION

SECTION 9. *Promotion of Fair Trade Practices*

The DTI and DOE shall take all measures to promote fair trade and prevent cartelization, monopolies, combinations in restraint of trade and any unfair competition in the Industry as defined in Article 186 of the Revised Penal Code, and Articles 168 and 169 of Republic Act No. 8293, otherwise known as the "Intellectual Property Rights Law."

Joint Industry Activities

To serve the public interest, achieve efficiency and cost reduction, ensure continuous supply of petroleum products, and enhance environmental protection, the DOE shall continue to encourage joint industry activities, which may include borrow-and-loan-agreements, rationalized depot and manufacturing operations, hospitality agreements, joint tanker and pipeline utilization, and joint actions on oil spill control and fire prevention. Participants to this joint industry activity, either as a group or individual, shall inform the DOE, through the Bureau of occurrence and details of such activities.

SECTION 10. *Monitoring and Arbitration by the DOE*

a. Monitoring

To help ensure the observance of fair and equitable practices and to ensure the enforcement of existing contracts, the DOE shall monitor the relationship between the oil companies (refiners and importers) and their dealers, haulers and LPG distributors.

For purposes of such monitoring, the oil companies shall provide the DOE, through the Bureau, with copies of all existing contracts between them and their dealers, haulers, and LPG distributors.

b. Arbitration and Conciliation

1. Disputes subject to arbitration

The DOE shall conciliate and arbitrate any dispute that may arise with respect to the contractual relationship, existing therein, involving the dealer's mark-up, the freight rate in transporting petroleum products and the margins of LPG distributors,

2. Arbitrator

The DOE Secretary shall be the arbitrator for any dispute that may arise under Section 7 of the Act. Provided, that the DOE Secretary may designate or appoint an official in the DOE to act as arbitrator on his behalf, which official shall not be lower than a Director. Provided further, that any award resulting from such arbitration shall be signed by the Secretary.

3. Guidelines and Procedures

- a. *Upon the filing of the complaint, the arbitrator shall forthwith notify the adverse party/parties in writing of the issues raised in the said complaint and shall require him/them within ten (10) days from receipt thereof to submit position paper with respect to arbitrable issues and the possible evidences that the parties may present to support his/their respective position.*
- b. *The arbitrator shall set a time and place for the hearing of the dispute submitted to him and must cause notice thereof to be given to each of the parties.*
- c. *The hearing may proceed in the absence of any party who, after due notice, fails to be present at such hearing or fails to file a motion for the postponement or continuance thereof.*
- d. *The arbitrator shall not make an award based solely on the default of a party but shall require the other party to submit such evidence as he may require for making an award.*
- e. *Each of the party to the dispute may be represented by counsel.*
- f. *The Arbitrator shall arrange for the taking of stenographic record of the proceedings.*

- g. The Arbitrator shall have the power to administer the oaths to all witnesses in the hearing. This oath shall be required of every witness before his testimony is heard.*
- h. The Arbitrator may subpoena any person to attend the hearing as a witness or to produce documents whenever he may deem necessary.*
- i. In the absence of any agreement, the normal order of arbitration is as follows:*
 - 1. Opening statements of the parties.*

The Arbitrator may, at the commencement of the hearing, ask both parties for brief statements of the issues in controversy and/or agreed statements of facts. He shall have wide latitude of discretion in determining the order of presentation.

2. Stipulation of Facts

The arbitrator, when warranted, attempt to draw the parties to stipulate facts, which are no longer disputable, leaving the presentation and examination of evidence only to such facts that are still in dispute.

3. Presentation of Evidence

The parties may offer such evidence as they desire, and shall produce such additional evidence as the arbitrator shall require or deem necessary to a better understanding and determination of the dispute.

4. Formal Offer of Evidence

The formal offer of evidence may be dispensed with unless otherwise agreed upon by the parties.

5. Appreciation of Evidence

The Arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered or produced and shall not be bound to conform to the Rules of Court pertaining to evidences. He shall receive as exhibits in evidence any document, which the parties may wish to submit, and the exhibits shall be properly identified and marked at the time of submission.

6. Submission of Memoranda

The Arbitrator may require the parties to submit their respective memoranda. A definite time limit for the filing shall be fixed by the arbitrator at the close of the hearing.

7. *Time for rendering award.*

The written award of the Arbitrator shall be rendered within thirty (30) days after the closing the hearings, or if the oral hearing shall have been waived, within thirty (30) days after the Arbitrator shall have declared such proceedings as closed.

In the event that the parties to an arbitration have, during the course of such arbitration, settled their dispute, they may request of the Arbitrator that such settlement be embodied in an award which shall be signed by him.

8. *Form of Award*

The award must be made in writing and signed by the DOE Secretary

9. *Proceeding in lieu of hearing*

The parties may, by written agreement, submit their dispute to arbitration by a mode other than oral hearing. The parties may submit an agreed statement of facts. They may also submit their respective contentions to the Arbitrator in writing; which shall include a statement of facts, together with all documentary proof. Parties may also submit a written argument. Each party shall provide all other parties to the dispute with a copy of all statements and documents submitted to the arbitrators. Each party shall have an opportunity to reply in writing to any other party's statements and proofs; but if such party fails to do so within seven (7) days after receipt of such statements and proofs, he shall be deemed to have waived his right to reply. Upon the delivery to the arbitrators of all statements and documents, together with any reply statements, the arbitrators shall declare the proceedings in lieu of hearing closed.

10. *Reconsideration*

Any motion for reconsideration of any award by the arbitrator shall be filed within fifteen (15) days from receipt of the award by the adverse party.

11. *Judicial Review*

Any appeal that may be taken from an award and the proceeding thereon shall be instituted by certiorari and the proceeding thereof shall be governed by the rules of court as these are applicable.

SECTION 11. ***Program to Encourage the Entry of new Participants in the Industry***

Pursuant to Section 8 of the Act, the DOE, the DFA and the DTI shall jointly formulate and establish a program that will promote the entry of new participants in the Industry. This program shall commence after three (3) months from the effectivity of the Act.

a. International Information Campaign

Among others, the program shall include a strategic international information campaign to be implemented through selected embassies and consular offices of the Philippines.

b. "Philippine Downstream Oil Industry Investment Guide"

The DOE shall provide an investment guide to new Industry participants and prospective participants, which shall contain, among others, the following:

1. An introduction to the Philippine Downstream Oil Industry and the government's unwavering commitment to deregulation;
2. The entry requirements;
3. Information on the benefits and incentives for new industry participants which shall specify: (i) all the incentives and benefits they can enjoy, and (ii) the procedural and substantive requirements needed for entitlement; and
4. Such other information the DOE may deem necessary to promote the entry of new participants.

SECTION 12. ***Incentives for New Investments***

The same incentives granted to BOI-registered enterprises engaged in a preferred area of Investments, pursuant to Executive Order No. 226 (Omnibus Investment Code of 1987), shall be extended, as applicable, to persons with new investments as determined by the DOE and registered with the BOI in refining,

storage, marketing and distribution of petroleum products. Such incentives shall include the following:

- a. Income tax holiday;
- b. Additional deduction for labor expenses;
- c. Minimum tax and duty of three percent (3%) and value-added tax (VAT) on imported capital equipment;
- d. Tax credit on domestic capital equipment;
- e. Exemption from contractor's tax;
- f. Unrestricted use of consigned equipment;
- g. Exemption from the real property tax on production equipment or machineries;
- h. Exemption from taxes and duties on imported spare parts; and
- i. Such other applicable incentives under Article 39 of Executive Order No.226.

SECTION 13. ***Availment of Incentives***

The incentives cited under Section 12 hereof may be availed of by persons with new investments for a period of five (5) years from registration with the BOI: *Provided, however,* That in the storage, marketing (including the establishment of gasoline stations) and distribution of petroleum products, only the investments of new industry participants shall be entitled to incentives provided in the Omnibus Investment Code of 1987.

For this purpose, the industry shall be included in the Annual Investment Priorities Plan (IPP): *Provided,* That nothing herein contained shall preclude qualified persons or entities as provided under the Code from applying for or continue enjoying incentives and benefits under the said Code.

SECTION 14. ***Promotion of Retail Competition***

To achieve the social policy objective of fair prices, and facilitate the attainment of a truly competitive petroleum product market in the retail level, the DOE shall promote and encourage by way of information dissemination, networking and management/skills training, the active and direct participation of the private sector and cooperatives in the retailing of petroleum products through joint venture/supply agreements with new industry participants for the establishment and operation of gasoline stations; *Provided,* That, the training herein shall include LPG retailing.

a. ***Management and Skills Training***

The DOE shall, in cooperation with the Technology and Livelihood Resource Center (TLRC) and Technical Education and Skills Development Authority (TESDA), coordinate with new industry participants and existing

petroleum dealer's associations in the formulation of a two-fold program on management and skills training for the management, establishment and operation of gasoline stations and LPG retail outlets.

b. Government Assistance

Persons who successfully completed the two-fold program shall be entitled to government assistance being extended by government lending agencies, in the form of medium-to long-term loans with low interest rates and to the training and loan fund.

c. Training and Loan Fund

This shall serve as capital for the establishment and operation of gasoline stations and shall be administered by the DOE under a separate account.

An initial amount of Three hundred million pesos (P300, 000,000.00) shall be provided by the Philippine Amusement and Gaming Corporation (PAGCOR). Of this amount, two percent (2%) plus any additional funding shall be allocated for the two-fold program; one percent (1%) plus any additional funding shall be set aside for administrative, maintenance, and other operating expenses; ninety-four percent (94%) shall be used exclusively for lending and financial assistance; and the remaining three percent (3%) shall be utilized in accordance with the provision of Section 26 of the Act. *Provided*, that the loans to be awarded herein shall be from short-to-medium-term with low interest rates.

RULE IV – ANTI-TRUST SAFEGUARDS, OTHER PROHIBITED ACTS AND REMEDIES

SECTION 15. *Anti-Trust Safeguards*

To ensure fair competition and prevent cartels and monopolies in the Industry, the following acts are hereby prohibited:

a. Cartelization, which means any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;

b. Predatory Pricing which means selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential

competitor from entering the market: Provided however, that pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this prohibition, "variable cost" as distinguished from "fixed cost" refers to costs such as utilities or raw materials, which vary as the output increases or decreases and "average variable cost" refers to the sum of all variables cost divided by the number of units and outputs.

Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts, shall suffer the penalty of three (3) to seven (7) years imprisonment, and a fine ranging from One million pesos (P1, 000,000.00) to two million pesos (P2,000,000.00).

SECTION 16. ***Other Prohibited Acts***

To ensure compliance with the provisions of the Act, the refusal to comply With any of the following shall likewise be prohibited:

- (a) Submission of any reportorial requirements;
- (b) Use of clean and safe (environment and worker-benign) technologies;
- (c) Any order or instruction of the DOE Secretary issued in the exercise Of his enforcement powers under Section 15 of the Act; and
- (d) Registration of any fuel additive with the DOE prior to its use as an Additive.

Any person, including but not limited to the chief operating officer, chief executive officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and fine ranging from Two hundred fifty thousand pesos (250,000.00) to Five hundred thousand pesos (500,000.00).

SECTION 17. ***Remedies***

The DOE-DOJ Task Force, created under Section 14 (d) of the Act, shall take the following remedial measures:

- a. Investigate and act upon complaints or reports from any person of an unreasonable rise in the prices of petroleum products and may, motu proprio, investigate and/or file the necessary complaint with the proper court or agency;
- b. Investigate and act upon complaints or reports of commission of the prohibited acts under Section 11 of the Act, and after determination of

- such violation endorse the same to the provincial or city prosecutor having jurisdiction for institution of the appropriate action;
- c. Prepare and submit a report to the Secretary of Energy and Secretary of Justice embodying its findings and recommendations as a result of its investigation of the alleged violation of Section 11 of the Act;
 - d. Investigate and act upon a complaint by any instrumentality or agency of the Government, including government-owned or –controlled corporations, that loss or damage has been suffered or incurred by such instrumentality, agency or government corporation by reason of violation of Section 11 of the Act; and
 - e. Perform such other functions as may jointly be assigned by the Secretary of Energy and the Secretary of Justice.

RULE V – POWERS AND FUNCTIONS OF THE DOE AND DOE SECRETARY

SECTION 18. *Monitoring*

The DOE shall monitor the following pursuant to Section 14 of the Act. Any misrepresentation, mislabeling, concealment or fraud, shall be subject to penalties under existing applicable laws.

a. *Prices*

The DOE shall monitor and publish international oil prices as well as follow the movement of domestic oil prices.

1. *Price Display Boards*

For the convenience of the public, all retailers of petroleum products shall display the prices of each type of petroleum product sold in gasoline stations in prominently installed price display boards with backgrounds preferably conforming to the color coding scheme for the product, such as: green for Unleaded Premium Gasoline, red for Premium Low Lead Gasoline, orange for Regular Gasoline, yellow for Diesel Fuel, and white for Kerosene. In the case of LPG (which has no product color), the price display board may be light blue in color. The numeric entries in these boards shall be at least six (6) inches in height.

The price display boards shall be properly installed and labeled not later than June 30, 1998. Failure to comply with this requirement shall be penalized pursuant to Section 24 of the Act.

2. *Unreasonable Rise in Prices*

Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon by the DOE-DOJ Task Force in accordance with Section 17 of this IRR. The said Task Force shall determine within thirty (30) days the merits of the report and shall initiate the necessary actions warranted under the circumstances.

b. *Product Quality and Quantity*

The Bureau shall monitor the quality of petroleum products, including adulteration and other forms of product misrepresentation or mislabeling, and stop the operation of businesses involved in the sale of petroleum products which do not comply with the national standards of quality, which the BPS, together with the DENR, the DOE, the DOST, representatives of the fuel and automotive industries and the consumers, shall set pursuant to Section 14 of the Act.

Misrepresentation of the quantity of petroleum products such as underdelivery, shortselling, underfilling of LPG, dispensed at the outlets, as well as inaccurate tare weight markings on the LPG cylinders, shall be subject to penalties under existing applicable laws.

1. *Color Coding/Use of Marker Dyes*

Products sold on retail shall conform to the color-coding scheme prescribed under Section 18 (b) hereof. The required marker dyes for certain petroleum products shall likewise be enforced to all refiners and marketers directly importing these products.

2. *Sampling and Testing of Product*

To ascertain and ensure conformance to national standards of quality, the Bureau may conduct spot and periodic sampling and testing of petroleum products at various points of the business. Likewise, quality control certificates shall be made available for monitoring purposes.

All fees and charges to be encountered during the testing of petroleum product samples shall be borne by the refiners/importers/ bulk marketers except in cases of product complaints from the public against such entities, whereby the corresponding testing fee for the product shall be borne by the Bureau.

3. *Calibration*

Periodic calibration of dispensing pumps, tank trucks, storage tanks, weighing scales and calibration buckets shall be done in accordance with existing government standards, the records of which shall be made available upon the Bureau's inspection and validation. Likewise, the required weighing scale shall be installed and rendered usable at all times.

b. *Refining, Manufacturing and Marketing Processes*

The Bureau shall monitor the local refining and manufacturing processes and the process of marketing local and imported petroleum products to ensure that clean and safe (environment and worker-benign) technologies are applied.

1. *Conformance to Standards and Facilities*

The refiners and marketers shall operate using processes and facilities conforming to national standards and/or internationally accepted standards for the oil industry. The following information/documents shall be submitted upon actual start of operation, and to be updated annually:

- (i) Refining, Processing, including Recycling and Blending
 - (a) Exact location of the refinery/plant;
 - (b) Plot plan (location of various equipment and facilities for the refinery/plant);
 - (c) Process configuration and description;
 - (d) Material balance and product yield;
 - (e) Maximum design and actual capacities for crude and product storage, oil movements facilities (docking, berthing, and loading), as well as process units capacities.
- (ii) Storing (transshipment)
 - (a) Exact location of the storage site;
 - (b) Plot plan (location of various facilities for the storage);
 - (c) Maximum design and actual capacities of crude and product storage oil movements' facilities (docking, berthing, and loading).

- (iii) Distribution/Operation of Petroleum Carriers (Pipeline, Tankers, Barges, Tanktrucks)
 - (a) For tankers and barges: details and particulars of the vessel
 - (b) For pipelines: location and description; product service; and capacity/pumping rate
 - (c) For tank trucks: number of units and corresponding capacities; and Calibration Certificate

- (iv) Gasoline Stations
 - (a) List of dispensing pumps and underground tanks with the corresponding capacities and products stored; and
 - (b) Lay-out plan and latest photograph of the outlet

- (v) LPG Refilling Plant
 - (a) List of approved-type filling equipment
 - (b) Plant data on storage and other fixed facilities
 - (c) Technical data on plant capacity
 - (d) List Qualified LPG servicemen and duly licensed personnel; and
 - (e) Lay-out plan and latest photograph of the plant

- (vi) Bunkering From Freeports and Special Economic Zones - Copy of the delivery receipt signed by both the transporter and end-user vessels' official/master/chief mate, and representatives of the BOC and Philippine Ports Authority

2. *Inspection and Audit of Facilities*

The Bureau shall conduct periodic inspection and audit at various points of the business, such as but not limited to refineries, manufacturing and storage plants, handling, marketing, and distribution facilities, as well as terminals, tankers, barges, pipeline, and tank trucks, or in coordination with the appropriate government agencies. Such facilities shall conform to the government standards, or in its absence, internationally accepted standards for the downstream oil industry.

3. *Safety*

To ensure safety of end-users and the buying public in general, all persons and engaged in the downstream oil industry shall comply with the following:

- (i) All persons and entities engaged in the downstream oil industry, including selling of gasolines and any petroleum and petroleum-based products, shall use only facilities, and equipment that comply with the specification, design, fabrication, inspection, marking and requalification provision of the safety codes set and observed in the industry.
- (ii) All other matters affecting the safe and proper handling, transport, storage, installation and use of equipment and facilities used in the downstream oil industry shall be governed by the pertinent provisions of the different international safety codes now observed and adopted in the industry.
- (iii) All installations for the filling, use and storage of petroleum products including gasoline and LPG as well its containers and their necessary appurtenances shall conform to local zoning ordinances and regulations.
- (iv) Any person undertaking the initial installation of an LPG system shall be responsible for providing his customer with adequate instructions for the proper and safe handling, use and maintenance of the system installed. All installations of LPG systems shall be done only by Qualified Servicemen.
- (v) All LPG brand owners shall keep their own cylinders in safe, clean and serviceable condition and shall maintain them in a manner consistent with the provisions of the safety codes adopted in the industry.
- (vi) All persons or entities engaged in the sale and distribution of petroleum products including LPG shall provide free inspection and technical assistance to their customers, retail outlets and dealers, as the case may be, to ensure conformity to safety standards in accordance with the provisions of this IRR and shall respond to all emergency calls affecting safety at any time.

- (vii) To ensure safety of consumers, all LPG marketers are enjoined to procure only brand new cylinders from duly licensed cylinder manufacturers with their brand name clearly embossed on the cylinder body and shall conform with the provisions of the Philippine National Standards ("Specification for Steel Cylinders for LPG"). All cylinders shall be re-qualified ten (10) years from the date of manufacture and every five (5) years thereafter.
- (viii) All LPG marketers shall have appropriate provisions for the safe handling of all cylinders in circulation.
- (ix) Imported cylinders that are without the prescribed safety and engineering standard markings must be requalified prior to being put in circulation, and every five (5) years thereafter.
- (x) Vehicles used in transporting LPG cylinders shall have substantially flat floors and equipped with suitable racks for holding the cylinders which shall be securely fastened in a position that shall minimize the possibility of movement and tipping over, which might cause danger to life and property.
- (xi) All brand owners who sell LPG in bulk or retail shall carry a product liability insurance to answer for whatever damage or liability that may result from the unsafe condition of LPG tanks, installation and equipment.
- (xii) All cylinders offered for sale to the public shall be filled only at the authorized filling and refilling plants.
- (xiii) All unsafe or dilapidated empty cylinders shall be set aside for requalification, repair, cleaning, painting prior to having such cylinders refilled.
- (xiv) All re-assembles or the so-called "chop-chop" cylinders shall not be used by those engaged in the LPG business.
- (xv) All LPG refillers shall test-weigh and leak test every cylinder before each one leaves the refilling plant premises.

4. *Data on Facilities*

Any person who shall engage in any activity or business in the downstream oil industry shall provide the Bureau with annual updates of information on the facilities used in the operation, including the capacities and working/operating conditions of such facilities. Pertinent permits for any or all new/additional/renovated/refurbished facilities and its respective operation shall be submitted to the Bureau prior to commissioning. Decommissioning or non-operation of facilities, and the reasons for such, shall be reported to the Bureau within five (5) working days from stoppage of operation.

SECTION 19. *National Emergency*

By virtue of Section 14 (e) of the Act, in times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the industry.

In cases of imminent supply disruptions, the DOE shall adopt contingency measures pursuant to Section 12 (c)(2) of RA 7638. of the Department of Energy Act of 1992.

RULE VI - TRANSITION PHASE

SECTION 20. *Phases of Deregulation*

Pursuant to Section 16 of the Act, the deregulation shall be done in two (2) phases: Phase I (Transition Phase) and Phase II (Full Deregulation Phase).

SECTION 21. *Buffer Fund*

An amount not exceeding Two billion nine hundred million pesos (P2, 900,000,000.00) from the Reserve Control Account or RCA may be used by the President as a buffer fund to cover increases in the prices of petroleum products, except for premium gasoline, during the Transition Phase over the prices prevailing as of February 12, 1998. The RCA refers to a lump sum collation of reserve impositions deducted from the appropriations approved by Congress for the operation of the government and the implementation of projects and programs;

SECTION 22. *Automatic Oil Pricing Mechanism*

Pursuant to Section 18 of the Act, the Board shall establish an automatic pricing mechanism to enable the domestic price of petroleum products to approximate and promptly reflect the price of oil in the international market.

RULE VII - FULL DEREGULATION

SECTION 23. *Start of Full Deregulation*

As provided under Sec. 19 of the Act, full deregulation of the Industry shall start five (5) months following the effectivity of the Act. However, the DOE and DOF are authorized to recommend to the President of the Philippines the acceleration of the start of full deregulation when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account relevant trends and prospects.

Notwithstanding the foregoing provision, the five (5) -month Transition Phase shall continue to apply to LPG, regular gasoline and kerosene as socially sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period. Upon the implementation of full deregulation, the transition phase shall be deemed terminated.

RULE VIII - FINAL PROVISIONS

SECTION 24. *OPSF Balance*

All outstanding claims against the OPSF as of the effectivity of the Act, subject to the existing auditing rules and regulations of the Commission on Audit (COA), shall be considered as accounts payable of the National Government.

The reimbursement certificates issued by the DOE covering the said outstanding claims shall be honored and accepted by the Bureau of Customs and the Bureau of Internal Revenue as payment to the extent of ten percent (10) per payment of the tariff duties and specific taxes due from the creditor-claimant against the OPSF until such claims are settled in full. All reimbursement certificates are not transferable.

SECTION 25. *Initial Public Offering*

Any person engaged in the oil refinery business shall make a public offering through the stock exchange of at least ten percent (10%) of its common stock within a period of three (3) years from the effectivity of the Act, or the commencement of its refinery operations. Provided, That no single person or entity

shall be allowed to own more than five percent (5%) of the stock offered by any other crude oil refining company pursuant to Section 22 of the Act. Provided, finally, that any such company which made the requisite public offering before the effectivity of the Act shall be exempted from the requirement.

SECTION 26. *Penal Sanction*

Any person who violates any of the provisions of the Act shall suffer the penalty of three (3) months to one (1) year imprisonment and a fine ranging from Fifty thousand pesos (P50, 000.00) to Three hundred thousand pesos (P300, 000.00).

SECTION 27. *Public Information Campaign*

The DOE, in coordination with the Board and the Philippine Information Agency, shall undertake an information campaign to educate the public on the deregulation program of the Industry.

SECTION 28. *Repealing Clause*

Any rule or regulation inconsistent with the provisions of this IRR is hereby repealed or modified accordingly.

SECTION 29. *Separability Clause*

If, for any reason or reasons, any part of this IRR be declared unconstitutional or invalid, no other parts or provisions hereof shall be affected thereby.

SECTION 30. *Effectivity*

This IRR and any amendments thereto shall take effect upon complete publication in at least two (2) newspapers of general circulation.

(Sgd.)
FRANCISCO L. VIRAY
Secretary

Fort Bonifacio, Taguig City, Metro Manila, March 11, 1998.

ERRATAIN
DOE Department Circular No. 98-03-004

1. Section 10, Paragraph b (3) ix (5) of Rule III (Appreciation of Evidence)

From:

“x x x. He shall have his award on the evidence submitted. x x x.”

To:

“x x x. He shall have his award on the evidence submitted. x x x.”

2. Section 10, Paragraph b (3) ix (6) of Rule III (Submission of Memoranda)

From:

“x x x. A definite time limit for the filing of such memoranda shall be fixed by the arbitrator at the close of the hearing.”

To:

“x x x. A definite time limit for the filing of such memoranda shall be fixed by the arbitrator at the close of the hearing.”

3. Section 18, Paragraph b of Rule V (Refining, Manufacturing and Marketing Processes)

From:

“b. Refining, Manufacturing and Marketing Processes.”

To:

“c. Refining, Manufacturing and Marketing Processes.”