

**[DOE DEPARTMENT CIRCULAR NO. 98-03-004,
March 11, 1998]**

**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 of crude oil, gasolines, diesel, fuel oils, aviation fuels, liquefied petroleum gas, 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 of 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 or entity, 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 who 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 reprocessing, 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