

[DOE, December 10, 1998]

**GUIDELINES FOR REGISTRATION AND INCENTIVES AVAILMENT
OF THE DOWNSTREAM OIL INDUSTRY UNDER REPUBLIC ACT NO.
8479**

Pursuant to Section 9 of Republic Act No. 8479, otherwise known as the "Downstream Oil Industry Deregulation Act of 1998", the Board of Investments (BOI) and the Department of Energy (DOE) hereby jointly adopt the following guidelines for the registration and incentives availment of new investments in the Downstream Oil Industry, specifically in the activities of refining, storage, marketing and distribution of petroleum products.

SECTION 1. Coverage — These guidelines shall apply to investments in refining, storage, distribution and marketing of petroleum products. The following activities shall be eligible for registration:

a. Refinery — This activity pertains to oil refining, oil processing and oil movement and storage within the refinery. Oil refining refers to the activity of manufacturing locally petroleum products through distillation, conversion and treatment of crude oil and other naturally occurring petroleum hydrocarbons. Oil processing is the manufacture of petroleum products with or without the use of the distillation process. Products resulting from oil refining and/or processing shall conform to the Philippine National Standards (PNS). Oil movement and storage cover receiving/discharging and storing petroleum within the refinery intended for refining and/or processing and eventual distribution purposes.

b. Storage — This activity pertains to the business of receiving/discharging and storing petroleum crudes and/or products of others for compensation or profit. This shall include fuels transshipment or terminalling (pertains to the last point prior to distribution).

c. Distribution — Refers to bunkering and fuels shipping and transport.

1. Bunkering covers the activity of selling fuel for direct use by a vessel, usually for water and air transport, through a smaller transport vessel.

2. Fuels shipping and transport - For the fuels to get to the points or areas where they are needed; the downstream oil industry covers the shipping and transport of fuels through land such as tank trucks, lorries and pipeline and water tankers, and barges.

d. Marketing — Includes retailing of petroleum products, such as fuels retailing; fuels bulk marketing; LPG refilling and marketing.

1. Fuels retailing refers to the activity of selling petroleum products or fuels in

retail, generally directed to the end users, through dispensing pumps in gasoline stations or in packaged containers such as drums for the liquid fuels or metal cylinders for LPG. This will include the establishment and operation of gasoline stations and LPG retailing.

2. Fuels bulk marketing refers to the activity of selling petroleum products or fuels in wholesale through tank trucks, lorries, tankers, barges or pipelines which may be sourced from one's own storage facilities. Investment for this activity shall also include underground tanks and other equipment intended for fuels retailing through outlets such as gasoline stations and LPG outlets.

3. A combination involving storage, distribution and marketing activities will be eligible for registration under marketing.

SECTION 2. Qualifications for registration — Persons with new investments can qualify for registration. New investments are investments put up or incurred upon the effectivity of the Rules and Regulations Implementing R.A. 8479 on March 13, 1998:

a. REFINERY — The applicant must submit an endorsement of the Department of Energy (DOE) certifying that the applicant is either a natural or juridical person with new investments.

b. STORAGE, MARKETING AND DISTRIBUTION — The applicant shall submit an endorsement of the Department of Energy certifying that the applicant is a new industry participant with new investments.

In case of gasoline retailing stations, except those locating in the Less Developed Areas (LDA) listed in the current Investment Priorities Plan (IPP) under Executive Order No. 226, as amended, the applicant shall in addition to the DOE endorsement, be required to invest an amount equivalent to Ten Million (P 10M) Pesos as minimum capital requirement, excluding land, or such amount as may be determined jointly by BOI and DOE for augmentation purposes, as the need arises.

SECTION 3. Incentives Availment — The right to any incentive shall be vested in any qualified person, whether natural or juridical, upon the issuance of the Certificate of Registration.

Subject to Section 7 hereof, incentives shall be available for a period of five (5) years from the date of registration except Income Tax Holiday (ITH) which shall be reckoned from date of commercial operation.

SECTION 4. Incentives Available — A registered person as provided under Sec. 2 hereof shall be entitled to the following incentives:

a. Income Tax Holiday (ITH) — This shall be applicable to income derived from the activity covered by the registration reckoned five (5) years from date of commercial operation: Provided that in case of gasoline retailing stations, except those locating in LDAs, the incentive shall be available only to those with minimum capital requirement, excluding land, of Twenty Million (P 20M) Pesos or such amount as may be determined jointly by BOI and DOE for augmentation purposes, as the need arises.

Applications for ITH shall be filed with the BOI within one (1) month after filing the annual Income Tax Return (ITR) indicating the exemption from income tax.

b. Additional deduction for labor expense — This consists of an additional deduction from taxable income of fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers if the activity meets the prescribed ratio of capital equipment to the number of workers set by the BOI: Provided, that this additional deduction shall be doubled if the activity is located in Less Developed Areas.

c. Duty of three (3) percent and Value Added Tax (VAT) on imported capital equipment — Importation(s) of brand new capital equipment, machinery and accompanying spare parts shall be entitled to this incentive subject to the following conditions:

1. They are not manufactured domestically in sufficient quantity of comparable quality and at reasonable prices;
2. The equipment are reasonably needed, and will be exclusively used in the registered activity;
3. Prior BOI Approval is obtained for the importation as endorsed by the DOE.

Special transports equipment such as but not limited to tank trucks/lorries may be imported with incentives subject to land transport operation requirements.

Provided, that importations of tankers and barges must be endorsed by the Maritime Industry Authority (MARINA). Second-hand tankers and barges may be imported with incentives provided they are less than ten (10) years old.

d. Tax credit on domestic capital equipment — Tax credit shall be granted on locally fabricated capital equipment. This shall be equivalent to the difference between the tariff rate and the three percent (3%) duty imposed on the imported counterpart.

Applications for tax credit shall be filed with the Department of Finance (DOF) within one (1) year from delivery date.

e. Unrestricted use of consigned equipment — Capital equipment consigned to any registered person shall not be restricted as to period of use of such equipment subject to the filing of the appropriate re-export bond: Provided that such consigned equipment shall be for the exclusive use of the registered activity.

f. Exemption from the taxes and duties on imported spare parts — Importation of required supplies and spare parts for consigned equipment of those imported with incentives by any registered person with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes payable thereon upon compliance with the following requirements:

1. At least seventy (70) percent of production is exported;
2. Such spare parts and supplies are not locally available at reasonable prices,