

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 979

#### Melons Grown in South Texas, Expenses and Rate of Assessment; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** In FR Doc. 79-14141 appearing at page 26731 in the Federal Register of May 7, 1979, paragraph (b) of § 979.201 is corrected by deleting the words "40-pound container or equivalent quantity" and inserting in lieu thereof the word "carton."

**EFFECTIVE DATE:** May 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Donald S. Kuryloski, Acting Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-6393.

Dated: May 8, 1979.

D. S. Kuryloski,  
Acting Deputy Director, Fruit and Vegetable Division,  
Agricultural Marketing Service.

[FR Doc. 79-15028 Filed 5-11-79; 8:45 am]

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## DEPARTMENT OF ENERGY

### 10 CFR Part 218

#### Standby Mandatory International Oil Allocation

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Final Standby Rule.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts a rule to establish a standby mandatory

international oil allocation program. The rule, authorized by section 251 of the Energy Policy and Conservation Act (EPCA), establishes a new Part 218 to enable the DOE to implement the obligations of the United States under Chapters III and IV of the Agreement on an International Energy Program during a severe international energy supply interruption. The rule provides for the international allocation of oil through issuance of supply orders by the DOE to firms subject to U.S. jurisdiction which are engaged in producing, transporting, refining, distributing, or storing petroleum. Supply orders would not be issued unless the voluntary international allocation of oil by oil companies contemplated by the International Energy Program failed adequately to respond to the supply interruption.

Section 251(b)(1) of the EPCA provides that the regulations adopted today cannot take effect unless the President:

(1) has transmitted such rule to Congress;

(2) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the International Energy Program; and,

(3) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

Because this rule establishes a standby program, and because the final rule is somewhat different from the rule proposed on February 10, 1978 (43 F.R. 6794, February 16, 1978), additional comments are hereby solicited.

**DATES:** Adopted May 7, 1979 in standby status. Further comments due by June 29, 1979, 4:30 p.m.

**ADDRESS:** All comments to: Department of Energy, Public Hearing Management, Room 2313, Docket No. ERA-R-78-7, 2000 M Street, N.W., Washington, D.C. 20461.

**FOR FURTHER INFORMATION CONTACT:** William Webb, Office of Public Information, Economic Regulatory Administration, Room B-110, Washington, D.C. 20461, (202) 634-2170.

Jack M. Schick, Office of International Affairs, Room 5B-088, Forrestal Building, 1000 Independence Ave., N.W., Washington, D.C. 20585, (202) 252-6777.

Gerald P. Emmer, Office of Regulations and Emergency Planning, Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461 (202) 254-7200.

Martin S. Kaufman or Robert C. Goodwin, Jr., Office of General Counsel, Room 5116, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461 (202) 633-9380.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### II. Discussion

##### 1. Operative Provisions

##### 2. Procedural and Enforcement Provisions

##### III. Additional Comments Requested

##### I. Background

On February 10, 1978, DOE issued a Notice of Proposed Rulemaking (43 F.R. 6794, February 16, 1978) which proposed a standby mandatory international oil allocation program, to implement United States obligations under the Agreement on an International Energy Program (IEP) (TIAS 8278) which the United States and 15 other nations signed November 18, 1974. The IEP established a system among the present 20 member nations to allocate equitably the IEA's available share of world crude oil supplies among the participating member nations during a severe supply interruption. The international oil allocation system established is administered by the International Energy Agency (IEA).

If an interruption does occur, each member country would submit to the IEA monthly estimates of supplies available for a five month period. The IEA would then calculate the share of supplies available to IEP participants which each IEA member is entitled to for the current allocation month based upon reference to historic oil consumption during a defined twelve month base period. A member country with oil supplies in excess of its share, as determined by the IEA, would have an "allocation obligation" to redirect that portion of its supplies deemed excess to IEA member countries with oil supplies less than their share, to fulfill their "allocation right". Each member country may obtain its share of available supplies by the voluntary action of 34 participating international

or national oil companies, who collectively account for approximately 80 percent of free world oil movement or, alternatively, by the actions of governments which would issue legal directives ordering oil companies to redirect supplies. Such directives are called supply orders in the United States.

The IEP emergency allocation system is implemented by three types of actions. Type I consists of each participating oil company voluntarily adjusting its own supply and distribution system or through normal commercial transactions with other oil companies balancing supplies to IEA member countries where it operates. Type II involves voluntary offers by oil companies to redirect oil shipments through transactions with other oil companies, coordinated by the Industry Supply Advisory Group (ISAG), which operates under the direction and supervision of the IEA. Type III takes place only if the IEA determines the voluntary actions of oil companies (Types I and II) do not result in a balancing of allocation rights and obligations. Type III consists of member governments ordering oil companies under their jurisdiction to sell oil to another member country to fulfill their allocation obligations. During allocation under the IEP, all three types of allocations may occur simultaneously. The regulation adopted provides for the issuance of supply orders to U.S. companies to sell oil in order to meet IEA determined U.S. allocation obligations (Type III) during activation of the IEP.

Section 251 of the EPCA authorizes promulgation of a rule that will enable the U.S. to fulfill its obligation to redirect supplies as specified in Chapters III and IV of the IEP. However, it further provides that the DOE may not exercise such authority unless the President:

- (1) has transmitted such rule to Congress;
- (2) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the International Energy Program; and,
- (3) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

Subsequent to the issuance of the Notice of Proposed Rulemaking on February 10, 1978, a public hearing was held June 13, 1978 at which twelve of the 20 U.S. companies participating in the IEP provided oral or written comments, as did the Independent Gasoline Marketers Council, the Petrochemical

Energy Group, the New England Power Company and a private citizen. Virtually all oil companies providing comments raised the same substantive objections to the proposed rulemaking.

The price rule did not provide for recovery of legitimate costs such as duties, tariffs, license fees, port fees, etc.

Transportation costs did not provide for real world costs during a supply interruption or costs associated with diversion or U.S. domestic shipments.

Acquisition costs did not provide for product shipments, third party or exchange purchases, royalty oil, equity oil, special purchase arrangements, U.S. domestic oil, etc.

Disallowance based on prior month averages is unrealistic.

A seller could be ordered to supply beyond his legal authority to do so, i.e., to an embargoed country, unsafe port, a port not permitted under charter terms, etc.

No one should have to comply without a prompt and fair administrative review process.

Suppliers may be subject to jurisdiction of more than one government.

Definition of person renders employees subject to penalties.

Non-oil company commenters generally addressed issues related to the IEP as opposed to the regulations proposed to implement U.S. government responsibilities under the IEP.

#### Discussion

*A. Operative Provision.* The rule adopted today would operate through DOE's issuance of supply orders. A supply order would specify the action to be taken by the firm to which it is issued. It is anticipated that supply orders would be issued primarily for the purpose of changing the destination or purchaser of oil owned or controlled by an oil company or owned or controlled by other firms within the jurisdiction of the United States when that oil is in transit to the United States or a foreign country, i.e., the redirection of such oil to another IEP member country rather than domestic allocation of crude oil and petroleum products which would be governed by the standby crude oil and product allocation regulations adopted in January 1979 (44 FR 3418, January 16, 1979, 44 FR 3928, January 18, 1979 of the Federal Register). The language in section 251 of the EPCA and of the rule permits the issuance of supply orders to accomplish international oil allocation in other ways.

In accordance with section 251 of the EPCA, the rule would apply to any firm engaged in producing, transporting,

refining, distributing or storing oil which is subject to the jurisdiction of the United States. "Firm" is defined, as it is in other Department of Energy (DOE) regulations, to include, *inter alia*, individuals, companies and government bodies. "Oil" is defined to mean crude oil, residual fuel oil or any refined petroleum product (including any natural gas liquid and any natural gas liquid product). The rule would apply to any oil owned or controlled by firms subject to the rule, including any oil destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States.

Section 218.10(c) of the rule provides that a firm issued a supply order would not be required to sell, exchange or otherwise provide the oil specified in the order unless the firm to which the oil is to be supplied agrees in advance to submit any dispute to a mutually acceptable arbitration or other dispute settlement procedure. The provision is identical to that proposed. It received favorable comments.

Unlike this final rule, the proposed regulations contained a price rule, which would have established a "maximum allowable price", composed of the acquisition cost of the oil subject to the supply order, transportation costs computed using the "AFRA" method provided in 10 CFR § 212.85(d), and an additional amount of \$0.25 per barrel. Acquisition cost was defined as the FOB price paid at the time of initial loading, net of any rebates or discounts. In addition, the proposed rule provided that DOE could disallow acquisition costs or transportation costs deemed excessive. The proposed rule provided for procedures to enable DOE to enforce the price rule, including issuance of Notice of Probable Violation or Interim Remedial Orders for Immediate Compliance.

Many of the comments asserted that the price provisions of the proposed rule were inequitable on several grounds. Some commenters stated that the use of costs at loading, as provided in the proposed rule, was unfair because it ignored acquisition of oil through complex multi-party transactions in which the acquisition cost of the firms receiving the supply order might well be substantially greater than the price at the port of loading. Another criticism expressed by several commenters was that the use of an "average acquisition cost" could work an injustice if the particular cargo diverted pursuant to a supply order were purchased at the end of a month in which prices were escalating rapidly, a distinct possibility

in a period of supply shortage. Some commenters also stated that while the additional amount of \$0.25 per barrel might be reasonable at this time it might not be in the future and would not be for certain petroleum products. Oil companies generally commented that use of the AFRA rate for transportation costs was unjust, and urged use of the net cost method provided in 10 CFR § 212.85(c), particularly because vessels diverted pursuant to a supply order might have to steam longer distances than on normal point-to-point voyages.

The IEA is currently studying questions related to pricing during a supply emergency and a dispute settlement mechanism. These efforts of the IEA may affect any price rule which would be adopted, if one should prove advisable. In light of all the above mentioned considerations, we have deleted the price rule and the provisions for orders disallowing excess costs.

We do not believe that a pricing provision is essential to the operation of this rule so as to enable the United States to meet its present commitments under the IEP, although future developments could well make a price rule necessary or advisable. In the interim, until a decision on a price rule is taken, DOE has adopted the language of Article 10.1 of the IEP, prices of redirected oil should reflect those of comparable commercial transactions. If the IEA takes decisions which would require adoption of a price rule, or if we later come to believe that a price rule is otherwise necessary or appropriate, such a price mechanism can be added by amendment to the rule. A subpart has been reserved for this purpose.

The DOE anticipates that the prices charged for oil redirected by a supply order would be the result of negotiations between the party issued the supply order and the receiving party. Failing agreement by the parties, either through bilateral negotiation or IEA mediation, any price (or other) dispute arising from an oil transaction resulting from a supply order would be submitted to binding arbitration. We believe that until the IEA formally adopts a dispute settlement mechanism, Section 218.10(c), requiring agreement on a dispute settlement mechanism before the supply order need be carried out adequately protects both seller and purchaser.

The jurisdictional scope of the rule has not been changed. A number of oil companies asserted that they and their foreign affiliates could be subject to conflicting laws, regulations or orders during an allocation period. DOE recognizes this possibility. If the other governmental authority is an IEA

member, any potential conflicts presumably will have been resolved by the IEA's Standing Group on Emergency Questions (SEQ), on which government representatives sit, or by the IEA Allocation Coordinator in the allocation process. If the governmental authority having conflicting laws or regulations is not an IEA member, DOE would take into account potential conflicts and attempt to accommodate the legitimate interests of the government involved and the oil company which is subject to the potentially conflicting orders. However, it would not be appropriate, nor would it be consistent with the purposes of the IEA and Section 251 of EPCA, if DOE were foreclosed from issuing supply orders in the face of conflicting requirements of a foreign government, particularly if an international oil supply interruption were political in origin, or was deemed detrimental to vital interests of the United States.

Some commenters objected to the inclusion of companies' "authorized representatives" as "persons" subject to the rule. The rule has been revised to apply to "firms" and companies' authorized representatives are not included within that definition. However, the procedural and enforcement provisions of the rule apply to "persons" and that term has been defined as it is in 10 CFR 205.2 to include companies' authorized representatives. Inclusion of this term in the procedural and enforcement provisions is consistent with the requirements of section 524 of the EPCA.

The DOE recognizes that the IEA may develop operational procedures to apply to governmental redirection of oil that are somewhat different than those applicable to voluntary oil company redirection of oil. Additionally, the possibility exists that a reporting system to facilitate issuance of supply orders may be established. Such procedural provisions could be added to the rule at a later date.

**B. Procedural and Enforcement Provisions.** A number of comments indicated that the administrative procedures set forth or incorporated by reference in the proposed rule were unduly complicated and time consuming. Because the price rule and the disallowance rule have been deleted from this final standby rule, we believe that it is possible to adopt a simple, one step administrative review procedure. This is consistent with the need to have supply orders complied with promptly, or reviewed promptly if challenged, so that mandatory allocation can be effectively implemented under the IEP.

Therefore, we have replaced the procedures incorporated by reference to 10 CFR Part 205 in the proposed rule with administrative review of applications for modification or rescission of a supply order under § 218.30, *et seq.* This will be a summary procedure, and would generally be completed within 20 business days from the issuance of a supply order, if review is sought. An order denying an application for review would be subject to judicial review.

In cases where immediate compliance with a supply order would cause irreparable harm, Section 218.33 provides for issuance of a stay pending determination of an application for review of the supply order. A stay would be granted in a very timely manner but would be in effect for no more than 30 days unless extended by the DOE.

Section 218.42 incorporates the criminal and civil sanctions made specifically applicable to Section 251 rules by Sections 524 and 525 of the EPCA. There would be a civil penalty of \$5,000 for each violation of Part 218 or any order issued thereunder, with fines of up to \$10,000 for each willful violation of Part 218 or any order issued thereunder.

Section 218.40, regarding investigations, has been changed to parallel the language in the recent amendments to 10 C.F.R. § 205.201 (44 F.R. 23199, April 19, 1979). Sections 218.41 and 218.43, regarding violations and injunctions, parallel the language of 10 C.F.R. §§ 205.202 and 205.204, respectively, and have not been changed from the proposed rule.

### III. Additional Comments Requested

We recognize that the rule adopted today could have a significant impact on certain oil companies in the event it is activated. Although the rule is a standby rule subject to being activated immediately, it may not be activated until a future date. As indicated, this rule may be modified to reflect further developments in the IEA system. It is our intention to review this rule continuously prior to its activation with a view toward making additional changes, if appropriate. In this regard, the DOE and the IEA may conduct additional tests of the emergency allocation system. These tests could demonstrate the need for amendments to this standby rule and, if so, the changes will be made in the appropriate manner. Although this is a final rule, we are soliciting further written comments, through June 29, 1979, on all aspects of this rule, particularly on those provisions that represent modifications

of the proposed rule for the purpose of making any further amendments that may be appropriate. We are especially interested in receiving comments on the elimination, for the present, of the pricing rule and the elimination of the cost disallowance rule.

Comments should be submitted to the address indicated in the "Address" section of this preamble and should be identified on the envelope with the designation "Standby Mandatory International Oil Allocation Program", Docket No. ERA-R-78-7. Fifteen copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Reading Room, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

You should identify any information or data considered by you to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

In accord with Section 404 of the DOE Organization Act, the Federal Energy Regulatory Commission received a copy of the proposed rulemaking and did not determine that the proposed rulemaking would significantly affect any function within its jurisdiction pursuant to Section 204(a)(1), (b), and (c)(1) of the DOE Act.

We are adopting this rule immediately in standby status. In the event the rule is made effective, such action will be taken in accordance with the requirements set forth in Section 251(b)(1) of the Energy Policy and Conservation Act, Pub. L. 94-163, as amended.

(Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385, Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 218 is added to Chapter II of Title 10 of the Code of Federal Regulations as set forth below, on the day of issuance.

Issued in Washington, D.C. May 7, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

## PART 218—STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

### Subpart A—General Provisions

Sec.

- 218.1 Purpose and scope.
- 218.2 Activation/Deactivation.
- 218.3 Definitions.

### Subpart B—Supply Orders

Sec.

- 218.10 Rule.
- 218.11 Supply orders.

### [Subpart C—Reserved]

### Subpart D—Procedures

- 218.30 Purpose and scope.
- 218.31 Incorporated procedures.
- 218.32 Review.
- 218.33 Stay.
- 218.34 Addresses.

### Subpart E—Investigations, Violations, Sanctions and Judicial Actions

- 218.40 Investigations.
- 218.41 Violations.
- 218.42 Sanctions.
- 218.43 Injunctions.

**Authority:** Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.

### Subpart A—General Provisions

#### § 218.1 Purpose and scope.

(a) This part implements section 251 of the Energy Policy and Conservation Act (Pub. L. 94-163) (42 U.S.C. § 6271), as amended, which authorizes the President to take such action as he determines to be necessary for performance of the obligations of the United States under Chapters III and IV of the Agreement on an International Energy Program (TIAS 8278), insofar as such obligations relate to the mandatory international allocation of oil by International Energy Program participating countries.

(b) *Applicability.* This part applies to any firm engaged in producing, transporting, refining, distributing or storing oil which is subject to the jurisdiction of the United States.

#### § 218.2 Activation/Deactivation.

(a) This rule shall take effect providing:

(1) The International Energy Program has been activated; and,

(2) The President has transmitted this rule to Congress, has found putting such rule into effect is required in order to fulfill obligations of the United States under the International Energy Program and has transmitted such a finding to the Congress together with a statement

of the effective date and manner for exercise of such rule.

(b) This rule shall revert to standby status no later than 60 days after the deactivation of the emergency allocation system activated to implement the International Energy Program.

#### § 218.3 Definitions.

"DOE" means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95-91), and includes the Secretary of Energy or his delegate.

"EPCA" means the Energy Policy and Conservation Act (Pub. L. 94-163), as amended.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The ERA may, in regulations and forms issued in this part, treat as a firm: (a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm.

"IEA" means the International Energy Agency established to implement the IEP.

"IEP" means the International Energy Program established pursuant to the Agreement on an International Energy Program signed at Paris, France, on November 18, 1974, including (a) the Annex entitled "Emergency Reserves", (b) any amendment to such Agreement that includes another nation as a Party to such Agreement, and (c) any technical or clerical amendment to such Agreement.

"International energy supply emergency" means any period (a) beginning on any date that the President determines allocation of petroleum products to nations participating in the IEP is required by Chapters III and IV of the IEP and (b) ending on a date on which he determines such allocation is no longer required.

"Oil" means crude oil, residual fuel oil, unfinished oil, refined petroleum product and natural gas liquids, which is owned or controlled by a firm, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States but excludes any oil stored in or owned and

controlled by the United States Government in connection with the Strategic Petroleum Reserve authorized in section 151, *et seq.*, of the Energy Policy and Conservation Act (Pub.L. 94-163).

"Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

"Supply order" means a written directive or a verbal communication of a written directive, if promptly confirmed in writing, issued by the DOE pursuant to Subpart B of this Part.

"United States" when used in the geographic sense means the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States, and the outer continental shelf as defined in 43 U.S.C. 1331.

#### Subpart B—Supply Orders

##### § 218.10 Rule.

(a) Upon the determination by the President that an international energy supply emergency exists, firms engaged in producing, transporting, refining, distributing, or storing oil shall take such actions as are determined by the DOE to be necessary for implementation of the obligations of the United States under Chapters III and IV of the IEP that relate to the mandatory international allocation of oil by IEP participating countries.

(b) Any actions required in accordance with paragraph (a) of this section shall be stated in supply orders issued by DOE.

(c) No firm to which a supply order is issued shall be required to comply with such order unless the firm to which the oil is to be provided in accordance with such supply order has agreed to a procedure for the resolution of any dispute related to the terms and conditions of the sale undertaken pursuant to the supply order. The means for resolving any such disputes may include any procedures that are mutually acceptable to the parties, including arbitration before the IEA if the IEA has established arbitration procedures, arbitration or adjudication before an appropriate body, or any other similar procedure.

##### § 218.11 Supply orders.

(a) A supply order shall require that the firm to which it is issued take

actions specified therein relating to supplying the stated volume of oil to a specified recipient including, but not limited to, distributing, producing, storing, transporting or refining oil. A supply order shall include a concise statement of the pertinent facts and of the legal basis on which it is issued, and shall describe the action to be taken.

(b) The DOE shall serve a copy of the supply order on the firm directed to act as stated therein.

(c) The DOE may modify or rescind a supply order on its own motion or pursuant to an application filed in accordance with § 218.32 of this Part.

(d) A supply order shall be effective in accordance with its terms, and when served upon a firm directed to act thereunder, except that a supply order shall not remain in effect (1) upon reversion of this rule to Standby status or (2) twelve months after the rule has been transmitted to Congress (whichever occurs first) or (3) to the extent that DOE or a court of competent jurisdiction directs that it be stayed, modified, or rescinded.

(e) Any firm issued a supply order pursuant to this subpart may seek modification or rescission of the supply order in accordance with procedures provided in § 218.32 of this part.

##### § 218.12 Pricing.

The price for oil subject to a supply order issued pursuant to this subpart shall be based on the price conditions prevailing for comparable commercial transactions at the time the supply order is served.

#### [Subpart C—Reserved]

#### Subpart D—Procedures

##### § 218.30 Purpose and scope.

This subpart establishes the administrative procedures applicable to supply orders. They shall be exclusive of any other procedures contained in this chapter, unless such other procedures are specifically made applicable hereto by this subpart.

##### § 218.31 Incorporated procedures.

The following subparts of Part 205 of this chapter are, as appropriate, hereby made applicable to this part:

(a) *Subpart A—General Provisions; Provided, that § 205.11 shall not apply; and Provided further, that in addition to the methods of service specified in § 205.7 of this chapter, service shall be effective if a supply order is transmitted by telex, telecopies or other similar means of electronic transmission of a*

writing and received by the firm to which the supply order is addressed.

(b) *Subpart F—Interpretation*

(c) *Subpart K—Rulings*

(d) *Subpart M—Conferences, Hearings and Public Hearings*

##### § 218.32 Review.

(a) *Purpose and scope.* This subpart establishes the procedures for the filing of an application for review of a supply order. An application for review is a summary proceeding which will be initiated only if the criteria described in paragraph (g)(2) of this section are satisfied.

(b) *What to file.* (1) A firm filing under this subpart shall file an "Application for Review" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the firm filing the application. The applicant shall comply with the general filing requirements stated in 10 CFR § 205.9 in addition to the requirements stated in this section.

(2) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in 10 CFR 205.9(f) shall apply.

(c) *When to file.* An application for review should be filed no later than 5 days after the receipt by the applicant of the supply order that is the subject of the application, or no later than 2 days after the occurrence of an event that results in a substantial change in the facts or circumstances affecting the applicant.

(d) *Where to file.* The application for review shall be filed with DOE Office of Hearings and Appeals (OHA), 2000 M Street, NW., Washington, D.C. 20461.

(e) *Notice.* The applicant shall send by United States mail or deliver by hand a copy of the application and any subsequent amendments or other documents relating to the application to the Administrator of the Economic Regulatory Administration of DOE, 2000 M Street, NW., Washington, D.C. 20461. Service shall be made on the ERA at same time the document is filed with OHA and each document filed with the OHA shall include certification that the applicant has complied with the requirements of this paragraph.

(f) *Contents.* (1) The application shall contain a full and complete statement of all relevant facts pertaining to the application and to the DOE action sought. Such facts shall include a complete statement of the business or other reasons that justify review of the

supply order and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted with the application. A copy of the order of which review is sought shall be included with the application. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted.

(2) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA and DOE rulings, regulations, interpretations and decisions on appeal and exception relied upon to support the action sought therein.

(g) *DOE evaluation.* (1) *Processing.* (i) The DOE may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The DOE may solicit and accept submissions from third parties relevant to any application for review provided that the applicant is afforded an opportunity to respond to all third party submissions. In evaluating an application for review, the DOE may convene a conference, on its own initiative, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(ii) If the DOE determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the DOE may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the DOE may dismiss the application with prejudice. If the applicant fails to provide the notice required by paragraph (e) of this section, the DOE may dismiss the application without prejudice.

(iii) An order dismissing an application for any of the reasons specified in paragraph (g)(1)(ii) of this section shall contain a statement of the grounds for the dismissal. The order shall become final within 5 days of its service upon the applicant, unless within such 5-day period the applicant files an amendment correcting the deficiencies identified in the order. Within 5 days of the filing of such amendment, the DOE shall notify the applicant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies specified in the order, the

order shall become a final order of the DOE of which the applicant may seek judicial review.

(2) An application for review of an order shall be processed only if the applicant demonstrates that—

(i) There is probable cause to believe that the supply order is erroneous, inequitable, or unduly burdensome, or

(ii) There has been discovered a law, regulation, interpretation, ruling, order or decision that was in effect at the time of the application which, if it had been made known to the DOE, would have been relevant to the supply order and would have substantially altered the supply order; or

(iii) There has been a substantial change in the facts or circumstances affecting the applicant, which change has occurred during the interval between issuance of the supply order and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

(h) *Decision.* (1) Upon consideration of the application and other relevant information received or obtained during the proceeding, the DOE shall issue an order granting or denying the modification or rescission of the supply order requested in the application for review.

(2) The DOE shall process applications for review as expeditiously as possible. When administratively feasible, the DOE shall issue an order granting or denying the application within 20 business days after receipt of the application.

(3) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of which the applicant may seek judicial review.

(4) The DOE shall serve a copy of the order upon the applicant and any other party who participated in the proceeding.

#### § 218.22 Stay.

(a) The DOE may issue an order granting a stay if the DOE determines that an applicant has made a compelling showing that it would incur serious and irreparable injury unless immediate stay relief is granted pending determination of an application for review pursuant to this subpart. An application for a stay shall be labeled as such on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the firm filing the application. It shall include a description of the proceeding incident to which the stay is being sought and of the facts and

circumstances which support the applicant's claim that it will incur irreparable injury unless immediate stay relief is granted. The applicant shall comply with the general filing requirements stated in 10 CFR 205.9 in addition to the requirements stated in this section. The DOE on its own initiative may also issue an order granting a stay upon a finding that a firm will incur irreparable injury if such an order is not granted.

(b) An order granting a stay shall expire by its terms within such time after issuance, not to exceed 30 days as the DOE specifies in the order, except that it shall expire automatically 5 days following its issuance if the applicant fails within that period to file an application for review unless within that period the DOE for good cause shown, extends the time during which the applicant may file an application for review.

(c) The order granting or denying a stay is not an order of the DOE subject to administrative review.

#### § 218.34 Addresses.

All correspondence, petitions, and any information required by this part shall be submitted to: Administrator, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461, and to the Director, Office of Hearings and Appeals, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461.

#### Subpart E—Investigations, Violations, Sanctions and Judicial Actions

##### § 218.40 Investigations.

(a) The DOE may initiate and conduct investigations relating to the scope, nature and extent of compliance by any person with the rules, regulations or statutes of the DOE or any order promulgated by the DOE under the authority of section 251 of EPCA, or any court decree.

(b) Any duly designated and authorized representative of DOE has the authority to conduct an investigation and to take such action as he deems necessary and appropriate to the conduct of the investigation including any action pursuant to § 205.8.

(c) There are no parties, as that term is used in adjudicative proceedings, in an investigation under this Subpart, and no person may intervene or participate as a matter of right in any investigation under this Subpart.

(d) Any person may request the DOE to initiate an investigation pursuant to subsection (a) of this section. A request for an investigation shall set forth the

subject matter to be investigated as fully as possible and include supporting documentation and information. No particular forms or procedures are required.

(e) Any person who is requested to furnish documentary evidence or testimony in an investigation, upon written request, shall be informed of the general purpose of the investigation.

(f) DOE shall not disclose information or documents that are obtained during any investigation unless (1) DOE directs or authorizes the public disclosure of the investigation; (2) the information or documents are a matter of public record; or (3) disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and 10 CFR Part 1004.

(g) During the course of an investigation any person may submit at any time any document, statement of facts or memorandum of law for the purpose of explaining the person's position or furnish evidence which the person considers relevant to a matter under investigation.

(h) If facts disclosed by an investigation indicate that further action is unnecessary or unwarranted, the investigative file may be closed without prejudice to further investigation by the DOE at any time that circumstances so warrant.

#### § 218.41 Violations.

Any practice that circumvents, contravenes or results in the circumvention or contravention of the requirements of any provision of this Part 218 or any order issued pursuant thereto is a violation of the DOE regulations stated in this part and is unlawful.

#### § 218.42 Sanctions.

(a) *General.* Any person who violates any provisions of this Part 218 or any order issued pursuant thereto shall be subject to penalties and sanctions as provided herein.

(1) The provisions herein for penalties and sanctions shall be deemed cumulative and not mutually exclusive.

(2) Each day that a violation of the provisions of this Part 218 or any order issued pursuant thereto continues shall be deemed to constitute a separate violation within the meaning of the provisions of this part relating to fines and civil penalties.

(b) *Penalties.* (1) Any person who violates any provision of Part 218 of this chapter or any order issued pursuant thereto shall be subject to a civil penalty of not more than \$5,000 for each violation.

(2) Any person who willfully violates any provision of this Part 218 or any order issued pursuant thereto shall be subject to a fine of not more than \$10,000 for each violation.

(3) Any person who knowingly and willfully violates any provision of this Part 218 or any order issued pursuant thereto with respect to the sale, offer of sale, or distribution in commerce of oil after having been subject to a civil penalty under subparagraphs (1) or (2) of this paragraph (b) for a prior violation of the provisions of this Part 218 or any order issued pursuant thereto with respect to the sale, offer of sale, or distribution in commerce of oil shall be subject to a fine of not more than \$50,000 or imprisonment for not more than six months, or both, for each violation.

(4) Actions for penalties under this section are prosecuted by the Department of Justice upon referral by the DOE.

(5) When the DOE considers it to be appropriate or advisable, the DOE may compromise and settle any action under this paragraph, and collect civil penalties.

(c) *Other Penalties.* Willful concealment of material facts, or making of false, fictitious or fraudulent statements or representations, or submission of a document containing false, fictitious or fraudulent statements pertaining to matters within the scope of this Part 218 by any person shall subject such persons to the criminal penalties provided in 18 U.S.C. 1001 (1970).

#### § 218.43 Injunctions.

Whenever it appears to the DOE that any firm has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any regulation or order issued under this Part 218, the DOE may request the Attorney General to bring a civil action in the appropriate district court of the United States to enjoin such acts or practices and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include a mandatory injunction commanding any firm to comply with any provision of such order or regulation, the violation of which is prohibited by section 524 of the EPCA.

[Docket No. ERA-R-78-7]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

#### Airworthiness Directives; Ayres Corporation, Model S-2D, S-2R

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires repetitive visual inspections of those airplanes having an installed rudder assembly with only a single upper hinge, and the modification or replacement of that rudder assembly, if necessary. This AD is prompted by three reports of failures of the single upper hinge rudder which could have resulted in the loss of the airplane directional control. This AD does not apply to S-2D and S-2R airplanes which have installed a rudder assembly with three upper hinges.

**DATES:** Effective May 23, 1979. Compliance schedule as prescribed in body of AD.

**ADDRESSES:** Service Bulletin No. SB-AG-15 and Custom Kit Instructions No. CK-AG-18 may be obtained from Ayres Corporation, P.O. Box 1748, Albany, Georgia 31706, telephone (912) 883-1440. Copies of the Service Bulletin and the Custom Kit Instructions are also located in Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Don Buckley, Aerospace Engineer, Engineering and Manufacturing Branch, Flight Standards Division, FAA, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

**SUPPLEMENTARY INFORMATION:** There have been three reports of the single upper hinge separating from the rudder main spar. Two of these failures caused a structural failure of the upper rudder assembly which resulted in the partial loss of directional control on Ayres S-2R airplanes. Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is being issued which requires repetitive visual inspections of those S-2D and S-2R airplanes having an installed rudder assembly with only a single upper hinge and the modification of that rudder assembly to a three upper hinge configuration or the replacement of that rudder assembly with a new rudder assembly having three upper hinges, if necessary.