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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Lime Pack Regulation 9; Avocado Pack Regulation 6]

Limes Grown in Florida, and Avocados Grown in South Florida; Subpart—Pack Regulation, and Subpart—Container and Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes pack requirements for Florida limes and avocados that require containers of limes and avocades to bear a Federal or Federal-State Inspection Service lot stamp number showing that the fruit has been inspected and found to meet applicable regulation requirements issued under these marketing orders. The action is designed to verify inspection and compliance with these requirements, in the interest of producers and consumers.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Statement relative to this final rule is available upon request from the above named individual.

SUPPLEMENTARY INFROMATION: This final nation has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant." Notice was published in the October 23, 1980, issue of the **Federal Register** (45 FR 70278) that the Department was considering amending § 911.311 Lime Regulation 9, and § 915.306 Avocado Regulatin 6, under the marketing agreements, as amended, and marketing Orders 911 and 915, each as amended (7 CFR Parts 911 and 915). These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These amendments are based upon recommendations and information submitted by the committees established under these marketing orders, and other available information. In addition, these amendments revise references in these regulations to the U.S. grade standards for Florida limes and avocados to reflect recent changes in such standards. The notice provided that all written comments be submitted by November 7, 1980. None were recieved.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is found that the amendments are in accordance with the provisions of these marketing agreements and orders, that they are necessary to establish and maintain orderly marketing conditions, and they will tend to effectuate the declared policy of the act in the interests of growers and consumers.

It is further found that good cause exists for not postponing the effective date of these amendments until 30 days after publicatin in the **Federal Register** (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning these amendments, with an effective date of November 17, 1980, was published in the **Federl Register,** and no objection to these amendments or there effective date was received: (2) the recommendations for these amendments were developed at public meetings at which interested persons were afforded an opportunity to submit their views; (3) the amendments will not require any special preparation on the part of the persons subject to the regulatory requirements which cannot be completed by the effective time; (4) shipment of the 1980–81 season Florida lime and avocado crops is underway; and (5) the regulatory provisions for Florida limes and avocados are the same as those proposed in the notice, except that the effective date has been extended to November 20, 1980.

1. Therefore, § 911.311 of Subpart-Pack Regulation is amended by revising paragraph (a)(1), amending paragraph (a)(2), revising and redesignating paragraph (a)(3) as paragraph (a)(4), adding a new paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) *Order.* (1) The grades set forth in the U.S. Standards for Grades of Persian (Tahiti) Limes (7 CFR 2851.1000–2851.1016) are hereby established as pack specifications for the grading and packing of limes.

(2) On and after November 20, 1980. * * *

* * * * *

(3) On and after November 20, 1980, no handler shall handle any container of limes, grown in the production areas, unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the limes have been inspected in accordance with regulations issued under § 911.45 of th marketing order.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of limes not exceeding 4 pounds, net weight, that are within master containers except that if such packages are individual bags either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a)(2) of this section and master containers shall be marked or labeled in accordance with the requirements of paragraph (a)(3) of this section.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and standard pack shall mean the same as in the U.S. Standards for Grades of Persian (Tahiti) Limes (7 CFR 2851.1000–2851.1016).

2. Therefore, § 915.306 of Subpart-Container and Pack Regulations is amended by revising paragraph (a)(1), amending paragraph (a)(2), revising and redesignating paragraph (a)(3) as paragraph (a)(4), adding a new paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 915.306 Avocado Pack Regulation 6.

(a) *Order.* (1) The grades set forth in the U.S. Standards for Grades of Florida Avocados (7 CFR 2851.3050–2851.3000) are hereby establihsed as pack specifications for the grading and packing of avocados.

(2) On and after November 20, 1980
* * *

* * * * *

(3) On and after November 20, 1980, no handler shall handle any container of avocados, gronw in the production areas unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the avocados have been inspected in accordance with regulations issued under § 915.51 of this marketing order.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of avocados not exceeding 4 pounds, net weight, that are within master containeers.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and standard pack shall mean the same as in the U.S. Standards for Grades of Florida Avocados (7 CFR 2851.3050–2851.3000).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 17, 1980 to become effective November 20, 1980

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-36268 Filed 11-18-80; 8:45 am]

BILLING CODE 2110-02-M

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7 CFR Parts 982 and 999

Commodity Credit Corporation

Filbert Imports and Filberts Grown in Oregon and Washington; Stay of Effective Date of Amendment of Import Regulation and of a Change in Marketing Order Grade and Size Regulation

Correction

In FR Doc. 80-34573 appearing on page 73634 in the issue of Thursday, November 6, 1980, make the following correction:

On page 73635, at the top of the first column, delete the paragraph in small type designated "(d)".

BILLING CODE 1505-01-M

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7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980—Crop Sorghum Supplement]

1980—Crop Sorghum Loan and Purchase Program

Correction

In FR Doc. 80-33061 appearing on page 70212 in the issue of Thursday, October 23, 1980, make the following corrections in the table in § 1421.115(a):

1. Under California, "San Louis Obispo" should have read "San Luis Obispo".

2. Under Texas, the price for Kaufman County should have read "3.94".

BILLING CODE 1505-01-M

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7 CFR Part 1421

[CCC Grain Price Support Reg. 1980—Crop Oats Supplement]

Grains and Similarly Handled Commodities; 1980—Crop Oats Loan and Purchase Program

Correction

In FR Doc. 80-33798 appearing on page 72084 in the issue of Friday, October 31, 1980, make the following corrections to the table in § 1421.274(a):

1. Under Illinois, "Livington" should have read "Livingston".

2. Under Indiana, "Koscinusko" should have read "Kosciusko".

3. Under Montana, "Choputeau" should have read "Chouteau", "Metroleum" should have read "Petroleum", and "Wilbaux" should have read "Wibaux".

4. Under Nebraska, "Clofax" should have read "Colfax"

5. Under Wisconsin, "Calument" should have read "Calumet", "Landlade" should have read "Langlade", and "Wauahara" should have read "Waushara".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Deletion of Hughes Air West; Addition of Republic Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This is an amendment to the regulations of the Immigration and Naturalization Service to delete a carrier under its old name and to add the carrier under its new name to the list of transportation lines which have entered into agreement with the Commissioner of Immigration and Naturalization to guarantee the preinspection of their passengers and crews at places outside the United States. This amendment is necessary because transportation lines which have signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: November 5, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC 20536. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.4 is published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat. 1561) and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b) and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order deletes a transportation line under its old name and adds the transportation line under its new name to the listing and is editorial in nature.

The Commissioner of the Immigration and Naturalization Service entered into a new agreement effective on November 5, 1980, with Republic Airlines after it changed its name from "Hughes Air West," to guarantee preinspection of its passengers and crew at a place outside of the United States under section 238(b) of the Immigration and Nationality Act and 8 CFR Part 238:

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

In § 238.4 *Preinspection outside the United States,* the listing of transportation lines preinspected at Calgary is amended by deleting "Hughes Air West" and adding in alphabetical sequence "Republic Airlines."

* * * * *

(Secs. 103 and 238(d); (8 U.S.C. 1103 and 1228(b)))

Dated: November 14, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-36091 Filed 11-18-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 221

[Docket No. ERA-R-79-50]

Priority Supply of Crude Oil and Petroleum Products to the Department of Defense Under the Defense Production Act

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) adopts final regulations pursuant to sections 101(a) and 709 of the Defense Production Act of 1950 for priority supply of crude oil and petroleum products to the Department of Defense (DOD).

The regulations permit DOD, whenever necessary or appropriate to promote the national defense, to request ERA to issue a priority rating for crude oil or petroleum product contracts. If ERA determines that issuance of a priority rating is necessary to meet the national defense requirements identified by DOD and that a proposed supplier is capable of delivering the necessary crude oil or petroleum products, ERA would issue a priority rating to DOD complying in whole or in part with the DOD request. When a supplier receives a priority-rated supply order from DOD, it would be required to fill that order regardless of its other supply commitments to non-DOD purchasers. A priority rating also could entitle DOD to a precedence of delivery for its requirements.

The priority procedures in the regulations would be used only for crude oil and petroleum products not subject to allocation controls under the Emergency Petroleum Allocation Act (EPAA). Products subject to EPAA controls would be allocated to DOD under the regulations in Parts 210 and 211 of 10 CFR.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–4055

Stanley Vass (Office of Petroleum Allocation Regulations), Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–3263

William Funk or Peter Schaumberg (Office of General Counsel), Department of Energy, Room 6A127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6736, or 252–6754

SUPPLEMENTARY INFORMATION:

I. Background and Authority
II. Discussion of Comments and Major Issues
III. Section-by-Section Analysis
IV. Additional Matters

I. Background and Authority

On October 26, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearing (44 FR 63109, Nov. 2, 1979) to amend Chapter II, Title 10 of the Code of Federal Regulations by adding a new Part 221 setting forth regulations for the priority supply of crude oil and petroleum products to the Department of Defense (DOD) under the Defense Production Act (DPA). Written comments were invited, and a public hearing was held in Washington, D.C. Over 18 written comments were received and eight persons provided oral testimony at the hearing. The written and oral comments have been carefully considered by ERA.

These final regulations are being promulgated pursuant to section 101(a) of the DPA, 50 U.S.C. App. § 2071, which provides in pertinent part as follows:

> The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

This authority, with respect to energy resources, was vested originally in the Department of Interior (DOI) by Executive Order 10480 (18 FR 4939, Aug. 18, 1953), as amended. The DOI implemented section 101(a) of the DPA by adopting regulations for the mandatory priority supply of crude oil and petroleum products. (38 FR 30572, Nov. 6, 1973). Following the establishment of the Department of Energy (DOE), this authority was delegated to the Secretary of Energy by Executive Order 12038 (43 FR 4957, Feb. 7, 1978), which amended Executive Order 10480, and Executive Order 11790 (39 FR 23785, June 27, 1974), and subsequently has been delegated by the Secretary to the Administrator of the Economic Regulatory Administration (ERA). (See Amendment No. 1 to DOE Delegation Order No. 0204–4.)

Under the DPA, ERA is authorized to issue priority ratings for DOD and other defense-related contracts which would require that a supplier accept such orders and supply the specified quantities and qualities of crude oil and petroleum products. Additionally, ERA can issue directives to particular companies requiring that they provide necessary supplies for national defense needs. Such orders may be issued under DPA authority without the reimposition of mandatory allocation or price regulations under the Emergency Petroleum Allocation Act (Pub. L. 93–159, EPAA). Priority ratings would be used only during periods when DOD was experiencing difficulties in obtaining supplies needed for national defense purposes.

ERA has determined to adopt final regulations to provide procedures by which these priority rated orders can be requested by DOD and issued. This would enable ERA to act expeditiously and consistently to provide DOD with the necessary relief whenever DOD is unable to obtain needed supplies of crude oil or petroleum products for national defense-related activities. In addition, these regulations would further notify potential DOD suppliers of the possibility of mandatory priority supply obligations and the procedures associated therewith.

The regulations would apply to the priority supply to DOD of crude oil, residual fuel oil, refined petroleum products and lubricants. This regulation would not apply to the supply of natural gas or ethane.

II. Discussion of Comments and Major Issues

A. *DPA vs. EPAA authority.* Comments were received on the issue of whether the DPA regulations are necessary or appropriate in view of DOE's allocation authority under the EPAA. As we noted in the preamble to the proposed regulations, ERA has authority under the EPAA to allocate products still subject to controls, to reimpose controls under sec. 12(f) of the EPAA on products currently exempt from allocation regulations, to adjust refinery yields to require refiners to produce more of a particular product and under certain circumstances to assign purchasers new suppliers of a particular product. Nonetheless, we believe that there are several reasons why it is appropriate to issue these regulations under the DPA.

The Defense Production Act was enacted in 1950 to ensure the timely production and delivery of materials necessary for the national defense. The general purposes of the DPA always have been national defense related, and use of DPA section 101(a) authorities is limited expressly to contracts or orders "necessary or appropriate to promote the national defense." The EPAA, on the other hand, provides in section 4(b)(1)(A) that regulations under that Act only need provide "to the maximum extent practicable" for the national defense. Furthermore, national defense is but one of several objectives of the EPAA. It is evident, therefore, that the DPA is more strictly committed to meeting national defense needs than is the EPAA.

Issuing orders and directives to private firms mandating terms of production and delivery constitutes use of extraordinary authority by the Government. The DPA was specifically designed for this purpose. By way of illustration, DPA section 101(a) expressly provides for priority performance of contracts *and* authority to require acceptance and performance of contracts. Most importantly, section 707 of the DPA expressly provides a defense against damages or penalties so that a supplier will not be subject to claims for damages from its other customers as a result of complying with a priority rated order. Under section 704 of the DPA, the President may even exercise these authorities without adopting regulations. In short, the DPA was designed to remove any impediments to swift delivery of needed materials for the national defense.

The Department of Energy has interpreted the EPAA as authorizing reimposition of controls on a case-by-case basis, thereby enabling DOE, if necessary, to allocate otherwise decontrolled petroleum products to DOD in a manner similar to the DPA. The EPAA authorities, however, were not expressly designed for this purpose, and do not contain the explicit expediting procedures found in the DPA, discussed in the preceding paragraph.

Finally, as was stated in the preamble to our Notice of Proposed Rulemaking on the DPA regulations, it is not our intention to use the DPA for products still subject to EPAA controls, *e.g.*, gasoline. Thus, we do not foresee there being any problem of overlap under the two programs. And, by adopting these rules under the DPA, when the EPAA expires next year, it will not be necessary to adopt new regulations for DOD so long as the DPA remains in effect.

It is our conclusion, in view of our responsibilities under the Defense Production Act and Executive Orders 10480, 11790 and 12038 and the phased decontrol of crude oil and petroleum products, that the Defense Production Act is the preferable statutory authority for adopting a program to ensure continued supplies of crude oil and petroleum products needed for the national defense.

B. *Inclusion of crude oil within the scope of the rule.* Most commenters argued that the DPA rule should not include crude oil because DOD has no need for crude oil and no capability to refine the crude oil. ERA believes that although DOD is not a general purchaser of crude oil, a mechanism should be provided to address all of DOD's emergency fuel needs, including a means of providing crude oil to specified refiners for processing. There may be refiners willing to supply products to DOD but for a lack of crude oil to run in the refinery. Crude oil currently is subject to EPAA allocation controls, and it is our intent to use that authority, rather than the DPA, if it is necessary to allocate crude oil for DOD needs. By including crude oil in the DPA regulations at this time, it will eliminate any need in the future to amend these DPA regulations to include crude oil upon expiration of the EPAA.

C. *Role of the Federal Emergency Management Agency (FEMA).* The proposed regulations provide in §§ 221.31(b) and 221.32(c) for a limited role for FEMA in the priority rating process. FEMA would be notified by DOD when it requested a priority rating from ERA, and ERA and DOD would consult with FEMA where priority ratings would conflict. Some commenters supported an increased oversight role for FEMA, whereas an equal number suggested that greater restriction upon FEMA involvement is more appropriate.

ERA believes that adoption of the regulations as proposed will allow FEMA to exercise sufficient oversight to discharge its general responsibilities under the DPA and relevant Executive Orders. No commenters supported FEMA involvement to the point where it would interfere with the expeditious handling of priority requests by DOD. Sections 221.31(b) and 221.32(c) ensure, however, that FEMA will be apprised of all requests for priority ratings and that it will be able thereafter to monitor the progress of the applications.

D. *Need for an exceptions and appeals procedure for the DPA regulations.* Six commenters supported the inclusion of an exceptions and appeals mechanism in the DPA regulations, to provide a means for a refiner to be excused from performance under a rated order. There are two reasons why such an exceptions and appeals procedure is not appropriate in these regulations.

First, the DPA is an extraordinary authority designed to ensure expedited procurement for the national defense. Acceptance and performance of contracts can be mandated (sec. 101(a)), stiff penalties may be imposed for failure to comply with an order (sec. 103) and injunctive provisions are specifically provided for persons who violate the DPA (sec. 706). It therefore would be inconsistent with both the letter and spirit of the DPA to allow for administrative impediments to expedited procurement for the national defense.

The second point is in response to concerns raised by refiners who fear they may receive an order with which they cannot comply. An overriding purpose of the regulations is to provide ERA with the necessary information to identify those refiners which are most capable of meeting DOD's needs. In most circumstances, ERA will not issue an order to a refiner which would suffer a disproportionate burden if it complied. However, all refiners in emergency situations must be prepared to make sacrifices if necessary to protect the national defense.

E. *Inclusion of defense contractors and other national defense components.* The Department of Defense has strenuously urged the inclusion of defense contractors in the regulations as eligible to apply for priority ratings. The Commerce Department concurred. The two refiners who commented on this issue favored limitation of the regulations to DOD only. As was stated in the preamble to the proposed regulations, the scope of the regulations expressly was limited to crude oil or petroleum products purchased by DOD for its own use or purchases made by DOD on behalf of other agencies of the Federal Government. The final regulations retain this limitation.

To include in the regulations defense contractors and some or all of the other agencies which are included within the definition of national defense, *e.g.*, DOE nuclear programs and the National Aeronautics and Space Administration, would substantially expand the scope of these regulations. Also, the inclusion of all defense contractors likely would generate a large volume of requests for priority assistance which would have to be processed even if they did not merit a priority. The potential volume of such requests could adversely affect our ability to meet national defense priorities. Accordingly, ERA has decided to limit the scope of these regulations to DOD and to issue a separate rulemaking for defense contractors and other defense entities.

As was noted in the preamble to the notice of proposed rulemaking, ERA does have authority under the DPA to authorize priority ratings for defense contractors. In extraordinary circumstances, even in the absence of additional regulations, DOD may determine that failure to provide crude oil or petroleum products to a particular defense contractor will have a substantial negative impact on the national defense. ERA could invoke the general DPA authorities to assist that contractor notwithstanding the absence of a specific provision in these regulations authorizing ratings for contractors. DOD has procedures for determining contractor energy shortages in its Instruction No. 4170.9 (May 16, 1978), and we assume that DOD will rely upon these or similar procedures for identifying contractors in need of priority assistance. Similarily, other national defense programs may come to ERA for priority assistance where necessary in an emergency.

F. *Need for a defined methodology for determining which suppliers receive rated orders.* Several commenters expressed the view that the regulations should include standards for distribution of rated orders among refiners so that one group of refiners will not be assigned a disproportionate share of priority orders. ERA does not believe that it would be possible to adopt strict guidelines to ensure equitable distribution of the rated orders among suppliers. Broad discretion is needed under the regulations to afford ERA ample flexibility to deal with DOD emergency requirements. ERA will, to the extent practicable, spread the priority orders as equitably as possible among potential suppliers.

G. *Pricing under a priority rated order and other contract provisions.* Most of the commenters were in favor of a provision in the regulations to ensure that DOD and ERA would not use the DPA regulations to secure a price advantage for DOD when purchasing petroleum products. This is a matter beyond the scope of these regulations.

It long has been recognized that the DPA cannot be used merely to obtain a better price. If the reason that DOD cannot find a supplier is that it is unable to come to terms on price, DOD will not receive a priority rating. ERA must evaluate under § 221.32 whether DOD's needs can reasonably be satisfied without exercising the authority in the regulations. If DOD is unwilling to pay suppliers a reasonable price for the products and seeks ERA priority assistance, such assistance will be denied since DOD's needs can be met if it is willing to pay a reasonable price.

The commenters were virtually unanimous in their criticism of DOD procurement procedures and cited DOD's contract terms as one reason why suppliers avoid DOD contracts. The main criticisms were: cumbersome and onerous contracting procedures; drawn out procurement and payment procedures; and specifications requiring segregated storage. It it outside the scope of these regulations for ERA directly to affect DOD's contract procedures. But, for the reasons stated above, ERA will not permit DOD to resort to the DPA simply to cure normal procurement difficulties. If necessary, however, ERA can include in a priority rating or a directive certain terms as to quantity, quality, delivery, etc. Otherwise, except as provided in § 221.35 of the final regulations, DOD and the supplier will have to negotiate contract terms between themselves.

III. Section-by-Section Analysis

The regulations are being adopted as proposed. Therefore, the section-by-section analysis in the proposed regulations, 44 FR 63109, 63110 (Nov. 2, 1979), should be referred to for additional information on the operation and effect of the regulations.

IV. Additional Matters

A. *Section 404 of the DOE Act.* Pursuant to the requirements of section 404 of the Department of Energy Act, a copy of the proposed rule was sent to the Federal Energy Regulatory Commission (FERC) for review. The FERC determined that this rule would not significantly affect any of its functions.

B. *National Environmental Policy Act.* It has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

C. *Executive Order 12044.* ERA has determined that this rulemaking is not subject to the provisions of Executive Order No. 12044 on Improving Government Regulations (43 FR 12661, March 24, 1978). Section 6 of that Executive Order excepts from the coverage of the Order regulations issued with respect to a military function of the United States and regulations related to Federal Government procurement.

(Emergency Petroleum Allocation Act of 1973, 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, 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, Pub. L. 94–163 as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, Pub. L. 95–91; E.O. 12009, 42 FR 46267; Defense Production Act, Pub. L. 82–774, as amended; E.O. 10480 (18 FR 4939); E.O. 12038 (43 FR 4957); E.O. 11790 (39 FR 23785))

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations, is amended by adding a new Part 221 as set forth below.

Issued in Washington, D.C., on November 12, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

Subchapter A of Chapter II, Title 10 of the Code of Federal Regulations is amended to add a new Part 221 as follows:

PART 221—PRIORITY SUPPLY OF CRUDE OIL AND PETROLEUM PRODUCTS TO THE DEPARTMENT OF DEFENSE UNDER THE DEFENSE PRODUCTION ACT

Subpart A—General

Sec.
221.1 Scope.
221.2 Applicability.

Subpart B—Exclusions

221.11 Natural gas and ethane.

Subpart C—Definitions

221.21 Definitions.

Subpart D—Administrative Procedures and Sanctions

221.31 Requests by DOD.
221.32 Evaluation of DOD request.
221.33 Order.
221.34 Effect of order.
221.35 Contractual requirements.
221.36 Records and reports.
221.37 Violations and sanctions.

Authority: Defense Production Act, 50 U.S.C. App. 2061 *et seq.*, E.O. 10480 (18 FR 4939, Aug. 18, 1953) as amended by E.O. 12038 (43 FR 4957, Feb. 7, 1978), and E.O. 11790 (39 FR 23785, June 27, 1974)

Subpart A—General

§ 221.1 Scope.

This Part sets forth the procedures to be utilized by the Economic Regulatory Administration of the Department of Energy and the Department of Defense whenever the priority supply of crude oil and petroleum products is necessary or appropriate to meet national defense needs. The procedures available in this

Part are intended to supplement but not to supplant other regulations of the ERA regarding the allocation of crude oil, residual fuel oil and refined petroleum products.

§ 221.2 Applicability.

This Part applies to the mandatory supply of crude oil, refined petroleum products (including liquefied petroleum gases) and lubricants to the Department of Defense for its own use or for purchases made by the Department of Defense on behalf of other Federal Government agencies.

Subpart B—Exclusions

§ 221.11 Natural gas and ethane.

The supply of natural gas and ethane are excluded from this Part.

Subpart C—Definitions

§ 221.21 Definitions.

For purposes of this Part—

"Directive" means an official action taken by ERA which requires a named person to take an action in accordance with its provisions.

"DOD" means the Department of Defense, including Military Departments and Defense Agencies, acting through either the Secretary of Defense or the designee of the Secretary.

"ERA" means the Economic Regulatory Administration of the Department of Energy.

"National defense" means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling and space, or activities directly related to any of the above.

"Person" means any individual, corporation, partnership, association or any other organized group of persons, and includes any agency of the United States Government or any other government.

"Priority-rated supply order" means any delivery order for crude oil or petroleum products issued by DOD bearing a priority rating issued by ERA under this Part.

"Supplier" means any person other than the DOD which supplies, sells, transfers, or otherwise furnishes (as by consignment) crude oil or petroleum product to any other person.

Subpart D—Administrative Procedures and Sanctions

§ 221.31 Requests by DOD.

(a) When DOD finds that (1) a fuel supply shortage for DOD exists or is anticipated which would have a substantial negative impact on the national defense, and (2) the defense activity for which fuel is required cannot be postponed until after the fuel supply shortage is likely to terminate, DOD may submit a written request to ERA for the issuance to it of a priority rating for the supply of crude oil and petroleum products.

(b) Not later than the transmittal date of its request to ERA, DOD shall notify the Federal Emergency Management Agency that it has requested a priority rating from ERA.

(c) Requests from DOD shall set forth the following: (1) the quantity and quality of crude oil or petroleum products determined by DOD to be required to meet national defense requirements; (2) the required delivery dates; (3) the defense-related activity and the supply location for which the crude oil or petroleum product is to be delivered; (4) the current or most recent suppliers of the crude oil or petroleum product and the reasons, if known, why the suppliers will not supply the requested crude oil or petroleum product; (5) the degree to which it is feasible for DOD to use an alternate product in lieu of that requested and, if such an alternative product can be used, the efforts which have been made to obtain the alternate product; (6) the period during which the shortage of crude oil or petroleum products is expected to exist; (7) the proposed supply source for the additional crude oil or petroleum products required, which shall, if practicable, be the historical supplier of such crude oil or product to DOD; and (8) certification that DOD has made each of the findings required by paragraph (a).

§ 221.32 Evaluation of DOD request.

(a) Upon receipt of a request from DOD for a priority rating as provided in § 221.31, it shall be reviewed promptly by ERA. The ERA will assess the request in terms of (1) the information provided under § 221.31; (2) whether DOD's national defense needs for crude oil or petroleum products can reasonably be satisfied without exercising the authority specified in this Part; (3) the capability of the proposed supplier to supply the crude oil or petroleum product in the amounts required; (4) the known capabilities of alternative suppliers; (5) the feasibility to DOD of converting to and using a product other than that requested; and (6) any other relevant information.

(b) The ERA promptly shall notify the proposed supplier of DOD's request for a priority rating specified under this Part. The proposed supplier shall have a period specified in the notice, not to exceed fifteen (15) days from the date it is notified of DOD's request, to show cause in writing why it cannot supply the requested quantity and quality of crude oil or petroleum products. ERA shall consider this information in determining whether to issue the priority rating.

(c) If acceptance by a supplier of a rated order would create a conflict with another rated order of the supplier, it shall include all pertinent information regarding such conflict in its response to the show cause order provided for in subsection (b), and ERA, in consultation with DOD and the Federal Emergency Management Agency shall determine the priorities for meeting all such requirements.

(d) ERA may waive some or all of the requirements of § 221.31 or this section where the Secretary of Defense or his designee certifies, and has so notified the Federal Emergency Management Agency, that a fuel shortage for DOD exists or is imminent and that compliance with such requirements would have a substantial negative impact on the national defense.

§ 221.33 Order.

(a) *Issuance.* If ERA determines that issuance of a priority rating for a crude oil or refined petroleum product is necessary to provide the crude oil or petroleum products needed to meet the national defense requirement established by DOD, it shall issue such a rating to DOD for delivery of specified qualities and quantities of the crude oil or refined petroleum products on or during specified delivery dates or periods. In accordance with the terms of the order, DOD may then place such priority rating on a supply order.

(b) *Compliance.* Each person who receives a priority-rated supply order pursuant to this Part shall supply the specified crude oil or petroleum products to DOD in accordance with the terms of that order.

(c) *ERA directives.* Notwithstanding any other provisions of this Part, where necessary or appropriate to promote the national defense ERA is authorized to issue a directive to a supplier of crude oil or petroleum product requiring delivery of specified qualities and quantities of such crude oil or petroleum products to DOD at or during specified delivery dates or periods.

(d) *Use of ratings by suppliers.* No supplier who receives a priority-rated supply order or directive issued under the authority of this section may use such priority order or directive in order to obtain materials necessary to meet its supply obligations thereunder.

§ 221.34 Effect of order.

Defense against claims for damages. No person shall be liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any ERA authorized priority-rated supply order or ERA directive issued pursuant to this Part, notwithstanding that such priority-rated supply order or directive thereafter be declared by judicial or other competent authority to be invalid.

§ 221.35 Contractual requirements.

(a) No supplier may discriminate against an order or contract on which a priority rating has been placed under this Part by charging higher prices, by imposing terms and conditions for such orders or contracts different from other generally comparable orders or contracts, or by any other means.

(b) Contracts with priority ratings shall be subject to all applicable laws and regulations which govern the making of such contracts, including those specified in 10 CFR 211.26(e).

§ 221.36 Records and reports.

(a) Each person receiving an order or directive under this Part shall keep for at least two years from the date of full compliance with such order or directive accurate and complete records of crude oil and petroleum product deliveries made in accordance with such order or directive.

(b) All records required to be maintained shall be made available upon request for inspection and audit by duly authorized representatives of the ERA.

§ 221.37 Violations and sanctions.

(a) Any practice that circumvents or contravenes the requirements of this Part or any order or directive issued under this Part is a violation of the regulations provided in this Part.

(b) Criminal Penalties. Any person who willfully performs any act prohibited, or willfully fails to perform any act required by this Part or any order or directive issued under this Part shall be subject to a fine of not more than $10,000 for each violation or imprisoned for not more than one year for each violation, or both.

(c) Whenever in the judgment of the Administrator of ERA any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of these regulations, the Administrator may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision.

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

Correction of Commodity Control List and Related Matters

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Correction of interim rule.

SUMMARY: This document corrects errors in documents on the Export Administration Regulations and the Commodity Control List (CCL) which appeared in the **Federal Register** of June 25, 1980. The error in Part 385 appeared on page 43145 of **Federal Register** Document 80-18860, and the errors in the CCL appeared on page 43010 of **Federal Register** Document 80-18859. A technical amendment is made to Part 385, and the following entries of the CCL are corrected:

1110A(c); 1206A; 4363B; 2406A; 5406D; 2409A; 1416A; 1418A; 1431A; 4460B; 6460F; 6490F; 6499G; 5510D; 5597B; 4678B; 3709A; 4799B; and 5999B.

DATES: This rule becomes effective on November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377-5247 or 377-4811.

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** on June 25, 1980 (45 FR 43010 and 43145) the Department issued a revision in interim form of Part 385 of the Export Administration Regulations as well as a revision in interim form of the Commodity Control List (CCL). This rule amends those revisions by correcting errors made in the amendments to Part 385 and to the CCL entries. Although there is no formal comment period, public comments on these corrections are welcome.

1. The following correction is made in **Federal Register** Document 80-18860, appearing at page 43145 in the issue of June 25, 1980:

The second sentence of § 385.1 is corrected to read as follows:

§ 385.1 Country Group Z; North Korea, Vietnam, Cambodia and Cuba.

* * * * *

Certain exceptions are contained in Parts 371 and 379, and in ECCN's 7599 and 7999 on the Commodity Control List.

* * * * *

2. The following corrections are made in **Federal Register** Document 80-18859, appearing at page 43010 in the issue of June 25, 1980:

Section 399.1 is corrected as follows:

§ 399.1 [Amended]

(a) On pages 43064 and 43069 of the **Federal Register,** Entry Nos. 1110A(c) and 1206A are corrected by inserting code "1," in the "Reason for Control" column preceding code "4" in that column. Footnotes to these entries remain unchanged.

(b) On pages 43078 and 43129, Entry Nos. 4363B and 4678B are corrected by transferring footnote "1" from the "Reason for Control" column to the "Validated License Required" column. The footnote is corrected to read as follows:

[1] A validated license is *not* required for export of these commodities to the countries listed in Supps. No. 2 and No. 3 to Part 373.

(c) On page 43083, Entry No. 6499G is corrected by: (a) deleting "and Afghanistan" from the "Validated License Required" column, and (b) adding a footnote "2" in this same column reading as follows:

[2] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled or used by or for these entities. (See §§ 371.2(c)(11) and 385.4(a)).

(d) On page 43087, Entry No. 5510D is corrected by changing the second word in the "Commodity Description" column from "Sonal" to "Sonar."

(e) On page 43125, Entry No. 5597B is corrected by deleting the words "and identification" from the phrase "fingerprint and identification cameras."

(f) On page 43131, Entry No. 3709A is corrected by deleting footnote "1" in the column entitled "GLV $Value Limits T & V."

(g) On page 43136 Entry No. 4799B is corrected by changing the "Commodity Description" column to read as follows:

Chemical agents, including tear gas formulations containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloracetophenone (CN), and smoke bombs; and fingerprint powders, dyes and inks. (Specify by name.) (See § 376.14.)

(h) On page 43080, Entry No. 2406A is corrected by adding a footnote "1a" in the "Unit" column reading as follows:

[1a] Report vehicles, and engines in number.