



# Department of Defense INSTRUCTION

NUMBER 4170.10

August 8, 1991

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ASD(P&L)

SUBJECT: Energy Management Policy

- (a) DoD Directive 4170.10, "Energy Conservation," March 29, 1979 (hereby canceled)
- (b) Secretary of Defense Memorandum, "Management of Defense Energy Resources," November 17, 1973 (hereby canceled)
- (c) Secretary of Defense Memorandum, "Matters Affecting the Petroleum Industry," January 21, 1974 (hereby canceled)
- (d) Secretary of Defense Memorandum, "Management of Defense Energy Resources - Phase II," August 26, 1974 (hereby canceled)
- (e) through (tt), see enclosure 1

## 1. REISSUANCE AND PURPOSE

This Instruction:

- 1.1. Reissues reference (a).
- 1.2. Updates DoD policy, assigns responsibilities, and prescribes procedure for DoD energy management.
- 1.3. Supersedes references (b) through (g).

## 2. APPLICABILITY AND SCOPE

This Instruction:

- 2.1. Applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and

Specified Commands; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as the "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

2.2. Pertains to all phases of administration, operations, maintenance, training, material acquisition and research and development (R&D) activities that affect the supply and consumptions of facilities energy or mobility fuels.

### 3. DEFINITIONS

The terms used in this Instruction are defined in enclosure 2.

### 4. POLICY

4.1. General. Energy is critical to executing the DoD peacetime, surge, mobilization, and wartime missions. All the DoD Components shall plan and program resources for the acquisition and maintenance of adequate and secure energy supplies, and attendant energy distribution systems. The DoD Components shall acquire and supply energy products (see enclosure 2) to meet their requirements and assist DoD contractors to obtain energy products to fulfill their contract obligations in the most efficient, life-cycle cost-effective manner possible.

4.2. Policy Development and Implementation. DoD policy initiatives shall be coordinated in the Defense Energy Policy Council (DEPC) under DoD Instruction 5126.47 (reference (h)).

4.3. Supply Assurance. When market conditions are expected to adversely affect, or have adversely affected the Department of Defense's ability to acquire energy products to meet peacetime, surge, mobilization, or wartime requirements of defense energy users, DoD Components shall acquire such products in accordance with the following:

4.3.1. Waiver of Statutes. Waiving provisions of law prescribing procedures for forming contracts, prescribing terms and conditions to be included, or regulating the performance of contracts to expedite or facilitate obtaining petroleum not otherwise available to the Department of Defense for use by the DoD Components. That authority may be exercised for individual contract or classes of contracts, and such a waiver may be made applicable to subcontracts under such contracts in accordance with 10 U.S.C. 2404 (reference (i)).

4.3.2. Naval Petroleum Reserves (NPRs). Requesting the Department of Energy (DoE) to provide the Department of Defense access to any portion of the U.S. Government's share of crude oil produced from the NPRs, with reimbursement at the market price for DoD Component use, exchange, or sale under Section 7430(l) of reference (i).

4.3.3. Outer Continental Shelf (OCS). Recommending to the President that the Department of Defense be given the right of first refusal to purchase at the market price all or any portion of crude oil produced from the OCS for DoD Component use, or for acquisition by exchange, under 43 U.S.C. 1341(b) (reference (j)).

4.3.4. Strategic Petroleum Reserve (SPR). Recommending to the Secretary of Energy and/or to the President the necessary actions that will lead to drawdown and distribution of the SPR and/or that crude oil from the SPR to be allocated for use by the DoD Components under 42 U.S.C. 6241 and the DoE Plan (references (k) and (l)).

4.3.5. Energy Product Priority Assistance. Requesting the DoE to provide energy product priority assistance to DoD energy users (see enclosure 2) under E.O.s 12742, 11790, 10480, and 12038; and 10 CFR 221 (references (m) through (q)).

4.4. Energy Conservation and Resource Management. The DoD policy is to minimize the amount of energy used and its cost, while meeting operational mission support requirements and providing quality working and living conditions for DoD personnel and military dependents. Actions to accomplish that support shall consist of the following:

4.4.1. Goals. Ensuring that all cost-effective actions are taken to eliminate energy waste, improve energy utilization efficiency, and implement measures to reduce energy cost. The energy conservation goals of Executive Order 12759 (reference (r)) represent the minimum goals to be achieved through investment in energy conservation, technology, and equipment, and through operation and maintenance and personnel information and recognition programs to create energy conservation awareness throughout the Department of Defense. Efforts to achieve goals will not impair the training, readiness, and combat capability of the Armed Forces or the health, safety, or productivity of military and civilian personnel and dependents.

4.4.2. Life-Cycle Cost Effectiveness. Using the most life-cycle cost-effective fuels in new energy producing facilities, in accordance with 10 U.S.C. 2690 (reference (i)). Life-cycle cost analysis of energy-dependent design and acquisition decisions shall be made in accordance with Section 8255 of reference (k), as amended by Section 8254 of reference (k).

#### 4.4.3. Private Sector Financing

4.4.3.1. Energy Production. Acquiring energy from facilities constructed with private capital under Sections 2394 and 2689 of reference (i)). Such private sector financing must be pursued before requesting appropriated funds to construct energy producing facilities.

4.4.3.2. Shared Energy Savings. Applying energy conservation techniques, using shared energy savings contracts under 42 U.S.C. 8287 (reference (k)), when they are the most cost-effective option to achieve the savings.

4.4.4. Renewable Energy Sources and Systems. Using cost-effective and reliable renewable energy sources and systems in accordance with 10 U.S.C. 2394a (reference (i)).

4.4.5. Utility Energy Services Strategy. Applying acquisition strategies to minimize utility costs in accordance with DoD Directive 5100.32 (reference (s)).

#### 4.4.6. Energy Security

4.4.6.1. Vulnerability Assessment. Periodic evaluation of the vulnerability of basic mission requirements to energy disruptions, assessing the risk of such disruptions, and implementing remedial actions to remove unacceptable energy security risks.

4.4.6.2. Key Asset Protection Program (KAPP). Investigation of off-base utility distribution and energy supply systems and, if warranted, nomination of critical nodes of those systems for inclusion in the KAPP under DoD Directive 5160.54 (reference (t)).

4.5. Energy Information. Accurate and timely energy data shall be reported through the Defense Energy Information System (DEIS) under DoD Directive 5126.46 (reference (u)) for use in formulating energy policy, measuring energy use against goals, establishing trends, and reporting to Congress.

#### 4.6. Environment

4.6.1. Waste Generation and Management. The DoD Components shall minimize the generation of hazardous waste from energy production and use. The DoD Components shall manage new, used, and reclaimed petroleum products, and hazardous petroleum wastes, in accordance with applicable national environmental statutes and regulations, under DoD Directives 5030.41 and 5100.50 (references (v) and (w)).

#### 4.6.2. Alternative Motor Fuels

4.6.2.1. Technology. The Department of Defense shall coordinate testing of alternative motor fuels with the DoE under 42 U.S.C. 6374(c) (reference (k)).

4.6.2.2. Use. When cost-effective and on satisfactory completion of fleet tests, alternative motor fuels shall be considered equal substitutes for conventional fuels in the appropriate DoD-operated motor vehicles under Executive Order 12759 (reference (r)).

4.6.3. Emissions. DoD Components shall coordinate their environmental and energy policies to minimize air, ground and water emissions from fuel and energy storage, use and combustion, and to minimize the cost of compliance with environmental laws and regulations.

#### 4.7. Support of Non-DoD Energy Users

4.7.1. Conditions. The Department of Defense shall supply energy to non-DoD users during national security emergencies, domestic and foreign peacetime civil emergencies, and energy supply interruptions under the DoD Directives 3020.36, 3025.1, and 5100.46 (references (x) through (z)).

4.7.2. Fiscal Policy. Supply support shall be executed consistent with fiscal policies under 31 U.S.C. 1535, 10 U.S.C. 2481, and DoD 7421.13-R (references (aa), (i), and (bb)).

4.8. Lease Rights. The Department of Defense shall seek security and economic benefit from leases of rights to oil and gas produced on DoD lands under DoD Directive 4700.3 (reference (cc)) and other onshore and offshore Federal lands under 30 U.S.C. 223 and 43 U.S.C. 1337 (references (dd) and (j)).

## 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) shall:

5.1.1. Establish policies and provide guidance to the DoD Components for the management of energy resources in the Department of Defense and serve for the Secretary of Defense as the primary DoD authority for energy policy matters, under Delegation of Authority (DA) Number 22, in DoD Directive 5128.1 (reference (ee)). The Energy Policy Directorate in the Office of the Deputy Assistant Secretary of Defense (Logistics) (ODASD(L)), shall support the ASD(P&L) in the discharge of those functions.

5.1.2. Periodically issue resource management goals and guidance for, and oversight of, the DoD Components' execution of each energy policy in section 4., above.

5.1.3. Coordinate with:

5.1.3.1. The Under Secretary of Defense (Policy) about DoD policy on planning for and responding to energy emergencies. (See enclosure 2.)

5.1.3.2. The Director for Logistics (J-4); the Chairman, Joint Chiefs of Staff (CJCS) about operational military energy requirements during energy emergencies. (See enclosure 2.)

5.1.4. Publish a DoD Manual, in accordance with the DoD 5025.1-M (reference (ff)), to facilitate implementation of this Instruction.

5.1.5. Exercise emergency authorities through the following:

5.1.5.1. Waiver of Statutes. When market conditions have, or are expected to, adversely affect DoD access to petroleum products, the ASD(P&L) may waive any provision of law prescribing the formation of contracts for the acquisition of petroleum products under 10 U.S.C. 2404 (reference (i)). The ASD(P&L) shall review the Defense Logistics Agency's (DLA's) requests for waiver under Section 2404 of reference (i) and paragraph 5.3.5., below, and either execute the findings and determinations (see enclosure 5) or return the request as "disapproved" to the DLA under the DA Number 6 in DoD Directive 5128.1 (reference (ee)).

5.1.5.1.1. Financial Impact. Inform the Comptroller of the Department of Defense (C, DoD), of any financial impacts based on determinations on waivers provided to facilitate petroleum acquisition.

5.1.5.1.2. Post-Award Review. Minimally conduct a post-award review of a statistically relevant sample of the waivers granted to ensure that the conditions precipitating the waiver were in fact present and conformed to the requirements specified in Section 2404 of reference (i).

5.1.5.2. The NPR. Request the Director, Office of Naval Petroleum and Oil Shale Reserves (ONP&OSR), DoE, to transfer to the Department of Defense any portion of the U.S. Government's share of NPR-authorized production with reimbursement at the market price, if needed to meet DoD petroleum product requirements under Section 7403(l) of reference (i), and the DoE and the DoD MOU and Petroleum Transfer Agreement (references (gg) and (hh)).

#### 5.1.5.3. The OCS

5.1.5.3.1. Right of First Refusal. Recommend to the Secretary of Defense, as necessary, that he request the President to direct that the Department of Defense shall have the right of first refusal to purchase at the market price all, or any portion of, the crude oil produced from the OCS under 43 U.S.C. 1341(b) (reference (j)).

5.1.5.3.2. Purchase. Request the Director, Minerals Management Service (MMS), Department of the Interior (DoI), to facilitate DoD purchase at the market price of all, or any portion of, the crude oil produced from the OCS, in anticipation of Presidential authorization under subparagraph 5.1.5.3.1., above.

#### 5.1.5.4. The SPR

5.1.5.4.1. Drawdown and/or Allocation. Request that the Secretary of Energy take the necessary actions to start drawdown and distribution of the SPR, including specification of an amount of crude oil to be allocated to the Department of Defense under 42 U.S.C. 6241 and the DoE "Strategic Petroleum Reserve Drawdown Plan" (references (k) and (l)).

5.1.5.4.2. Justification. Justify the request, recognizing SPR objectives prescribed in reference (l) or in the such other SPR distribution plan as may be in effect at that time, by stating how the quantity and quality of crude oil physically

available from the SPR can be applied over a period of time to satisfy military petroleum requirements and enhance or augment national security during the energy supply interruption.

#### 5.1.5.5. Energy Product Priority Assistance

5.1.5.5.1. Findings and Determinations. Review the DoD Component's request for energy product priority assistance for primary DoD activities under paragraph 5.2.2., below, and either return the request as "disapproved" to the DoD Component or, with the approval of the Under Secretary of Defense (Acquisition) under the Secretary of Defense Memorandum of January 14, 1991 (reference (ii)), as necessary, execute the findings and determinations (see enclosures 3 and 4), forwarding it to the Assistant Secretary of Energy (International Affairs and Energy Emergencies) (IA&EE), DoE, and the Director, Federal Emergency Management Agency (FEMA), in accordance with E.O.s 12742, 11790, 10480, and 12038; 10 CFR 221; and the DA Number 9 under DoD Directive 5128.1 (references (m) through (q) and (ee)).

5.1.5.5.2. Competing Priorities. Resolve, as necessary, competing energy product priority assistance requests in support of DoD activities (see enclosure 2), with the advice and assistance of the Heads of DoD Components and the Joint Materiel Priorities and Allocation Board (JCS Document Number 202/212 (reference (jj))).

5.1.6. Provide for energy conservation and resource management, including the following:

5.1.6.1. Goals. Establish Departmental energy conservation program goals and develop procedures to measure energy conservation accomplishments by the DoD Components.

5.1.6.2. Annual Guidance. Provide annual programming guidance and oversight for the achievement of DoD energy goals and objectives.

5.1.6.3. Innovation and Incentives. Provide guidance facilitating innovation and incentive awards to encourage energy conservation among the DoD Components.



5.1.6.4. Investment. Establish criteria for and monitor the execution of the Military Construction-Funded Energy Conservation Investment Program (ECIP) and the Procurement-Funded Energy Conservation and Management Program (ECAM). (See enclosure 2.)

5.1.6.5. Reporting. Develop policy guidance to report energy use and results of energy conservation accomplishments against Federal energy conservation and management goals.

5.1.7. Provide guidance for, and review and approve, privately financed energy and energy production facilities contracts under 10 U.S.C. 2394 and 2812, and the DA Number 7 in DoD Directive 5128.1 (references (i) and (ee)).

5.1.8. Make recommendations to the Federal Energy Regulatory Commission (FERC) and, as necessary, the DoE, about facilities for the transmission of electricity and natural gas across U.S. borders under E.O.s 10485 and 12038, and the DA Number 23 in DoD Directive 5128.1 (references (kk), (p) and (ee)).

5.2. The Heads of DoD Components shall provide for:

5.2.1. General

5.2.1.1. Implementation. Implement defense energy policies in section 4., above.

5.2.1.2. Representation. Designate and assign qualified individuals to represent the DoD Component in the DEPC and in national, international, government, or industry organizations deliberating energy policy matters.

5.2.1.3. Resources. Provide management and resources for the execution of assigned responsibilities of their representatives to the organization in subparagraph 5.2.1.2., above.

5.2.2. Energy Product Priority Assistance

5.2.2.1. Findings and Determinations. When necessary, draft findings and determinations (see enclosures 3 and 4) on the need for energy product priority assistance for the primary DoD activities identified in subparagraph 5.1.5.5.1., above, and forward them with request for such assistance through the Deputy Assistant Secretary of Defense (Logistics) (DASD(L)) to the ASD(P&L) for execution. Draft

findings and determinations shall be accompanied by supporting factual justification with the following provisions:

5.2.2.1.1. Bulk Petroleum Products. In accordance with DLA's role as the integrated DoD manager for bulk petroleum products under DoD Directive 4140.25 (reference (ll)), the DoD Components shall forward requests to the DLA where priority assistance is sought for the acquisition of bulk petroleum products.

5.2.2.1.2. Defense Contractors. When either primary or secondary DoD activities relate to the mission of the DoD contractors, the DoD Components shall advise such contractors:

5.2.2.1.2.1. That DO and DX ratings assigned to contracts under DoD Directive 4400.1 (reference (mm)) are not available for obtaining supplies of energy products under Schedule II of the Defense Priority Regulation Number 1 (reference (nn)).

5.2.2.1.2.2. That the DoD Components shall submit requests for priority assistance on behalf of DoD contractors and that the priority requested shall be one in congruity with the rating (DO or DX) accorded the orders and/or contracts for the end items to be produced by the DoD contractors with the energy supplies sought.

5.2.2.1.2.3. As to the resolution of energy product supply interruptions, affecting the contractor, under this subparagraph.

5.2.2.2. Additional Assistance. After the execution by the ASD(P&L) of the proper findings and determinations identified in subparagraph 5.2.2.1., above, but subject to subparagraph 5.2.2.1.2., above, on bulk petroleum products, exercise the authority of the Secretary of Defense under DoD Directive 5128.1 (reference (ee)) and submit to the DoE (with one copy of the correspondence to the DASD(L)) additional energy product priority assistance requests for the following:

5.2.2.2.1. The secondary DoD activities.

5.2.2.2.2. Changes in suppliers and product type, quality, and quantity relating to:

5.2.2.2.2.1. Initial requests for priority assistance previously referred to the DoE by the ASD(P&L) on primary DoD activity requirements.

5.2.2.2.2. Additional requests for priority assistance on secondary DoD activity requirements.

5.2.2.3. To the extent that requests referenced in subparagraph 5.2.2.2. above, present unresolved allocation issues relative to JCS Document Number 202/212 (reference (jj)), such issues shall be referred to and resolved by the ASD(P&L) before submission of requests to the DoE.

### 5.2.3. Energy Conservation and Resource Management

5.2.3.1. Program. Establish and execute an energy program management structure to provide for:

5.2.3.1.1. Funding. Program and budget funds sufficient to meet energy conservation goals.

5.2.3.1.2. Measure Progress. Implement DoD-established policies and procedures to measure progress in meeting energy conservation goals.

5.2.3.1.3. Reporting. Report energy use and progress in meeting energy conservation goals and program costs.

5.2.3.1.4. Efficiency. Develop programs that shall result in fixed facilities and mobile and transportable equipment that are designed, operated, and maintained to achieve optimum performance and maximize energy efficiency.

5.2.3.1.5. Staffing. Ensure fixed facilities are provided with trained energy program managers and operators and maintenance personnel for heating, power generating, ventilating, and air-conditioning plants and systems. Conduct training programs, as required, to ensure energy efficient operation of facilities.

5.2.3.1.6. Leased Facilities. Ensure that facility leases for Government-owned, contractor-operated facilities contain the requirement to:

5.2.3.1.6.1. Implement sound energy conservation procedures, and allow contract modification to accommodate energy efficiency improvements.

5.2.3.1.6.2. Measure and report energy use and the resulting savings.

5.2.3.2. Energy Awareness. Develop internal energy awareness programs to provide for:

5.2.3.2.1. Publicity. Publicize energy conservation goals.

5.2.3.2.2. Shared Information. Disseminate information on energy matters and energy conservation techniques.

5.2.3.2.3. Command Attention. Emphasize energy conservation at all command levels and relate energy conservation to operational readiness.

5.2.3.2.4. Incentives. Promote energy efficiency awards and recognition.

5.3. The Director, Defense Logistics Agency (DLA), shall provide for:

5.3.1. Bulk Petroleum Management. Perform petroleum and related facility management responsibilities assigned under DoD Directive 4140.25 (reference (II)).

5.3.2. Coal Procurement. Perform coordinated coal procurement, distribution, and contract administration responsibilities assigned under DoD 4140.25-M (reference (oo)).

5.3.3. Source Supply Natural Gas Procurement. Perform centralized procurement of source supply natural gas for the Department of Defense, including consolidation of DoD Components' natural gas requirements and contracting for the source supply natural gas and its pipeline transportation to the point in the natural gas transmission system at which the local distribution company receives wholesale gas deliveries.

5.3.4. Energy Markets. Monitor the petroleum, coal, and natural gas markets to determine existing or potential adverse conditions.

5.3.5. Waiver of Statutes

5.3.5.1. Emergencies. Exercise the authority of the Secretary of Defense, under 10 U.S.C. 2404(a) and (b) and DoD Directive 5128.1 (references (i) and (ee)), for single contracts only, under emergency conditions when a supply interruption may be imminent and the Director, DLA, concludes that:

5.3.5.1.1. An immediate waiver of one or more provisions of law is essential to acquiring petroleum.

5.3.5.1.2. The acquisition of petroleum must be completed immediately to protect life or DoD property, or is critical to accomplish one or more missions.

5.3.5.2. Documentation. Notify the ASD(P&L) within 24 hours of any such waiver in subparagraph 5.3.5.1., above; and provide full documentation of the waiver within 4 working days. The documentation shall explain the circumstances surrounding the use of authority cited in Section 2404 of reference (i).

5.3.5.3. Findings and Determinations. When necessary, draft the findings and determinations (see enclosure 5) identified in subparagraph 5.1.5.1., above, and forward them to the ASD(P&L) for execution. Draft determinations shall be accompanied by supporting factual justification.

5.3.5.4. Contracting Practices. Follow the law under 48 CFR (reference (pp)) not specifically waived for contracts executed or modified under waivers, and apply normally prudent business practices to acquisitions processed under waiver procedures.

5.3.5.5. Financial Impact. Provide information to the ASD(P&L) on any financial impacts of waivers or determinations prepared and/or granted.

5.3.5.6. Acquisition by Exchange. Exercise the authority of the Secretary of Defense to acquire petroleum products by exchange under Section 2404(c) of reference (i) and DoD Directive 5128.1 (reference (ee)) and enter into such contracts, as may be appropriate, whether in emergencies or otherwise.

5.3.6. The NPR and/or the OCS and/or the SPR. When necessary, advise the ASD(P&L) on the quantity and quality of crude oil that, if available from either the NPR, the OCS, or the SPR, can be applied over a period of time to satisfy military petroleum requirements.

5.3.7. Bulk Petroleum Product Priority Assistance. Exercise the authority of the Secretary of Defense for bulk petroleum product priority assistance in circumstances, as in subparagraph 5.2.2.2., above, using 10 CFR 221 (reference (q)).

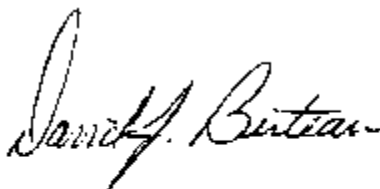
5.3.8. DoE/DoD Interagency Agreement (Reference (qq)). Implement provisions of reference (qq) on purchasing crude oil for the SPR, when requested by the DoE.

## 6. INFORMATION REQUIREMENTS

The reporting requirement referenced in subparagraph 5.2.3.1.3. has been assigned Report Control Symbol DD-P&L(A)1529 in accordance with DoD 7750.5-M (reference (rr)).

## 7. EFFECTIVE DATE

This Instruction is effective immediately.



**DAVID J BERTEAU  
PRINCIPAL DEPUTY ASD(P&L)**

## Enclosures - 5

- E1. References, continued
- E2. Definitions
- E3. Format - Findings and Determinations for Energy Product Priority Assistance
- E4. Supplemental Format - Findings and Determinations for Energy Product Priority Assistance
- E5. Format - Findings and Determination Under 10 U.S.C. 2402

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Instruction 4170.9, "Defense Contractor Energy Shortages and Conservation," May 16, 1978 (hereby canceled)
- (f) Secretary of Defense Memorandum, "Delegation of Authority Under Section 2394 of Title 10, United States Code," December 2, 1982 (hereby canceled)
- (g) DoD Instruction 4220.8, "Petroleum Acquisition Under Title 10, United States Code, Section 2404," December 20, 1985 (hereby canceled)
- (h) [DoD Instruction 5126.47](#), "Department of Defense Energy Policy Council," December 2, 1985
- (i) Sections 2394, 2394(a), 2404, 2481, 2689, 2690, 2812, and 7430(l) of title 10, United States Code
- (j) Sections 1337 and 1341(b) of title 43, United States Code
- (k ) Sections 6241, 6374(c), 7254, 8254, 8255, and 8287 of title 42, United States Code
- (l) Department of Energy "Strategic Petroleum Reserve Drawdown Plan, Amendment Number 4," December 1, 1982<sup>1</sup>
- (m) Executive Order 12742, "National Security Industrial Responsiveness," January 8, 1991
- (n) Executive Order 11790, "Providing for the Effectuation of the Federal Energy Administration Act of 1974," June 25, 1974
- (o) Executive Order 10480, "Administration of Civil and Defense Mobilization," August 18, 1953, as amended
- (p) Executive Order 12038, "Relating to Certain Functions Transferred to the Secretary of Energy by the Department of Energy Organization Act," February 3, 1978
- (q) Title 10, Code of Federal Regulations, Part 221
- (r) Executive Order 12759, "Federal Energy Management," April 17, 1991
- (s) DoD Directive 5100.32, "Delegation of Authority with Respect to Contracts for the Procurement of Public Utility Services," September 6, 1974
- (t) [DoD Directive 5160.54](#), "DoD Key Assets Protection Program (KAPP)," June 26, 1989
- (u) [DoD Directive 5126.46](#), "Defense Energy Information System (DEIS)," December 2, 1987
- (v) [DoD Directive 5030.41](#), "Oil and Hazardous Substance Pollution Prevention and Contingency Program," June 1, 1977

- (w) DoD Directive 5100.50, "Protection and Enhancement of Environmental Quality," May 24, 1973
- (x) [DoD Directive 3020.36](#), "Assignment of National Security Emergency Preparedness (NSEP) Responsibilities to DoD Components," November 2, 1988
- (y) [DoD Directive 3025.1](#), "Use of Military Resources During Peacetime Civil Emergencies Within the United States, Its Territories, and Possessions," May 23, 1980
- (z) [DoD Directive 5100.46](#), "Foreign Disaster Relief," December 4, 1975
- (aa) Section 1535 of title 31, United States Code
- (bb) DoD 7420.13-R, "Stock Fund Operations," June 1986, authorized by DoD Directive 7420.13, January 27, 1983
- (cc) [DoD Directive 4700.3](#), "Mineral Exploration and Extraction on DoD Lands," September 28, 1983
- (dd) Section 223 of title 30, United States Code
- (ee) DoD Directive 5128.1, "Assistant Secretary of Defense (Production and Logistics)," February 9, 1989
- (ff) [DoD 5025.1-M](#), "Department of Defense Directives System Procedures," December 1990, authorized by [DoD Directive 5025.1](#), December 23, 1988
- (gg) Memorandum of Understanding Between the Department of Energy and the Department of Defense, October 19, 1978<sup>2</sup>
- (hh) Petroleum Transfer Agreement Between the Department of Energy and the Department of Defense," June 15, 1981, as amended May 10, 1983
- (ii) Secretary of Defense Memorandum, "Delegation of Authority Relating to Mobilization of Resources," January 14, 1991
- (jj) JCS Document Number 202/212, "Joint Materiel Priorities and Allocation Board Charter," March 3, 1982<sup>3</sup>
- (kk) Executive Order 10485, "Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Electric Power and Natural Gas Facilities Located on the Borders of the United States," September 3, 1953
- (ll) [DoD Directive 4140.25](#), "Management of Bulk Petroleum Products, Storage, and Distribution Facilities," May 15, 1980
- (mm) DoD Instruction 4400.1, "Priorities and Allocations - Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals," November 16, 1971
- (nn) Schedule II of the Defense Priority System Regulation Number 1<sup>4</sup>



- (oo) DoD 4140.25-M, "Management of Bulk Petroleum Products, Storage, and Distribution Facilities," July 1988, authorized by [DoD Directive 4140.25](#), May 15, 1980
- (pp) Title 48, Code of Federal Regulations, Chapters 1 and 2, current edition
- (qq) Interagency Agreement Between the Department of Energy and Department of Defense Number AI01-78US02809, April 11, 1977, and Related Annexes
- (rr) DoD 7750.5-M, "Department of Defense Procedures for Management of Information Requirements," November 1986, authorized by DoD Directive 7750.5, August 7, 1986
- (ss) Federal Acquisition Regulation (FAR), current edition
- (tt) Defense FAR Supplement (DFARS), current edition

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- 1 Available from the Deputy Assistant Secretary for Petroleum Reserves, Department of Energy, Washington, DC 20585
  - 2 Available from the Deputy Assistant Secretary of Defense (Logistics), Department of Defense, Washington, DC 20301
  - 3 Available from the Director for Logistics, Joint Staff, Washington, DC 20301
  - 4 Available from the Director, Office of Industrial Resource Administration, Department of Commerce, Washington, DC 20230

## E2. ENCLOSURE 2

### DEFINITIONS

E2.1.1. DoD Contractor. Any person who enters into a contract with the Department of Defense, and persons that are subcontractors and subtiercontractors, thereto.

E2.1.2. Emergencies. Periods when market conditions are expected to adversely affect, or have adversely affected the DoD Component's or DoD Contractor's ability to acquire energy products to meet peacetime, surge, mobilization, or wartime DoD Component requirements.

E2.1.3. Energy Conservation Investment Program (ECIP). A multiyear military construction-funded program to reduce energy use through retrofit to existing facilities.

E2.1.4. Energy Conservation and Management Program (ECAM). A multiyear procurement-funded program to reduce energy use through retrofit of existing Government-owned facilities.

E2.1.5. Energy Product. Petroleum, solid fuel (i.e., coal, coke, peat, or refuse-derived fuel), natural gas (including liquefied and synthetic natural gas), thermal energy, and electricity.

E2.1.6. Petroleum. Natural or synthetic crude oil, blends of natural or synthetic crude oil, and products refined or derived from natural or synthetic crude oil or such blends.

E2.1.7. Primary DoD Activity. The mission of a DoD Component, one or more of its constituent elements, or a DoD contractor that is identified initially to the ASD(P&L) by the DoD Component as requiring energy product priority assistance.

E2.1.8. Priority Assistance. The act by the DoE of issuing EITHER:

E2.1.8.1. A priority rating that the Department of Defense may place on a supply order under a current contract between an energy supplier and a DoD Component or a DoD contractor in support of a DoD activity. The priority rating would ensure, in accordance with 10 CFR 221 (reference (q)), delivery of specified qualities and quantities of such energy product on, or during, specified delivery dates

or periods to meet the minimum essential energy product requirements of the DoD activity; OR

E2.1.8.2. A directive by the DoE to an energy product supplier requiring delivery of specified qualities and quantities of such energy product to a DoD Component or a DoD contractor in support of a DoD activity at, or during, specified delivery dates or period under a new contract to cover the minimum essential energy product requirements of the DoD activity.

E2.1.9. Secondary DoD Activity. The mission of a DoD Component, one or more of its constituent elements, or a DoD contractor that would be adversely impacted, directly or indirectly, by any energy product priority assistance afforded a primary DoD activity.

E3. ENCLOSURE 3

FORMAT  
FINDINGS AND DETERMINATIONS FOR ENERGY  
PRODUCT PRIORITY ASSISTANCE

As Assistant Secretary of Defense for Production and Logistics (ASD(P&L)), under the authority of DoD Directive 5128.1, and in accordance with 10 CFR 221 (references (ee) and (q)), I hereby certify the following findings and determinations.

FINDINGS

*In this section, state the facts that lead to the determinations. This must include the following information:*

1. The quantity and quality of energy product determined to be required to meet national defense requirements that remain unsatisfied after all steps are taken (which should be described in item 8., below).
2. The required delivery dates and /or schedules.
3. The DoD activity and the location of the DoD Component or DoD contractor to which the energy product is to be delivered. If the purchasing agent, e.g., the Defense Fuel Supply Center, is not the DoD Component of the DoD Contractor in question, then the purchasing agent also should be identified.
4. The current or most recent suppliers of the energy product and the reasons, if known, why the suppliers shall not supply the requested product.
5. The degree to which it is feasible for an alternate energy product to be used in support of the DoD activity and, if such an alternate product can be used, the efforts that have been made to obtain the alternate product.
6. The period during which the interruption in energy product supply, in support of the DoD activity, is expected to exist.

7. The proposed supply source(s) to satisfy the DoD activity's energy product requirement, which should, if practicable, be the historical supplier(s) of the energy product.

8. All actions, and results of such actions, taken to date to satisfy the energy product requirement of the DoD activity.

## DETERMINATIONS

Based on the foregoing finding, I hereby determine that:

1. An energy product supply interruption exists or is anticipated to exist that will have a substantial negative impact on the national defense.
2. The DoD activity for which the energy product is required cannot be postponed until after the energy product supply interruption probably will terminate.
3. The Department of Defense requires priority assistance in the appropriate form of EITHER:
  - a. Priority performance against a current contract between an energy product supplier and a DoD Component or a DoD contractor. The priority performance would be expected to ensure the delivery of specified qualities and quantities of such energy product to the DoD Component or the DoD contractor on or during specified delivery dates or periods to cover the minimum essential energy product requirements of the DoD activity; OR
  - b. A directive to an energy product supplier requiring delivery of specified quantities and qualities of such energy product to a DoD Component or a DoD contractor, one or during specified delivery dates or periods, under a new contract to cover the minimum essential energy product requirements of the DoD activity.

Based on the foregoing findings, I hereby determine that:

4. Potential or actual energy product supply delivery delays cannot be tolerated in the performance of this DoD contractor, and that all local remedial action has been exhausted.

E4. ENCLOSURE 4

SUPPLEMENTAL FORMAT  
FINDINGS AND DETERMINATIONS FOR ENERGY  
PRODUCT PRIORITY ASSISTANCE (continued)

In addition to the facts stated in enclosure 3, provide the following information:

1. The DoD Component procurement contracting officer and industrial manager who are responsible for administering the DoD contractor's energy product priority assistance request.

2. The Defense Priority System rating on the contract (DX or DO) per DoD Directive 4400.1 (reference (mm)).

3. The ratio of commercial to the DoD production at the DoD contractor's plant experiencing the energy product supply interruption, and the means by which the DoD Component shall ensure that the contractor shall use the energy product, if supplied under priority assistance, to sustain DoD production and not for some other purpose.

4. The quantity and quality of energy product supply required daily to sustain a specific rate of production of the item(s) produced.

5. An assessment of the impact of the energy product supply interruption on DoD production, including:

- a. The type of items produced.
- b. Their relationship to urgent DoD programs and activities.
- c. The impact of potential or actual delivery delays of these items on the end items or programs supported.
- d. The ability to accommodate such delays; e.g., how long production curtailment or shutdown can be endured without serious negative impact to the program or activities being supported.

6. (As an augmentation of the information in item number 8. in the "FINDINGS" section of enclosure 3.) State efforts taken by the DoD contractor to seek relief and the results, including documentation from suppliers, distributors, and Federal, State, and local authorities involved.

7. Actions taken by the DoD Component to advise and assist the DoD contractor.



E5. ENCLOSURE 5

FORMAT

FINDINGS AND DETERMINATIONS UNDER 10 U.S.C. 2402<sup>5</sup>

As Assistant Secretary of Defense for Production and Logistics (ASD(P&L)), under the authority of 10 U.S.C. 2404 and DoD Directive 5128.1 (*references (i) and (ee)*), I hereby make the following findings and determinations:

FINDINGS

*In this section, state the facts that lead to the determinations. This should include references to specific laws, including implementing provisions of the FAR and the DFARS (references (ss) and (tt)) being waived, which may be listed as an enclosure to the "Findings" and "Determinations" sections.*

DETERMINATIONS

Based on the foregoing findings, I hereby determine that:

1. Petroleum market conditions have adversely affected, or will in the near future adversely affect, the acquiring of petroleum by the Department of Defense.
2. The waiver of the application of laws listed in the findings, above, will expedite or facilitate the acquisition of petroleum for Government needs.
3. The application of laws listed in the findings, above, is hereby waived.
4. The authority to waive any provision of law for contracts signed during the period of waiver granted in this document automatically expires after \_\_\_\_\_ days from the date of approval.

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<sup>5</sup> Reference (i)