

U.S. Department of Energy
Washington, D.C.

*Cancelled
BY DOE
1321.140
5-20-94*

ORDER

HQ 2100.1A

5-11-81

SUBJECT: FINANCIAL MANAGEMENT OF MONEY RECEIVED FROM PERSONS WHO
HAVE ALLEGEDLY VIOLATED DEPARTMENT OF ENERGY REGULATIONS

1. PURPOSE. To establish the policy, objectives, procedures, and responsibilities for the financial management of monies received from persons who have allegedly violated or who have violated the Department of Energy price and allocation regulations.
2. CANCELLATION. HQ 2100.1, FINANCIAL MANAGEMENT OF MONEY RECEIVED FROM PERSONS WHO HAVE ALLEGEDLY VIOLATED DEPARTMENT OF ENERGY REGULATIONS, of 2-2-81.
3. COVERAGE. This Order applies to monies received pursuant to Consent Orders, Remedial Orders, Remedial Orders for Immediate Compliance, Orders of Disallowance ("orders") issued by the Department of Energy, Consent Decrees and decisions of the courts ("decisions"). This Order provides the following:
 - a. A detailed accounting and reporting system for the monies received and subsequently distributed under each order or decision;
 - b. Procedures for the investment of money in U.S. Government Securities, use of commercial banks, and for the allocation of interest earned; and
 - c. Designation of responsible officials to certify withdrawals of monies and authorize appropriate distributions.
4. REFERENCES.
 - a. Department of Energy, Department of the Treasury Agreement on Establishment of a Deposit Fund Escrow Account for Payments by Alleged Violators of DOE Regulations, of 4-7-80 (Attachment 1), which establishes a Treasury account for the deposit of monies collected by the Department and procedures for investment in U.S. Government Securities.
 - b. Statutes.
 - (1) Economic Stablization Act (ESA) of 1970, § 209, 12 U.S.C. § 1904 note (1976), which provides restitution authority to individuals that suffer a loss because of the alleged violation or violation of the Department of Energy Price and Allocation regulations.
 - (2) Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. § 751 et seq. (1976), which:

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INITIATED BY:
Office of the Controller

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- (a) § 5(a)(1) of this act incorporates § 209 of the Economic Stabilization Act which concerns injunctions and other relief for violations.
 - (b) § 4(a) of this act gives the Department of Energy authority to promulgate regulations for the mandatory allocation and pricing of crude oil, residual fuel oil, and refined petroleum products in the United States.
 - (c) § 4(b) of this act states the objectives of the Mandatory Petroleum Allocation and Petroleum Price Regulations including: equitable distribution of crude oil and refined petroleum products at equitable prices among all users and the maintenance of residential heating.
- (3) Federal Energy Administration Act of 1974 (FEAA), 15 U.S.C. § 761 et seq. (1976), which § 2(a) of this act gives findings of FEAA--one finding is to insure the maintenance of fair and reasonable consumer prices for scarce energy supplies.
 - (4) Department of Energy Organization Act of 1977, 42 U.S.C. § 7101 note (1977), which section 503 provides that the Department of Energy can issue a Remedial Order to a violator of any regulation, rule or order promulgated pursuant to the Economic Petroleum Allocation Act.

c. Regulations.

- (1) Mandatory Petroleum Allocation and Petroleum Price Regulations, 10 CFR 205, 210, 211, 212, and 214, which provides guidelines for pricing and allocating petroleum.
- (2) Enforcement documents.
 - (a) Remedial Orders, 10 CFR 205.199B, which provides that the Director of the Office of Hearings and Appeals of the Department of Energy or his designee may issue a final Remedial Order and serve a copy to the person to whom it is directed after considering all information received during the proceeding.
 - (b) Remedial Orders for Immediate Compliance, 10 CFR 205.199D, which provides that the Department may issue an Interim Remedial Order for Immediate Compliance, which shall be effective upon issuance until rescinded or suspended.
 - (c) Order of Disallowance, 10 CFR 205.199E, which provides that the Director of the Office of Hearings and Appeals of the Department of Energy or his designee may issue a final order of disallowance after a proposed order of disallowance has been issued and reviewed.

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- (d) Consent Orders, 10 CFR 205.199J, which provides that the Department may at any time resolve an outstanding compliance investigation or proceeding, or a proceeding involving the disallowance of costs pursuant to § 205.199E of paragraph 3c(2)(c). A Consent Order must be signed by the person it is issued to and must indicate the terms agreed to. A Consent Order need not constitute an admission by any person that a violation has occurred.

(3) Remedies.

- (a) 10 CFR 205.199I, which provides that a Remedial Order, Remedial Order for Immediate Compliance, and Order of Disallowance, or a Consent Order may require the person to whom it is directed to roll back prices, to make refunds equal to the amount (plus interest) charged in excess of those permitted by regulation or to take such action as the Department determines is necessary to eliminate or compensate the effects of a violation.
- (b) 10 CFR 205.280 et seq. (subpart V), which establishes special procedures implemented by the Office of Hearings and Appeals to refund monies to injured persons who are not readily identifiable and are entitled to refunds specified in paragraph 3c(3)(a) above. Under the provisions of Subpart V, the Office of Hearings and Appeals issues decisions and orders which set forth the standards and procedures that will be used in evaluating refund applications and in distributing refunds.

5. BACKGROUND. The Economic Regulatory Administration's Office of Enforcement and Office of Special Counsel have the authority to commence enforcement actions against persons who are subject to the Mandatory Petroleum Allocation and Price Regulations and to enter into Consent Orders with these persons in settlement of alleged violations. The Office of Hearings and Appeals has the authority to review formal enforcement documents issued by the Office of Enforcement and the Office of Special Counsel, to implement special refund procedures pursuant to the procedures in Subpart V of paragraph 3c(3)(b) upon petition by the Office of Enforcement and the Office of Special Counsel, and to issue final remedial orders, orders of disallowance, and decisions and orders in subpart V proceedings referenced in paragraph 3c(3)(a), above. In addition, the Office of Enforcement, Office of Special Counsel, and Office of Hearings and Appeals have the authority to take other action to compensate for the effects of a violation or cost disallowance. As a result, many decisions or orders involve the payment of money from persons to the Department of Energy for subsequent distribution to remedy the effects of the alleged violations. In accordance with the terms and conditions of Attachment 1, the deposit fund escrow account (herein after "the Account") has been established for these monies and will be invested by the Controller. Funds in the Account shall be invested in U.S. Government Securities or deposited with commercial banks for investments in securities paying an interest rate comparable to U.S. Government Securities.

6. POLICY. It is Department of Energy policy that:

- a. The Account shall be used to deposit all or any part of monies received from persons who have allegedly violated the Department of Energy regulations.
- b. Monies initially deposited in commercial banks, and under the signature authority for disbursement by other offices within the Department of Energy shall be transferred immediately to the Account for management by the Controller's office in those cases for which same is authorized pursuant to agreement by the parties or by the order or direction of the Department of Energy.
- c. Monies in the Account shall be invested in U.S. Government Securities or shall be deposited in commercial banks for investment at the then prevailing U.S. Government Securities rate.
- d. Monies deposited in commercial banks shall either be (1) completely insured by the Federal Deposit Insurance Corporation or (2) invested at all times by the commercial banks in investments backed by the full faith and credit of the United States.
- e. Monies deposited in the Account, or subsequently invested, shall be disbursed only to remedy the effects of the alleged violations of the Department of Energy regulations.
- f. The monies shall not be used to pay or reimburse Departmental administrative expenses.

7. GENERAL.

- a. The financial management of the monies received shall include a separate accounting (subsidiary account) for each remedial order, order of disallowance, consent order, or decision and order (hereinafter referred to collectively as "order") and shall list the principal, interest, unpaid balance and disbursements against each order. A copy of the order shall be included with the initial deposit. The total monies collected and deposited to the Account shall be pooled for investment purposes without regard to the amounts applicable to individual orders in accordance with the Agreement between the Treasury and Department of Energy, Attachment 1.
- b. All monies deposited to the Account shall be invested by the Controller in U.S. Government Securities or deposited in commercial banks for investments in accordance with subparagraphs 6c and 6d, above. For investment planning purposes, the offices responsible for determining distribution of the money shall arrange, to the maximum extent possible, disbursements that coincide with the maturity date of the investments. Until a disbursement plan is established, the Controller, Office of Financial Policy, Analysis, and GAO Liaison, shall restrict investment terms to a maximum of 6 months.

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- c. The interest on investment shall be credited to the individual subsidiary accounts established for each order based on the number of days the funds are available for investment during the investment period. Interest shall be credited daily.
- d. Request for disbursements shall be approved by the Director of Enforcement, the Director of the Office of Special Counsel for Compliance, the Director of Hearings and Appeals, or their designees, and shall be forwarded to the Director of Finance and Accounting, Washington Financial Services Division. Each request shall specify the amount and purpose, and the order the payment is to be charged to. Orders issued by the Office of Hearings and Appeals in accordance with subpart V directing the disbursement of funds from the Account shall not be subject to formal concurrence by the Offices of Enforcement, Special Counsel, or the Office of General Counsel and shall be implemented by the Director of Finance and Accounting, Washington Financial Services Division.
- e. The Director of Washington Financial Services shall provide a status report each month to the appropriate office on their subsidiary account(s). Such reports shall include the principal balance, interest earned for the current month, and cumulative interest from inception.
- f. The Agreement between Treasury and the Department of Energy, Attachment 1, is the basis for the Department of Energy to invest the amount deposited in the Account in U.S. Government Securities. The investments shall be managed by the Director of Financial Policy, Analysis, and GAO Liaison.

8. RESPONSIBILITIES.

- a. The Offices of Enforcement, Special Counsel, and Hearings and Appeals, or Designees Within each Office, shall:
 - (1) Arrange for payments made pursuant to orders to be sent to the Office of Finance and Accounting, Washington Financial Services Division, for deposit to the Account.
 - (2) Provide a copy of each order to the Office of Finance and Accounting and indicate whether the payment made is full or partial, and if partial, provide a schedule of payments including interest assessment if applicable.
 - (3) Designate an approving official to authorize disbursement of monies from the Account to remedy the effects of a violation of the Department of Energy regulations.

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- (4) Be responsible for the collection of monies from violators or alleged violators of the Department of Energy regulations.
- (5) Issue determinations specifying the distribution of funds received pursuant to paragraph 7a(1), above, which determinations shall be executed by the Controller, pursuant to paragraph 7c.
- (6) Assure that orders requiring monies to be deposited in commercial banks for DOE specify that the Controller, or his designee, is the only authorized official to withdraw such monies from the bank.

b. The Office of the Controller shall:

- (1) Be responsible for the overall financial management of monies in the accounts that are the subject of this Order.
- (2) Maintain subsidiary ledgers for each order and separately account for the monies received from the Offices of Enforcement, Special Counsel, and Hearings and Appeals for each such order.
- (3) Allocate daily the interest on investment to each subsidiary account.
- (4) Distribute funds, including interest earned, in accordance with directives issued by the responsible official for any particular disbursement effort pursuant to paragraph 7a(5) and pursuant to policies established by the Secretary for the distribution of such monies.
- (5) Provide monthly reports to the responsible officials on their respective subsidiary accounts together with a detailed listing of transactions affecting each subsidiary account.
- (6) Assure compliance with the terms and conditions of the Agreement between Treasury and the Department of Energy, Attachment 1, and request changes to the agreement as may be required.
- (7) Make deposits with commercial banks for investments.
- (8) Develop and implement an investment plan for the monies collected by the Department.

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- c. The General Counsel shall provide general legal advice to the Controller, upon request, regarding the implementation of the determinations made by the Offices of Enforcement, Special Counsel, and Hearings and Appeals for distributions to remedy the effect of alleged violations.



William S. Heffelfinger
Director of Administration

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DEPARTMENT OF ENERGY ("DOE") DEPARTMENT OF THE
TREASURY ("TREASURY") AGREEMENT ON ESTABLISHMENT
OF A DEPOSIT FUND ESCROW ACCOUNT FOR PAYMENTS IN
REGARD TO POSSIBLE OR ACTUAL VIOLATIONS OF LAW
ENFORCED BY DOE

WHEREAS, DOE HAS IN THE PAST AND WILL IN FUTURE RECEIVE AMOUNTS IN REGARD TO POSSIBLE OR ACTUAL VIOLATIONS OF THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973, AS AMENDED ("EPAA"), 15 U.S.C. 751 ET SEQ., AND/OR OTHER PROVISIONS OF LAW ENFORCED BY THE DEPARTMENT OF ENERGY;

WHEREAS, AMOUNTS SO PAID IN WILL BE RETAINED BY DOE PENDING DETERMINATION BY DOE OF THE APPROPRIATE DISTRIBUTION IN ACCORD WITH APPLICABLE PROCEDURES;

WHEREAS, DOE WISHES TO LIMIT, TO THE EXTENT POSSIBLE, THE INCREMENTAL LOSSES SUFFERED BY PERSONS WHO HAVE BEEN ADVERSELY AFFECTED BY SUCH VIOLATIONS, WHICH MIGHT ARISE BECAUSE OF THE TIME ELAPSED IN DETERMINING APPROPRIATE DISTRIBUTIONS; AND

WHEREAS, TREASURY IS CONCERNED WITH THE SECURITY OF AMOUNTS SO PAID IN TO DOE, BECAUSE SUCH AMOUNTS MAY EVENTUALLY BECOME MONIES FOR THE USE OF THE UNITED STATES WITHIN THE MEANING OF 31 U.S.C. 484;

NOW THEREFORE, DOE AND TREASURY AGREE AS FOLLOWS:

1) IN ACCORDANCE WITH TITLE 7 GENERAL ACCOUNTING OFFICE POLICY AND PROCEDURES MANUAL FOR GUIDANCE OF FEDERAL AGENCIES, SECTIONS 4.10(6), 5.1 and 5.2, DOE SHALL ESTABLISH A DEPOSIT FUND ESCROW ACCOUNT (HEREINAFTER "THE ACCOUNT") IN TREASURY BEARING AN ACCOUNT SYMBOL AND TITLE ASSIGNED BY TREASURY. DOE AGREES TO ADMINISTER THE ACCOUNT IN ACCORDANCE WITH THIS AGREEMENT.

2) DOE MAY AT ANY TIME AND IN ITS DISCRETION DEPOSIT TO THE CREDIT OF THE ACCOUNT ALL OR ANY PART OF THE AMOUNTS RECEIVED BY IT BECAUSE OF SUCH VIOLATIONS;

3) AMOUNTS IN THE ACCOUNT SHALL BE INVESTED BY TREASURY AT THE REQUEST OF DOE IN TREASURY NON-MARKETABLE GOVERNMENT ACCOUNT SERIES SECURITIES (HEREINAFTER "MARKET-BASED SPECIALS"); PROVIDED THAT, IF AT ANY TIME THE BALANCE OF THE ACCOUNT FALLS BELOW \$100,000, TREASURY IS NOT REQUIRED TO MAKE ANY REQUESTED INVESTMENT UNTIL THE ACCOUNT BALANCE EXCEEDS \$100,000. INCOME EARNED THEREBY IS TO BE CREDITED TO THE ACCOUNT. THE OPERATING PROCEDURES FOR SUCH INVESTMENTS ARE DESCRIBED IN A SEPARATE MEMORANDUM OF UNDERSTANDING BETWEEN TREASURY AND DOE DATED APRIL _____, 1980, AND ARE AGREED TO AND INCORPORATED IN THIS AGREEMENT BY REFERENCE, WITH THE SAME EFFECT AS IF FULLY STATED HEREIN;

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4) AT SUCH TIME AS DOE DECIDES THAT AMOUNTS IN THE ACCOUNT WILL NOT OTHERWISE BE APPLIED IN ACCORDANCE WITH THE EPAA AND/OR OTHER APPLICABLE PROVISIONS OF LAW, THE PRINCIPAL BALANCE REMAINING IN THE ACCOUNT, TOGETHER WITH ALL EARNINGS ON THAT BALANCE, SHALL BE DEPOSITED BY DOE IN THE UNITED STATES TREASURY TO THE CREDIT OF MISCELLANEOUS RECEIPTS;

5) TREASURY'S FUNCTIONS UNDER THIS AGREEMENT ARE EXPRESSLY LIMITED TO ACCEPTING SUCH AMOUNTS AS DOE, IN ITS SOLE DISCRETION, TENDERS FOR DEPOSIT TO THE ACCOUNT; INVESTING ALL OR PART OF THE BALANCE IN THE ACCOUNT IN ACCORDANCE WITH INSTRUCTIONS GIVEN BY DOE IN CONFORMITY WITH THE REQUIREMENTS OF THIS AGREEMENT AND OF THE MEMORANDUM OF UNDERSTANDING REFERRED TO IN NUMBERED PARAGRAPH 3 OF THIS AGREEMENT; AND MAKING SUCH DISBURSEMENTS FROM THE ACCOUNT AS DOE INSTRUCTS. IT IS EXPRESSLY ACKNOWLEDGED THAT TREASURY HAS NO RESPONSIBILITY TO MAKE ANY INVESTMENTS NOT REQUESTED BY DOE IN CONFORMITY WITH THE REQUIREMENTS OF THIS AGREEMENT AND OF THE MEMORANDUM OF UNDERSTANDING REFERRED TO IN NUMBERED PARAGRAPH 3 OF THIS AGREEMENT. IT IS FURTHER EXPRESSLY ACKNOWLEDGED THAT TREASURY HAS NO RESPONSIBILITY FOR INTERPRETATION OF STATUTORY OR OTHER AUTHORITY AVAILABLE TO DOE; FOR THE COLLECTION OF THE FUNDS WHICH ARE THE SUBJECT OF THIS AGREEMENT; OR FOR DETERMINATIONS OR PROCEDURES RELATED TO THE ULTIMATE OWNERSHIP OR DISPOSITION OF SUCH FUNDS.

6) THIS AGREEMENT SHALL BECOME EFFECTIVE ON THE DATE IT IS SIGNED FOR DOE AND TREASURY AND, IF NOT SIGNED BY BOTH ON THE SAME DATE, THEN ON THE LATER DATE SIGNED; AND

7) THIS AGREEMENT SHALL REMAIN IN EFFECT UNTIL FIVE YEARS FROM THE DATE OF ITS EXECUTION UNLESS TERMINATED, AMENDED OR EXTENDED BY MUTUAL AGREEMENT OF DOE AND TREASURY. UPON EXPIRATION OR TERMINATION OF THIS AGREEMENT, ANY AND ALL FUNDS REMAINING IN THE ACCOUNT SHALL BE REFUNDED TO DOE FOR SUCH DISPOSITION AS DOE, IN ITS SOLE DISCRETION, DETERMINES IS AUTHORIZED.

FOR THE DEPARTMENT OF ENERGY


BY Jack E. Hobbs, Controller 4/4/80
(NAME & TITLE) (DATE)

FOR THE DEPARTMENT OF TREASURY


BY Paul H. Taylor 4/7/80
(NAME & TITLE) (DATE)
Paul H. Taylor
Fiscal Assistant Secretary

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