

Register for Order

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PART V



DEPARTMENT OF
ENERGY

Economic Regulatory
Administration



Exemption of Kerosene-Base Jet
Fuel and Aviation Gasoline from
the Mandatory Petroleum Price
Regulations

[6450-01-M]

Title 10—Energy
CHAPTER II—DEPARTMENT OF
ENERGY

[Docket No. ERA-R-78-5 Docket No. ERA-R-78-6]

PART 210—GENERAL ALLOCATION
AND PRICE RULES

PART 212—MANDATORY
PETROLEUM PRICE REGULATIONS

Exemption of Kerosene-Base Jet Fuel
and Aviation Gasoline From the
Mandatory Petroleum Price Regula-
tions.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending 10 CFR Parts 210 and 212 to exempt kerosene-base jet ("kerojet") fuel and aviation gasoline from its Mandatory Petroleum Price Regulations. The exemption has been transmitted to the Congress as DOE Energy Action No. 4 under the procedures set forth in the Energy Policy and Conservation Act which provide for a fifteen-day review period. In connection with its exemption of kerojet fuel and aviation gasoline from the price regulations, the ERA is issuing concurrently with this rule a separate amendment exempting kerojet fuel and aviation gasoline from the Mandatory Petroleum Allocation Regulations. Both exemptions will become effective on the first day following the expiration of the fifteen-day Congressional review period. We are also issuing two documents entitled *Findings and Views Concerning the Exemption of Kerojet Fuels from the Mandatory Petroleum Allocation and Price Regulations* and the *Findings and Views Concerning the Exemption of Aviation Gasoline from the Mandatory Petroleum Allocation and Price Regulations* ("Findings"). The Secretary of Energy (the "Secretary") is submitting both amendments and the Findings to the Congress for review.

EFFECTIVE DATE: The first day following the expiration of the fifteen-day Congressional review period.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Comments Received.
- III. Findings and Views.
- IV. Standby Authority.

I. BACKGROUND

On February 12, 1978, the Economic Regulatory Administration of the Department of Energy issued advance notices of proposed rulemaking and public hearing on Kerojet fuel deregulation (43 FR 6959, February 17, 1978) and aviation gasoline deregulation (43 FR 6962, February 17, 1978). We concurrently issued two documents entitled *Preliminary Findings and Views Concerning the Exemption of Kerojet Fuels from the Mandatory Petroleum Allocation and Price Regulations* and *Preliminary Findings and Views Concerning the Exemption of Aviation Gasoline from the Mandatory Petroleum Allocation and Price Regulations* ("Preliminary Findings"). The advance notices were issued to obtain public comment on the Preliminary Findings for the purpose of determining whether the ERA should initiate rulemaking proceedings proposing the exemption of kerojet fuel and aviation gasoline from the price and allocation regulations.

The comments submitted in response to the advance notices generally supported our Preliminary Findings. Therefore, on June 22, 1978 we concurrently issued notices of proposed rulemaking on kerojet fuel deregulation (43 FR 27974, June 27, 1978) and aviation gasoline deregulation (43 FR 27976, June 27, 1978).

The comments and statements in response to the advance notices enabled us to prepare the Findings in support of exempting kerojet fuel and aviation gasoline.

Section 402(c)(1) of the Department of Energy Organization Act (DOE Act, Pub. L. 95-91) requires the FERC to consider any proposal by the Secretary to amend any regulation under section 4(a) of the Emergency Petroleum Allocation Act, as amended (EPAA, Pub. L. 93-159), when either section 8 or section 12 of the EPAA requires the President to transmit the proposal to each House of Congress for its review under section 551 of the Energy Policy and Conservation Act, as amended (EPCA, Pub. L. 94-163).

Under this statutory provision, the Secretary forwarded to the FERC by letter dated June 22, 1978, the proposed amendments to exempt kerojet fuel and aviation gasoline from both the Mandatory Petroleum Allocation Regulations and the Mandatory Petroleum Price Regulations.

The FERC published a notice of public hearing (43 FR 29298, July 7, 1978) and conducted its hearings concerning the proposed exemptions of aviation gasoline and kerojet fuel on August 1 and 3, 1978, respectively. In addition, the FERC accepted written comments through August 11, 1978. The FERC's hearing transcript, the written comments, the transcripts of the ERA hearings of March 22, 1978 and March 23, 1978, the ERA's Findings, and the earlier comments submitted to the ERA were the basis of the FERC's subsequent deliberations on kerojet fuel and aviation gasoline deregulation.

By letter of September 6, 1978, the FERC responded to the Secretary, advising him of its preliminary conclusions and that unless by noon, September 8, 1978 the Secretary were to inform the FERC that he wished to consult on any matter addressed in the letter, the FERC would forward to the Secretary a further letter stating its concurrence in the proposals without formal recommendations. The Deputy Secretary responded on September 11, 1978, stating that in light of the fact that the FERC's concurrence in the amendments proposed by the Secretary would not be subject to any binding recommendations within the meaning of 404(b) of the DOE Act, no further consultation beyond the exchange of letters would be necessary. The FERC, on September 12, 1978, concurred without recommendations in the Secretary's kerojet fuel and aviation gasoline deregulation proposals and on that date issued its *Analysis and Recommendations* in these matters.

Section 404(c) of the DOE Act provides that the Secretary, following the publication of the FERC's recommendations, (1) may issue a final rule in the form initially proposed if the FERC has concurred, (2) may issue a final rule in amended form so that the rule conforms in all respects with the FERC's recommended changes, or (3) may issue no rule. Inasmuch as the FERC concurred without recommendations, we are issuing the kerojet fuel and aviation gasoline deregulation amendments under section 404(c)(1) of the DOE Act.

Concurrently with the issuance of this amendment exempting kerojet fuel and aviation gasoline from the Mandatory Petroleum Price Regulations, we are issuing a separate amendment to exempt kerojet fuel and aviation gasoline from the Mandatory Petroleum Allocation Regulations. The Secretary is concurrently submitting both amendments for Congressional review, as DOE Energy Actions Nos. 4 and 3, respectively, pursuant to section 551 of the EPCA, and in accordance with section 102 of the Energy Conser-

vation and Production Act, as amended (ECPA, Pub. L. 94-385), which requires that the DOE submit separate energy actions to the Congress when proposing the exemption of any oil, refined petroleum product, or refined product category from price and allocation regulations but does not prohibit concurrent submissions of such separate energy actions. We are combining kerojet fuel and aviation gasoline into one refined product category, as permitted under the definition of that term in section 12(c)(3) of the EPAA. Thus, we are submitting for Congressional review a single energy action for the removal of allocation controls from both kerojet fuel and aviation gasoline and another energy action for the removal of price controls from both products.

II. COMMENTS RECEIVED

A. ADVANCE NOTICE ON KEROJET FUEL DEREGULATION

The ERA invited written comments on the advance notice concerning kerojet fuel deregulation through March 27, 1978 and held a public hearing in Washington, D.C. on March 23, 1978. Over sixty parties submitted oral and written comments in response to the February 17 advance notice. Those offering comments included major integrated refining companies, large and small independent refining companies, retailers, trade associations, air carriers, consumer groups and governmental representatives.

All of those commenting in response to the advance notice on kerojet fuel recommended that the ERA propose the exemption of kerojet fuel from the allocation and price regulations. This recommendation was based generally upon agreement with our projections as to supply and demand, completion, and other findings and views set forth in the Preliminary Findings. In particular, there was widespread agreement that competition and market forces are adequate to protect consumers following the exemption of kerojet fuel from regulation. Many commenters expressed the opinion that deregulation would enhance competition in all sectors of the kerojet fuel market.

Retailers indicated that there may be kerojet fuel price increases in certain regions by fixed base operators to reflect increased non-product costs. Refiners generally agreed with our projections in the Preliminary Findings that while regional price increases may occur as both refiner and retailer non-product cost increases are fully passed through on the volume of product on which they are incurred, these regional increases should be offset in part by reductions in other regions.

The airline industry and, in particular, the Air Transport Association,

generally recommended the establishment of a mechanism, similar to the proposed Special Rule No. 4 for motor gasoline (See 42 FR 40915, August 12, 1977), to assure airlines a source of kerojet fuel supply during the transition period following deregulation. The airline industry also favored the establishment of a price monitoring system, without a pre-set index or "trigger," coupled with a formal procedure which would require the ERA to take action on an air carrier's complaint of discriminatory treatment with regard to pricing or supply of kerojet fuel. Other commenters were nearly unanimously opposed to both recommendations.

B. ADVANCE NOTICE ON AVIATION GASOLINE DEREGULATION

The ERA invited written comments on the advance notice concerning aviation gasoline deregulation through March 27, 1978 and held a public hearing in Washington, D.C. on March 22, 1978. Forty-six parties submitted oral and written comments in response to the February 17 advance notice. Those offering comments included major integrated refining companies, large and small independent refining companies, retailers, trade associations representing consumers, and governmental representatives.

All of those commenting in response to the advance notice on aviation gasoline recommended that the ERA propose the exemption of aviation gasoline from the allocation and price regulations without an accompanying price monitoring or supply protection program. This recommendation was based generally upon agreement with our projections as to supply and demand, competition, and other findings and views set forth in the Preliminary Findings. As was the case with regard to kerojet fuels, there was agreement that competition and market forces are adequate to protect consumers following the exemption of aviation gasoline from regulation. Many commenters expressed the opinion that deregulation would enhance competition in the aviation gasoline market.

In general, retailers concurred with the Preliminary Findings that there will be only minor pressure to increase prices of aviation gasoline as a result of deregulation. Retailers indicated, however, that fixed base operators in certain regions may increase prices to reflect localized increased non-product costs. Refiners generally agreed with our projections in the Preliminary Findings that, while regional price increases may occur as both refiner and retailer non-product cost increases are fully passed through on the volume of product on which they are incurred, these regional increases should be

offset in part by reductions in other regions.

C. FERC COMMENTS RECEIVED ON KEROJET FUEL AND AVIATION GASOLINE DEREGULATION

The FERC invited written comments on the ERA's proposals to exempt kerojet fuel and aviation gasoline through August 11, 1978 and held a public hearing on aviation gasoline on August 1, 1978 and a public hearing on kerojet fuel on August 3, 1978. Four parties commented orally on the aviation gasoline proposal and seven parties so commented on the kerojet fuel proposal. The FERC also received fifty-one written comments. Those offering comments on the deregulation proposals included major integrated refining companies, large and small independent refining companies, retailers, trade associations, air carriers, and governmental representatives.

None of the oral or written comments to the FERC expressed opposition to the deregulation of either aviation gasoline or kerojet fuel. There were, however, some suggestions for modifications. A large majority of the written comments expressed support for the proposal without further elaboration. A few comments provided additional factual material or added analysis to supplement the ERA's Findings.

In its September 6 letter to the Secretary the FERC indicated that, after reviewing the comments, it found two areas of particular concern. The first reflected its apprehension over the possibility of spot shortages. This concern arose partially in response to the July 26, 1978 letter from the Energy Planning Division of the Montana Department of Natural Resources and Conservation to the FERC indicating potential difficulties new fixed base operators and small, established fixed base operators could have in providing supplies of aviation products for forest fire fighting and other emergency situations. The FERC's concern also related to the commercial airlines' recommendation that a mechanism be established to provide airlines adequate sources of supply of kerojet fuel during the transition period following deregulation. This concern is addressed more fully in the preamble to the aviation gasoline and kerojet fuel allocation exemption.

FERC's other concern related to the price monitoring program recommended by the airlines. In its September 6 letter the FERC concluded that in view of our announced intent generally to monitor aviation fuel prices, a binding recommendation in this regard under Section 404 of the DOE Act was not necessary. The FERC did suggest, however, that the manner in which we intend to monitor prices be

described at the time we announce the exemption and that such a program should not contain a "trigger."

After carefully considering all the comments, we have concluded that the initial view that kerojet fuel and aviation gasoline should be exempted from regulations is correct. No information or data were presented which meaningfully alter the ERA's conclusions in its Findings.

In response to the FERC's suggestion regarding the price monitoring system, we reemphasize that we intend to analyze kerojet fuel and aviation gasoline prices after deregulation. As we have done with respect to previously deregulated products, we will continue to collect supply and price data pursuant to our general statutory authority to receive such information so as to enable us to detect any significant changes in market conditions which may develop following deregulation of kerojet fuel and aviation gasoline.

As part of its role in monitoring market price trends, the Energy Information Administration (EIA) of the DOE collects pricing data on kerojet fuel and aviation gasoline from refiners, large reseller, retailers, and gas plant operators. The EIA uses the data reported on FEA Form P302-M-1 to calculate national weighted average wholesale and retail prices of kerojet fuel and aviation gasoline on a monthly basis. This information is made available to the public in two monthly publications prepared by the EIA, the "Monthly Energy Review" and the "Monthly Petroleum Product Price Report."

We also anticipate continued reliance in our monitoring activities on the Civil Aeronautics Board's monthly report "Fuel Cost and Consumption." This publication provides average prices per gallon for aviation fuels on a monthly basis. It also indicates the percentage price increase per gallon over the average price per gallon in the preceding month, the same month in the preceding year, and in July 1973. This data is provided separately for individual domestic and international trunk, local service, cargo, and supplemental carriers.

In view of the relatively small universe of suppliers and purchasers of kerojet fuel, we do not believe a price monitoring or survey system more detailed than that presently existing is necessary to detect significant changes in market conditions.

We have decided not to establish a formal procedure which would require the ERA to take action on an air carrier's complaint of discriminatory treatment with regard to pricing or supply of kerojet fuel. Our analysis indicates that when free market forces emerge following kerojet fuel and aviation

gasoline deregulation, such problems will be minimized. We believe therefore that a formal complaint procedure is unnecessary, inasmuch as most airlines are capable of bringing to our attention instances of discriminatory treatment with respect to the pricing or supply of kerojet fuel. We encourage communication from any party which may experience difficulty in securing adequate supplies of either kerojet fuel or aviation gasoline following deregulation, inasmuch as such information will facilitate our analysis of the effects of deregulation on price trends and supply distribution.

While fixed base operators may increase prices for kerojet fuel and aviation gasoline in certain regions after deregulation to reflect increased non-product costs, these regional increases should be offset in part by reductions in other regions. We have concluded that during a period of adequate supplies which is expected at least through 1980, average prices for kerojet fuel and aviation gasoline will not rise to levels significantly higher than if regulations were continued.

III. FINDINGS AND VIEWS

In addition to this amendment exempting kerojet fuel and aviation gasoline from the Mandatory Petroleum Price Regulations and the concurrent amendment exempting kerojet fuel and aviation gasoline from the Mandatory Petroleum Allocation Regulations, we are issuing the Findings supporting these amendments, as required by section 12 of the EPAA. They are based upon our consideration of the comments of those persons who participated in the rulemaking proceedings and other available information.

Our general conclusions set forth in the Findings may be summarized, in part, as follows:

1. Kerojet fuel and aviation gasoline are not in short supply.
2. Exemption of kerojet fuel and aviation gasoline from the allocation and price regulations will not have an adverse impact on the supply of any other oil or refined petroleum product subject to the EPAA.
3. Following exemption of kerojet fuel and aviation gasoline from regulations, competition and market forces should be adequate to protect consumers.
4. Exemption of kerojet fuel and aviation gasoline from regulation will not result in inequitable prices for any class of user of kerojet fuel, aviation gasoline, or other products.
5. The exemption of kerojet fuel and aviation gasoline will not have adverse impacts on any governmental unit, state or region.
6. As long as supplies remain adequate, exemption of kerojet fuel and

aviation gasoline will not have an adverse effect on the availability of consumer goods and services; the Gross National Product (GNP); competition; small business; supply and availability of energy resources as fuel or feedstock for industry; consumer prices; the Consumer Price Index, or the implicit price deflator for the GNP; or the rate of unemployment.

We also believe that as long as supplies continue to be adequate, the continuation of allocation and price regulations on kerojet fuel and aviation gasoline is unnecessary to protect the public health, safety and welfare, and the national defense (section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the maintenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)). Adequate supply and the positive effects of increased competition should also ensure that the exemption of kerojet fuel and aviation gasoline would be consistent with the preservation of an economically sound and competitive petroleum industry (section 4(b)(1)(D)); the equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)(1)(F)); economic efficiency (section 4(b)(1)(H)); and minimization of economic distortion, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)). The exemption should have no adverse effect on the allocation of suitable crude oil to domestic refineries (section 4(b)(1)(E)).

IV. STANDBY AUTHORITY

Section 12(f) of the EPAA provides that following the exemption of any refined product category from regulation, the DOE shall have the authority at any time to reimpose price regulations if necessary to attain the objectives of the EPAA. For this reason, we are adopting amendments which exempt kerojet fuel and aviation gasoline from the general price regulations but which do not delete those regulations from the Code of Federal Regulations. We have, in effect, converted them to standby status, so that, in the event of shortages or other occurrences which might require reimposition of regulations, we may, with appropriate modifications, quickly put them back into effect. In this connection, we have recently adopted additional standby production allocation and price regulations (44 FR 3928, January 18, 1979) that may be ordered into effect with respect to kerojet fuel and aviation gasoline.

(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; Energy Conservation and Production Act, Pub. L. 94-385, as amended, Pub. L. 95-70, Pub. L. 95-91; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Parts 210 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective on the first day following the expiration of the fifteen-day Congressional review period provided for by section 551 of the Energy Policy and Conservation Act.

Issued in Washington, D.C., January 31, 1979.

DAVID J. BARDIN,
*Administrator, Economic
Regulatory Administration.*

1. Section 210.35 is amended by revising subparagraph (g)(2) and by adding subparagraph (h)(2) to read as follows:

§ 210.35 Exempted products.

* * * * *

(g) * * *
(2) Aviation jet fuel as defined in § 212.31 of this chapter is exempt from the provisions of Part 212 of this chapter.

(h) * * *
(2) Aviation gasoline as defined in § 212.31 of this chapter is exempt from the provisions of Part 212 of this chapter.

2. Section 212.31 is amended in the definition of "covered products" to read as follows:

§ 212.31 Definitions.

* * * * *

"Covered products" means butane, crude oil, gasoline, natural gas liquids, natural gasoline, and propane. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend. A blend of one or more covered products with one or more non-petroleum-based products is a covered product if the covered product or products constitutes more than 50 percent by volume of the blend, and is that covered product which is the most predominant by volume in the blend.

* * * * *

3. Section 212.56 is amended to read as follows:

§ 212.56 General refinery products.

(a) The following general refinery products are exempt from the provisions of this part: Aviation gasoline, benzene, gas oil, greases, hexane, kerosene, lubricant base oil stocks, lubricants, naphthas, No. 1 heating oil, No. 1-D diesel fuel, residual fuel oil, special naphthas (solvents), toluene, unfinished oils, xylene, and other finished products.

(b) The following general refinery products are not exempt from the provisions of this part: Butane, natural gas liquids, natural gasoline, and propane.

4. Part 212 is amended by adding a new § 212.58 as follows:

§ 212.58 Aviation jet fuel.

The sales of aviation jet fuel are exempt from the provisions of this part.

[FR Doc. 79-3908 Filed 2-1-79; 8:45 am]