

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

WASHINGTON STATE ENERGY OFFICE

(agency name)

Administrative Order No. 79-1

(1) I, Jack O. Wood, director of Washington State Energy Office

do promulgate and adopt at 400 E. Union Ave., Olympia, Washington (place)

the annexed rules relating to:

WAC 194-14 - Petroleum Allocation

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules. and WSR 79-09-018 This action is taken pursuant to Notice No. WSR 79-07-092 filed with the code reviser on 6-29-79. Such rules shall take effect:

- [x] pursuant to RCW 34.04.040(2). [] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04. (1977 c 19 § 2) that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

[] (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

[x] (b) This rule is promulgated pursuant to RCW 43.21F.050 (12) which directs that the Washington State Energy Office (agency)

has authority to implement the provisions of P.L. 93-159 Emergency Petroleum Allocation Act; 10 C.F.R. 205 of the Federal (name of act or RCW citation) Mandatory Petroleum Allocation Regulations.

[] (c) This rule is promulgated under the general rule-making authority of the (agency)

as authorized in RCW

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this agency is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON APPROVED AND ADOPTED August 27, 1979 FILED

By Jack O. Wood Director, Washington State Energy Office Title

AUG 30 1979

CODE REVISER'S OFFICE WSR 79-09-078

[Form CR-7: Effective 12/1/77]



STATE OF
WASHINGTON

Dixy Lee Ray
Governor

WASHINGTON STATE ENERGY OFFICE

400 E. Union-1st floor, Olympia, Washington 98504

206/754-1350

August 30, 1979

M E M O R A N D U M

TO: Code Revisor
Secretary of the Senate
Chief Clerk of the House of Representatives

FROM: Jack O. Wood, Director
Washington State Energy Office

SUBJECT: Statement of Purpose for Amendatory Rule

In compliance with Chapter 34.04 RCW, the Washington State Energy Office (WSEO) does hereby submit a Statement of Purpose for the amendatory rule adopted August 27, 1979.

- (a) The rule pertains to Petroleum Allocation. The amendments update and modify the allocation procedures. The rule is promulgated pursuant to RCW 43.21F.050 which enables the State Energy Office to implement the provisions of P.L. 93-159 Emergency Petroleum Allocation Act; 10 C.F.R. 205 of the MANDATORY Petroleum Allocation Regulations. The rule amends certain sections of WAC 194-14. Proposed rules were filed (file number WSR 79-07-092) and appeared in the State Register July 15, 1979.
- (b) The amendatory rules clarify procedures for processing requests for petroleum product from the state set-aside reserves; establish priorities for processing requests for petroleum product from qualified applicants (bulk purchasers); establish procedures for recommending permanent assignments to DOE on behalf of end-users as provided for under the Mandatory Petroleum Allocation Regulations; and revise the composition of appeals board whose function is to hear appeals from state assignment orders issued under the Mandatory Petroleum Allocation Program (set-aside).
- (c) The agency personnel responsible for drafting, implementing and enforcement of these rules are located at 400 East Union, 1st Floor, Olympia, Washington, and include:

Jack O. Wood, Director	754-1351
Philip C. Wiatrak, Assistant Director	754-1377
Eddie L. Miller, Fuel Allocation Officer	754-1362
Ed McGuire, Contingency Planner	754-1367

- (d) The August 8, 1979 public hearing at the WSEO in Olympia, Washington was attended by 13 persons. A list of attendees including whom they represented is attached.

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August 30, 1979

The major concerns centered on the definitions of Passenger Transportation Services, and amendments were proposed. One attendee (Mr. Gary Smith) requested that the rules include as a priority commercial users of petroleum products not entitled to an allocation level (non-bulk purchasers).

The meeting was continued on August 27, 1979 at which time WSEO staff made recommendations on the suggested amendments to the proposed rules. The definition of Passenger Transportation Services was amended to address the concerns raised at the August 8, 1979 hearing. The request to make set-aside product available to commercial users not entitled to an allocation under federal law was dismissed as being beyond the scope of the proposed rules.

August 8, 1979 Hearing on Proposed WAC's

<u>Name</u>	<u>Representing</u>
Kevin Ryan	Office of the Attorney General
Bill Roach	Seattle-King County Commuter Pool
Mike Howard	Seattle-King County Commuter Pool
Gordon Kirkemo	Wash. State Dept. of Transportation
Gordon Burch	University of Washington
Audrey Pan	Seattle-King County Commuter Pool
Allen M. Mitchell	Rainier National Bank Transportation
Norm Schut	Senior Citizen Lobby
Karen Kotkins	Group Health Cooperative
Gary Smith	Independent Business Association
Phil Wiatrak	Wash. State Energy Office (Fuel Allocation)
Jack O. Wood	Director, Wash. State Energy Office
Ed McGuire	Contingency Planner, Wash. State Energy Office

AMENDATORY SECTION (Amending Order 1, filed 1/18/77)

WAC 194-14-030 DEFINITIONS. The following words and terms have the following meanings for the purposes of this chapter, unless otherwise indicated.

(1) "Agricultural production" means all the activities classified under the industry code numbers specified in paragraph (a) below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph (b) which are excluded:

(a) Activities included. (i) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph (b) of this section.

(ii) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, as specified in paragraph (b) below; and

(iii) All the following other industry code numbers:

1474 Potash, Soda and Borate Minerals (Potash mining only);

1475 Phosphate Rock;

2141 Tobacco Stemming and Redrying;

2411 Logging Camps and Logging Contractors;

2421 Sawmills and Planing Mills;

2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);

2873 Nitrogenous Fertilizers;

2874 Phosphatic Fertilizers;

2875 Fertilizers, Mixing Only;

2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;

4212 Local Trucking Without Storage (farm to market hauling and log trucking only);

4971 Irrigation Systems (for farm use); and

5462 Retail Bakeries, Baking and Selling.

(b) Activities excluded. (i) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);

0279 Animal Specialties, Not Elsewhere Classified (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);

1742 Veterinary Services for Animal Specialties;

0752 Animal Specialty Services;

0781 Landscape Counseling and Planning;

9782 Lawn and Garden Services; and

0949 Gathering of Forest Products, Not Elsewhere Classified.

(ii) All the following industry code numbers, otherwise listed under Major Group 20, Food and Kindred Products, of Division D, Manufacturing, are excluded from the definition:

2047 Dog, Cat and Other Pet Food;

2067 Chewing Gum; and

2085 Distilled, Rectified and Blended Liquors.

Generally, an applicant may be considered as an agricultural producer if he derives the majority of his income from that activity.

((1)) (2) Assignment: An action designating that an authorized purchaser be supplied at a specified entitlement level by a specified supplier.

(3) Base period (or base allocation period): (a) for gasoline means the month of the period November, 1977, through October, 1978, corresponding to the current month;

(b) for middle distillates means the month during calendar year 1978 corresponding to the current month.

((2)) (4) Base Period Supply Volume: The volume of purchases from a supplier or to purchasers during the base period ((as defined in 10C-F-R-S211-17)).

(5) "Bulk purchaser" means any firm which is an ultimate consumer which, as part of its normal business practices, purchases or obtains middle distillates or motor gasoline from a supplier and either (a) receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location, or (b) with respect to use in agricultural production, receives delivery into a storage tank with a capacity not less than 50 gallons substantially under the control of that firm. A bulk purchaser of heating oil would include any firm or individual needing the product for space heating and has a storage tank substantially under the control of that firm or individual at a fixed location.

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~~((43))~~ (6) Coordinator: The Director or his designee who is authorized to sign orders and authorizing documents for permanent assignments.

~~((44))~~ (7) Current Requirements: The supply of an allocated product needed by an end-user or wholesale purchaser to meet its present supply requirements for any single month.

~~((45))~~ (8) Director: The Director of the Washington State Energy Office.

(9) Emergency or Severe Hardship: A situation which, in the opinion of the office, represents a threat or foreseeable danger to the health, safety and well being of the citizens of the state.

~~((46))~~ (10) Emergency Petroleum Allocation Act: Public Law 93-159.

(11) Emergency services: Law enforcement, fire fighting, and emergency medical services.

~~((47))~~ (12) End-User: Any person who is an ultimate consumer of an allocated product other than a wholesale purchaser-consumer and is also a bulk purchaser.

(13) Energy production: The exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods. Excluded from this definition are synthetic natural gas manufacturing, electrical generation whose power source is petroleum based, gasoline blending and manufacturing and refinery fuel use.

(14) Market area: The delineation of the market area will vary in each case, and ultimately will be determined by the office. There can be no hard and fast criteria, but some general guidelines may be observed:

(a) In a city of 25,000 population, the market area to be considered should be the area within a one-mile radius of the applicant or affected party.

(b) In a suburban area (housing developments, shopping centers, apartments) the market area to be considered should be the area within a two-to-three mile radius of the applicant or affected party, depending upon the density of recent growth and traffic pattern characteristics in the area.

(c) On a non-urban arterial highway with full control of access, the market area should include the area within one-fourth mile of the access point and the next two access points in each direction from the applicant or affected party.

(d) On a non-urban arterial highway with uncontrolled access or partially controlled access, the market area should include five miles in either direction along the highway from the applicant or affected party.

(e) On a through street or through highway in a rural area, the market area should be that area within a five mile radius of the applicant or affected party.

(f) In a town under 25,000 population, the market area should be a two mile radius from the applicant or affected party.

As used in the above guidelines, the following terms have the following meanings:

"Arterial highway" means a highway primarily for through traffic, usually on a continuous route.

"Full control of access" means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections.

"Partially controlled access" means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

(15) Medical and nursing buildings: buildings that house medical, dental or nursing activities including, but not limited to those listed in Appendix I of 6 CFR 300.18-300.19, the use of clinics, hospitals, nursing homes and other facilities.

(16) Middle distillate: any derivatives of petroleum including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371° and 700° F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C or ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes and process oil.

(17) Motor gasoline: a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° to 390° F and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties.

~~((18))~~ (18) Office: The Washington State Energy Office.

~~((19))~~ (19) Officer: The Director or his designee who is authorized to sign orders and authorizing documents for state set-aside assignments.

~~((20))~~ (20) Order: A written directive or verbal communication of a written directive if promptly confirmed in writing, issued by the Office concerning state set-aside assignments or permanent assignments, or a written document issued by the Fuel Allocation Appeals Board deciding an appeal from an order of the Office. ~~((An order is effective on the date of its issuance.))~~ An order shall be deemed to be issued on the date on which it is signed by the Officer or Coordinator. With respect to permanent assignment orders, they shall not become effective unless and until the Regional DOE office authorizes the action. Set-aside assignment orders are effective on the date of issuance.

(21) Passenger Transportation Services: (a) air, land and water facilities and services designed and used for the carrying of passengers whether publicly or privately owned. These facilities and services shall include, but not be limited to: Tour buses, charter buses, taxicabs and other methods or modes which serve the general public on a for hire or fare basis; Special transportation services for the elderly and/or handicapped; Vanpools and shuttle buses which shall regularly carry at least seven (7) persons, including the driver and which at least eighty (80) percent of that vehicles mileage can be verified as attributed to the use of commuting; and (b) bus transportation of pupils to and from school and school sponsored activities.

~~((22))~~ (22) Permanent Assignment: A recommendation by the Office to the ~~((Federal Energy Administration))~~ U. S. Department of Energy that an applicant be assigned a permanent supplier and an allocation entitlement.

~~((23))~~ (23) Prime Supplier: The supplier or producer which makes the first sale of any allocation product subject to the state set-aside into the state distribution system for consumption within the state. edjd

~~((24))~~ (24) Purchaser: Wholesale purchaser, end-user, or both.

~~((25))~~ (25) Retail Gasoline Outlet: Wholesale purchaser-reseller which purchases or otherwise obtains gasoline and resells or otherwise transfers it to ultimate consumers.

(26) Sanitation services: the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities during emergency conditions. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

~~((27))~~ (27) Set-Aside: The amount of an allocated product which is made available from the total supply of a prime supplier to resolve emergencies and hardships due to fuel shortages, pursuant to 10 C.F.R. S 211.17.

~~((28))~~ (28) Supplier: Any firm or subsidiary of any firm which presently sells, transfers or otherwise furnishes any allocated product or crude oil to wholesale purchasers or end-users.

(29) Telecommunications services: the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, during periods of substantial disruption of normal service.

(30) Truck: a motor vehicle with motive power designed primarily for the transportation of property or special purpose equipment and with a gross vehicle weight rating for a single vehicle (the value specified by the manufacturer as the loaded weight of the vehicle) or the equivalent thereof in excess of 20,000 pounds, or in the case of trucks designed primarily for drawing other vehicles and not so constructed as to carry a load other than part of the weight of the vehicle and the load so drawn, with a gross combination weight rating (the value specified by the manufacturer as the loaded weight of the combination vehicle) or the equivalent thereof in excess of 20,000 pounds.

~~((31))~~ (31) Wholesale Purchaser-Consumer: Any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (())jd

(b) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; or

(c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971.

~~((18))~~ (32) Wholesale Purchaser-Reseller: Any firm which purchases, receives through transfer, or otherwise obtains an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form.

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 1, filed 1/18/77)

WAC 194-14-040 APPLICATIONS FOR SET-ASIDE ASSIGNMENTS--FORM. Except as provided in WAC 194-14-050, all applications for state set-aside assignment shall be submitted on forms approved by the Office or in a signed letter containing the following information:

(1) The applicant's name, address, telephone number, prime supplier, amount requested and an explanation of the reason for the application, including the date by which the product is needed(,), and if available, the applicant's allocation for the month of application.

~~((If the applicant is a wholesale purchaser-consumer, the allocation figure for the month of application,))~~ The applicant must identify energy conservation programs which that individual or firm has in effect.

~~((3)) If the applicant is a wholesale purchaser-reseller, the allocation figure for the month of application, and the name of the applicant's oil representative-))~~

(3) If the applicant is a wholesale purchaser-reseller, current retail prices being charged for the requested fuel.

(4) If the applicant is a service or gas station, anticipated days and hours of operation.

The Office may request such additional information from an applicant as it deems necessary.

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order I, filed 1/18/77)

WAC 194-14-060 STATE SET-ASIDE ASSIGNMENTS--
((CRITERIA)). (1) General. To the extent that such supplies are available to the state, ~~((Assignments))~~ assignments from the state set-aside may be made to wholesale purchaser-consumers and end-users located within the state who demonstrate hardship or emergency, or to wholesale purchaser-resellers to enable them to supply such persons. An applicant may be deemed to demonstrate hardship if:

~~((1))~~ (a) Such applicant is undergoing curtailment of an energy source and must depend on an alternate source of energy for which he has no allocation or an insufficient allocation; or

~~((2))~~ (b) Said applicant is a wholesale purchaser-reseller and demonstrates:

~~((a))~~ (i) a need for additional product as a result of supply imbalance; and

~~((b))~~ (ii) good faith compliance with fair marketing practices; and

~~((c))~~ (iii) in cases where long term relief is available through action by the ((Federal-Energy-Administration)) U. S. DOE, that such action has been initiated by the applicant; or

~~((3))~~ (c) Said applicant is an end-user or wholesale purchaser-consumer who is unable to obtain needed product for his own use from his supplier of record.

(d) Said applicant has an energy conservation program in effect.

(2) Priorities and Procedures (a) To the maximum extent practicable the order in which cases will be processed for the month of request will be as follows:

(i) emergency or severe hardship situations, including space heating requirements of medical and nursing buildings;

(ii) passenger transportation services;

(iii) wholesale purchaser-consumer or end-user needing the product, in the opinion of the office, to avoid a serious disruption in their business operations;

(iv) retail outlets which are experiencing, in the opinion of the Office, an unusually low allocation level as compared to their average allocation levels because of such things as road construction, illness, specific market area problems, or other circumstances which prevented normal operations

during the base period. Also included in this category are service stations located in discrete market areas or communities which may be experiencing severe supply imbalances as compared to the statewide average. Such imbalances may be due to disproportionate growth, unanticipated demand, or product loss, (e.g., station closures) since the base allocation period. In addition, the Office may determine it appropriate to issue set-aside on the basis that an emergency or serious disruption in the market place may occur if such state action is not taken;

(v) all remaining cases representing wholesale purchaser-consumers or end-users;

(vi) all remaining applicants.

(b) If set-aside product is not available to meet all requests within a given category, as listed above in (2) (a), cases within that category will be processed on a first-in, first-out basis. No distinction will be made among cases received prior to the first of the month for which the product is requested. All such cases will be randomly logged in as being received on the first of the month.

(3) Acceptance of Product. Applicants receiving a set-aside assignment must notify their supplier of their intent to receive the allocated product no later than 7 days from the date the order was issued, whichever comes sooner. Such notification having been given, the set-aside order is valid irrespective of the fact that the allocated product may not be delivered during the month the assignment was made.

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 1, filed 1/18/77)

WAC 194-14-120 PERMANENT ASSIGNMENTS--CRITERIA--((PRIORITY)) AGRICULTURAL AND PASSENGER TRANSPORTATION SERVICES END-USERS. Applications from ((priority)) agricultural and passenger transportation services end-users ((as-described-in-10-C.F.R.-S-211,-subparts-F-K)) will be approved. These end-users must satisfy the Office through proper verification and certification that they meet the classification of ((priority)) agricultural or passenger services.

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 1, filed 1/18/77)

WAC 194-14-130 PERMANENT ASSIGNMENTS--CRITERIA--((NONPRIORITY)) ALL OTHER END-USERS. Applications from all other end-users ((nonpriority-users)) will not be approved unless the following conditions apply:

(1) There is severe economic impact on the business directly resulting from reliance on retail purchases by that business; and

(2) An energy conservation program is in effect as demonstrated to the Office; and

(3) Every attempt has been made, including feasible changes in regular business operations, to obtain needed fuel through retail outlets.

AMENDATORY SECTION (Amending Order 1, filed 1/18/77)

WAC 194-14-160 APPEALS BOARD. All appeals taken under these regulations shall be heard by the Fuel Allocation Appeals Board which shall consist of ((three-employees-of-the-Office-appointed-by-the-Director--The-Board-members-shall-be-persons-who-were-not-involved-in-the-decision-from-which-the-appeal-is-taken-)) the Director of the Office or his designee who shall serve as ex-officio member, and the directors, or their designees, of the Washington State Departments of Agriculture, State Patrol and Commerce and Economic Development.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 194-14-080 STATE SET-ASIDE--MAXIMUM QUANTITIES.