

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

WASHINGTON STATE ENERGY OFFICE
(agency name)

Administrative Order No. 80-1

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

do promulgate and adopt at State Energy Office, 400 E. Union, Olympia, WA 98504
the annexed rules relating to:

WAC 194-14-030, expanding the definition of "Passenger Transportation Services" to include Fleetpools.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 80-15-028 filed with the code reviser on October 3, 1980. 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 RCW 43.21F.050 and 43.21F.060 (name of act or RCW citation)

- [] (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 FILED

DEC 2 1980

CODE REVISER'S OFFICE WSR 80-18-035

ADOPTED December 2 19 80

By

Jack O. Wood

Director

Title

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

MINUTES OF PUBLIC HEARING ON WAC AMENDMENT

November 25, 1980

On November 25, 1980 a public hearing was held in the State Energy Office. The purpose of this meeting was to consider amending the WAC to include fleetpools in the definition of "Passenger Transportation Services" under the state set-aside allocation rules.

Present at the meeting were:

WSEO: Jack Wood, Dave Sjoding, Phil Wiatrak, Ed Miller, Dan Silver

Visitors: Dennis Pflug, Gene DeWeese

Phil Wiatrak opened the meeting at 9:30.

Dan Silver gave a background of the proposed amendment. He noted two reasons for WSEO's interest in this amendment. First, there is WSEO's desire to encourage ridesharing activities. Second, there is WSEO's interest in implementing SHB 96, which concerns use of state and local government vehicles for commuting purposes.

Dennis Pflug, representing Seattle/King County Commuter Pool, spoke in favor of the amendment. He noted state, regional, and federal government policies in support of ridesharing efforts. He suggested that the proposed amendment would assist these efforts by encouraging the formation of fleetpools. Pflug indicated that Commuter Pool had no problem with the amendment as drafted.

No person spoke against the amendment.

Wiatrak stated that, due to the general support for the amendment, it would be formally adopted, as previously planned, on December 2. He then adjourned the meeting.

DS/gh

AMENDATORY SECTION (Amending Order 79-1, filed 8/30/79)

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.

(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.

- (4) Base period supply volume: The volume of purchases from a supplier or to purchasers during the base period.
- (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.
- (6) Coordinator: The director or his designee who is authorized to sign orders and authorizing documents for permanent assignments.
- (7) Current requirements: The supply of an allocated product needed by an end-user or wholesale purchaser to meet its present supply requirement for any single month.
- (~~(8)~~) (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.
- (10) Emergency Petroleum Allocation Act: Public Law 93-159.
- (11) Emergency services: Law enforcement, fire fighting, and emergency medical services.
- (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) Fleetpool: A government or private motor pool which is used during nonwork hours for commuter ridesharing purposes. To qualify as a fleetpool, these general guidelines must be observed:
- (a) The motor pool must have a fleet of five or more passenger vehicles;
- (b) The principle use of the vehicles must be for the regular business of the firm, other than commuting;
- (c) During nonwork hours, the vehicles may not be used for private errands, other than commuting;
- (d) The government or business entity must enact a formal agreement with the employees consistent with the terms of this regulation; and
- (e) During the commute each such vehicle must be shared on a regular basis by three or more persons.
- (15) 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 nonurban 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 nonurban 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+)) (16) 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+)) (17) 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+)) (18) 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+)) (19) Office: The Washington State Energy Office.

((+19+)) (20) Officer: The director or his designee who is authorized to sign orders and authorizing documents for state set-aside assignments.

((+20+)) (21) 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 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+)) (22) 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 persons,

including the driver and which at least eighty percent of that vehicles mileage can be verified as attributed to the use of commuting; fleetspools; and

(b) Bus transportation of pupils to and from school and school sponsored activities.

((22)) (23) Permanent assignment: A recommendation by the office to the U.S. Department of Energy that an applicant be assigned a permanent supplier and an allocation entitlement.

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

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

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

((26)) (27) 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)) (28) 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)-(S)) § 211.17.

((28)) (29) 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)) (30) 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)) (31) 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)) (32) 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;

(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.

((32)) (33) 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.