

to employer appeal; however, the subsequent submittal of accurate and complete reports may result in a redetermination by the department. Benefits paid prior to the redetermination which are based on the arbitrary computation will be charged to each employer's account as though the initial determination were accurate even though subsequent redetermination based on accurate information would result in the issuance of a determination that the claim was invalid.

The amount paid to any claimant on the basis of the initial determination issued in accordance with the arbitrary computation procedure will not be established as an overpayment in the absence of fraud, misrepresentation or nondisclosure on the part of the claimant (RCW 50.20.160(1)); however, the department will not continue to pay benefits to a claimant once a redetermination of nonentitlement, based on accurate information on a complete wage detail report, has been issued. It was not the intention of the department in submitting the legislation, nor do we believe it was the intention of the legislature in adopting the legislation, to establish an exception to the qualification criteria, RCW 50.04.030, which would allow the continued payment of unemployment insurance benefits to individuals clearly not meeting the basic qualification criteria. It would be an unsound policy to dispense public funds in the guise of a penalty against an employer who has failed to comply with the provisions of the law when in fact it is the unemployment insurance fund which suffers the detriment and only the unqualified individual who is benefited. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-16-001, filed 8/14/78; Order 2-77, § 192-16-001, filed 9/2/77; Order 4-75, § 192-16-001, filed 8/29/75, effective 10/6/75.]

**WAC 192-16-002 Interpretative regulations--Employer reports--Further defining hours worked--RCW 50.12.070.** RCW 50.12.070 requires employers to report "the hours worked by each worker and such other information as the commissioner may by regulation prescribe," beginning July 1, 1977. In order to further define what hours should be included on quarterly wage reports, the commissioner accordingly prescribes as follows:

(1) Vacation pay. The employee will be credited for the actual number of hours on leave with pay. Vacations without pay will not count as hours worked. Cash payments in lieu of vacations will not be counted as hours worked.

(2) Sick leave pay. Hours will not be reported for sick pay excluded under the provisions of RCW 50.04.330(1). However, sick pay which is not excluded under the provisions of RCW 50.04.330(1) shall be reported as leave with pay and the number of hours reported accordingly.

(3) Overtime. The number of hours actually worked for which overtime pay or compensatory time is provided, will be reported without regard to the amount of compensation paid.

(4) Employees on salary. If a salaried employee works irregular nonstandard weeks, he or she shall be reported

for the actual number of hours worked. In the absence of reliable time figures, a full-time salaried employee will be reported for 40 hours worked for each week in which any of his or her duties are performed.

(5) Commissioned employees. Employees compensated by commission will be reported for the actual number of hours worked. In the absence of reliable time figures, a full-time commissioned employee will be reported for 40 hours worked for each week in which any of his or her duties are performed.

(6) Wages in lieu of notice. Employees paid wages in lieu of notice will be reported for the actual number of hours compensated thereby.

(7) Severance pay. Since the payment is predicated on past services, no additional hours are to be reported for severance pay. Severance pay is compensation for the separation from the employment itself as distinguished from wages in lieu of notice which compensates the employee for the amount of wages or salary he or she would have earned during the specified notice period.

(8) Payments in kind. The actual number of hours worked (or reasonable estimate thereof) for performing services which are compensated only by payment in kind shall be reported.

(9) Bonuses, tips and other gratuities. If such compensation is received during the course of performing regular compensated services for which hours are reported, no additional hours shall be reported for items in these categories. However, if the sole compensation for services performed are from any of these items, hours shall be reported.

(10) Fractions of hours. If the employee's total number of hours for the quarter results in a fraction amount, the total figure will be rounded off to the next higher number. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-16-002, filed 8/14/78; Order 2-77, § 192-16-002, filed 9/2/77.]

**WAC 192-16-003 Repealed.** See Disposition Table at beginning of this chapter.

## Title 194 WAC

### WASHINGTON STATE ENERGY OFFICE

#### Chapters

194-14 Emergency Petroleum Allocation Act rules.

#### Chapter 194-14 WAC

### EMERGENCY PETROLEUM ALLOCATION ACT RULES

#### WAC

194-14-030	Definitions.
194-14-040	Applications for set-aside assignments—Form.
194-14-060	State set-aside assignments.
194-14-080	Repealed.
194-14-120	Permanent assignments—Criteria—Agricultural and passenger transportation services end-users.

- 194-14-130 Permanent assignments—Criteria—All other end-users.  
 194-14-160 Appeals board.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 194-14-080 State set-aside—Maximum quantities. [Order 1, § 194-14-080, filed 1/18/77.] Repealed by 79-09-078 (Order 79-1), filed 8/30/79. Statutory Authority: RCW 43.21F.050(12).

**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)] 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) 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)] Office: The Washington State Energy Office.

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

[(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 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 persons, including the driver and which at least eighty 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) 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) Prime supplier: The supplier or producer which makes the first sale of any [allocation] [allocated] product subject to the state set-aside into the state distribution system for consumption within the state.

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

(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) 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) 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) 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) 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. [Statutory Authority: RCW 43.21F.050(12). 79-09-078 (Order 79-1), § 194-14-030, filed 8/30/79; Order 1, § 194-14-030, filed 1/18/77.]

**Reviser's Note:** RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**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.

(2) The applicant must identify energy conservation programs which that individual or firm has in effect.

(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. [Statutory Authority: RCW 43.21F.050(12). 79-09-078 (Order 79-1), § 194-14-040, filed 8/30/79; Order 1, § 194-14-040, filed 1/18/77.]

**Reviser's Note:** RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 194-14-060 State set-aside assignments.** (1) General. To the extent that such supplies are available to the state, 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:

(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

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

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

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

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

(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. [Statutory Authority: RCW 43.21F.050(12). 79-09-078 (Order 79-1), § 194-14-060, filed 8/30/79; Order 1, § 194-14-060, filed 1/18/77.]

**Reviser's Note:** RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 194-14-080 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 194-14-120 Permanent assignments--Criteria--Agricultural and passenger transportation services end-users.** Applications from agricultural and passenger transportation services end-users will be approved. These end-users must satisfy the office through proper verification and certification that they meet the classification of agricultural or passenger services end-user. [Statutory Authority: RCW 43.21F.050(12). 79-09-078 (Order 79-1), § 194-14-120, filed 8/30/79; Order 1, § 194-14-120, filed 1/18/77.]

**WAC 194-14-130 Permanent assignments--Criteria--All other end-users.** Applications from all other

end-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. [Statutory Authority: RCW 43.21F.050(12). 79-09-078 (Order 79-1), § 194-14-130, filed 8/30/79; Order 1, § 194-14-130, 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 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. [Statutory Authority: RCW 43.21F.050(12). 79-09-078 (Order 79-1), § 194-14-160, filed 8/30/79; Order 1, § 194-14-160, filed 1/18/77.]

## Title 198 WAC

### ENVIRONMENTAL HEARINGS OFFICE

#### Chapters

- 198-09** Statement of exemption from State Environmental Policy Act.  
**198-12** Disclosure of public records--Public meetings.

#### Chapter 198-09 WAC

##### STATEMENT OF EXEMPTION FROM STATE ENVIRONMENTAL POLICY ACT

#### WAC

- 198-09-010 Statement of exemption.

**WAC 198-09-010 Statement of exemption.** The environmental hearings office has reviewed its authorized activities and found them all to be exempt under the provisions of WAC 197-10-170(7). This section is adopted for compliance with the State Environmental Policy Act, chapter 43.21C RCW. [Statutory Authority: RCW 34.04.940, 42.17.250, 42.30.070 and 43.21C.120. 79-12-025 (Order 79-1), § 198-09-010, filed 11/16/79.]

#### Chapter 198-12 WAC

##### DISCLOSURE OF PUBLIC RECORDS--PUBLIC MEETINGS

#### WAC

- 198-12-010 Purpose.