

Title 194 WAC

WASHINGTON STATE ENERGY OFFICE

Chapters

- 194-10** Public Disclosure Act rules.
- 194-12** Washington State Environmental Policy Act rules.
- 194-14** Emergency Petroleum Allocation Act rules.

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 194-16

FEES--RADIOACTIVE WASTE MANAGEMENT FACILITIES

- 194-16-010 Purpose and scope. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-010, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-010.
- 194-16-020 Authority. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-020, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-020.
- 194-16-030 Definitions. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-030, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-030.
- 194-16-040 Perpetual care and maintenance fee. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-040, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-040.
- 194-16-050 PCM fee—Method of payment. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-050, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-050.
- 194-16-060 PCM fee—Disposition. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-060, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-060.
- 194-16-070 Severability. [Statutory Authority: RCW 43.21F.075(2), 82-11-005 (Order 82-1), § 194-16-070, filed 5/7/82.] Repealed by 83-18-020 (Order DE 83-25), filed 8/30/83. Statutory Authority: 1983 1st ex.s. c 19 and Title 43 RCW. Later promulgation, see WAC 173-44-070.

Chapter 194-10 WAC

PUBLIC DISCLOSURE ACT RULES

WAC

- 194-10-010 Purpose.
- 194-10-020 Definitions.
- 194-10-030 Description of organization.
- 194-10-040 Procedures.

- 194-10-050 Public records available.
- 194-10-060 Exemptions.
- 194-10-070 Public records officer.
- 194-10-080 Office hours.
- 194-10-090 Requests for public records.
- 194-10-100 Adoption of form.
- 194-10-110 Copying fees.
- 194-10-120 Review of denials.
- 194-10-130 Protection of public records.
- 194-10-140 Records index.

WAC 194-10-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state energy office with the provisions of chapter 42.17 RCW, the Public Disclosure Act. [Order 1, § 194-10-010, filed 1/18/77.]

WAC 194-10-020 Definitions. "Person" includes an individual, partnership joint venture, public or private corporation, association, federal, state or local government entity or agency however constituted.

"Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

"Washington state energy office" means the state agency created pursuant to chapter 43.21F RCW. It shall hereinafter be referred to as "office." Where appropriate, the term "office" also refers to the staff and employees of the Washington state energy office.

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents. [Statutory Authority: RCW 43.21F.045(12), 82-17-030 (Order 82-2), § 194-10-020, filed 8/11/82; Order 1, § 194-10-020, filed 1/18/77.]

WAC 194-10-030 Description of organization. The Washington state energy office is located at 400 E. Union, Olympia, Washington, 98504. There are no field offices. The agency is organized into four divisions/groups as follows: Administration division, conservation division, resource development and energy management division, and the energy policy development group. The director is appointed by the governor. The energy office advisory committee is appointed pursuant to RCW 43.21F.085. [Statutory Authority: RCW 43.21F.045(12), 82-17-030 (Order 82-2), § 194-10-030, filed 8/11/82; Order 1, § 194-10-030, filed 1/18/77.]

WAC 194-10-040 Procedures. The energy office has instituted an "Office Policies and Procedures Manual" to govern agency administrative practices and procedures. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-040, filed 8/11/82; Order 1, § 194-10-040, filed 1/18/77.]

WAC 194-10-050 Public records available. All public records of the office, as defined in WAC 194-10-020 are deemed to be available except as provided by chapter 42.17 RCW or RCW 43.21F.060(1). [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-050, filed 8/11/82; Order 1, § 194-10-050, filed 1/18/77.]

WAC 194-10-060 Exemptions. The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 194-10-090 is exempt under the provisions of chapter 42.17 RCW and other applicable laws. In addition, pursuant to chapter 42.17 RCW, the agency reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is a reason to believe that disclosure of such details would be an invasion of personal privacy or vital governmental interests. In each case, the justification shall be explained fully in writing. Notwithstanding any other provision of law to the contrary, proprietary information obtained under RCW 43.21F.060(1) shall be confidential and maintained as such if so requested by the person providing the information. However, the use of confidential information to prepare statistics or other general data for publication when it is so presented as to prevent identification of particular persons or sources of confidential information is authorized. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-060, filed 8/11/82; Order 1, § 194-10-060, filed 1/18/77.]

WAC 194-10-070 Public records officer. The office's public records shall be in charge of the public records officer designated by the director of the Washington state energy office. The public records officer shall be responsible for the implementation of these rules regarding release of public records and coordination and compliance by staff with the provisions of chapter 42.17 RCW. [Order 1, § 194-10-070, filed 1/18/77.]

WAC 194-10-080 Office hours. Public records shall be available for inspection and copying during the customary business hours of the office. For the purposes of this chapter, the customary business hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. [Order 1, § 194-10-080, filed 1/18/77.]

WAC 194-10-090 Requests for public records. Public records may be inspected or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form in substantial compliance with the provisions of WAC 194-10-100. The form shall be available from the office and shall be presented to the public records officer or to any member of the office staff if the public records officer is not available. The request shall include the following information:

- (a) The name of the person requesting the record,
- (b) The time of day and calendar date on which the request was made,
- (c) The nature of the request,
- (d) If the requested matter is indexed, an appropriate index reference,
- (e) If the requested matter is not identifiable by reference to a current index, an appropriate description of the matter requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff to assist the member of the public in appropriately identifying the matter requested.

(3) Staff members shall make all reasonable efforts to respond to the request within two working days after its receipt. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-090, filed 8/11/82; Order 1, § 194-10-090, filed 1/18/77.]

WAC 194-10-100 Adoption of form. The office has adopted state Form S.F. 276 for use by all persons requesting inspection and/or copies of public records. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-100, filed 8/11/82; Order 1, § 194-10-100 and Form, filed 1/18/77.]

WAC 194-10-110 Copying fees. No fees are to be charged for inspection of public records. The office will charge a fee not to exceed 25¢ per page of copy for use of the office's copy equipment in cases where no significant staff time is taken up with the request. [Order 1, § 194-10-110, filed 1/18/77.]

WAC 194-10-120 Review of denials. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by submitting to the public records officer a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the director of the office. The director or his designee shall consider the matter and either affirm or reverse such denial. Consultation will be made with the attorney general's office regarding the matter under review. The request shall be returned with a final decision within two business days of the date of filing the request for review.

(3) Administrative remedies shall not be considered exhausted until the agency has returned the request for review with a decision or until the close of the second

business day following date of filing the request for review, whichever occurs first. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-120, filed 8/11/82; Order 1, § 194-10-120, filed 1/18/77.]

WAC 194-10-130 Protection of public records. Requests for public records shall be made in the Washington state energy office at 400 E. Union, Olympia. Public records and a facility for their inspection will be provided by the public records officer. Such records shall not be removed from the place designated for their inspection. Copies shall be made in the office or, if copying facilities are not available, the office will arrange to have copies made subject to the provisions of WAC 194-10-110. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-130, filed 8/11/82; Order 1, § 194-10-130, filed 1/18/77.]

WAC 194-10-140 Records index. A current index of records of the Washington state energy office may be examined at the Washington state energy office at 400 E. Union, Olympia, during office hours defined in WAC 194-10-080. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-10-140, filed 8/11/82; Order 1, § 194-10-140, filed 1/18/77.]

Chapter 194-12 WAC

WASHINGTON STATE ENVIRONMENTAL POLICY ACT RULES

WAC

194-12-010	Authority.
194-12-020	Purpose.
194-12-030	Scope and coverage.
194-12-040	Incorporation by reference.
194-12-050	Definitions.
194-12-060	Exemptions.
194-12-070	Designation of responsible official.
194-12-080	Copies of public information.
194-12-090	Consultation request guidelines.
194-12-100	Involvement of private applicant in preparation of EIS.
194-12-110	Preparation of EIS by persons outside the office.
194-12-120	Severability.

WAC 194-12-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 43.21C.120, requiring each state agency to adopt rules implementing the State Environmental Policy Act.

This chapter is also promulgated to comply with WAC 197-10-020(1). [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-010, filed 8/11/82; Order 1, § 194-12-010, filed 1/18/77.]

WAC 194-12-020 Purpose. The purpose of this chapter is to:

(1) Establish guidelines interpreting and implementing the State Environmental Policy Act of 1971 (SEPA) as applicable to the Washington state energy office, and

(2) Incorporate guidelines established by the council on environmental policy into the rules and regulations of the Washington state energy office. [Order 1, § 194-12-020, filed 1/18/77.]

WAC 194-12-030 Scope and coverage. It is the intent of the Washington state energy office that compliance with the guidelines of this chapter and with chapter 197-10 WAC shall constitute complete procedural compliance with SEPA for any action. These agency guidelines supplement and elaborate portions of the SEPA guidelines but do not themselves provide a comprehensive description of the SEPA requirements to which actions of the Washington state energy office are subject. When questions concerning SEPA requirements arise, reference should be made first to the SEPA guidelines and then to this chapter. [Order 1, § 194-12-030, filed 1/18/77.]

WAC 194-12-040 Incorporation by reference. All activities and functions of the Washington state energy office shall be carried out in compliance with the requirements of the State Environmental Policy Act and the SEPA guidelines, and to this end all provisions of the SEPA guidelines, unless clearly designated as optional or unless modified by this chapter, are hereby incorporated into these agency guidelines. [Order 1, § 194-12-040, filed 1/18/77.]

WAC 194-12-050 Definitions. The following words and terms have the following meanings for the purposes of this chapter, unless otherwise indicated:

(1) Action. An activity potentially subject to the environmental impact statement requirements of RCW 43.21C.030 (2)(c) and (2)(d). All actions fall within one of the following subcategories:

(a) Governmental licensing.

(b) Governmental action of a project nature. This includes and is limited to:

(i) The decision by an agency to undertake any activity which will directly modify the physical environment, whether such activity will be undertaken directly by the agency or through contact with another, and

(ii) The decision to purchase, sell, lease, transfer or exchange natural resources, including publicly-owned land, whether or not it directly modifies the environment.

(c) Governmental action of a nonproject nature. This includes and is limited to:

(i) The adoption or amendment of legislation, ordinances, rules or regulations which contain standards controlling use or modification of the physical environment;

(ii) The adoption or amendment of comprehensive land use plans or zoning ordinances;

(iii) The adoption of any policy, plan or program which will govern the development of a series of functionally related major actions, but not including any policy, plan or program for which approval must be obtained from any federal agency prior to implementation;

(iv) Creation of, or annexations to, any city, town or district;

(v) Adoptions or approvals of utility, transportation and solid waste disposal rates;

(vi) Capital budgets; and

(vii) Road, street and highway plans.

(2) Agencies with expertise. Those agencies to which a draft environmental impact statement shall be sent pursuant to WAC 197-10-465, unless they are also agencies with jurisdiction.

(3) Agencies with jurisdiction. Those agencies from which a non-exempt license is required for a proposal or any part thereof, or which will act upon an application for a grant or loan for a proposal, or agencies which are proposing or initiating any governmental action of a project or nonproject nature. The term does not include those agencies authorized to adopt rules or standards of general applicability which govern the proposal in question when no license or approval is required for specific proposals; nor does the term include agencies, involved in approving grants or loans, which serve only as conduits between the primary administering agency and the recipient of the grant or loan. Federal agencies with jurisdiction are instrumentalities of the federal government from which a license is required, or which will receive an application for a grant or loan for a proposal.

(4) Agency. All state agencies and local agencies are defined in this section. The term does not include any agency or division of the federal government.

(5) Declaration of nonsignificance. The written decision by the responsible official of the lead agency that a proposal will not have a significant adverse environmental impact and that therefore no environmental impact statement is required. A form substantially similar to WAC 197-10-355 shall be used for this declaration.

(6) Declaration of significance. The written decision by the responsible official of the lead agency that a proposal will or could have a significant adverse environmental impact and that therefore an environmental impact statement is required. A form substantially similar to WAC 197-10-355 shall be used for this declaration.

(7) Director. The director of the Washington state energy office.

(8) Draft EIS. An environmental impact statement prepared prior to the final detailed statement.

(9) EIS. The detailed statement required by RCW 43.21C.030(2)(c). It may refer to either a draft or final environmental impact statement, or both, depending upon context.

(10) Environmental checklist. The form contained in WAC 197-10-365.

(11) Final EIS. An environmental impact statement prepared to reflect comments to the draft EIS. It may consist of a new document, or of the draft EIS together with supplementary material prepared pursuant to WAC 197-10-570, 197-10-580, or 197-10-695.

(12) Lead agency. The agency designated by the provisions of WAC 197-10-200 through 197-10-370 or

197-10-345, which is responsible for making the threshold determination and preparing or supervising preparation of the draft and final environmental impact statements.

(13) Local agency. Any political subdivision, regional governmental unit, district, municipal or public corporation including cities, towns and counties. The term does not include the departments of a city or county.

(14) Office. The Washington state energy office, and where appropriate, the staff of the Washington state energy office.

(15) Private applicant. Any person or entity, other than an agency as defined in this section, applying for a license from an agency.

(16) Proposal. A specific request to undertake any activity submitted to, and which is seriously considered by, an agency or a decision-maker within an agency, as well as any action or activity which may result from approval or any such request.

(17) Responsible official. That officer or officers, committee, department or section of the lead agency designated to undertake its responsibilities as lead agency.

(18) SEPA. State Environmental Policy Act of 1971, chapter 43.21C RCW, as amended.

(19) SEPA guidelines. Chapter 197-10 WAC.

(20) State agency. Any state board, commission or department except those in the legislative or judicial branches. The term includes the office of the governor and the various divisions thereof, state universities, colleges and community colleges.

(21) Threshold determination. The decision by a lead agency whether or not an environmental impact statement is required for a proposal. [Order 1, § 194-12-050, filed 1/18/77.]

WAC 194-12-060 Exemptions. In addition to those exemptions identified by WAC 197-10-170, any action taken pursuant to chapter 43.21G RCW (Energy supply emergencies alert), shall be exempt from the procedural requirements of this chapter. This is in accordance with RCW 43.21G.040(6). [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-060, filed 8/11/82; Order 1, § 194-12-060, filed 1/18/77.]

WAC 194-12-070 Designation of responsible official. The responsible official is the director of the state energy office. Normally, the director will delegate duties and functions assigned under this chapter. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-070, filed 8/11/82; Order 1, § 194-12-070, filed 1/18/77.]

WAC 194-12-080 Copies of public information. Copies of public information shall be provided upon written request. The office may charge for copies in the manner provided by chapter 42.17 RCW, and for the cost of mailing. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-

080, filed 8/11/82; Order 1, § 194-12-080, filed 1/18/77.]

WAC 194-12-090 Consultation request guidelines. All consultation requests from state agencies or private applicants will be referred to the responsible official.

(1) If the office is an agency with jurisdiction, the office will, under the direction of the responsible official or his designee, conduct research and field investigations which would normally be required and will research impacts of the proposal which bring it within the jurisdiction of the office.

(2) If the office is an agency with expertise, the office will, under the direction of the responsible official or his designee, provide substantive data, information, test results and other relevant material which the office possesses. At the option of the responsible official, the office may also investigate, develop and transmit additional information to enable the lead agency to meet its responsibilities under WAC 197-10-440 or 197-10-442. [Order 1, § 194-12-090, filed 1/18/77.]

WAC 194-12-100 Involvement of private applicant in preparation of EIS. At the option of the office, a private applicant may be required to prepare all or portions of environmental checklists, draft and final environmental impact statements. Such preparation will take place under the direction of the responsible official by either of the following methods:

(1) Applicant prepares the EIS under the supervision and to the satisfaction of the responsible official, or

(2)(a) Applicant posts a deposit;

(b) The office retains a mutually agreed upon and independent consultant to prepare the document;

(c) The consultant prepares the document under and to the satisfaction of the responsible official; and

(d) The consultant is paid from the deposit and the balance of the deposit is returned. The applicant will be provided an itemized accounting of the expenditures made.

In addition to or instead of any requirements made by the office under this section, private applicants shall be encouraged to cooperate in the impact statement preparation process. [Order 1, § 194-12-100, filed 1/18/77.]

WAC 194-12-110 Preparation of EIS by persons outside the office. (1) Preparation of the EIS is the responsibility of the lead agency, by or under the direction of its responsible official. No matter who participates in the preparation of the EIS, it is nevertheless the EIS of the responsible official of the lead agency. The responsible official, prior to distributing the draft EIS, shall be satisfied that it complies with the provisions of these guidelines.

(2) An EIS may be prepared by a private applicant or agent or by an outside consultant retained by either a private applicant or the lead agency. In such case, the responsible official shall assure that the EIS is prepared

in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document.

(3) If a person other than the lead agency is preparing the EIS, the responsible official will coordinate any pre-draft consultation procedures so that the individual preparing the EIS immediately receives all substantive information submitted by consulted agencies. The responsible official shall also attempt to obtain any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any private party preparing an EIS access to all public records of the office which are relevant to the subject matter of the EIS, pursuant to chapter 42.17 RCW. [Order 1, § 194-12-110, filed 1/18/77.]

WAC 194-12-120 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. [Order 1, § 194-12-120, filed 1/18/77.]

Chapter 194-14 WAC

EMERGENCY PETROLEUM ALLOCATION ACT RULES

WAC

194-14-010	Authority.
194-14-020	Purpose.
194-14-030	Definitions.
194-14-040	Applications for set-aside assignments—Form.
194-14-050	Application for set-aside assignment—Form—Exception.
194-14-060	State set-aside assignments.
194-14-070	State set-aside action.
194-14-090	Assignment of state set-aside supplier.
194-14-100	Submission of set-aside order to prime supplier.
194-14-110	Application for permanent assignment—Form.
194-14-120	Permanent assignments—Criteria—Agricultural and passenger transportation services end-users.
194-14-130	Permanent assignments—Criteria—All other end-users.
194-14-140	Permanent assignment action.
194-14-150	Appeals.
194-14-160	Appeals board.
194-14-170	Hearing.
194-14-180	Parties.
194-14-190	Appeal proceedings.
194-14-200	Prehearing conference.
194-14-210	Informal disposition.
194-14-220	Transcript.
194-14-230	Judicial review.
194-14-240	Agency decision.

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 194-14-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW

34.04.020 and according to the guidelines established in 10 C.F.R. § 205 of the Federal Mandatory Petroleum Allocation Regulations. [Order 1, § 194-14-010, filed 1/18/77.]

WAC 194-14-020 Purpose. The purpose of this chapter is to establish administrative procedures with respect to state orders issued under the authority granted by the Emergency Petroleum Allocation Act and appeals from such orders. [Order 1, § 194-14-020, 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.

(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) 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.

(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.

(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.

(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.

(19) Office: The Washington state energy office.

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

(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.

(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; fleetpools; and

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

(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.

(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.

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

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

(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.

(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. § 211.17.

(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.

(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.

(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.

(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 multifamily residences; or

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

(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. [Statutory Authority: RCW 43.21F.050(12). 80-18-035 (Order 80-1), § 194-14-030, filed 12/2/80; 79-09-078 (Order 79-1), § 194-14-030, filed 8/30/79; Order 1, § 194-14-030, 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.

(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 194-14-050 Applications for set-aside assignment--Form--Exception. An application for state set-aside assignment may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When a verbal request is made, the office will require written confirmation by the applicant of the information required by WAC 194-14-040. [Order 1, § 194-14-050, filed 1/18/77.]

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 194-14-070 State set-aside action. The office shall take action on an application by either ordering an assignment, denying the application or requesting more information within ten business days after the application has been received by the office. If the office fails to take action on an application within ten days, the applicant may treat the application as having been denied in all respects and may appeal therefrom. If an application is denied, a copy of the denial shall be served upon the applicant. [Order 1, § 194-14-070, filed 1/18/77.]

WAC 194-14-090 Assignment of state set-aside supplier. State set-aside assignments shall generally be issued through the prime supplier with whom the applicant has an established base period supply volume. In exceptional cases, the office may order assignments through alternate prime suppliers or may split assignments between prime suppliers. When assignments are made to a retail gasoline outlet from a supplier other than the supplier associated with the outlet's brand name, the applicant shall comply with RCW 9.16.080 and shall post a disclaimer to the effect that the product sold is not the brand usually associated with the outlet. [Order 1, § 194-14-090, filed 1/18/77.]

WAC 194-14-100 Submission of set-aside order to prime supplier. Upon approval by the office of a state set-aside assignment, the fuel allocation officer shall issue a written order authorizing the assignment and shall serve it on the prime supplier and, where applicable, the local distributor of the prime supplier, from whose set-aside the assigned product is to be drawn. An order issued by the office under this section is effective upon issuance, unless stayed, modified, suspended or rescinded, and represents a call on the prime supplier's set-aside volume for the month of issuance, even if delivery of the product cannot be made until the following month. [Order 1, § 194-14-100, filed 1/18/77.]

WAC 194-14-110 Application for permanent assignment--Form. An application for a permanent assignment which falls under the state's jurisdiction shall be made on forms issued by the Federal Energy Administration for that purpose and shall be filed with the office. Forms shall be available from the office. [Order 1, § 194-14-110, filed 1/18/77.]

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 194-14-140 Permanent assignment action. If a permanent assignment is approved by the office, the coordinator shall issue a written recommendation to the regional office of the Federal Energy Administration for final deposition. A copy of the recommendation shall be sent to the applicant and to the applicant's supplier. If a permanent assignment is denied by the office, the coordinator shall issue an order of denial. The order shall be served upon the applicant. [Order 1, § 194-14-140, filed 1/18/77.]

WAC 194-14-150 Appeals. Any person aggrieved by an order of the office may file an appeal from such order with the director. Notice of appeal shall be filed within 15 days of the order from which the appeal is taken, and shall be in writing and signed by the appellant. Each appeal shall state:

(1) The reason for the appeal, including the reasons appellant believes the order to be unjust or unwise;

(2) The names and addresses of persons known to appellant who might be adversely affected by the outcome of the appeal;

(3) The nature of the relief sought, whether reversal, modification or some other relief;

(4) A demand for a hearing, or all appeal documents if no oral hearing is requested. [Order 1, § 194-14-150, 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.]

WAC 194-14-170 Hearing. Within 20 days after the receipt of a notice of appeal, the director shall set a

hearing date or, if no hearing is requested, a date for consideration of the appeal by the appeals board. The director shall serve upon all affected persons known to the director:

(1) A statement of the time, place and nature of the proceeding;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon request a more definite and detailed statement shall be furnished. [Order 1, § 194-14-170, filed 1/18/77.]

WAC 194-14-180 Parties. For purposes of these rules, the parties to an appeal shall be the appellant and the office. If the appellant is a person other than the original applicant for the order, the applicant may be permitted to intervene. Upon application, any other person may be permitted to intervene upon a showing that he will be adversely affected by the outcome of the appeal, unless the board determines that his interest is adequately represented by one of the parties or intervenors to the appeal. [Order 1, § 194-14-180, filed 1/18/77.]

WAC 194-14-190 Appeal proceedings. The provisions of chapter 1-08 WAC, shall govern all proceedings before the appeals board. [Order 1, § 194-14-190, filed 1/18/77.]

WAC 194-14-200 Prehearing conference. In any proceeding the board may, upon its motion or upon the motion of one of the parties, direct the parties to appear at a specified time and place for a conference. Such notice shall be provided not less than five days before the date of the conference. [Order 1, § 194-14-200, filed 1/18/77.]

WAC 194-14-210 Informal disposition. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. [Order 1, § 194-14-210, filed 1/18/77.]

WAC 194-14-220 Transcript. A verbatim record of the hearing shall be taken by a court reporter or recording equipment. A court reporter shall be used if demanded by any party, and the expense of the court reporter shall be paid by the demanding party, unless the office agrees otherwise. The verbatim recording will not be transcribed unless requested by a party. If a transcript is requested, the board may require the requesting party to pay the reasonable cost of preparing the transcript. [Order 1, § 194-14-220, filed 1/18/77.]

WAC 194-14-230 Judicial review. The decision of the appeals board shall constitute a final decision for the purposes of RCW 34.04.130 and review of such final

decision may be had to a superior court of competent jurisdiction pursuant to RCW 34.04.130. [Order 1, § 194-14-230, filed 1/18/77.]

WAC 194-14-240 Agency decision. Every decision of the appeals board shall:

(1) Be correctly captioned as to name of proceeding and the fuel allocation appeals board;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded.

A copy of the order shall be delivered or mailed to each party or his designated representative, and to any person readily identifiable by the appeals board as one who is aggrieved by such order. [Order 1, § 194-14-240, filed 1/18/77.]