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 Applications 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 Repealed by 79-09-078 (Order 79-1), filed 8/30/79.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 forseeable 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, firefighting, 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 C.F.R. 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 naptha-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 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffec-

tual 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 34.05.395 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.]