

6 MCAR 2

1 Department of Energy, Planning and Development

2 Energy Division

3

4 Adopted Rules Governing the Petroleum Products State Set-Aside

5 Program

6

7 Rules as Adopted

8 6 MCAR S 2.0108 Authority. Rules 6 MCAR SS 2.0108-2.0116 are

9 adopted pursuant to Minn. Stat. S 116H.095, subd. 7.

8-16-82

10 6 MCAR S 2.0109 Purpose. Rules 6 MCAR SS 2.0108-2.0116 govern

11 the administration of the state petroleum product set-aside

12 program. The state set-aside program provides emergency

13 petroleum supplies to relieve the hardship caused by shortages

14 of refined petroleum products or other emergencies. The purpose

15 of the program is to minimize the adverse impacts of shortages

16 and dislocations on the state's citizens and economy.

17 6 MCAR S 2.0110 Definitions.

18 A. Applicability. For the purposes of 6 MCAR SS

19 2.0108-2.0116 the terms defined in this rule have the meanings

20 given them.

21 B. Agriculture. "Agriculture" means certain activities in

22 food production, processing, and sales as set out in the

23 Standard Industrial Classification Manual, 1972 edition.

24 1. Included activities are:

25 a. activities listed in Division A, Agriculture,

26 Forestry and Fishing, except those excluded by B.2.;

27 b. activities listed in Division D, Manufacturing,

28 including grain and seed drying under Major Group 20, Food and

29 Kindred Products, except those excluded by B.2.;

30 c. activities listed in codes 1475, 2141, 2411, 2421,

31 2873, 2874, 2875, 2879, and 5462; and

32 d. activities of potash mining listed in code 1474,

33 dicalcium phosphate production listed in code 2819, farm to

34 market hauling and log trucking listed in code 4212, and farm

35 irrigation systems listed in code 4971.

1           2. Excluded activities are:

2           a. classification codes 0742, 0752, 0781, 0782, 0849,  
3 and non-food producing activities in codes 0271 and 0279 within  
4 Division A, Agriculture, Forestry, and Fishing; and

5           b. classification codes 2047, 2067, and 2085 within  
6 Major Group 20, Food and Kindred Products in Division D,  
7 Manufacturing.

8           C. Assignment. "Assignment" means an order by the office or  
9 the board to a prime supplier to release state set-aside product  
10 to a specific person.

11          D. Average product use. "Average product use" means the  
12 volume of product purchased during the same month last year.

13          E. Board. "Board" means the state set-aside appeals board.

14          F. Cargo and freight hauling. "Cargo and freight hauling"  
15 means hauling by any truck with a gross vehicle weight of 20,000  
16 pounds or more and the shipping of goods by rail or water.

17          G. Commissioner. "Commissioner" means the Commissioner of  
18 the Minnesota Department of Energy, Planning and Development.

19          H. Current month requirement. "Current month requirement"  
20 means the volume of product needed by an end user to meet its  
21 supply need for the present month.

22          I. Decision. "Decision" means the ruling of the board about  
23 any appeal.

24          J. Department. "Department" means the Minnesota Department  
25 of Energy, Planning and Development.

26          K. Emergency services. "Emergency services" means  
27 activities immediately necessary to preserve the health or  
28 safety of the citizens. Emergency services include: ambulance  
29 operation; city, county, state, and federal law enforcement;  
30 firefighting; mobilized national guard; and Red Cross services.

31          L. End user. "End user" means a final consumer of motor  
32 gasoline or middle distillate.

33          M. Energy production. "Energy production" means the  
34 manufacturing, processing, storage, or transportation of primary  
35 energy sources including electricity, natural gas, or petroleum  
36 products. Energy production excludes electric utilities whose

1 needs for electrical energy can be met by purchase from members  
2 of the Mid-Continent Area Power Pool.

3 N. Essential services. "Essential services" means  
4 activities that provide continuing public health and safety  
5 services. They include: energy production; government  
6 services; maintenance vehicles for telecommunication services;  
7 postal services; sanitation services; and cargo and freight  
8 hauling.

9 O. Fuel coordinator. "Fuel coordinator" means city council  
10 or county board appointed individuals who verify state set-aside  
11 applications.

12 P. Government services. "Government services" include:  
13 activities of the judicial branch of government; jail and prison  
14 activities; meetings of elected political officials; the  
15 Division of Emergency Services Operations Center city, county,  
16 and state activities; hearings of mobilized Local Energy  
17 Conservation Boards; hearing hearings of the Office of  
18 Administrative Hearings; and minimum services to provide Aid For  
19 Dependent Children, food stamps, Social Security Income, and  
20 Social Security checks.

21 Q. Middle distillates. "Middle distillates" means  
22 distillates obtained between kerosene and lubricating oil  
23 fractions in the refining process, including kerosene, number  
24 one and number two heating oil, and number one and number two  
25 diesel fuel.

26 R. Motor gasoline. "Motor gasoline" means a liquid mixture  
27 of hydrocarbons produced by the distillation of petroleum and  
28 used chiefly as a fuel in internal combustion engines.

29 S. Office. "Office" means the unit within the department  
30 responsible for the state set-aside program.

31 T. Officer. "Officer" means the individual who manages the  
32 office and who has authority to sign orders and documents for  
33 the state set-aside program.

34 U. Order. "Order" means a written document signed by the  
35 officer or the commissioner directing a prime supplier to  
36 release a product for an assignment. The office may telephone

1 an order to the prime supplier, but the office shall promptly  
2 send the written order to the prime supplier's representative.  
3 The order is effective the day it is signed by the officer or  
4 commissioner.

5 V. Passenger transportation. "Passenger transportation"  
6 means conventional public transit service which operates on a  
7 fixed route and is available to the public for a fare, intercity  
8 bus transportation, van pools, subscription buses, tour and  
9 charter bus transportation, bus transportation of pupils for  
10 educational purposes, taxicabs licensed to conduct business in a  
11 municipality, rail passenger transportation, aviation ground  
12 support for regularly scheduled airlines, and special  
13 transportation services for the elderly or handicapped.

14 W. Person. "Person" means an individual and any legally  
15 existing business, government unit, or institution.

16 X. Plant protection. "Plant protection" means sufficient  
17 heat and power to keep from freezing pipes and damaging  
18 equipment.

19 Y. Postal service. "Postal service" means the delivery of  
20 first, second, or third class United States mail.

21 Z. Prime supplier. "Prime supplier" means the producer or  
22 supplier now or hereafter making the first sale of middle  
23 distillates or motor gasoline subject to the state set-aside  
24 program for consumption within the state.

25 AA. Prime supplier's representative. "Prime supplier's  
26 representative" means an individual who is authorized to act as  
27 liaison for the prime supplier in regular activities of the  
28 state set-aside program.

29 BB. Retail outlet. "Retail outlet" means a person who sells  
30 refined petroleum products from fixed tanks in a fixed location  
31 to end users in retail volumes.

32 CC. Sanitation services. "Sanitation services" means the  
33 activities of a person who supplies water to the public through  
34 public utilities, or collects or disposes gaseous, liquid, or  
35 solid wastes for the public.

36 DD. Service. "Service" means personal service or service by

1 certified United States mail, postage prepaid, addressed to a  
2 person at the person's last known address.

3 EE. Shortfall. "Shortfall" means the amount by which demand  
4 exceeds supply of crude oil or refined petroleum products during  
5 any month.

6 FF. State. "State" means the state of Minnesota.

7 GG. State set-aside. "State set-aside" means the amount of  
8 middle distillates or motor gasoline required to be made  
9 available by a prime supplier for utilization by the  
10 commissioner to resolve or mitigate emergencies or hardships due  
11 to shortages of supply.

12 HH. Supplier. "Supplier" means a person, other than the  
13 United States Department of Defense, who furnishes a refined  
14 petroleum product or crude oil to end users, other suppliers,  
15 wholesale purchaser-consumers, or wholesale purchaser-resellers.

16 II. Wholesale purchaser-consumer. "Wholesale  
17 purchaser-consumer" means an end user who purchases truck  
18 transport volumes of middle distillate or motor gasoline or both  
19 from a prime supplier.

20 JJ. Wholesale purchaser-reseller. "Wholesale  
21 purchaser-reseller" means a person who obtains petroleum product  
22 from a supplier and, without additional refining, sells or  
23 transfers the product to other purchasers.

24 6 MCAR S 2.0111 Prime supplier's obligations.

25 A. Monthly reports. Each prime supplier and producer or  
26 supplier making the first sale of propane or residual fuel oil  
27 within the state shall submit to the office a monthly report.  
28 The report shall be submitted in time to be received by the  
29 office each month no later than the 25th day of the month. The  
30 report shall include actual volumes of product sold in the  
31 previous month and the forecasted volumes of product to be  
32 delivered in the month following the month in which the report  
33 is submitted.

34 1. The following petroleum products shall be included in  
35 each monthly report:

36 a. propane (consumer grade);

- 1 b. motor gasoline (total);
- 2 c. unleaded motor gasoline;
- 3 d. kerosene;
- 4 e. number 1 distillate;
- 5 f. number 2 heating oil;
- 6 g. diesel fuel;
- 7 h. aviation gasoline;
- 8 i. kerosene base jet fuel;
- 9 j. naphtha base jet fuel;
- 10 k. number 4 distillate;
- 11 l. residual fuel oil with sulfur content equal to or
- 12 less than one percent; and
- 13 m. residual fuel oil with sulfur content greater than
- 14 one percent.

15 2. The monthly reports shall be submitted in a  
16 standardized form approved by the office.

17 B. Prime supplier's representative. Each prime supplier  
18 shall report to the office the name, mailing address, and  
19 telephone number of a representative to act for the company  
20 regarding state set-aside. The duties of this representative  
21 shall include confirming monthly state set-aside volumes and  
22 accepting and processing state set-aside orders.

23 C. Nonpublic data. Reports submitted pursuant to this rule  
24 are nonpublic data in accordance with Minn. Stat. S 15.1682.

25 6 MCAR S 2.0112 Applications.

26 A. Who may apply. The following persons may apply for state  
27 set-aside if they are supplied middle distillate or motor  
28 gasoline or both directly by a prime supplier:

29 1. a wholesale purchaser-consumer or an end user seeking  
30 an assignment because of hardship or emergency; or

31 2. wholesale purchaser-resellers seeking assignments to  
32 supply their traditional wholesale-purchaser and end user  
33 accounts because of hardship or emergency.

34 B. Form of application. An applicant shall submit an  
35 application to the office for each month of hardship or  
36 emergency.

1           1. Except as provided in 2., applications shall be  
2 submitted in writing on forms approved by the office and signed  
3 by the applicant. Each application shall be verified and signed  
4 by a fuel coordinator attesting to the applicant's need for  
5 state set-aside products. The office may request reasonable  
6 additional information from an applicant as needed to support  
7 the claim of hardship or emergency.

8           2. An application may be made orally when extraordinary  
9 circumstances make it impossible for the applicant to submit a  
10 written application. When an oral application is made, the fuel  
11 coordinator shall orally certify to the office that the  
12 applicant has an emergency or hardship situation. It is the  
13 responsibility of the applicant to insure both that the fuel  
14 coordinator contacts the office and that the written application  
15 is submitted within five days following the oral application.  
16 If the written application is not submitted within five days  
17 following the oral application, the office may refuse to accept  
18 future oral requests from that applicant.

19 6 MCAR S 2.0113 Evaluation criteria.

20           A. Middle distillates. The amount of middle distillates  
21 available for state set-aside is a volume equal to four percent  
22 of all prime suppliers' monthly supply estimate as stated in the  
23 monthly report filed pursuant to 6 MCAR S 2.0111. Applicants  
24 shall specify the gallons requested for each end user category  
25 and the reason for any need of volumes in excess of contract  
26 volumes. All assignments shall be based on the following  
27 priorities:

- 28           1. First priority middle distillate users include:
- 29           a. agriculture;
  - 30           b. emergency services;
  - 31           c. essential services;
  - 32           d. heating customers with no alternate source of fuel,  
33 including hospitals, multi-unit housing, nursing homes, and  
34 residences;
  - 35           e. major industrial and commercial activities whose  
36 continued operation is essential to the economic well-being of

1 an area, including auto manufacturing and mining;

2 f. minimum plant and building protection; and

3 g. passenger transportation.

4 2. Second priority middle distillate users are heating  
5 customers on interruptible natural gas or another primary source  
6 of fuel. They include hospitals, multi-unit housing, nursing  
7 homes, and residences.

8 3. Third priority middle distillate users include  
9 government buildings, for heating; industrial and commercial  
10 activities not included in 1.; and schools.

11 4. Notwithstanding the priorities stated in 1. to 3.,  
12 when an energy supply fuel oil emergency has been declared  
13 pursuant to Minn. Stat. S 116H.09 and 6 MCAR SS 2.3101-2.3120,  
14 the priorities stated in 6 MCAR S 2.3111 shall apply.

15 B. Motor gasoline. The volume of motor gasoline available  
16 for state set-aside is a volume equal to three percent of all  
17 prime suppliers' monthly supply estimate as stated in the  
18 monthly report filed pursuant to 6 MCAR S 2.0111. The office  
19 may assign state set-aside motor gasoline volumes, when the  
20 applicant submits accurate and complete documentation, based on  
21 the following criteria.

22 1. Agricultural motor gasoline shortfall.

23 a. If the traditional supplier of an agricultural  
24 operation is unable to supply average motor gasoline use, the  
25 office may release amounts of state set-aside equal to the  
26 shortfall. The office may require the applicant to list the  
27 name, telephone number, and average motor gasoline use of the  
28 ultimate consumer.

29 b. If unusual weather conditions, natural disasters,  
30 or other extreme occurrences require more than average motor  
31 gasoline use, the office may make a state set-aside assignment  
32 to satisfy the greater requirement. In these cases, the  
33 applicant shall provide the office with the current monthly  
34 requirement and a justification for the request.

35 2. Community or area hardship.

36 a. If a supplier pullout produces a shortfall of motor



1 gasoline in a local area, a wholesale purchaser-reseller in the  
2 area may apply for a state set-aside assignment. The applicant  
3 shall submit the name, address, and approximate gallons per  
4 month sold by the supplier who has pulled out.

5       b. State set-aside may be assigned to alleviate a  
6 shortfall caused by the closing of a motor gasoline retail  
7 outlet in a community. The applicant must certify that  
8 residents would have to drive 20 or more miles round trip to  
9 obtain motor gasoline between the hours of 7:00 a.m. and 8:00  
10 p.m. and provide the office with the name, address, and  
11 approximate gallons per month sold of all retail outlets which  
12 have opened or closed in the last calendar year within a ten-  
13 mile radius of the retail outlet requesting the state set-aside  
14 assignment.

15       c. A wholesale purchaser-reseller may receive an  
16 assignment on the basis of unusual growth if the applicant can  
17 demonstrate the existence of a shortfall because of a population  
18 increase in the community of over ten percent since 1980, new  
19 business in the community employing 500 or more employees since  
20 1980, or relocation of a highway since 1980.

21       d. The office may assign state set-aside motor  
22 gasoline to a retail outlet that has historically remained open  
23 24 hours a day and provided emergency road service.

24       3. The office may assign state set-aside motor gasoline  
25 to alleviate a shortage of motor gasoline due to a natural  
26 disaster including: floods; blizzards; fire; high winds; and  
27 tornadoes. Applicants shall state the nature of the disaster,  
28 the number of gallons sold, and to whom.

29       4. The office may assign state set-aside motor gasoline  
30 to meet the requirements of certain priority vehicles because of  
31 a shortfall. Applicants may apply for state set-aside to make  
32 up the difference between 100 percent of contract volume and the  
33 amount of supply currently available for the following types of  
34 priority vehicles: emergency services, essential services, and  
35 passenger transportation services.

36 6 MCAR S 2.0114 Application processing procedures.

1       A. Investigations. The office may initiate an investigation  
2 of any statement in an application and utilize in its evaluation  
3 of the application any relevant facts obtained by the  
4 investigation. The office may solicit and accept information  
5 from third persons relevant to any application, provided that  
6 the applicant is afforded an opportunity to respond.

7       B. Additional information. If the office determines that  
8 the application does not have sufficient information to support  
9 a decision, it may request the necessary additional information  
10 from the applicant. If the applicant repeatedly or willfully  
11 fails to supply additional information, the office may deny the  
12 application.

13       C. Processing. The office shall process applications each  
14 month for that month as follows:

15       1. Applications made by wholesale purchaser-consumers or  
16 by wholesale purchaser-resellers on behalf of wholesale  
17 purchaser-consumers or end users shall be processed within five  
18 working days after receipt.

19       2. Except when the applicant applies for state set-aside  
20 under 6 MCAR S 2.0113 B.2. or 3., applications that are made by  
21 or on the behalf of retail outlets shall be processed within  
22 five working days after the 15th day of the month.

23       3. Applications needing additional information shall be  
24 processed within five working days after receipt of the  
25 requested information.

26       D. Implementation. State set-aside assignments shall be  
27 implemented as follows:

28       1. Upon approval or modification of a request for state  
29 set-aside product, the office shall issue an order authorizing  
30 the assignment and serve it on the prime supplier from whom the  
31 state set-aside product is to be drawn.

32       a. An order issued by the office is effective the date  
33 it is signed by the officer or the commissioner, unless stayed,  
34 modified, suspended, or rescinded.

35       b. The order represents a call upon the prime  
36 supplier's state set-aside volume for the month of issuance even

1 if delivery cannot be made until the following month.

2 c. The applicant shall arrange for receipt of the  
3 product within ten days from the date of the order.

4 2. Upon denial of an application, the office shall notify  
5 the applicant in writing, stating the reason for denial.

6 6 MCAR S 2.0115 Appeals process.

7 A. Applicability. Within ten days after the effective date  
8 of an order or the mailing date of a denial, any person  
9 aggrieved may appeal in writing to the commissioner. The  
10 written appeal shall include:

11 1. the reason for the appeal, including why the action by  
12 the office is deemed unwise or unjust;

13 2. the names, addresses, and telephone numbers of any  
14 persons whom it is believed might be injured by the order being  
15 appealed; and

16 3. the objective of the appeal, including reversal of the  
17 office action, modification of the action, or other remedies.

18 B. Commissioner's action. Within five days of receipt of  
19 the appeal, the commissioner shall:

20 1. set a hearing date at least ten days after initiation  
21 of the appeal;

22 2. serve all interested parties with a copy of the appeal  
23 and notice of the time and place of the hearing; and

24 3. issue a stay of the order if:

25 a. it appears probable that a party may suffer serious  
26 injury;

27 b. the order appears in conflict with Minn. Stat. S  
28 116H.095, or other law; or

29 c. it appears probable that the board will grant the  
30 appeal.

31 C. State set-aside appeals board. The state set-aside  
32 appeals board consists of:

33 1. the commissioner or the ~~director's~~ commissioner's  
34 designee, as chairperson; -----

35 2. the Commissioner of the Minnesota Department of  
36 Agriculture or designee thereof;

1           3. the Director of the Office of Consumer Services of the  
2 Minnesota Department of Commerce or designee thereof;

3           4. the Director of the Office of Emergency Services of  
4 the Minnesota Department of Public Safety or designee thereof;  
5 and

6           5. the Chairperson of the Minnesota Public Utilities  
7 Commission or designee thereof.

8           D. Decisions on appeals. The commissioner plus any two or  
9 more additional members may hear and decide appeals.

10          E. Informal disposition. At any time during the  
11 proceedings, the affected parties may conclude a mutually  
12 acceptable settlement of the appeal.

13 6 MCAR S 2.0116 Hearings.

14          A. Rights of the parties to the hearing. Affected parties  
15 have a right to:

- 16           1. a hearing before the board;
- 17           2. representation by an attorney;
- 18           3. present public evidence;
- 19           4. present witnesses who will testify under oath;
- 20           5. cross-examine witnesses; and
- 21           6. present rebuttal testimony and argument.

22          B. Rules of evidence.

23           1. The board shall admit and consider any reasonable  
24 evidence.

25           2. The board may exclude evidence it determines to be  
26 immaterial, irrelevant, or repetitious.

27           3. The board shall consider only the evidence which is  
28 entered into the public record of the hearing.

29           4. If the board desires to use technical facts within its  
30 specialized knowledge or publicly accepted facts that were not  
31 part of the evidence presented, the board shall notify the  
32 parties and give them an opportunity to rebut those facts.  
33 After the rebutting evidence is received and reviewed, the board  
34 shall review all the evidence when making the decision.

35          C. Public record of the hearing. The board shall prepare an  
36 official record which shall include:

- 1           1. all pleadings, motions, and intermediate rulings;
- 2           2. evidence received or considered;
- 3           3. a statement of facts not introduced in evidence but
- 4 considered by the board and questions of those facts by affected
- 5 persons including rebuttals and objections;
- 6           4. proposed findings and exceptions;
- 7           5. any decision, opinion, or report by the board; and
- 8           6. all memoranda or data submitted to the board by the
- 9 office except advice of the office's attorney.

10       D. Verbatim record. The board shall make a verbatim record  
11 of the hearing on recording equipment. Any party may request  
12 that a court reporter make the record, but that person shall pay  
13 the court reporter's fee. The board shall transcribe the record  
14 only upon request and only if the requestor agrees to pay for  
15 the cost of transcribing.

16       E. Hearing procedure.

17           1. If the appellant fails to appear, the board may  
18 declare a default and deny the appeal.

19           2. After opening the hearing, the chairperson shall read  
20 the rights of the parties to the hearing and the rules regarding  
21 evidence from A. and B. The chairperson shall also call for the  
22 parties to present any written matter that they wish to  
23 introduce as an exhibit and offer as evidence.

24           3. A representative of the office shall introduce the  
25 jurisdictional exhibits including the written appeal received by  
26 the commissioner, the notice of hearing, and any agreements  
27 entered into by the parties to the appeal.

28           4. The appellant may make an opening statement. Other  
29 parties may make statements in the order determined by the board.

30           5. After opening statements, the appellant may present  
31 its case. Other parties may present their cases in the order  
32 determined by the board.

33           6. The board shall determine the order for  
34 cross-examining witnesses.

35           7. The parties may next give oral or written rebuttal  
36 evidence and final arguments in the order determined by the

1 board.

2       8. After final arguments, the board may: close the  
3 hearing; announce the time and place of the next hearing; or  
4 continue the hearing to some future time. The board shall give  
5 a five day written notice to all parties prior to holding a  
6 continued hearing.

7       E. Decorum. The chairperson may take action to insure the  
8 orderly conduct of public business at the hearing, as authorized  
9 by Minn. Stat. S 624.72, subd. 3.

10       G. Decision.

11       1. Within five days after the hearing is closed, the  
12 board shall issue its decision on the appeal.

13       2. The decision shall state that the denial or order of  
14 the office was modified, reversed, or upheld. If modified or  
15 reversed, the decision must state exactly what action is  
16 required. The decision shall state the conclusions of fact and  
17 law used to reach the ruling.

18       3. The commissioner shall, by the close of the working  
19 day following the decision, serve a copy of the decision on the  
20 parties to the hearing.

21

22 Repealer. Rules EA 101-107 of the Energy Agency are repealed.