

CHAPTER 4110
DEPARTMENT OF ENERGY AND ECONOMIC
DEVELOPMENT
PETROLEUM SET-ASIDE PROGRAM

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4110.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4110.0100 to 4110.2600 the terms defined in this chapter have the meanings given them.

Subp. 2. **Agriculture.** "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

A. Included activities are:

(1) activities listed in Division A, Agriculture, Forestry, and Fishing, except those excluded by item B;

(2) activities listed in Division D, Manufacturing, including grain and seed drying under Major Group 20, Food and Kindred Products, except those excluded by item B;

(3) activities listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

(4) activities of potash mining listed in code 1474, dicalcium phosphate production listed in code 2819, farm to market hauling and log trucking listed in code 4212, and farm irrigation systems listed in code 4971.

B. Excluded activities are:

(1) classification codes 0742, 0752, 0781, 0782, 0849, and non-food-producing activities in codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

(2) classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products in Division D, Manufacturing.

Subp. 3. **Assignment.** "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

Subp. 4. **Average product use.** "Average product use" means the volume of product purchased during the same month last year.

Subp. 5. **Board.** "Board" means the state set-aside appeals board.

Subp. 6. **Cargo and freight hauling.** "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Energy and Economic Development.

Subp. 8. **Current month requirement.** "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

Subp. 9. **Decision.** "Decision" means the ruling of the board about any appeal.

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Subp. 10. **Department.** "Department" means the Minnesota Department of Energy and Economic Development.

Subp. 11. **Emergency services.** "Emergency services" means activities immediately necessary to preserve the health or safety of the citizens. Emergency services include: ambulance operation; city, county, state, and federal law enforcement; firefighting; mobilized national guard; and Red Cross services.

Subp. 12. **End user.** "End user" means a final consumer of motor gasoline or middle distillate.

Subp. 13. **Energy production.** "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

Subp. 14. **Essential services.** "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

Subp. 15. **Fuel coordinator.** "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

Subp. 16. **Government services.** "Government services" includes: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services city, county, and state activities; hearings of mobilized local energy conservation boards; hearings of the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food stamps, Social Security income, and Social Security checks.

Subp. 17. **Middle distillates.** "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

Subp. 18. **Motor gasoline.** "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

Subp. 19. **Office.** "Office" means the unit within the department responsible for the state set-aside program.

Subp. 20. **Officer.** "Officer" means the individual who manages the office and who has authority to sign orders and documents for the state set-aside program.

Subp. 21. **Order.** "Order" means a written document signed by the officer or the commissioner directing a prime supplier to release a product for an assignment. The office may telephone an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or commissioner.

Subp. 22. **Passenger transportation.** "Passenger transportation" means: conventional public transit service that operates on a fixed route and is available to the public for a fare; intercity bus transportation; van pools; subscription buses; tour and charter bus transportation; bus transportation of pupils for educational purposes; taxicabs licensed to conduct business in a municipality; rail passenger transportation; aviation ground support for regularly scheduled airlines; and special transportation services for the elderly or handicapped.

Subp. 23. **Person.** "Person" means an individual and any legally existing business, government unit, or institution.

Subp. 24. **Plant protection.** "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Subp. 25. **Postal service.** "Postal service" means the delivery of first, second, or third class United States mail.

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Subp. 26. **Prime supplier.** "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside program for consumption within the state.

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

Subp. 28. **Retail outlet.** "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

Subp. 29. **Sanitation services.** "Sanitation services" means the activities of a person who supplies water to the public through public utilities, or collects or disposes of gaseous, liquid, or solid wastes for the public.

Subp. 30. **Service.** "Service" means personal service or service by certified United States mail, postage prepaid, addressed to a person at the person's last known address.

Subp. 31. **Shortfall.** "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

Subp. 32. **State.** "State" means the state of Minnesota.

Subp. 33. **State set-aside.** "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the commissioner to resolve or mitigate emergencies or hardships due to shortages of supply.

Subp. 34. **Supplier.** "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

Subp. 35. **Wholesale purchaser-consumer.** "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

Subp. 36. **Wholesale purchaser-reseller.** "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

Statutory Authority: *MS s 116J.16 subd 7*

History: *L 1983 c 289 s 115 subd 1*

4110.0200 AUTHORITY.

Parts 4110.0100 to 4110.2600 are adopted pursuant to Minnesota Statutes, section 116J.16, subdivision 7.

Statutory Authority: *MS s 116J.16 subd 7*

4110.0300 PURPOSE.

Parts 4110.0100 to 4110.2600 govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

Statutory Authority: *MS s 116J.16 subd 7*

OBLIGATIONS OF PRIME SUPPLIER**4110.1100 MONTHLY REPORTS.**

Subpart 1. **Timing.** Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month.

Subp. 2. Content. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be delivered in the month following the month in which the report is submitted. The following petroleum products shall be included in each monthly report:

- A. propane (consumer grade);
- B. motor gasoline (total);
- C. unleaded motor gasoline;
- D. kerosene;
- E. number 1 distillate;
- F. number 2 heating oil;
- G. diesel fuel;
- H. aviation gasoline;
- I. kerosene base jet fuel;
- J. naphtha base jet fuel;
- K. number 4 distillate;
- L. residual fuel oil with sulfur content equal to or less than one percent;

and

- M. residual fuel oil with sulfur content greater than one percent.

Subp. 3. Form. The monthly reports shall be submitted in a standardized form approved by the office.

Statutory Authority: *MS s 116J.16 subd 7*

4110.1200 PRIME SUPPLIER'S REPRESENTATIVE.

Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include confirming monthly state set-aside volumes and accepting and processing state set-aside orders.

Statutory Authority: *MS s 116J.16 subd 7*

4110.1300 NONPUBLIC DATA.

Reports submitted pursuant to parts 4110.1100 to 4110.1300 are nonpublic data in accordance with Minnesota Statutes, section 13.68.

Statutory Authority: *MS s 116J.16 subd 7*

APPLICATIONS, CRITERIA, APPEALS, AND HEARINGS

4110.2100 APPLICATIONS.

Subpart 1. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

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

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

Subp. 2. Form of application. An applicant shall submit an application to the office for each month of hardship or emergency.

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

B. An application may be made orally when extraordinary circum-

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stances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

Statutory Authority: *MS s 116J.16 subd 7*

4110.2200 EVALUATION CRITERIA FOR MIDDLE DISTILLATES.

Subpart 1. Amount. The amount of middle distillates available for state set-aside is a volume equal to four percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to parts 4110.1100 to 4110.1300. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the priorities in subparts 2 to 5.

Subp. 2. First priority. First priority middle distillate users include:

- A. agriculture;
- B. emergency services;
- C. essential services;
- D. heating customers with no alternate source of fuel, including hospitals, multiunit housing, nursing homes, and residences;
- E. major industrial and commercial activities whose continued operation is essential to the economic well-being of an area, including auto manufacturing and mining;
- F. minimum plant and building protection; and
- G. passenger transportation.

Subp. 3. Second priority. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include hospitals, multiunit housing, nursing homes, and residences.

Subp. 4. Third priority. Third priority middle distillate users include government buildings, for heating; industrial and commercial activities not included in subpart 2; and schools.

Subp. 5. Priorities during fuel oil emergencies. Notwithstanding the priorities stated in subparts 2, 3, and 4, when an energy supply fuel oil emergency has been declared pursuant to chapter 4120 and Minnesota Statutes, section 116J.15, the priorities stated in part 4120.3100 shall apply.

Statutory Authority: *MS s 116J.16 subd 7*

4110.2300 EVALUATION CRITERIA FOR MOTOR GASOLINE.

Subpart 1. Volume. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to parts 4110.1100 to 4110.1300. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the criteria in subparts 2 to 5.

Subp. 2. Agricultural motor gasoline shortfall. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state

set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

Subp. 3. Community or area hardship. Community or area hardship:

A. If a supplier pullout produces a shortfall of motor gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

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

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

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

Subp. 4. Natural disasters. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods; blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

Subp. 5. Priority vehicles. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles: emergency services, essential services, and passenger transportation services.

Statutory Authority: *MS s 116J.16 subd 7*

4110.2400 APPLICATION PROCESSING PROCEDURES.

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

Subp. 2. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

Subp. 3. Processing. The office shall process applications each month for that month as follows:

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

B. Except when the applicant applies for state set-aside under part 4110.2300, subpart 3, applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month.

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C. Applications needing additional information shall be processed within five working days after receipt of the requested information.

Subp. 4. **Implementation.** State set-aside assignments shall be implemented as follows:

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

(1) An order issued by the office is effective the date it is signed by the officer or the commissioner, unless stayed, modified, suspended, or rescinded.

(2) The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even if delivery cannot be made until the following month.

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

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

Statutory Authority: MS s 116J.16 subd 7

4110.2500 APPEALS PROCESS.

Subpart 1. **Process.** Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the commissioner. The written appeal shall include:

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

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

C. the objective of the appeal, including reversal of the office action, modification of the action, or other remedies.

Subp. 2. **Commissioner's action.** Within five days of receipt of the appeal, the commissioner shall:

A. set a hearing date at least ten days after initiation of the appeal;

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

C. issue a stay of the order if it appears probable that a party may suffer serious injury, the order appears in conflict with Minnesota Statutes, section 116J.16 or other law, or it appears probable that the board will grant the appeal.

Subp. 3. **State set-aside appeals board.** The state set-aside appeals board consists of:

A. the commissioner or the commissioner's designee, as chairperson;

B. the commissioner of the Minnesota Department of Agriculture or designee thereof;

C. the commissioner of commerce of the Minnesota Department of Commerce or designee thereof;

D. the director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

E. the chairperson of the Minnesota Public Utilities Commission or designee thereof.

Subp. 4. **Decisions on appeals.** The commissioner plus any two or more additional members may hear and decide appeals.

Subp. 5. **Informal disposition.** At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

Statutory Authority: MS 116J.16 subd 7

History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92

4110.2600 HEARINGS.

Subpart 1. Rights of parties to hearing. Affected parties have a right to:

- A. a hearing before the board;
- B. representation by an attorney;
- C. present public evidence;
- D. present witnesses who will testify under oath;
- E. cross-examine witnesses; and
- F. present rebuttal testimony and argument.

Subp. 2. Rules of evidence. The board shall admit and consider any reasonable evidence. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious. The board shall consider only the evidence which is entered into the public record of the hearing.

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

Subp. 3. Public record of hearing. The board shall prepare an official record, which shall include:

- A. all pleadings, motions, and intermediate rulings;
- B. evidence received or considered;
- C. a statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;
- D. proposed findings and exceptions;
- E. any decision, opinion, or report by the board; and
- F. all memoranda or data submitted to the board by the office except advice of the office's attorney.

Subp. 4. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record only upon request and only if the requester agrees to pay for the cost of transcribing.

Subp. 5. Hearing procedure. Hearing procedure:

- A. If the appellant fails to appear, the board may declare a default and deny the appeal.
- B. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence, from subparts 1 and 2. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.
- C. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the commissioner, the notice of hearing, and any agreements entered into by the parties to the appeal.
- D. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.
- E. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.
- F. The board shall determine the order for cross-examining witnesses.
- G. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the board.
- H. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or continue the hearing to some future time.

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The board shall give a five-day written notice to all parties prior to holding a continued hearing.

Subp. 6. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minnesota Statutes, section 624.72, subdivision 3.

Subp. 7. Decision. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

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

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

Statutory Authority: *MS s 116J.16 subd 7*